

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 10-16340
)	
JEFFREY W. MILLER and,)	Chapter 7
LEONA F. MILLER,)	
)	Judge Pat E. Morgenstern-Clarren
Debtors.)	
_____)	
)	
ROBERT ANTHONY,)	Adversary Proceeding No. 10-1330
)	
Plaintiff,)	
)	
v.)	
)	
JEFFREY W. MILLER,)	<u>MEMORANDUM OF OPINION</u> ¹
)	
Defendant.)	

The defendant-debtors Jeffrey and Leona Miller move to dismiss the amended complaint filed by *pro se* plaintiff Robert Anthony.² For the reasons stated below, the motion to dismiss is granted.³

I. JURISDICTION

The court has jurisdiction 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

¹ This opinion is not intended for publication, either electronic or in print.

² The plaintiff did not file a timely response in opposition to the motion. *See* docket 52, 54, 55.

³ Docket 51.

under 28 U.S.C. § 157(b)(2)(I) and (J). This decision is within the court's constitutional authority as analyzed by the Supreme Court in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

II. DISCUSSION

A. Background Information

When the plaintiff Robert Anthony sent a letter to the court stating that he objected to the discharge of any obligation owed to him by the debtor Jeffrey Miller, the court treated the correspondence as a complaint. The debtors filed an untimely motion to dismiss under Federal Civil Rules 9(b) and 12(b)(6), which the court denied on procedural grounds. Nevertheless, because the complaint was obviously deficient, the court instructed the plaintiff to file an amended complaint to state clearly “(1) the party or parties against whom he is requesting relief; (2) the relief he is seeking under the Bankruptcy Code; and (3) the particular facts which he believes support that relief.”⁴ Mr. Anthony filed an amended complaint.⁵

B. The Motion to Dismiss

The debtors timely move to dismiss the amended complaint on the grounds that it fails to state a claim, *see* FED. R. CIV. P. 12(b)(6) (made applicable by FED. R. BANKR. P. 7012(b)), and fails to plead fraud with the required specificity, *see* FED. R. CIV. P. 9(b) (made applicable by FED. R. BANKR. P. 7009).

In ruling on a 12(b)(6) motion, the court must accept the factual allegations as true and construe the complaint in the light most favorable to the plaintiff. *In re Travel Agent Comm'n*

⁴ Docket 42.

⁵ Docket 50.

Anti-Trust Litig., 583 F.3d 896, 903 (6th Cir. 2009). The Supreme Court established the standard for a 12(b)(6) motion in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and provided further guidance in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In discussing that standard, the Sixth Circuit has stated that:

A complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although the complaint need not contain “detailed factual allegations,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), Rule 8(a)(2) of the Federal Rules of Civil Procedure “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S.Ct. at 1949. As the Supreme Court explained in *Iqbal*: “A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.” *Id.* (internal quotation marks, citations, and alterations omitted).

Following *Twombly* and *Iqbal*, it is well settled that “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). A claim is plausible on its face if the “plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955). Plausibility is not the same as probability, but rather “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (stating that factual allegations “merely consistent with liability stop[] short of the line between possibility and plausibility”).

Center for Bio-Ethical Reform, Inc. v. Napolitano, 648 F.3d 365, 369 (6th Cir. 2011).

Additionally, Civil Rule 9(b) requires that a party alleging fraud “must state with particularity the circumstances constituting fraud[.]” FED. R. CIV. P. 9(b). Despite these requirements, a *pro se* pleading is liberally construed and is held to less stringent standards than formal pleadings

drafted by lawyers. *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991). However, this lenient treatment has its limits; plaintiff's *pro se* status does not alone mean that he is entitled to take his case to trial. *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996).

C. The Amended Complaint

The amended complaint is titled "Plaintiff's Amended Complaint and Objections to Discharge of Defendant" and names both debtors as defendants. The pleading sets forth two claims, neither of which is tied to a specific Bankruptcy Code provision. However, the jurisdictional section of the pleading includes a reference to § 523(a)(6) and quotes extensive portions of other subsections of § 523, as well as § 727.

In the first claim, the plaintiff alleges that he and Cynthia Fisher entered into a contract with Jeffrey Miller for Mr. Miller to perform work on real estate at 1546 Ambre Drive, Akron, Ohio; that Mr. Miller "committed fraud by deliberately and negligently breaching the contract;" that the property was damaged as a result; and that the property was determined to be unsafe and ordered to be demolished. It also alleges that Mr. Miller entered into the contract fraudulently and without the requisite bond, insurance, or permits. The plaintiff requests compensatory damages in the amount of \$161,000.00.

The second claim alleges that the plaintiff, doing business as R & D Construction & Landscaping LLC, contracted with Jeffrey Miller for Mr. Miller to perform work on real estate at 1046 Spring Avenue, N. E., Canton, Ohio; that Mr. Miller "committed fraud by deliberately and negligently breaching the contract;" and that the property was damaged as a result and was ordered to be demolished. It also alleges that Mr. Miller entered into the contract fraudulently

and without the requisite bond, insurance, or permits. The plaintiff requests compensatory damages in the amount of \$90,000.00.

On consideration and construing the plaintiff's *pro se* amended complaint liberally, the court finds that it fails to state a claim for relief as to either of the debtors.

The amended complaint does not state a claim for relief against Leona Miller. Other than being named as a defendant, she is not mentioned in the complaint and none of the allegations relate to her.

The amended complaint also fails to state a claim for relief against Jeffrey Miller. Plaintiff is asking either that the debt owed to him by the debtor be declared non-dischargeable under Bankruptcy Code § 523 or that the debtor be denied a discharge under § 727. To state such a claim, the pleading must include allegations that Mr. Miller engaged in conduct that would warrant such relief. The order instructing the plaintiff to file the amended complaint notified him of this requirement and gave him a second opportunity to meet the pleading standard.

Bankruptcy Code § 523(a)(6) provides that a debt is not discharged if it is “for willful and malicious injury by the debtor to another entity or to the property of another entity[.]” 11 U.S.C. § 523(a)(6). Under this section, a plaintiff must show both willful injury and malicious injury. *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 463 (6th Cir. 1999). A willful injury is one that results when the actor desires to cause the consequences of his actions or believes that the consequences are substantially certain to result from his actions. *Markowitz*, 190 F.3d at 464. An intentional act alone is insufficient; the injury itself must be intentional. *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). A person acts maliciously by acting “in conscious disregard of his duties or without just cause or excuse.” *Gonzalez v. Moffitt (In re*

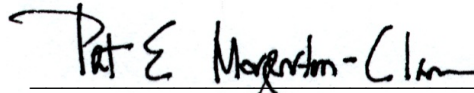
Moffitt), 252 B.R. 916, 923 (B.A.P. 6th Cir. 2000). The willful and malicious standard equates to the idea of an intentional tort. *Monsanto Co. v. Trantham (In re Trantham)*, 304 B.R. 298, 307 (B.A.P. 6th Cir. 2004). The Sixth Circuit has stated that these types of misconduct satisfy the § 523(a)(6) standard: intentional infliction of emotional distress; malicious prosecution; conversion; assault; false arrest; intentional libel; and deliberate vandalism. *Musilli v. Droomers (In re Musilli)*, 379 Fed. Appx. 494 at *4 (6th Cir. 2010) (citing *Steier v. Best (In re Best)*, 109 Fed. Appx. 1 at 5 n. 2 (6th Cir. 2004)).

The amended complaint essentially alleges that the plaintiff and Mr. Miller entered into contracts, that Mr. Miller breached the contracts, and that the plaintiff was damaged by the breaches; however, breach of contract is not an action that falls within the meaning of § 523(a)(6). The allegations do not state a plausible claim that the debtor's actions towards the plaintiff and his properties were willful and malicious and intended to lead to injury within the meaning of § 523(a)(6). Moreover, although the pleading includes the terms "fraud" and "deliberately"—terms which might suggest that Mr. Miller acted with the requisite intent—the use of those terms is not supported by any factual content. Consequently, the plaintiff failed to state a claim under § 523(a)(6).

Additionally, although the amended pleading quotes extensively from Bankruptcy Code § 727, it does not include sufficient factual matter, which, accepted as true, state a plausible claim to relief under that provision, either.

III. CONCLUSION

For these reasons, the defendant-debtors' motion to dismiss is granted. A separate judgment will be entered in accordance with this memorandum of decision.

A handwritten signature in black ink, reading "Pat E. Morgenstern-Clarren". The signature is written in a cursive, flowing style. The "P" is large and loops around the "at". The "Morgenstern" is written in a series of connected loops, and "Clarren" is written in a similar cursive style.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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Plaintiff,)	
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v.)	
)	
JEFFREY W. MILLER,)	<u>ORDER</u>
)	
Defendant.)	

For the reasons stated in the memorandum of opinion entered this same date, the defendant-debtors' motion to dismiss the amended complaint is granted. (Docket 51).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge