



IT IS ORDERED as set forth below:

Date: October 5, 2016

**Lisa Ritchey Craig
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
SYLVESTER ARTHUR DELLIMORE :	:	
MARILYN KAY DELLIMORE,	:	BANKRUPTCY CASE
	:	16-56205-LRC
Debtors.	:	
<hr/>		
NEVEROFF, INC. dba	:	ADVERSARY PROCEEDING
ServiceMaster of Gwinnett,	:	NO. 16-05156-LRC
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SYLVESTER ARTHUR DELLIMORE :	:	
MARILYN KAY DELLIMORE,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is the *Motion to Dismiss Plaintiff's Complaint* (the "Motion"),

filed by Arthur and Marilyn Dellimore (“Defendants”) (Doc. 4). The Motion arises in connection with a complaint to determine the dischargeability of a particular debt (hereinafter the “Complaint”) filed by Neveroff, Inc. d/b/a ServiceMaster of Gwinnett (“Plaintiff”). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 1334; 157(b)(2)(I).

Defendants filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 6, 2016. On July 8, 2016, Plaintiff filed the Complaint,¹ in which Plaintiff alleges that, after suffering a loss to their real property (the “Property”), Defendants received insurance funds and used the funds to “buy new fixtures and remodel the house,” rather than paying Plaintiff’s invoice for “cleanup” services performed at the Property.

On July 12, 2016, the Clerk notified Plaintiff by letter that the Complaint was deficient in that it was missing an Adversary Proceeding Cover Sheet and a filing fee of \$350. To date, Plaintiff has failed to correct these deficiencies.

On August 11, 2016, Defendants filed the Motion, seeking dismissal of the Complaint for failure to state a claim, or, in the alternative, striking of the Complaint because it was filed on behalf of a corporation without the assistance of legal counsel. Plaintiff has failed to respond to the Motion and, accordingly, the Motion is deemed unopposed. *See* BLR 7007-1(c).

¹ The Complaint was apparently prepared, signed, and filed by Plaintiff’s president, Joseph N. Williamson. There is no indication that Williamson is also an attorney licensed to practice in the State of Georgia.

For good cause shown, the Court concludes that the Motion fails to state a claim upon which relief can be granted. *See* Fed. R. Bankr. P. 7012; Fed. R. Civ. P. 12(b)(6). Plaintiff has requested a determination that the debt allegedly owed to Plaintiff by Defendants is nondischargeable, but has pled no facts upon which the Court could make a finding that the debt is excepted from discharge under any subsection of 11 U.S.C. § 523(a).

Rule 8 of the Federal Rules of Civil Procedure, requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2) (made applicable to this proceeding by FED. R. BANKR. P. 7008). Under Rule 12(b)(6), the Court may dismiss a complaint if it fails "to state a claim upon which relief can be granted." *See* FED. R. CIV. P. 12(b)(6) (made applicable to this proceeding by FED. R. BANKR. P. 7012(b)). When considering whether to dismiss a complaint for failure to state a claim upon which relief can be granted, the Court must accept as true all factual allegations set forth in the complaint and, on the basis of those facts, determine whether the plaintiff is entitled to the relief requested. The Court must also draw all reasonable inferences in the light most favorable to the non-moving party. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-56 (2007); *Daewoo Motor America, Inc. v. General Motors Corp.*, 459 F.3d 1249, 1271 (11th Cir. 2007); *Hill v. White* 321 F.3d 1334, 1335 (11th Cir. 2003); *Grossman v. Nationsbank, Nat'l Ass'n*, 225 F.3d 1228,

1231 (11th Cir. 2000); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1273 n.1 (11th Cir. 1999).

The Complaint alleges that Plaintiff performed cleanup work at the Property; that Defendants' insurance company paid Defendants an amount of money "to cover [Plaintiff's] work, as well as other expenses related to the loss"; and "[i]nstead of paying [Plaintiff's] invoice," Defendants bought new fixtures and appliances and remodeled the Property.

Section 523(a) of the Bankruptcy Code enumerates the debts that are not dischargeable in a bankruptcy case. *See* 11 U.S.C. § 523(a)(1)-(19). Without more, the fact that Defendants failed to pay Plaintiff's invoice is not a sufficient basis upon which to find a debt is nondischargeable. Here, even assuming the facts of the Complaint to be true and drawing all inferences in favor of Plaintiff, the Court cannot find that the Complaint states a claim that Defendants owe Plaintiff a nondischargeable debt. *See Burke v. Riddle (In re Riddle)*, Case No. 42735-PWB (Bankr. N.D. Ga. Apr. 6, 2011) (granting motion to dismiss for failure to state a claim because complaint did not allege any facts to establish that debtor had fraudulent intent or acted in a willful or malicious manner). The Complaint should, therefore, be dismissed for failure to state a claim upon which relief may be granted and because Plaintiff, a corporate entity, may not appear in federal court without the assistance of a licensed attorney. *See Palazzo v. Gulf Oil Corp.*,

764 F.2d 1381 (11th Cir. 1985).

For these reasons, the Motion is **GRANTED**. IT IS ORDERED that the Complaint is **DISMISSED**.

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