

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 08-05119

ADVERSARY PROCEEDING NO: 09-80020

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
TO DISMISS

The relief set forth on the following pages, for a total of 6 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
04/20/2009



Entered: 04/21/2009

US Bankruptcy Court Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re,

Samuel Thomas Church and Paula Williamson
Church,

Debtor(s).

James Ray Smith and Suzuki of Anderson,
Inc.,

Plaintiff(s),

v.

Samuel Thomas Church and Paula Williamson
Church,

Defendant(s).

C/A No. 08-05119

Adv. Pro. No. 09-80020

Chapter 7

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

The above captioned Debtors filed a petition for Chapter 7 relief on August 25, 2008. Plaintiffs filed this adversary proceeding to determine the dischargeability of debt under 11 U.S.C. § 523 and to deny the Debtors' discharge under 11 U.S.C. § 727. Before the court for consideration is Debtors/Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable by Rule 7012 of the Federal Rules of Bankruptcy Procedure. The court has jurisdiction over this matter and the parties to this proceeding.

The following is a summary of the allegations of Plaintiffs' Complaint. Defendants are owners of ETD Motorsports, LLC, the Debtor in Chapter 7 Case No. 08-00323. Smith is the owner of Suzuki of Anderson, Inc. Plaintiffs are creditors in both bankruptcy cases. Defendants' schedules list Plaintiffs' claims as follows: James Ray Smith—unknown; Suzuki of Anderson, Inc.—\$435,000.00, general unsecured. Suzuki of Anderson was “sold

out” by Plaintiff(s) to ETD for approximately \$712,000.00 in 2003, and Samuel Church and his mother, Evelyn Church, personally guaranteed the unpaid portion of the sale price owed to the seller(s). On or around October 2006, Mr. Smith discovered that Samuel Church was attempting to sell ETD. Mr. Church eventually sold the business in 2007 for approximately \$350,000.00, and used all but \$30,000.00 to pay off the business’s floor financiers. Mr. Church and ETD still owe Plaintiff(s) approximately \$437,000.00.

Prior to the sale to ETD in 2003, Samuel Church provided Plaintiff Smith with a financial statement showing his net worth to be \$862,000.00. The bankruptcy schedules now indicate a negative net worth of \$1,625,790.79. Plaintiffs allege reasonable reliance on the financial statement in extending credit to Mr. Church and ETD, that the statement was materially false, and Plaintiffs have been harmed as a result. Plaintiffs also assert that Mr. Church has transferred assets with an intent to hinder, delay and defraud plaintiff, and/or has removed, destroyed, mutilated, concealed, or has permitted to be transferred, removed destroyed, mutilated, or concealed property of the debtor within one year before the bankruptcy. The Complaint alleges that Mr. Church failed to explain the negative net worth disclosed in his bankruptcy schedules and has failed to preserve or produce information of his financial condition. The Complaint lists specific omitted information and asserts that the bankruptcy schedules filed in this case are inconsistent with those of ETD, including “business debt” that is not reflected on ETD’s lists of obligations. Plaintiffs allege that Mr. Church has failed to explain the loss of his personal and business assets and has made a false oath or account. Based on these allegations, Plaintiffs request that the debt in question be excepted from the Defendants’ discharge and further that any discharge be denied.

In response, Defendants dispute many of the allegations and assert three grounds for dismissal pursuant to Rule 12(b)(6): 1) the Complaint failed to allege actionable conduct on the part of Defendant Paula Church, 2) Plaintiffs' claim under 11 U.S.C. § 523 failed to allege sufficient facts, 3) and Plaintiffs' § 727 fails to state a claim as it does not assert an injury to or damages suffered by Plaintiff(s).

Standard for Determining a Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) permits a party to move for dismissal if the opposing party fails to state a claim for which relief can be granted. The purpose of such a motion is to test the sufficiency of the complaint. Graves v. Horry-Georgetown Technical College, 512 F.Supp.2d 413, 421 (D.S.C. 2007). “[A] Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.” Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999). A motion to dismiss will not be granted unless “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spaulding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984). Further, the pleadings must also comply with Rule 8(a)(2), which requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Accordingly, a complaint does not require detailed facts; however, a “formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007). Finally, “[u]nder the liberal rules of federal pleading, a complaint should survive a motion to dismiss if it sets out facts sufficient for the court to infer that all the required elements of the

cause of action are present.” City of Charleston, S.C. v. Hotels.com, LP, 520 F.Supp.2d 757, 763-64 (D.S.C. 2007). Defendants’ separate grounds for dismissal of the Complaint are discussed below.

Claims Against Paula Church

A review of the Complaint indicates that Mrs. Church is named infrequently and only indirectly and Plaintiffs therefore fail to state a claim against Mrs. Church. The Motion to Dismiss is granted as to all causes of action asserted against Mrs. Church.

11 U.S.C. § 523

Defendants argued that Plaintiffs’ § 523 claims must be dismissed because that code section excludes statements regarding the financial condition of a debtor. However, § 523(a)(2)(B) provides the following:

- (a) A discharge . . . does not discharge an individual debtor from any debt—
 - (2) for money, property, services, or an extension renewal, or refinancing of credit, to the extent obtained, by—
 - (B) use of a statement in writing—
 - (i) that is materially false;
 - (ii) respecting the debtor’s or an insider’s financial condition;
 - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
 - (iv) that the debtor caused to be made or published with intent to deceive; . . .

Plaintiffs’ Complaint alleges that Defendants violated § 523(a)(2), which includes § 523(a)(2)(B). Plaintiffs’ allegations are sufficient to overcome Defendants’ Motion to Dismiss the § 523(a) action.

11 U.S.C. § 727

Defendants request dismissal of Plaintiffs’ § 727 causes of action that seek denial of discharge, arguing that Plaintiffs merely recite the statutory elements and fail to allege any specific injury to Plaintiffs. After a careful review of the Complaint, the Motion to Dismiss

the § 727 claims against Mr. Church is denied. Plaintiffs' Complaint alleges sufficient facts to overcome the Motion. Further, the statutory language of § 727 does not require a direct injury to Plaintiff. "[P]roof of harm is not a required element of a cause of action under Section 727." Richardson v. Von Behren (In re Von Behren), 314 B.R. 169, 176 (Bankr. C.D. Ill. 2004).

IT IS THEREFORE ORDERED

That Defendant Paula Williamson Church's Motion to Dismiss is GRANTED as to all causes of action asserted against her. Plaintiffs shall have ten days from the entry of this Order to file an amended complaint against Mrs. Church, if appropriate. Defendant Samuel Thomas Church's Motion to Dismiss is **DENIED**.

AND IT IS SO ORDERED.