

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| IN RE: |) | CHAPTER 7 |
| |) | |
| ANGELICA SEBASTIAN HOPE, |) | CASE NO. 13-69704 – MHM |
| f/k/a Natalya Sevastyanovna Khapun, |) | |
| |) | |
| Debtor. |) | |
| |) | |
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| GUVEN FINE JEWELRY, INC. |) | |
| |) | |
| Plaintiff, |) | ADVERSARY PROCEEDING |
| v. |) | NO. 13-5422 |
| |) | |
| ANGELICA SEBASTIAN HOPE, |) | |
| f/k/a Natalya Sevastyanovna Khapun, |) | |
| |) | |
| Defendant. |) | |

**ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS**

This adversary proceeding is before the court on Defendant's *Motion for Judgment on the Pleadings* filed April 9, 2014 (Doc. No. 10). November 27, 2013, Plaintiff filed a complaint initiating this adversary proceeding, alleging that Defendant bought a diamond ring from Plaintiff using "false oaths, false pretenses, false representations and/or actual fraud" and arguing for a determination of non-dischargeability of the debt under 11 U.S.C. § 523(a)(2)(A) (Doc. No. 1 at 7). Plaintiff also alleges that Defendant fraudulently filed for bankruptcy to avoid paying Plaintiff a principal balance of

\$66,080.00, plus interest, due on the ring (Doc. No. 1 at 7). According to the Final Order and Judgment ("Final Judgment") attached to Plaintiff's complaint, a Fulton County state court determined in a prior action between the parties for breach of contract that Defendant owed the balance on the diamond ring but that "Plaintiff's claims for conversion and fraudulent inducement must fail" (Doc. No. 1 at 13). Defendant now argues that Plaintiff failed to state a claim and is barred by collateral estoppel.

In the *Response to Defendant's Motion for Judgment on the Pleadings*, Plaintiff alleges that Defendant committed fraud in her bankruptcy proceeding (Doc. No. 12 at 2). Plaintiff believes that Defendant still possesses the ring but intentionally excluded it from her schedules¹ (Doc. No. 12 at 2).

DISCUSSION

Plaintiff's complaint sufficiently alleges fraud on the part of Defendant by inducing Plaintiff to enter into a contract for the purchase of the diamond ring.² Furthermore, the Final Judgment rendered by the Fulton County state court does not bar Plaintiff's claim for fraud under § 523(a)(2).

¹ Section 521(a) and Bankruptcy Rule 1007(b) require a debtor to file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs (the "Schedules"). Section 521(a) also requires an individual Debtor to file pay advices.

² The body of the complaint contains few factual allegations; however, it incorporates by reference Plaintiff's complaint in the state court action.

Failure to State a Claim

Pursuant to Federal Rule of Civil Procedure 12(c), incorporated in Federal Rule of Bankruptcy Procedure 7012(b), a court should grant a motion for judgment on the pleadings when no material facts are disputed and the moving party is entitled to judgment as a matter of law. FED. R. BANKR. P. 7012(b); *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001). A Rule 12(c) motion filed by the defendant challenges the sufficiency of the complaint like a motion under Rule 12(b)(6). *See In re Dorsey*, 497 B.R. 374, 382 (Bankr. N.D. Ga. 2013). Accordingly, Rule 12(c) employs the same legal standard as Rule 12(b)(6). *Id.* This standard requires that for a defendant's motion to be granted, when viewing the pleadings in the light most favorable to the non-moving party, the complaint must contain no set of facts that support "a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Thus, a complaint is insufficient if it contains only "naked assertion[s of legal conclusions] devoid of further factual enhancement." *Id.*

A party alleging fraud must "state with particularity the circumstances constituting fraud." FED. R. BANKR. P. 7009. Such particularity requires a plaintiff to identify the precise statements of misrepresentation or omission; the content of those statements; when, where, and by whom the statements were made; and what the defendant obtained

by committing fraud. *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001). Intent may be alleged generally. FED. R. BANKR. P. 7009.

Here, Plaintiff's complaint alleges sufficient facts to establish a claim of fraud in inducing the sale of the diamond ring. Plaintiff states that May 8, 2009, Defendant "promise[d] to make regular substantial payments" (Doc. No. 1 at 21). Defendant also "falsely represented that [she] would pay Plaintiff . . . [and] never had any intention of compensating Plaintiff for said ring" (Doc. No. 1 at 24). Plaintiff alleges that it "relied on Defendant['s] representation . . . [and] was damaged as a result of Defendant['s] actions" (Doc. No. 1 at 24).

In contrast, Plaintiff's claim that Defendant "is employing her bankruptcy proceeding as a fraudulent shield to protect herself from" financial obligations lacks the requisite specificity to state a claim (Doc. No. 1 at 7). Plaintiff presents this as a factual allegation, but this allegation is in fact a legal conclusion. Furthermore, Plaintiff provides no factual allegations to support this conclusion.

Plaintiff also "believes . . . that [Defendant] is in possession or constructive possession" of the ring³ (Doc. No. 12 at 7). Plaintiff alleges that by deliberately omitting the ring from her Schedules when she filed for bankruptcy, Defendant "is attempting to work a fraud upon [Plaintiff] and this Court" (Doc. No. 12 at 7). However, Defendant's

³ Plaintiff appears to base this belief upon the fact that Defendant produced the ring at a deposition May 2, 2012. Plaintiff has not pointed to any specific facts suggesting Defendant possessed the ring during Defendant's bankruptcy case, which was initiated September 6, 2013.

conduct during the bankruptcy case does support Plaintiff's claim under § 523(a)(2), and Plaintiff does not object to Defendant's discharge under § 727.

Collateral Estoppel

The doctrine of collateral estoppel applies to § 523(a) dischargeability proceedings by barring relitigation of factual issues decided in a prior state court action. *In re Bush*, 62 F.3d 1319, 1322 (11th Cir. 1995); *In re St. Laurent*, 991 F.2d 672, 675-76 (11th Cir. 1993). A bankruptcy court may invoke collateral estoppel to reach conclusions about state court findings of fact as to whether those facts are sufficient to satisfy § 523 requirements of nondischargeability. *In re Halpern*, 810 F.2d 1061, 1064 (11th Cir. 1987). If factual findings are "detailed and carefully drawn" and "contain[] all of the elements necessary for a determination of nondischargeability," collateral estoppel may preclude relitigation of the facts that form the basis for a claim that a defendant's debts are nondischargeable. *Id.* at 1063. Collateral estoppel, however, does not preclude a bankruptcy court from exercising "exclusive jurisdiction to determine dischargeability." *In re St. Laurent*, 991 F.2d at 676.


Plaintiff's claim for fraudulent inducement, although first raised in a Fulton County state court, is not collaterally estopped. The state court determined that Plaintiff's claim for fraudulent inducement is barred in subsequent actions. The court based this determination on Plaintiff's decision to affirm the contract and sue for damages rather than rescind the contract and sue in tort for fraud; the court did not make

a specific factual finding that Defendant's actions were not fraudulent. Had there been a finding of *no fraud* in the state court action, Plaintiff could be estopped from relitigating the facts and obtaining a determination of nondischargeability. Instead, although Plaintiff "lost its opportunity to seek rescission of the" contract after suing for damages caused by Defendant's breach, the state court did not discuss in the Final Judgment whether the facts underlying Plaintiff's claim meet any of the elements of fraud (Doc. No. 1 at 13). Thus, because the state court made no specific finding of fraud, the Final Judgment does not preclude nondischargeability under the Bankruptcy Code.

As the complaint is not barred by collateral estoppel and contains sufficient factual allegations to survive a motion to dismiss, it is hereby

ORDERED that the Motion is *denied*,

IT IS SO ORDERED, this the 11th day of July, 2014.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE