

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

IN RE:	:	CASE NO. G11-21783-REB
	:	
JOHN PAUL HEDLEY	:	
and FREDDIE CHERYL HEDLEY,	:	
	:	
Debtors.	:	
JOHN PAUL HEDLEY,	:	ADVERSARY PROCEEDING
	:	NO. 12-2125
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 13
THE UNITED STATES,	:	
INTERNAL REVENUE SERVICE,	:	
MARY HANNAH,	:	
MAUREEN GREEN,	:	
and NANCY J. WHALEY,	:	
	:	
Defendants.	:	JUDGE BRIZENDINE
	:	

**ORDER**

Before the Court are certain matters that came on for hearing on December 18, 2012, to wit:

- (1) Special Motion of Plaintiff-Debtor John Paul Hedley to Strike All Affirmative Answers and Defenses filed on October 9, 2012 (Docket Entry No. 4);
- (2) Plaintiff's Special Request for Entry of Default and Default Judgment filed on October 26, 2012 (Docket Entry No. 11);
- (3) Motion of Defendant United States of America to Dismiss filed on November 1, 2012 (Docket Entry No. 13);

(4) Special Motion of Plaintiff to Strike Motion of United States of America to Dismiss filed on November 19, 2012 (Docket Entry No. 16); and,

(5) Amended Special Motion of Plaintiff to Strike All Affirmative Answers and Defenses November 19, 2012 (Docket Entry No. 17). Based upon consideration of these motions and responses thereto, as well as the argument of Plaintiff-Debtor, counsel for the Chapter 13 Trustee, and counsel for the United States as presented at the hearing as held in this matter, the Court makes its ruling regarding same as follows.

The Special Motion of Plaintiff-Debtor John Paul Hedley to Strike All Affirmative Answers and Defenses (Docket Entry No. 4) relates to Defendant Nancy J. Whaley, Chapter 13 Trustee in this case, and her answer filed herein on October 1, 2012. In the Special Motion, Plaintiff suggests Ms. Whaley's representation by staff counsel has improperly introduced a "stranger" and "non-interested party" in this matter. Plaintiff also seeks to strike all affirmative defenses apparently based on the merit of his claims. In response to Plaintiff's claim that equity acts *in personam*, while this maxim may be true, it does not mean a defendant cannot proceed through legal counsel in a law suit filed against her. Further, Ms. Whaley's asserted defenses merely join issue for trial and are not a ground for striking same.

At the hearing, counsel for the Trustee stated that it is unclear what Plaintiff is actually seeking in this proceeding. Plaintiff asserted that he wants equitable relief in the form of specific performance. He appears to be contending that a trust relationship was created with either or both the Internal Revenue Service and subsequently, the Office of the Chapter 13 Trustee. He wants his account, presumably relating to a federal tax liability, ledged out at zero on grounds that he transferred something of alleged value for which he claims the legal and equitable title merged, resulting in the extinguishment of the debt. Counsel for the Trustee stated that Plaintiff is current under his Chapter 13 plan and it is being

funded, there has been no disallowance or change in status of any conceivably related tax claim, and the Chapter 13 Trustee is performing all duties as required under the Bankruptcy Code and other guide lines of the Office of the United States Trustee. Given the lack of specificity in the complaint and the Trustee's stated difficulty in understanding what relief Plaintiff is seeking and on what grounds, which is admittedly shared by the Court, the Court concludes that entry of a default judgment against the Trustee, or striking of her affirmative answers and defenses in relation to same, is not appropriate on the present record and Plaintiff's Special Motion to Strike should be denied.

The Amended Special Motion of Plaintiff to Strike All Affirmative Answers and Defenses (Docket Entry No. 17) appears to relate to the same subject addressed in the Special Motion to Strike, entered as Docket Entry No. 4, and fails for similar reasons.

Next, Plaintiff's Special Request for Entry of Default and Default Judgment (Docket Entry No. 11) addresses an alleged failure of Defendants the United States, the Internal Revenue Service, Mary Hannah, and Maureen Green to respond to his complaint in a timely manner. Plaintiff argued at the hearing that through entry of a default judgment, he would obtain enforcement of a certain express trust he claims exists as discussed below. In his Special Request, Plaintiff states he served the summons on these persons and entities on September 10, 2012. Further, a review of the docket reveals that the United States filed a pleading in response through the form of a Motion to Dismiss on November 1, 2012, marking an appearance in this proceeding and a willingness to contest Plaintiff's claims that will be considered herein.

The Court next turns to the Motion of Defendant United States of America to Dismiss (Docket Entry No. 13) and the Special Motion of Plaintiff to Strike the Motion to Dismiss (Docket Entry No. 16), as well as the Response of the United States as filed thereto (Docket Entry No. 21). In his Motion to

Strike, Plaintiff states, among other things, that the Assistant Attorney General for the United States, Kathryn Keneally, and trial attorney Steven C. Woodliff, who signed the Motion to Dismiss are not interested parties herein, although Plaintiff, in fact, named the United States as a party defendant. As such, and as argued in its memorandum of law, the United States has the right to appear and defend itself in this proceeding. Further, the United States is the appropriate party to appear on behalf of the Internal Revenue Service, which is an agency of the government of the United States, and is not a properly named party in a law suit as an individual entity. Similarly, Mary Hannah and Maureen Green appear to be employees of the federal government and are not properly named individual party defendants herein, since any claim asserted against them acting in such capacity is construed as an action against the United States.<sup>1</sup> In sum, the Court finds and concludes that the arguments presented by the United States in response to Plaintiff's Special Motion are well-founded, and the Court will deny Plaintiff's Special Motion to Strike.

Finally, in its Motion to Dismiss, the United States further contends that this action is not ripe for adjudication, since it is bound by the automatic stay and cannot seek enforcement of the collection of any outstanding tax liability outside Plaintiff's confirmed Chapter 13 plan. In addition, it states that this Court lacks subject matter jurisdiction to grant injunctive relief under the provisions of the Anti-Injunction Act. *See* Memorandum of Law, at 4-5 (Docket Entry No. 13-1).

The United States also argues that under Federal Rule of Civil Procedure 12(b)(6), applicable herein through Federal Rule of Bankruptcy Procedure 7012, a dismissal should be granted as Plaintiff

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<sup>1</sup> At the hearing, Plaintiff indicated that he believed the Chapter 13 Trustee was the real party in interest, and not the other named defendants. When asked by the Court why he included the I.R.S., Ms. Hannah, and Ms. Green in his law suit, and why he complained when they participated, he simply responded that they are not. The Court is unable to discern Plaintiff's meaning here.

fails “to state a claim upon which relief can be granted.” This Rule is read in conjunction with Rule 8(a), which requires that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” See Fed.R.Civ.P. 8(a)(2), and Fed.R.Bankr.P. 7008. As pointed out by the United States, Plaintiff has instead filed a lengthy pleading, filled with vague accusations and legal jargon. The United States Supreme Court has ruled that “to survive a motion to dismiss, a complaint must now contain factual allegations that are ‘enough to raise a right to relief above the speculative level.’”<sup>2</sup> In considering a motion to dismiss, the Court restricts its inquiry to the legal feasibility of the complaint and whether same includes facts and not mere labels or conclusory statements.

Plaintiff, who is proceeding *pro se* here, appears to have attempted to set forth some basis for allegations apparently with respect to certain tax claims, asserting breach of trust coupled with a demand for an injunction and protective relief in equity. While the Court construes same in a light favorable to Plaintiff, and seeks to provide every party with an opportunity to be heard, Plaintiff is still required to put forward enough factual allegations to put other parties as named in his complaint on fair notice of the nature of his claims consistent with an asserted legal theory for recovery.

Upon review of the complaint, this Court cannot discern sufficient evidence of facts to create a plausible issue with regard to a particular Bankruptcy Code provision or other legal or equitable grounds to support a claim for relief in favor of Plaintiff, or how such claims are related to this bankruptcy case. Indeed, in reviewing Plaintiff’s pleadings of record, the Court finds it difficult to understand what Plaintiff wants and what, if anything, Plaintiff actually alleges as constituting facts to support a plausible

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<sup>2</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007), quoted in *Berry v. Budget Rent A Car Systems, Inc.*, 497 F.Supp.2d 1361, 1364 (S.D.Fla. 2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009); *American Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11<sup>th</sup> Cir. 2010).

claim that the named defendants are liable for some act taken, or a failure to act, and on what legal basis he is thereby entitled to relief.

Based on case authority cited by the United States as controlling in this circuit, mere assertions of legal conclusions are not sufficient. While federal tax liabilities, as mentioned, seem to be at issue, Plaintiff does not specify which liabilities he is contesting. He appears to be contending that his tax debt should be removed because he withdrew something from a general deposit and created a special, confidential relationship with I.R.S. officials, that somehow merged title and extinguished the debt. Plaintiff also stated at the hearing that these officials, as well as the Chapter 13 Trustee, have repudiated his demand to account for same in this manner. Yet, he does not set forth facts showing that a breach of trust occurred, or whether a trust was even created. Further, Plaintiff does not allege in his complaint facts demonstrating how same caused him to suffer a recognizable and compensable injury, and how Defendants were involved. The conclusory statements offered are not sufficient to state a claim.

In addition, assuming the veracity of any well-pleaded allegations to the extent made, the Court concludes they do not ““plausibly give rise to an entitlement to relief.”” *American Dental*, 605 F.3d at 1290, quoting *Iqbal*, 556 U.S. at 679, 129 S.Ct. at 1950. In terms of an alleged transfer to Defendants, Plaintiff does not indicate what it is he withdrew in connection with general or special deposits, what he offered to whom and how and what value it had, and how same was wrongfully refused in satisfaction of his tax debt.

In sum, even if these statements had some conceivable basis in law or in equity, which is by no means clear, Plaintiff has simply not alleged facts demonstrating a plausible claim to relief. Defendants are not required to speculate about same in preparing their response. Upon review of the Motion and complaint as filed herein, the Court concludes that the Motion of the United States should be granted

and Plaintiff's complaint dismissed as to all Defendants herein.

Accordingly, based on the above discussion, it is

**ORDERED** as follows, with said motions being hereafter listed consistent with their apparent relation as stated above:

(1) the Special Motion of Plaintiff-Debtor John Paul Hedley to Strike All Affirmative Answers and Defenses (Docket Entry No. 4) be, and the same hereby is, **denied**;

(2) the Amended Special Motion of Plaintiff to Strike All Affirmative Answers and Defenses (Docket Entry No. 17) be, and the same hereby is, **denied**; and,

(3) Plaintiff's Special Request for Entry of Default and Default Judgment (Docket Entry No. 11) be, and the same hereby is, **denied**. It is

**FURTHER ORDERED** that:

(4) the Special Motion of Plaintiff to Strike Motion of United States of America to Dismiss (Docket Entry No. 16) be, and the same hereby is, **denied**; and,

(5) the Motion of Defendant United States of America to Dismiss (Docket Entry No. 13) be, and the same hereby is, **granted**; and, therefore, it is

**FURTHER ORDERED** that the complaint of Plaintiff-Debtor as initiating the above-styled adversary proceeding be, and the same hereby is, **dismissed**.

The Clerk is directed to close this adversary proceeding as soon as administratively appropriate.

The Clerk is further directed serve a copy of this Order upon Plaintiff-Debtor, counsel for Defendant Nancy J. Whaley as Chapter 13 Trustee, counsel for the United States of America, and the

United States Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 21<sup>st</sup> day of December, 2012.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE