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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 02-16621  
)  
CAROL RAPISARDA, aka ) Chapter 7  
CAROL RAPISARDA SHANKER, )  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
\_\_\_\_\_)  
MARY ANN RABIN, TRUSTEE, ) Adversary Proceeding No. 03-1301  
)  
Plaintiff, )  
)  
v. ) MEMORANDUM OF OPINION  
)  
CAROL RAPISARDA SHANKER, et al., )  
)  
Defendants. )

Mary Ann Rabin, the plaintiff chapter 7 trustee, filed her second amended complaint to determine the priority, validity, and extent of liens in certain property and to sell the property. Among others, she named as defendants Howard Shanker (alleging he may be the debtor's husband with a dower interest) and McIntyre, Kahn & Kruse (alleging it holds a lien on the property). Howard Shanker, acting pro se, filed a document styled "Answer to Second Amended Complaint and Cross Claim of Howard Shanker and Objection to the Sale of the Real Property and Request to Answer for Minor Children Mike and Halle Shanker and Claim of All Dower Interests in Real Property of Carol Shanker." (Docket 51). McIntyre, Kahn & Kruse (the firm) timely moved to dismiss the cross-claim and to strike claims of non-parties. (Docket 53).

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Mr. Shanker's opposition, if any, to this motion was due on January 12, 2005. *See* FED. R. BANKR. P. 7012(a). The court extended the response time to February 21, 2005. (Docket 55). Mr. Shanker has not filed anything to date.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (K).

**THE MOTION TO DISMISS THE CROSS-CLAIM**

**A. The cross-claim**

Mr. Shanker's pleading does not have a separately denominated cross-claim. The parts of his pleading that refer to claims against the firm state:

\* \* \* \* \*

3. Howard Shanker has cross claims against [the firm] and Ohio Savings Properties.
4. [The firm has] unclean hands and should not be able to use this Court.
5. [The firm] and [sic] in violation of Regulation X and Z of Truth in Lending and have raised a[n] affirmative defense that requires Howard Shanker to Review the books and records of [the firm].
6. Howard Shanker has cross claims of over \$2,000,000.00 against [the firm].
7. Howard Shanker asks this honorable Court to equitably subrogate the Claims of [the firm].

\* \* \*

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9. Howard Shanker asks this Court to dismiss the claims of [the firm] due to [t]he fact they were acquired by malpractice.
10. Howard Shanker asks this Court to determine that [the firm] has made False statements to this Court in the Representation of the Michel [sic] Osborne Shanker Trust.

\* \* \*

WHEREFORE, the Defendant, Howard Shanker, prays this Court acknowledge The assigned liens of Howard Shanker as the First and Best liens.

\* \* \*

3. Order that [the firm's] Claims are barred by unclean hands.
4. Grant an order that [the firm's] claims are barred by violation of Regulation Z and X.
5. Grant and order that Howard Shanker may discover the books and records Of [the firm].
6. Grant an order that Howard Shanker has a cross claim against [the firm].

\* \* \* \* \*

**B. Discussion**

The firm argues that the cross-claim does not state a cause of action and should be dismissed under federal rule of bankruptcy procedure 7012(b), incorporating federal rule of civil procedure 12(b)-(h).

The bankruptcy rules provide that a cross-claim "shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. BANKR. P. 7008, incorporating FED. R. CIV. P. 8(a). If such a statement fails to state a claim upon which relief may be granted, the adverse party may move to dismiss the claim. FED. R. CIV. P. 12(b)(6). The

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court must construe the cross-claim in the light most favorable to the pleader, accept all factual allegations as true, and determine whether the cross-claimant “undoubtedly can prove no set of facts in support of the claims that would entitle” the cross-claimant to relief. *Eubanks v. CBSK Financial Group, Inc.*, 385 F.3d 894, 897 (6<sup>th</sup> Cir. 2004). In applying this standard, the court is not required to accept as true legal conclusions or unwarranted factual inferences. *Id.*

Mr. Shanker’s cross-claim does not state a claim upon which relief can be granted. There really are few if any factual allegations. The cross-claim instead includes a series of legal conclusions and references to statutes or doctrines, including unclean hands, equitable subrogation, and the federal truth in lending act. Mentioning such legal issues cannot substitute for a short and plain statement of the claim. Similarly, Mr. Shanker asks the court to find that the firm made false statements to the court in representing a trust, but there is no trust named in this lawsuit and there is no factual predicate for the request. The firm is, therefore, entitled to have the cross-claim dismissed.

**THE MOTION TO STRIKE CLAIMS OF NON-PARTIES**

Mr. Shanker’s pleading includes this request for relief:

WHEREFORE, the Defendant, Howard Shanker, prays this Court . . .

8. Grant an order that Howard Shanker may represent Halle and Mike Shanker.

The firm asks that these statements, together with certain others, be stricken. It does not cite any legal basis for the request.

Under federal civil rule 12(f), a party may move to strike any “insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P. 12(f), incorporated by

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FED. R. BANKR. P. 7012. Mr. Shanker is not an attorney and this court has already explained to him that he may not represent anyone other than himself. (“Because Mr. Shanker is not an attorney, he may not file an appearance or answer on behalf of any other person or entity.”) (Order entered December 3, 2004, Docket 39). His continued attempt to do so verges on the unauthorized practice of law. *See* Ohio Revised Code § 4705.01. The request to represent others is insufficient as a defense or cause of action, immaterial to the matters at issue, and is stricken.<sup>1</sup>

The remaining statements questioned by the firm do not state a claim but neither do they come within the standard for striking material from a pleading.

**OTHER ISSUES RAISED BY THE FIRM**

The firm also asks the court to determine that Mr. Shanker’s answer is insufficient to assert a dower interest in the property. This is, however, an answer to the trustee’s complaint and the firm is not the proper party to raise the issue of sufficiency. Even if it were, however, Mr. Shanker clearly states that he “claims his Dower rights in all the real property of Carol Shanker,” which is enough to put the matter in legitimate dispute. This part of the firm’s motion is, therefore, denied.

**CONCLUSION**

For the reasons stated, McIntyre, Kahn & Kruse’s motion is granted in part and denied in part, with Howard Shanker’s cross-claim against McIntyre, Kahn & Kruse dismissed for failure to state a claim and his request to represent other persons stricken. The balance of the motion is

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<sup>1</sup> Alternatively, the court treats the request as a motion, the firm’s filing as opposition, and denies the motion for the same reasons stated.

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denied. As a result, Mr. Shanker's pleading will go forward as an answer to the second amended complaint, only, filed on his own behalf.

A separate order will be entered reflecting this decision.

Date: 14 July 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center

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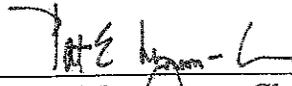
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CAROL RAPISARDA SHANKER, )  
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Debtor. ) Judge Pat E. Morgenstern-Clarren  
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MARY ANN RABIN, TRUSTEE, ) Adversary Proceeding No. 03-1301  
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Plaintiff, )  
)  
v. ) **ORDER**  
)  
CAROL RAPISARDA SHANKER, et al., )  
)  
Defendants. )

For the reasons stated in the memorandum of opinion filed this same date, McIntyre, Kahn & Kruse's motion to dismiss cross-claim filed by defendant Howard Shanker and motion to strike claims of non-parties is granted in part and denied in part. (Docket 53). The cross-claim filed by Howard Shanker against McIntyre, Kahn & Kruse is dismissed for failure to state a claim, Mr. Shanker's statements requesting permission for him to represent other people when he is not an attorney are stricken, and the balance of the motion is denied.

IT IS SO ORDERED.

Date:

24 Feb 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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