

**U.S. BANKRUPTCY COURT  
District of South Carolina**

CASE NO. 08-02547-hb  
ADVERSARY NO. 09-80163-hb

**ORDER GRANTING IN PART, DENYING IN PART GRACELAND RENTALS, LLC'S  
MOTION TO DISMISS AND REQUIRING MORE DEFINITE STATEMENT**

The relief set forth on the following pages, for a total of 10 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT  
01/04/2010**



Entered: 01/04/2010

  
US Bankruptcy Court Judge  
District of South Carolina

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In Re: ) CASE NO. 08-02547-hb  
)  
Curtis Glenn Moorer, Sr., ) CHAPTER 13  
)  
)  
Debtor. )  
\_\_\_\_\_)  
)  
Curtis Glenn Moorer, Sr., ) ADVERSARY NO. 09-80163-hb  
)  
Plaintiff, )  
)  
v. )  
)  
Graceland Rentals, LLC, )  
)  
Defendant. )  
\_\_\_\_\_)

**ORDER GRANTING IN PART, DENYING IN PART GRACELAND RENTALS, LLC'S  
MOTION TO DISMISS AND REQUIRING MORE DEFINITE STATEMENT**

This matter comes before the Court on Graceland Rentals, LLC's ("Defendant") Motion to Dismiss ("Motion") [Docket Entry 8] this adversary proceeding. The Court, having reviewed the Motion and pleadings submitted, and having heard this matter on December 17, 2009, finds that the Motion should be granted in part, denied in part and that Curtis Glenn Moorer, Sr., ("Plaintiff") shall be required to file a more definite state, as set forth below. In support of the Court's determination, the Court makes the following findings.<sup>1</sup>

<sup>1</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute findings of Fact, they are adopted as such.

## **PROCEDURAL POSTURE AND FINDINGS OF FACT**

1. Plaintiff's Complaint alleges as follows:

I purchased a storage building from Graceland Rental [Defendant] on March 8, 2007. I financed the purchase. I made monthly payments. I experienced a financial hardship and had to file for Chapter 13 Bankruptcy in April of 2008. I am currently making monthly payments under the plan from me and I explained to them that I was in Chap [sic] 13 bankruptcy. They came to my home when I was out of town and removed the doors from the storage building which I had my belongings in. There were a lot of my belongings taken in the process. I filed a [sic] incident report listing the items that were taken. (I am attaching that report) This company refused to return my items, however they returned the doors to my home and left them on the ground. This company is repeatedly harassing me by calling my home and putting threatening letters on my door. They are trying to take the storage building.

The Complaint requests the following relief: "I want to sue them [Defendant] for violating my civil rights. I want to be compensated for my missing belongings and keep my storage building."

2. Plaintiff's Complaint attaches an Incident Report and Supplemental Incident Report, allegedly prepared by the Greenville County Sheriff's Department dated May 1, 2008. The Reports indicates a burglary on April 30, 2008. The Reports list the missing items allegedly taken from a storage building on Plaintiff's property at 27 Foxhall Road on that date.

3. The Court's records indicate that also on April 30, 2008, at 9:20 a.m., Plaintiff filed a Petition for Relief in this Court pursuant to Chapter 13 of the United States Bankruptcy Code, Case No. 08-02547-hb, and served his notice of the plan and related motions.<sup>2</sup> Plaintiff did not list this loss or cause of action resulting from a loss on his initial bankruptcy schedules and did not thereafter amend his schedules to add any such information. It is not clear whether any claim for loss existed before the time that the bankruptcy case was filed as the time of the alleged burglary is not known, or at least is not part of the pleadings or information before the

---

<sup>2</sup> It is appropriate for the Court to take judicial notice of prior filings and its Orders in the Plaintiff's bankruptcy case, and doing so does not convert Graceland's Motion to a motion for summary judgment. See Lovelace v. Software Spectrum, 78 F.3d 1015, 1017-18 (5th Cir. 1996).

Court. Plaintiff's petition bears the signing date of April 29, 2009. His schedules list minimal values for household goods and personal property.

4. Plaintiff's Chapter 13 plan initially proposed payments of \$30 per month to Defendant with 8.5% interest until the debt to Defendant for the storage building was paid in full. Defendant objected to the plan, asserting that the agreement between the parties was an executory contract that must receive appropriate treatment, but withdrew its objection on the condition that an amended plan with appropriate payment terms would be filed by Plaintiff. The amended plan was filed by Plaintiff's bankruptcy counsel<sup>3</sup> as agreed and thereafter was confirmed on July 18, 2008. That plan provided that Defendant's claim was to be paid as an executory contract (lease) that would be assumed and that Plaintiff would cure the pre-petition contract deficiency of \$931.48 with payments of \$137.16 per month for 10 months.<sup>4</sup>

5. On May 28, 2009, Defendant moved for relief from the automatic stay in Plaintiff's bankruptcy case in order to pursue its contractual and state law remedies to recover the storage building on the basis of Plaintiff's failure to make the requisite post-petition payments.<sup>5</sup> The Stay Motion alleges that Plaintiff made only one post-petition payment: \$160.00 on July 30, 2008. The Stay Motion stated that the pre-petition arrearage was still \$931.48 and that Plaintiff was past due on regular post-petition payments in the amount of \$1,818.00. The record indicates that the Movant served a copy of the Stay Motion and Notice of the Motion (which includes a deadline for filing objections to request a hearing) on Curtis Glenn Moorner at 27 Fox Hall Rd., Greenville, SC 29605, and also served a copy on his attorney. Plaintiff and his attorney did not

---

<sup>3</sup> Bankruptcy counsel does not represent Mr. Moorner in this adversary proceeding, but continues to represent him in the underlying bankruptcy case.

<sup>4</sup> 11 U.S.C. §365(b)(1) requires that pre-petition lease arrearages must be cured and adequate assurance of future performance of contractual lease terms given to a lessor before assumption. In summary, a lessee must generally cure lease arrearages **and** continue with post-petition contractual obligations/payments upon assumption.

<sup>5</sup> This Motion initially included an exhibit that contained personal information of the Debtor, including his social security number, driver's license number and date of birth. On December 16, 2009, Graceland filed the appropriate motion to redact this information and an amended pleading appears on the record as Docket #43.

object or otherwise request a hearing. Therefore, on June 18, 2009, this Court issued its Order allowing Defendant to pursue its state law and contractual remedies against the property based on the allegations of default contained in the Stay Motion.<sup>6</sup>

6. On August 27, 2009, the Plaintiff commenced this proceeding, *pro se*, by filing his Complaint in the United States District Court for the District of South Carolina ("District Court"). Thereafter, the Honorable Bruce Howe Hendricks, U.S. Magistrate Judge for the District of South Carolina, reviewed the Complaint and issued her Report and Recommendation [Docket Entry. 2], which recommended that this proceeding be referred to this Court because it is "related to" the Plaintiff's pending bankruptcy case. On September 25, 2009, the District Court entered its Order [Docket Entry 3] adopting the Magistrate's Report and Recommendation and referring the proceeding to this Court, and this action was received by the Bankruptcy Court on September 30, 2009. After a review of the Complaint and the relief requested as set forth in paragraph 1 above, Judge Hendricks stated in her Order: "Liberally construed, Plaintiff may also be alleging state law intentional tort claims, such as conversion of personal property, outrage and trespass."

7. Following issuance of the Summons and service of the Summons and Complaint, on November 4, 2009, Defendant filed the instant Motion. Also on November 4, 2009, Defendant filed its Answer to the Complaint and asserted a Counterclaim for possession of the at-issue storage building.

---

<sup>6</sup> This process is different from a "default" judgment proceeding without an appearance by the opposing party. Plaintiff was the Debtor that initiated this bankruptcy case and the resulting automatic stay against creditors. He has been represented by counsel throughout the bankruptcy and when the Order lifting the stay was entered and had an opportunity to request a hearing on the Motion to litigate any issue set forth therein. 11 U.S.C. §362 provides this procedure.

## CONCLUSIONS OF LAW

Defendant's Motion is made under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Bankruptcy Rule 7012(b). In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept all of the plaintiff's factual allegations as true and reasonable inferences therefrom in the light most favorable to the plaintiff. Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999). While the Court is required to liberally construe pro se complaints and hold them to a less stringent standard, Erickson v. Pardus, 551 U.S. 89, 94 (2007), these complaints are still subject to summary dismissal. See Weller v Dep't of Social Servs., 901 F.2d 387, 391 (4th Cir. 1990) (holding that "[t]he 'special judicial solicitude' with which a district court should view [ ] pro se complaints does not transform the court into an advocate" and therefore the court cannot ignore a clear failure in the pleading to allege facts that set forth a cognizable claim). Therefore, "only a complaint that states a plausible claim for relief survives a motion to dismiss." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1950 (2009).

Defendant argues that Plaintiff cannot prevail in this case because his claims are barred by this Court's prior Orders relating to disputes between Plaintiff and Defendant. In order to successfully invoke claim preclusion, resulting in a finding that Plaintiff's complaint does not state a plausible claim for relief, three conditions must be present:

- 1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and, 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.

In re Varat Enters., Inc., 81 F.3d 1310, 1315 (4th Cir. 1996). Similarly, the elements of federal issue preclusion are:

(1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum.

In re Swilley, 295 B.R. 839, 846 (Bankr. D.S.C. 2003).

Plaintiff and Defendant have previously litigated (or had the opportunity to litigate) the issues of whether Defendant was delinquent on his obligations to make payment to Defendant for the storage building both pre- and post-petition, and orders have been entered regarding the amount of the delinquencies. Further, the prior orders involved a determination of whether the bankruptcy stay should be lifted to allow Defendant to exercise its state law rights to recover the storage building. Therefore, the Court finds that the Court's Confirmation Order that established post-petition repayment terms and the amount of the pre-petition delinquency, and Defendant's prior Stay Motion and resulting Order, satisfy the elements of both claim preclusion and issue preclusion regarding Defendant's right to relief from stay in order to repossess the storage building and any issues of Plaintiff's failure to make the necessary payments to Defendant per the contract between the parties (including any adjustments to payment terms in the bankruptcy and default thereunder). Time for litigating those issues has passed and they have been finally resolved by the Court's Orders. Consequently, Plaintiff is precluded from now raising his claims regarding Defendant's ability to repossess the storage building post-petition and any claims that he was not delinquent on his payment obligations. Specifically precluded issues set forth in the allegations of the current Complaint are as follows: "I made monthly payments. . . . I am currently making monthly payments under the plan. . . ." and "They are trying to take the storage building." Any relief requested as a result of these allegations is precluded, including "I want to . . . keep my storage building." These issues have been decided by prior proceedings. It has

been determined that Plaintiff was delinquent pre-petition, cure terms were established, and it has been determined that there was a default post-petition, and the stay was lifted to allow Defendant to proceed with its contractual state law contractual remedies to recover the storage building.

However, Plaintiff's allegations and requested relief regarding any actions taken by Defendant as follows are not precluded as a result of the Court's prior Orders:

They came to my home when I was out of town and removed the doors from the storage building which I had my belongings in. There were a lot of my belongings taken in the process. I filed a [sic] incident report listing the items that were taken. (I am attaching that report) This company refused to return my items, however they returned the doors to my home and left them on the ground.

Plaintiff's Complaint includes the vague requested relief as follows: "I want to sue them [Defendant] for violating my civil rights" and the clearer statement of "I want to be compensated for my missing belongings . . . ." As Judge Hendricks stated, "Liberally construed, Plaintiff may also be alleging state law intentional tort claims, such as conversion of personal property, outrage and trespass." Any such claims involving the conduct or lawfulness of Defendant in the methods it employed to enforce the state law contractual remedies has not previously come before the Court and are not precluded. The Court does believe a more definite statement of these claims is necessary in order to aid the parties and the Court to consider the Plaintiff's allegations.<sup>7</sup> See Anderson v. District Board of Trustees, 77 F.3d 364, 366-367 (11th Cir. 1996) (requiring more definite statement relieves trial judge of "the cumbersome task of sifting through myriad claims, many of which [may be] foreclosed by [various] defenses") (citations omitted). Currently Plaintiff's surviving requests for relief merely state that his civil rights have been violated and

---

<sup>7</sup> Defendant argued that Plaintiff's failure to list or previously disclose any causes of action against it in this bankruptcy proceeding and failure to list the missing, itemized goods on his bankruptcy schedules could lead to issue preclusion as to the remaining causes of action. These omissions may or may not handicap Plaintiff's causes of action as this case proceeds and as the facts develop, but do not warrant imposition of issue preclusion in the context of a Rule 12(b)(6) Motion.

that he wants to be compensated for his missing belongings. These statements are vague and are insufficient to state a cause of action at this time based on the alleged facts. Specifically, Plaintiff does not state whether he is alleging that Defendant took his items or whether Defendant was negligent in some way or acted contrary to applicable law, resulting in the loss of his items or other damages. Plaintiff must file a more definite statement including additional allegations supporting a claim against Defendant for whatever damages he may claim, and including a statement of an appropriate theory of recovery that is not inconsistent with this Order.

**IT IS THEREFORE, ORDERED**

1. That Graceland's Motion is granted in part and denied in part as set forth herein.
2. That the Court's confirmation Order that established post-petition repayment terms and the amount of the pre-petition delinquency, and Defendant's prior Stay Motion and resulting Order, satisfy the elements of both claim preclusion and issue preclusion regarding Defendant's right to relief from stay in order to repossess the storage building and any issues of Plaintiff's failure to make the necessary payments to Defendant per the contract between the parties and any adjustment thereof by this bankruptcy proceeding. Therefore, Plaintiff's causes of action related to Defendant's right to recover the storage building are hereby dismissed with prejudice.
3. That Defendant's Motion to dismiss the remaining causes of action related to the alleged removal of the storage building's doors is denied without prejudice at this time. It is further ordered, however, that the Plaintiff shall file an amended Complaint setting forth a more definite statement of his causes of action related to the alleged removal of the storage building's doors, including an identification of when he alleges the doors were

removed, when he discovered the doors were removed, why the removal was improper, how he was allegedly damaged as a result, why Defendant is legally responsible for any damage he suffered, and an identification of the specific causes of action he is asserting based on the alleged facts. The Plaintiff shall file the Amended Complaint within twenty (20) days from entry of this Order and, if he fails to do so, the Court may dismiss the Complaint without further notice or opportunity for a hearing. The Plaintiff may file the Amended Complaint by mailing it to the Clerk of Court, J. Bratton Davis U.S. Bankruptcy Courthouse, 1100 Laurel Street Columbia, South Carolina 29201-2423 by the deadline provided herein, and must serve a copy of the Amended Complaint on Defendant's counsel by mail and provide proof thereof to the Court.