

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
GEORGE MARSHALL BLISS, JR.)	Case No. 02-40831
)	Chapter 7
Debtor.)	
_____)	
)	
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 03-7057
)	
GEORGE MARSHALL BLISS, JR.)	
)	
Defendant.)	
_____)	

**MEMORANDUM AND ORDER DENYING
DEFENDANT’S MOTION TO DISMISS**

This matter is before the Court on Defendant George Bliss’ Motion to Dismiss, which was incorporated into his Answer (Doc. 4). Defendant is seeking to dismiss this adversary proceeding based on an allegation that the Complaint does not plead fraud with the required specificity. Plaintiff has filed a brief in opposition to the Motion to Dismiss, and Defendant has not responded. The Court has reviewed the brief submitted by plaintiff and is now prepared to rule.

I. FINDINGS OF FACT

Plaintiff Burlington Northern and Santa Fe Railway Company (hereinafter “Burlington”) filed the Complaint in this case seeking a determination that Defendant Bliss should be denied a discharge pursuant

to 11 U.S.C. § 727 and that judgment should be entered in its favor against him. Burlington bases its claim that Bliss should be denied a discharge, in part, because he has committed fraud. In support of its claims, Burlington included 42 separately numbered paragraphs in the Complaint and attached numerous documents that were incorporated into the Complaint. Of the 42 numbered paragraphs, 20 of the paragraphs provided factual details and information to support the claims.

Bliss filed an Answer to the Complaint, which included a Motion to Dismiss based upon an alleged failure to plead fraud with specificity. Bliss filed no memorandum in support of the Motion to Dismiss. In fact, Bliss' entire argument on its Motion to Dismiss is found in paragraph 46 of his Answer, which states "Defendant moves this Court for an Order of Dismissal on the grounds Plaintiff has failed to state fraud with particularity."

II. ANALYSIS

Pursuant to Bankruptcy Rule 7009, "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Bankr. P. 7009(b). Bliss provides no analysis of the Complaint filed in this case or any case law to support his allegation that Burlington has not complied with Rule 7009. Despite the clear language contained in D. Kan. Rule 7.1(a) that requires a memorandum in support of the motion be filed with the Court, Bliss has failed to provide any legal support for his Motion to Dismiss. Bliss has placed the burden upon the Court, with only the assistance of Plaintiff, to review the pleadings in this case, analyze the law surrounding the particularity requirements of Rule 7009, and determine how the law applies to the facts of this case.

Despite Bliss' failure to comply with D. Kan. Rule 7.1, or to provide any legal or factual analysis why he believes the Complaint is insufficient, the Court will address the merits of the Motion to Dismiss.

The Court has reviewed the Complaint and finds that it contains sufficient factual information to meet the particularity requirements of Rule 7009(b). The factual allegations contained in the Complaint clearly provide Bliss with sufficient information to determine what alleged fraudulent conduct is alleged and to prepare a defense to those allegations. Therefore, the Motion to Dismiss will be denied.

IT IS, THEREFORE, BY THIS COURT ORDERED that Defendant's Motion to Dismiss, inserted at the end of its Answer, is denied.

IT IS SO ORDERED this _____ day of October, 2003.

JANICE MILLER KARLIN, Bankruptcy Judge
United States Bankruptcy Court
District of Kansas

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the Memorandum and Order Denying Defendant's Motion to Dismiss was deposited in the United States mail, postage prepaid on this _____ day of October, 2003, to the following:

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