THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-14253
	)	
BRIAN P. ROWLAND,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
CHASE MANHATTAN BANK USA, NA,	)	Adversary Proceeding No. 05-1311
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BRIAN P. ROWLAND,	)	**MEMORANDUM OF OPINION**
	)	**AND ORDER**
Defendant.	)	

Plaintiff Chase Manhattan Bank USA, NA filed a complaint under bankruptcy code § 523(a)(2) objecting to the dischargeability of a debt owed by the debtor Brian Rowland based on credit card use. The debtor moves to strike parts of the complaint as scandalous and impertinent. (Docket 9). The bank opposes the motion. (Docket 11). For the reasons stated below, the motion is denied.

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)(I).

FACTS AND DISCUSSION

Plaintiff Chase Manhattan Bank USA, NA filed a complaint alleging that a debt owed by the debtor is not dischargeable under bankruptcy code § 523(a)(2). 11 U.S.C. § 523(a)(2). The debtor moves to strike the paragraphs alleging that the debtor obtained or accepted an extension of credit when he had no ability or objective intent to repay and that he obtained the credit by false pretenses, false representations, and/or actual fraud.

The debtor argues that the bank failed to state fraud with particularity, that the bank must know of some particular factual allegation or it would have violated rule 11 by this filing, and concludes that the statements are scandalous and impertinent. The bank responds that the allegations will be proven true, the account activity is suspicious on its face, and the pleading is proper under notice pleading.

The debtor cites bankruptcy rule 7012(f):

> Upon motion made by a party before responding to a pleading . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

FED. R. BANKR. P. 7012(f) (incorporating FED. R. CIV. P. 12(f)).

There is nothing scandalous or impertinent about the words used by the bank. They are, in fact, quite close to the statutory language of § 523 and the case law interpreting it. Whether, as the debtor suggests, the bank lacks a good faith basis in law and fact for making this allegation is a different issue. The debtor may investigate this through the required bankruptcy rule disclosures and discovery. If the bank does not have a good faith basis, that might amount to a

violation of bankruptcy rule 9011, thus exposing the bank and its counsel to sanctions. *See* Fed. R. Bankr. P. 9011. That issue is not, however, before the court on a motion to strike material as scandalous.

CONCLUSION

For the reasons stated, the motion is denied.

IT IS SO ORDERED.

Date: 29 July 2005

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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