



**The relief described hereinbelow is SO ORDERED.**

**SIGNED this 22nd day of February, 2019.**

  
Robert D. Berger  
United States Bankruptcy Judge

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

In re:

**MATTHEW WILFRED ROBERTS and  
SHELLEY D. GARZA-ROBERTS,**

Debtors.

Case No. 18-20906  
Chapter 7

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**FREEBIRD COMMUNICATIONS, INC.,  
PROFIT-SHARING PLAN, et al.,**

Plaintiffs,

Adv. No. 18-06063

v.

**MATTHEW WILFRED ROBERTS and  
SHELLEY D. GARZA-ROBERTS,**

Defendants.

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**ORDER NUNC PRO TUNC GRANTING  
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

This matter comes before the Court on defendants' motion to dismiss plaintiffs' First Amended Complaint ("Complaint") for failure to comply with various provisions of the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. For the reasons stated below, defendants' motion will be granted under Fed. R. Civ. P. 8.

The story behind the Complaint appears relatively straightforward: Plaintiff Michael Scarcello and defendant Matthew Roberts, both former employees of KCTV-5, served as the directors of plaintiff Freebird Communications, Inc. ("Freebird"), from its inception in 2001. Both Scarcello and Roberts transferred their 401(k) retirement accounts from KCTV-5 to plaintiff Freebird Communications, Inc., Profit-Sharing-Plan (the "Plan"). At various times between 2001 and 2016, Roberts allegedly diverted money and property from, and breached his fiduciary duties to, Scarcello, Freebird, and the Plan. His wife, defendant Shelley Garza-Roberts, allegedly diverted money from Freebird. The debts incurred by the defendants (who have since filed for Chapter 7 bankruptcy) through those actions are, plaintiffs argue, nondischargeable under §§ 523(a)(2), (4), (6), and (19) of the Bankruptcy Code.

Although the story appears straightforward, the Complaint itself is not. It comprises 72 pages and 166 numbered paragraphs, most of which contain a variety of factual allegations and legal conclusions. Paragraph 51, for example, uses one 386-word-long sentence to describe more than 15 different ways in which Roberts

allegedly breached his fiduciary duty to Freebird. The allegations are awash with superfluous detail: the reader learns from paragraph 19, for example, that “[a]fter being honorably discharged from the Navy, Scarcello received a technical degree in electronics from the Bell & Howell School in Kansas City, Missouri, which later purchased and became part of DeVry Technical Institute, now DeVry University.” The requests for relief, with headings such as “Violation of the Defend Trade Secrets Act” and “Breach of Fiduciary Duty,” conflate civil liability with nondischargeability. In short, the Complaint is antithetical to Fed. R. Civ. P. 8(a)(2), which mandates that it contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” and Fed. R. Civ. P. 8(d), which requires each allegation to be “simple, concise, and direct.”

Because the Complaint violates Fed. R. Civ. P. 8, it is hereby dismissed without prejudice. Plaintiffs will be granted leave to amend<sup>1</sup> via separate order.

IT IS SO ORDERED.

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<sup>1</sup> *Cf. Moya v. Schollenbarger*, 465 F.3d 444, 448-451 (10th Cir. 2006) (discussing difference between dismissal of complaint and dismissal of entire action).