

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

December 19, 2024 at 11:00 a.m.

1. 24-23053 -E-7 24-2187 CAE-1	NICHOLAS/KIMBERLY CORNETT Richard Jare	AMENDED MOTION TO DISMISS CASE, AMENDED MOTION FOR SUMMARY JUDGMENT 10-24-24 [13]
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SCHAMBER V. CORNETT

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's attorney on October 24, 2024. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Motion to Dismiss Adversary Proceeding/ Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

December 19, 2024 at 11:00 a.m.

**The Motion to Dismiss Adversary Proceeding / Motion for Summary Judgment
is denied without prejudice.**

Nicholas Lee Cornett, Debtor-Defendant (“Defendant”) moves for the court to dismiss all claims against him in Dayna Lee Schamber’s (“Plaintiff”) Complaint according to Federal Rules of Civil Procedure 12(b)(6), 56, as incorporated into bankruptcy through Federal Rules of Bankruptcy Procedure 7012 and 7056.

REVIEW OF COMPLAINT

The Complaint, summarized as follows, alleges the following grounds:

1. Plaintiff has filed a Superior Court action pending against Cornett in the County of Placer styled Dayna Lee Schamber v. NCDP, LLC and Nicholas L. Cornett, Case No. S-CV-0049874, in Department 40 of that court. Complaint ¶¶ 7, 8.
2. The third cause of action therein is for Fraud and Intentional Misrepresentation against Cornett alleging that Cornett induced Plaintiff to lend Cornett the sum of \$100,000.00 plus interest which he would pay Plaintiff back pursuant to the terms of a promissory note to Cornett’s LLC.
 - a. Plaintiff loaned and provided to Cornett the principal sum of \$100,000.00 with interest accruing at the interest rate of 15% per annum on the unpaid principal sum. Payments were to commence on September 05, 2022.
 - b. Cornett did in fact represent to Plaintiff that he had a viable business which would generate funds that would be used to repay Plaintiff. Cornett represented that he was reliable, trustworthy, hardworking and would be able to make all payments necessary to repay the loan.

Id. at ¶ 8.
3. When Cornett made these representations he did so with the intention to deceive and defraud Plaintiff so as to induce her to act in reliance on his representations and supply him with the loan funds of \$100,000.00.
 - a. Cornett fully knew that the representations were false and that they were made with the intent and purpose of deceiving Plaintiff.
 - b. Cornett had a duty to be honest and disclose the true, material facts of his inability or lack of intention to repay Plaintiff or honor the terms of his agreement with her, so that she would not otherwise rely upon them, their statements and misrepresentations.

- c. Their personal, long-time relationship, dealings, and the transaction loan between them required the disclosure of all material facts. Defendants' failure to disclose these material facts to Plaintiff constitutes fraud, fraud in the inducement, intentional misrepresentation.

Id. at ¶ 9.

4. Cornett made exactly one interest payment of \$1250.00 to Plaintiff and then completely disappeared and failed to respond to any demands for payment. As a proximate result of the fraudulent conduct, omissions, and concealment of Cornett, Plaintiff has incurred damages in excess of \$100,000 plus accruing interest of \$1250 per month since September 2, 2022, less one payment made and additional amounts according to proof. *Id.* at ¶ 11.
5. On Defendant's Schedule E/F in the related bankruptcy case, Defendant listed this debt as a "personal loan," not a business loan. *Id.* at ¶ 17.
6. Plaintiff seeks relief pursuant to 11 U.S.C. § 523(a)(2). *Id.* at ¶ 19.

THE MOTION

The Motion responds to the Complaint's claims with the following grounds:

1. Plaintiff's claims are jurisdictionally improper, unsubstantiated, and misrepresent Defendant's personal liability. Mot. 2:3-4, Docket 11.
2. Defendant never received any funds from Plaintiff. All funding was provided by Dennis Rice through his company, Visio Entertainment, LLC, not Plaintiff. *Id.* at 2:9-10.
3. Defendant made no false statements or misrepresentations to Plaintiff, and there was no communication regarding any business loans or transactions. *Id.* at 5:1-4.
4. California law shields LLC members from personal liability absent fraud or a personal guarantee. Defendant signed no personal guarantee, nor committed fraud. As such, there is no legal basis for attaching personal liability to Defendant for the LLC's debts. *Id.* at 5:15-17.
5. Defendant provided Dennis Rice with transparent, detailed monthly cash-flow statements, which were reviewed and approved before any funds were transferred. Plaintiff had no involvement in these transactions. There is no evidence of fraudulent conduct by Defendant. Plaintiff's fraud claims are unsubstantiated and fail to meet the burden of proof. *Id.* at 5:20-24.

Improperly attached to the Motion are nine unauthenticated Exhibits with no Exhibit list.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on December 5, 2024. Docket 20. Plaintiff also submits an Objection to Defendant's exhibits, objecting on the basis that non of the exhibits have been properly authenticated. Docket 24.

In the Opposition, Plaintiff reiterates the facts alleged in the Complaint and contests all of Defendant's arguments point by point. Plaintiff illustrates the point that Defendant has not met its burden to grant the Motion to Dismiss or the Motion for Summary Judgment, Defendant failing to show that the claim is not plausible on the face of the Complaint, or that there is indeed no genuine issue of material fact. For example, one genuine issue of material fact in the case includes the fact that Defendant allege s Plaintiff never made the loan, and it was instead Mr. Dennis Rice. Defendant submits the Declaration of Mr. Rice at Docket 21, and Mr. Rice testifies he did not lend the money, but Plaintiff in this action loaned the money. Decl. ¶ 4, Docket 21.

DEFENDANT'S RESPONSE

Defendant filed a Response to the Opposition on December 6, 2024. Dckt. 26. Defendant argues Plaintiff's claim is simply devoid of any actual facts, and Plaintiff alleges false statements which are immaterial and incorrect. Defendant requests the court order sanctions against Plaintiff's counsel, apparently for relying on Mr. Rice's declaration rather than Plaintiff's assertions.

APPLICABLE LAW

Rule 12(b)(6) Motion to Dismiss

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”)).

Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot “plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (“[A] plaintiff's obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.”).

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court “required to “accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

Summary Judgment

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears the initial burden of “informing the district court of the basis for its motion, and identifying [the documents] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986). A fact is material if it “might affect the outcome of the suit under governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Once the movant makes this initial showing, the burden rests upon the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” *Id.* An issue of fact is genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

DISCUSSION

Rule 12(b)(6) Motion to Dismiss

A Motion to Dismiss for failure to state a claim is only considered on the face of the complaint and the attached exhibits. The court is to construe all well-pleaded facts in favor of the nonmoving party. The standard the Supreme Court has given trial courts in considering the complaint is the “plausible” standard of stating a claim for recovery, which is a slightly higher standard than the “possible” standard. Therefore, the court does not now delve into the veracity of the facts alleged for purposes of determining the Motion to Dismiss.

11 U.S.C. 523(a)(2) states:

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition;

(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; or
- (C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than \$500 [2] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than \$750 2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. .

Plaintiff has stated a plausible claim for recovery for purposes of surviving a 12(b)(6) Motion. The facts alleged are that Defendant represented to Plaintiff the loan of \$100,000 was for legitimate business purposes. The Complaint alleged facts that could allow the court to determine that the loan was made, and defendant never had any intent to repay the loan. Plaintiff relied on this representation to her detriment. The court may confer that the representation was fraudulent, constituting a claim for a nondischargeable debt under 11 U.S.C. § 523(a)(2).

The Motion to Dismiss Adversary Proceeding is not warranted at this stage. The Motion to Dismiss is denied.

Summary Judgment

It is clear to the court there remain genuine disputes of material facts in the case. As mentioned by Plaintiff in her Opposition, the most glaring disputed material fact pertains as to who actually made the loan, Plaintiff alleging the loan was made by herself and providing testimony evidence to support that claim, Defendant alleging the loan was made by Mr. Rice.

Another genuine issue of material fact that remains evident is the fact that Defendant argues that his LLC is solely liable for the obligation, and he is not liable in his personal capacity. Plaintiff argues that, and submits some evidence in support of that claim that, Defendant is personally liable for his own personal conduct.

While styled as a Summary Judgment Motion, no Declaration is presented with the Motion. While Defendant-Debtor may believe that his allegations in the Motion are the equivalent of testimony under penalty of perjury, they are not.

Additionally, whether in the context of a motion for summary judgment or motion to dismiss, an assertion that “hey, the other side doesn’t provide evidence with the complaint” does not carry the day. As addressed above, the person filing the summary judgment motion must first present evidence, and the parties go from there.

The presence of genuine issues of material fact in the case do not permit the court granting a Motion for Summary Judgment. The Motion for Summary Judgment is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding filed by Jesse Casey and Amber Casey, Debtor-Defendants (“Defendant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

IT IS FURTHER ORDERED that the Motion for Summary Judgment is denied without prejudice.

FINAL RULINGS

2. [24-00203-E-0](#)
[24-2195](#)

WINDSOR TERRACE
HEALTHCARE, LLC

MOTION FOR REMAND
11-8-24 [[10](#)]

RICHARD HOLBEN, AS HEIR-AT-LAW
AND SUCCESSOR-IN-IN V. WINDSOR

Final Ruling: No appearance at the December 19, 2024 hearing is required.

The hearing on the Motion for Remand has been continued to January 23, 2025 at 11:00 a.m, with written Opposition, if any, to be filed by January 10, 2025, and with Replies, if any, to be filed by January 16, 2025. Order, Docket 15.