

The court incorporates by reference in this paragraph and adopts as the findings and analysis of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: June 15 2005

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No.: 04-39961
	)	
Thomas A. Hodrick and Carla Hodrick,	)	Chapter 7
	)	
Debtors.	)	Adv. Pro. No. 05-3069
	)	
Christopher Napolski,	)	Hon. Mary Ann Whipple
	)	
Plaintiff,	)	
v.	)	
	)	
Thomas A. Hodrick and Carla Hodrick,	)	
	)	
Defendants.	)	

**MEMORANDUM OF DECISION REGARDING  
MOTION TO DISMISS ADVERSARY CASE**

Thomas A. Hodrick is before the court on the Motion to Dismiss Adversary Case that he filed in this proceeding on April 8, 2005. After reviewing the motion and other documents on file in this proceeding,

the court will grant the motion but grant leave for Christopher Napolski (“Plaintiff”) to file an amended complaint.

On March 7, 2005, Plaintiff, *pro se*, filed in this court a copy of the response to a foreclosure complaint filed against him in the Common Pleas Court of Lucas County, Ohio. Plaintiff asserts that he holds a mortgage on the property that is the subject of the foreclosure action, which is junior to the foreclosing mortgagee’s lien. The pleading seeks to bar the foreclosure on the property without satisfying Plaintiff’s lien, the balance of which is \$7,100.36. Plaintiff attached copies of a promissory note and a mortgage in his favor purportedly executed by Thomas Hodrick and Carla Hodrick (“Defendants”). The pleading was accompanied by an Adversary Proceeding Cover Sheet, which indicated that this is a proceeding to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523.

The clerk treated the filing as a complaint initiating this adversary proceeding. On March 14, 2005, the court issued a Summons and Notice of Pre-Trial Conference, which scheduled a pretrial conference in this proceeding for April 26, 2005. Plaintiff did not appear at that conference.

The motion presently before the court seeks the dismissal of this proceeding on the ground that Plaintiff’s filing does not state a claim under § 523 of the Bankruptcy Code. Accordingly, the court will treat the motion as having been made pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Civil Rules”), as made applicable in bankruptcy adversary proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. (the “Bankruptcy Rules”).

Civil Rule 8(a), made applicable in adversary proceedings by Bankruptcy Rule 7008(a), provides, in relevant part, as follows:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Bankruptcy Rule 7008(a) adds the following requirement:

The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, the complaint . . . shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.

Accordingly, the pleading filed by Plaintiff is defective in that it does not include the requisite information about Defendants' bankruptcy case and also does not contain the mandatory statements relating to "core" jurisdiction.

In addition, as Defendants contend, the pleading does not state a cause of action under 11 U.S.C. § 523. The Sixth Circuit recently reiterated the analysis required when applying Civil Rule 12(b)(6):

A motion to dismiss for failure to state a claim is a test of the plaintiff's cause of action as stated in the complaint, not a challenge to the plaintiff's factual allegations. Thus this Court must assume that all allegations are true and dismiss the claim "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," i.e., that the legal protections invoked do not provide relief for the conduct alleged. In addition, "while liberal, this standard of review does require more than the bare assertion of legal conclusions." "In practice, 'a . . . complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.'"

*Golden v. City of Columbus*, 404 F.3d 950, 958-59 (6<sup>th</sup> Cir. 2005)(citations omitted). Plaintiff's pleading clearly does not state the basic, material elements of a cause of action under any paragraph of § 523(a), and the court cannot infer such allegations from the pleading. Indeed, while the paper appears to represent an attempt to assert a claim against the first mortgagee, it does not even purport to allege any cause of action against Defendants. The first mortgage holder's foreclosure action is not before this court, and there are no facts alleged for excepting any in personam liability of Defendants for a debt to Plaintiff, apart from his claimed lien in their real property, from discharge in bankruptcy.

Plaintiff's pleading contains neither (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, including the required statements regarding whether the proceeding is a core proceeding and, if not, whether Plaintiff consents to the entry of final orders or judgment, nor (2) a short and plain statement of the claim showing that the pleader is entitled to relief, nor (3) a demand for judgment for relief against Defendants. Fed. R. Bankr. P. 7008(a); Fed. R. Civ. P. 8(a). Although courts construe *pro se* complaints liberally, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594 (1989), *pro se* complaints must still satisfy basic pleading requirements. See *Wells v. Brown*, 891 F.2d 591, 594 (1989); accord *Martin v. Overton*, 391 F.3d 710, 712 (6<sup>th</sup> Cir. 2004). Even giving Plaintiff every benefit of the doubt in construing his pleading, Plaintiff's existing complaint still fails to satisfy these basic pleading requirements.

The court will, therefore, enter a separate order granting Defendants' motion but affording Plaintiff an opportunity to file a proper complaint. Fed. R. Bankr. P. 7015; Fed. R. Civ. P. 15(a).