

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
Eastern Division

In Re:

DAVID ALAN ROSENBERG,

Debtor.

In Proceedings Under Chapter 7

Case No.: 05-23111

Adv. Proc. No. 05-1587

CHIEF JUDGE RANDOLPH BAXTER

DENTRUST DENTAL  
INTERNATIONAL,

Plaintiff,

v.

DAVID ALAN ROSENBERG,

Defendant.

FILED  
2006 JAN 25 PM 2:52  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

MEMORANDUM OF OPINION AND ORDER

The matter before the Court is the Defendant / Debtor, David Alan Rosenberg's motion to strike certain paragraphs and exhibits from the Plaintiff's complaint pursuant to FED. R. CIV. P. 12(f).

The Court acquires core matter jurisdiction over this proceeding under 28 U.S.C. § 157 and General Order No. 84 of this District. Upon an examination of the parties' respective briefs and supporting documentation, and after conducting a hearing on the matter, the following findings of fact and conclusions of law are hereby rendered:

The Plaintiff initiated the above styled adversary complaint on November 2, 2005, asking the Court to determine that a \$250,000 sanction issued in favor of the Plaintiff against the Defendant by the Court of Common Pleas, Buck County, Pennsylvania is nondischargeable pursuant to § 523(a)(7). The Plaintiff also argues that a liquidated damages debt of \$250,000 resulting from the breach of a noncompetition contract is nondischargeable pursuant to § 523(a)(6).

\*\*

Pursuant to FED. R. CIV. P. 12(f), the Defendant moves to strike certain paragraphs and exhibits from the Plaintiff's complaint, on the grounds that they are unnecessary and inappropriate. Specifically, the Defendant argues that certain paragraphs and exhibits to the Plaintiff's complaint unnecessarily incorporate a referenced document, use objectionable descriptive terms, and include evidentiary documents in support of the Plaintiff's allegations.

Rule 12(f) provides, in pertinent part:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

FED. R. CIV. P. 12(f). Under Rule 12(f), “[i]mmaterial’ means that the matter has no bearing on the controversy before the court. If there is any doubt as to whether the allegations might be an issue in the action, courts will deny the motion. ‘Impertinent’ has been defined as allegations that are not responsive or irrelevant to the issues that arise in the action and which are inadmissible as evidence. ‘Scandalous’ includes allegations that cast a cruelly derogatory light on a party or other person.” *In re 2TheMart.com, Inc. Securities Litigation*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000) (citations omitted).

“Motions to strike are generally disfavored, and the resolution of such motions is reserved to the sound discretion of the trial court.” *Wausau Benefits v. Progressive Ins. Co.*, 270 F. Supp. 2d 980, 985 (S.D. Ohio 2003); *Federal Sav. and Loan Ins. Corp. v. Burdette*, 718 F. Supp. 649, 663 (E.D. Tenn. 1989). The Sixth Circuit has held that

[p]artly because of the practical difficulty of deciding cases without a factual record, it is well established that the action of striking a pleading should be sparingly used by the courts. It is a drastic remedy to be resorted to only when required for the purposes of justice.

*Williams v. Provident Inv. Counsel, Inc.*, 279 F. Supp. 2d 894, 906 (N.D. Ohio 2003) (quoting *Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir.1953)); *Adams v. Hyman Lippitt, P.C.*, 2005 WL 3556196, \*21 (E.D. Mich. 2005); *Monsanto Co. v. Potts*, 2005 WL 1514130, \*2 (S.D. Ohio 2005) (“Striking a pleading is an extreme measure, however, and motions to strike are disfavored and only infrequently granted.”).

In a motion to strike, the movant bears the burden of showing, by a preponderance of the evidence, that the allegations have no relation to the controversy or are unduly prejudicial. *Brown & Williamson Tobacco Corp.*, 201 F.2d at 822 (“The motion to strike should be granted only when the pleading to be stricken has no possible relation to the controversy.”); *Tramontana v. May*, 2004 WL 539065, \*12 (E.D. Mich. 2004) (“A motion to strike portions of pleadings may be granted when the allegations ‘have no bearing on the subject matter of the litigation,’ or ‘where the requested relief is unavailable.’”); *Sierra Club v. Young Life Campaign, Inc.*, 176 F. Supp. 2d 1070, 1086 (D. Colo. 2001) (“[M]otions to strike are usually only granted when the allegations have no bearing on the controversy and the movant can show that he has been prejudiced.”); *Vakharia v. Little Co. of Mary Hosp. & Health Care Centers*, 2 F. Supp. 2d 1028, 1033 (N.D. Ill. 1998) (“A movant bears the burden of demonstrating that the challenged

allegations are so unrelated to plaintiff's claim as to be devoid of merit, unworthy of consideration, and unduly prejudicial."); *In re EBP, Inc.*, 171 B.R. 601, 603 (Bankr. N.D. Ohio 1994) ("In a motion to strike a pleading, the burden of proof is upon the movant who must meet the burden by a preponderance of the evidence standard.").

\*\*\*

The Defendant has offered no evidence that the subject portions of the complaint are redundant, immaterial, impertinent, or scandalous. The fact that the Plaintiff chose to include portions of the underlying employment agreement and the state court's findings are relevant to the cause of action, as they form the basis for the underlying debts that the Court is asked to render nondischargeable. Further, to find a debt nondischargeable under § 523(a)(6), the Plaintiff must show that the debt arose from the "willful and malicious injury by the debtor . . . ." 11 U.S.C. § 523(a)(6). The mere use of words "surreptitiously" and "illegal," alone, do not constitute the requisite prejudice to the Defendant necessary to warrant the granting of a motion to strike.

\*\*\*\*

Accordingly, the Defendant's Motion to Strike is not well-premised and is hereby **DENIED**. Each party is to bear its respective costs.

**IT IS SO ORDERED.**

Dated, this 25<sup>th</sup> day of  
January, 2006.

  
**RANDOLPH BAXTER**  
**CHIEF JUDGE**  
**UNITED STATES BANKRUPTCY**  
**COURT**