



SO ORDERED.

SIGNED this 14 day of September, 2005.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

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

In Re:

**DOUGLAS A. MORRIS and
NATASHA L. MORRIS,**

DEBTORS.

**CASE NO. 05-11888
CHAPTER 7**

LINDSAY MANUFACTURING CO,

PLAINTIFF,

v.

ADV. NO. 05-5535

**DOUGLAS A. MORRIS and
NATASHA L. MORRIS,**

DEFENDANTS.

**MEMORANDUM AND ORDER
DENYING DEFENDANTS' MOTION TO DISMISS
AND GRANTING DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT**

The matter before the Court is the defendants' motion to dismiss this adversary proceeding or, in the alternative, for a more definite statement. Plaintiff, Lindsay Manufacturing Company (Lindsay), is represented by Curtis A Loub, Gilliland & Hayes, P.A. Defendants, Douglas Morris and Natasha Morris (Debtors), are represented by W. Thomas Gilman, Redmond & Nazar, LLP.

The adversary proceeding arises out of a business relationship whereby Debtors entered into a Dealer Sales and Service Agreement with Lindsay to be a nonexclusive distributor of Lindsay's irrigation products. It is alleged that the Debtors mismanaged bookkeeping and other financial responsibilities that resulted in significant financial losses and debt which the Debtors were unable to pay. The Complaint is in eight counts: Breach of contract; contribution; fraudulent misrepresentation; fraudulent concealment; tortious interference with business relationship or expectancy; breach of duty of care; breach of duty of loyalty; and unjust enrichment. The request for relief is for primarily nonbankruptcy remedies, including a prayer for judgment in Lindsay's favor against the Debtors for breach of contract in the amount of \$795,887.06; ordering an accounting of books and records; and awarding attorneys fees and costs. A demand is made for jury trial. The bankruptcy relief sought is a determination "that the debt of \$795,887.06, with accruing interest, is non-dischargeable." The only reference to the Bankruptcy Code is in paragraph 5, entitled "Jurisdiction and Venue," in which it is alleged, "This action is being brought in connection with Defendants' case under chapter 7 of title 11, Case No. 05-11888, to determine the dischargeability of Defendants/Debtors' debt to Plaintiff pursuant to 11 U.S. C. § 523(c), and to deny Debtors' discharge under 11 U.S.C. § 727(a)(3)."

The Defendants move to dismiss the Complaint pursuant to Federal Rule of Bankruptcy Procedure 7012(b), which provides that Federal Rule of Civil Procedure 12(b)-(h) applies in adversary

proceedings. Specifically, Defendants allege grounds for dismissal under Rule 12(b)(1), lack of jurisdiction over the subject matter, and Rule 12(b)(6), failure to state a claim upon which relief can be granted. In the alternative, the Defendants request, pursuant Rule 12(e), that the Court order a more definite statement before a responsive pleading is due. The Plaintiff opposes the motion. The Court, for the reasons stated below, denies the motion to dismiss, but grants the motion for a more definite statement.

First, the Court denies the Defendants' motion to dismiss for lack of subject matter jurisdiction. The Court construes the Complaint as being an adversary proceeding to determine the nondischargeability of a debt under 11 U.S.C.A. § 523(a),¹ combined with a prayer to liquidate and enter judgment for the amount of the allegedly nondischargeable debt. The Defendants correctly assert that the 10th Circuit BAP in *In re Lang*² has concluded that "under the broad congressional grant of jurisdiction given to bankruptcy courts under 28 U.S.C. § 157, bankruptcy courts have the jurisdiction to award money damages in a section 523(a) proceeding."³ Citing opinions from the second, sixth, seventh, and ninth circuits, the BAP noted that all circuit courts that had addressed the issue had concluded that bankruptcy courts have such jurisdiction.⁴ Although the procedural route selected by Lindsay is not the most common, it is not prohibited. One practice guide states:

¹ Subsequent references to the Bankruptcy Code in the text shall be to the Code section only.

² *Lang v. Lang (In re Lang)*, 293 B.R. 501 (10th Cir. BAP 2003).

³ *Id.* at 516.

⁴ *Id.*

If there are facts which suggest that the debt may be nondischargeable, the unsecured creditor should initiate a complaint to except the debt from the general discharge.... Of course, it is not necessary that a judgment have been obtained prior to the bankruptcy. If a suit is already pending, the issues of nondischargeability may be raised in the pre-bankruptcy situs court, or if no suit has already been filed, the reduction of the claim to a judgment may be presented to the Bankruptcy Court along with the nondischargeability issues, and the court exercise pendent jurisdiction. The most common route, however, is to obtain a judgment on the nondischargeability issues from the Bankruptcy Court, leaving all matters concerning the underlying judgment to the court in which the matter is or could be filed absent the bankruptcy case.... If the creditor has already filed suit in state court which includes allegations, if proven, would satisfy the requirements of Code § 523 and render the debt nondischargeable, the creditor should consider removal of the state court suit to Bankruptcy Court. A less expensive way of accomplishing the same objective may be to file a motion seeking termination of the stay of 11 U.S.C.A. § 362 against state court actions for the purpose of liquidating the claim and determining dischargeability.⁵

The case cited by the Defendants in support of the absence of subject matter jurisdiction, *In re United Methodist Youthville, Inc.*,⁶ is not on point. In that case, the chapter 11 debtor, as plaintiff, brought an adversary proceeding to collect prepetition accounts receivable. Unlike the case before this Court, it was not a core proceeding to which was joined a prayer for adjudication and judgment on state law causes of action. Based upon the foregoing authorities, the Court declines to dismiss the Complaint for lack of jurisdiction.⁷

⁵ 1 Rosemary E. Williams, *Bankruptcy Practice Handbook* § 6:15 (2nd ed. 2005).

⁶ *United Methodist Youthville, Inc. v. Lutheran Social Services (In re United Methodist Youthville, Inc.)*, 289 B.R. 754 (Bankr. D.. Kan. 2003).

⁷ Although a bankruptcy court has jurisdiction to adjudicate a state law claim, award monetary damages, and determine dischargeability, the court is not required to exercise such jurisdiction, as abstention is authorized by 28 U.S.C.A. § 1334(c).

Second, the Court declines to dismiss the Complaint for failure to state a claim upon which relief may be granted. Although the Complaint appears to have been drafted without bankruptcy relief in mind, it clearly alleges state law claims for relief and gives notice of nature of the bankruptcy relief sought. The Defendant movants have not shown that the Complaint is legally insufficient to state a claim.

Finally, the Court agrees that the Plaintiff has not made sufficient allegations concerning nondischargeability of a debt under section 523(a). There are nineteen subsections to section 523(a), each of which excepts categories of debts from discharge based upon very specific circumstances. To apprise the Debtors of the basis for alleged exception from discharge, the subsections relied upon need to be identified and the necessary elements for relief alleged as to each. Further, if the Plaintiff intends to assert a basis for denial of discharge pursuant to section 727, the same specificity of pleading is required. The Complaint in its present form is so vague that the Debtors cannot reasonably be required to frame a responsive pleading to the bankruptcy law claims. The Court therefore grants the Debtors' motion under Rule 12(e). Within 30 days of this order, Lindsay shall file a more definite Complaint addressing the deficiencies noted.

For the foregoing reasons, the Court denies the Debtors' motion to dismiss, grants the alternative motion for a more definite statement, and orders that an amended Complaint be filed pursuant to Rule 12(e) within 30 days of this order.

BE IT SO ORDERED.

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