

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No.: 02-34493
	)	
Michael T. Haddad,	)	Chapter 7
Debtor.	)	
	)	Adv. Pro. No. 02-3366
	)	
Maumee Motors LLC,	)	Hon. Mary Ann Whipple
Plaintiff,	)	
	)	
v.	)	
	)	
Michael T. Haddad,	)	
Defendant.	)	

**ORDER REGARDING MOTION TO DISMISS**

This matter is before the Court on Defendant’s Motion to Dismiss [Doc. #23] and Plaintiff’s response [Doc. # 43]. A hearing was held regarding other matters in this case on July 10, 2003, at which the Court also addressed the instant motion. For the following reasons as well as those stated on the record, Defendant’s motion to dismiss is granted.

**BACKGROUND**

On October 29, 2002, Plaintiff filed an adversary complaint to deny Defendant/Debtor a discharge under 11 U.S.C. § 727(a). Specifically, Plaintiff alleges that Defendant should be denied a discharge on the grounds that (1) he has fraudulently transferred, removed or concealed property within one year before filing his bankruptcy petition (§ 727(a)(2)(A)), (2) he has fraudulently transferred, removed or concealed property of the estate after the date the petition was filed (§ 727(a)(2)(B)), and (3) he fraudulently made a false oath or account (§ 727(a)(4)). Defendant filed a motion to dismiss contending that Plaintiff has failed to allege the claims with the specificity required by Rule 9(b) of the Federal Rules of Civil Procedure and has failed to otherwise apprise him of the basis for its claims.

**LAW AND ANALYSIS**

Generally, a complaint which sets forth a claim for relief must simply contain a “short and

plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. 8(a). However, with respect to allegations of fraud, a pleader must comply with the requirements of Rule 9(b), made applicable by Bankruptcy Rule 7009. Rule 9(b) provides that “the circumstances constituting fraud or mistake must be stated with particularity.” Simply quoting or paraphrasing statutory language setting forth fraudulent conduct does not satisfy the particularity requirement. *Migoscha, S.A. v. Hans Detlef Meffert (In re Hans Detlef Meffert)*, 232 B.R. 71, 74-75 (Bankr. S.D.N.Y. 1998); *Rieser v. Humphrey (In re Humphrey)*, 146 B.R. 202, 205 (Bankr. S.D. Ohio 1992). Where allegations of fraud are based upon information and belief, “the pleader must allege the facts upon which his belief is based.” *Hans Detlef Meffert*, 232 B.R. at 74.

In this case, Plaintiff’s allegations of fraudulent conduct in the complaint simply parrot sections 727(a)(2) and (a)(4). It fails to allege any specific facts setting forth fraudulent conduct. The Court rejects Plaintiff’s contention that allegations of fraudulent conduct as set forth in § 727(a) are not subject to the pleading requirements of Rule 9. *See, e.g., Id.* (finding § 727(a)(4)(A) sounds in fraud and must be pled with particularity); *Ehle v. Brien (In re Brien)*, 208 B.R. 255 (B.A.P. 1<sup>st</sup> Cir. 1997)(same); *Humphrey*, 146 B.R. at 205 (dismissing § 727(a)(2) and (a)(4) claims for failing to plead with particularity).

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Defendant’s motion to dismiss be, and hereby is, GRANTED, provided, however, Plaintiff is granted leave to file an amended complaint on or before July 17, 2003.

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/s/ Mary Ann Whipple

Mary Ann Whipple  
United States Bankruptcy Judge