

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

In re:)	
)	
JOHN FREDRICK WILLIAM THIEDE)	Case No. 02-42533-7
and CASSIE MARIE THIEDE,)	
)	
Debtors.)	
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)	
FIRST STATE BANK OF STRATTON,)	
COLORADO,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 03-7023
)	
JOHN FREDRICK WILLIAM THIEDE)	
and CASSIE MARIE THIEDE,)	
)	
Defendants.)	
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MEMORANDUM AND ORDER

This matter is before the Court on the Defendants’ Motion to Dismiss Complaint Objecting to Discharge, to Determine Dischargeability, and Determination of Fraudulence Conveyances (Doc. 6). The parties have each submitted briefs in this matter, and the Court is now ready to rule.

I. STATEMENT OF FACTS

The Plaintiff, First National Bank of Stratton Colorado (“FNB”), filed a Complaint objecting to the discharge of debt and seeking a determination of whether certain conveyances were fraudulent in nature. The Defendants, John Fredrick William Thiede and Cassie Marie Thiede (“Thiedes”), have moved to have the Complaint dismissed on the grounds that (1) FNB failed to include a statement of jurisdiction within its

Complaint; (2) FNB failed to include a statement as to whether their proceeding is a core or non-core proceeding; and (3) FNB failed to plead special matters, such as fraud, with particularity. FNB has responded to the Motion to Dismiss by arguing that the failure to include a statement of jurisdiction and a statement concerning whether this is a core or non-core proceeding is not fatal to their case and that the Complaint contains sufficient particularity on all matters that require special pleading.

II. ANALYSIS

A. FNB's failure to include a statement of jurisdiction is not grounds for dismissing the Complaint.

The Thiedes contend that the Complaint should be dismissed because FNB failed to include a statement of jurisdiction therein. FNB admits that the jurisdictional statement is absent in the Complaint, but contends that dismissal is not the proper course of action for the court. FNB seeks leave to amend its Complaint to bring it into compliance with the rules.

Any party filing an adversary proceeding is required to include a statement of jurisdiction in the Complaint. Fed. R. Bankr. P. 7008. However, “pleading in federal practice is no longer a game of skill in which one misstep by counsel can be fatal.” *In re Yadidi*, 274 B.R. 843, 849 (9th Cir. B.A.P. 2002) (citing *Conley v. Gibson*, 355 U.S. 41, 48 (1957)). “Thus, a defective complaint is not subject to dismissal with prejudice, i.e. without opportunity to amend or replead, unless either it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations or multiple repleadings have not cured the defects.” *Id.* Courts have held that dismissal is not the appropriate remedy when a party has failed to include a jurisdictional statement in the complaint. *See In re Carlson*, 202 B.R. 946, 948 (Bankr. N.D. Ill. 1996) and *In re Halberstram*, 219 B.R. 356, 361 (Bankr. E.D. N.Y. 1998).

The Court finds that FNB's failure to include a jurisdictional statement in the Complaint is not fatal and that FNB should be allowed to amend the Complaint rather than the Complaint being dismissed. FNB will be given until **July 8, 2003**, to file an Amended Complaint in this case that contains the jurisdictional requirement set forth in Rule 7008.

B. FNB's failure to include a statement concerning whether this is a core or non-core proceeding is not grounds for dismissing the Complaint.

The Thiedes next contend the Complaint should be dismissed because FNB failed to include a statement whether the proceeding was a core or non-core proceeding. As with the jurisdictional statement, FNB admits that the error occurred, but claims that dismissal is not appropriate.

FNB was required to include a statement in the Complaint indicating whether the proceeding was core or non-core. Fed. R. Bankr. P. 7008(a). However, failure to include this statement is "technical in nature and certainly not fatal to the complaint." *In re Painter*, 84 B.R. 59, 61 (Bankr. W.D. Va. 1998). "To the extent necessary, leave shall be granted to the plaintiff to amend [the] complaint to comply with Bankruptcy Rule 7008." *Id.* See also *In re Edwards*, 112 B.R. 30, 31 (Bankr. W.D. Mo. 1990) (holding that failure to include a statement concerning whether the proceeding was core or non-core was purely technical in nature and should not result in dismissal of the case).

The Court finds that FNB's failure to include a statement concerning whether the proceeding was core or non-core in the Complaint is not fatal and that FNB should be allowed to amend the Complaint rather than the Complaint being dismissed. FNB will be given until **July 8, 2003**, to file an Amended Complaint that contains a statement whether this is a core or non-core proceeding, as required by Rule 7008.

C. FNB has plead fraud with sufficient particularity.

The final argument by the Thiedes is that FNB failed to plead special matters with particularity pursuant to Bankruptcy Rule 7009. 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). The Thiedes have provided no analysis of the Complaint filed in this case or any case law to support their allegation that FNB has not complied with Rule 7009. The Court has reviewed the Complaint and finds that it contains sufficient factual information to meet the particularity requirements of Rule 7009(b). Therefore, the Motion to Dismiss will be denied as it relates to the Thiedes’ argument that the Complaint lacks sufficient particularity.

III. CONCLUSION

The Court finds that none of the arguments made by the Thiedes justify dismissal of the Complaint in this case. Although it is true that the Complaint fails to contain a jurisdictional statement or a statement that the proceeding is a core or non-core proceeding, the proper action for the Court is requiring an amendment to the Complaint, rather than dismissal of the case. The Thiedes’ argument that the Complaint fails to contain the particularity required by Bankruptcy Rule 7009(b) is without merit.

IT IS, THEREFORE, BY THIS COURT ORDERED that the Defendants’ Motion to Dismiss Complaint Objecting to Discharge, to Determine Dischargeability, and Determination of Fraudulence Conveyances (Doc. 6) is denied.

IT IS FURTHER ORDERED that the Plaintiff, First National Bank of Stratton, Colorado, shall amend its Complaint by **July 8, 2003**, as set forth previously in this Memorandum and Order.

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

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

CERTIFICATE OF MAILING

The undersigned certifies that copies of the Memorandum and Order was deposited in the United States mail, prepaid on this _____ day of June, 2003, to the following:

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