

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

In Re: MACON A. MOYER, II,	)	
Debtor	)	
_____	)	Case No. 06-50080
	)	Chapter 7
	)	
JOSEPH F. HAERTSCH,	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 06-05020
MACON A. MOYER, II,	)	
Defendant	)	
	)	

**DECISION AND ORDER**

At Harrisonburg in said District this 29th day of January, 2007:

The matter before the Court is the Defendant’s Motion to Dismiss the above-captioned adversary proceeding which seeks to deny discharge of his debt. The Court conducted a hearing on the Motion in Staunton on September 20, 2006. At that time, the Court took the matter under advisement. After due consideration of the evidence and authorities and for the reasons stated here, the Motion is denied.

**BACKGROUND**

Defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on February 21, 2006. The Section 341 meeting of creditors was held on March 31, 2006. The bar date for filing objections to discharge was May 30, 2006.<sup>1</sup>

On May 18, 2006, the Plaintiff filed with the Clerk of the Court a one-page typed document, in the format of a letter, objecting to the discharge of the Defendant

---

<sup>1</sup> See Rule 4007(c).

(Objection to Discharge or Objection). The Plaintiff filed the Objection to Discharge pro se. At the top of the page the Plaintiff wrote “I object to the discharge of the debtor.” Also written at the top of the page were the name of the Defendant, the address of the Defendant at the time he filed for bankruptcy, the address of the Defendant as of May 18, 2006, and the Defendant’s bankruptcy case number. The Plaintiff signed the Objection to Discharge and provided his address and phone number at the bottom of the sheet. The body of the Objection to Discharge read as follows:

I object to the discharge based on the fact that it was workmanship and not a loan. He damaged my home (personal property) [sic] He failed to do the job right. He failed to make it right. He failed to pay me from the judgment on June 16<sup>th</sup> 2005 . . . .

. . . .

Mr. Moyer received payment for his workmanship. However, the product was not delivered. I ask that he be held accountable for the judgment owed me.

The Plaintiff attached an adversary proceeding cover sheet to the Objection to Discharge.<sup>2</sup> The cover sheet calls for a plaintiff to provide the court with certain information under various headings. Under the “Cause of Action” heading, Plaintiff wrote “to object to the discharge of the debtor.”<sup>3</sup> Under the “Nature of Suit” heading, the Plaintiff indicated he sought “to recover money or property.”<sup>4</sup> And, under the “Demand”

---

<sup>2</sup> The local rules require a cover sheet to be filed along with any adversary proceeding complaint. Bankr. W.D. Va. R. 7003-1.

<sup>3</sup> This section instructs plaintiffs to provide a “brief statement of cause of action, including all U.S. statutes involved.” Plaintiff provided no statutory basis.

<sup>4</sup> This section provides a number of various options that may be chosen to indicate the nature of the suit. Each option is chosen by marking a box beside the desired option. Plaintiffs may only check the one most appropriate box.

heading, the Plaintiff specified \$15,000.

On June 8, 2006, Plaintiff filed a document docketed as an amended complaint (Amended Complaint). Attached to the Amended Complaint was a sheet amending the adversary proceeding cover sheet. This sheet sought to change the cause of action to a “Complaint to Determine Exception for Discharge pursuant to 11 U.S.C. § 523 (debt of fraud, larceny, and/or malicious injury),” the nature of the suit to “determine the dischargeability of a debt under 11 U.S.C. § 523,” and the demand to \$14,814.29.

Defendant filed a Motion to Dismiss the Amended Complaint on June 9, 2006, and filed supporting authorities on September 7, 2006. The Motion seeks to dismiss the Amended Complaint in its entirety as being time barred.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

This court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under title 11, and the court may hear and determine such proceeding under 28 U.S.C. § 157(b). Venue is proper in this District under 28 U.S.C. § 1409(a).

In the present case, Defendant argues that the Amended Complaint should be dismissed as time barred. The statute of limitation relied upon by the Defendant arises under Bankruptcy Rule 4007. In particular, subsection (c) of Rule 4007 requires that a complaint under Section 523(c) “be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a).” Bankr. R. 4007(a).

The statute of limitations under Rule 4007 expired on May 30, 2006, because the first date set for the meeting of creditors was March 31, 2006. Plaintiff filed the Objection

to Discharge on May 18, 2006, thus prior to the bar date. However, Plaintiff did not file the Amended Complaint until after the bar date.<sup>5</sup> Although an amended complaint may relate back to the filing date of the original complaint under Federal Rule of Civil Procedure 15, Defendant argues that the Amended Complaint fails to relate back to May 18, 2006 and is thus time barred under Rule 4007(c). Rule 15(a) provides that “[a] party may amend a party’s pleading once as a matter of course before a responsive pleading is served.” Fed. R. Civ. P. 15(a). In this case, the Defendant did not respond to the Objection to Discharge until after the Plaintiff filed the Amended Complaint.

Furthermore, even if Defendant had served the Motion to Dismiss before Plaintiff filed his Amended Complaint, a motion to dismiss is not a pleading as that term is defined in Fed. R. Civ. P. 7(a). See Smith v. Blackledge, 451 F.2d 1201, 1203 n.2 (4th Cir. 1971).

Therefore, Plaintiff was entitled to amend the Objection to Discharge once as a matter of course. See Fed. R. Civ. P. 15(a). However, Defendant argues that Plaintiff’s Objection to Discharge was not a complaint and, thus, not a pleading under Rule 7007; therefore, the subsequent filing on June 8, 2006, was not an “amendment,” but an original pleading which initiated an adversary proceeding.

### **Sufficiency of the Objection to Discharge**

Defendant asserts that Plaintiff’s Objection to Discharge is not a complaint, because it fails to comply with the requirements of Bankruptcy Rules 7008 and 7010.<sup>6</sup>

---

<sup>5</sup> The Plaintiff filed the Amended Complaint on June 8, 2006.

<sup>6</sup> Specifically, Defendant argues that the Objection to Discharge failed to comply with three pleading requirements. First, Defendant argues that the Objection to Discharge failed to contain any statement of the grounds upon which jurisdiction depends or make reference to the district and division where the bankruptcy case was filed. See Bankr. R. 7008. Second, Defendant argues that the Objection to Discharge failed to make

Bankruptcy Rules 7008 and 7010 provide an understanding of the substantive and technical requirements of a complaint. In particular, Bankruptcy Rule 7008, which incorporates Rule 8 of the Federal Rules of Civil Procedure, requires that:

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, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (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. Relief in the alternative or of several different types may be demanded.

Fed. R. Civ. P. 8.

Bankruptcy Rule 7010, which incorporates Rule 10 of the Federal Rules of Civil Procedure, details the information a complaint is to contain in the caption, as well as other more technical requirements. Specifically, the caption must include the name of the case, the case number, the chapter of the case under the bankruptcy code to which the adversary proceeding relates to, and the adversary proceeding number. Bankruptcy Rule 7010 also requires that each averment of a claim be made in numbered paragraphs and that the contents of each paragraph be limited, as far as practicable, to a single set of circumstances.

The Bankruptcy Code and Rules do not provide guidance on whether a pleading that fails to comply with Bankruptcy Rules 7008 and 7010 may be amended as a matter of course to cure such deficiencies. However, courts have analyzed the factors relevant to granting leave to amend under Rule 15(a). Because amendments as a matter of course and

---

a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Id.* Finally, the Defendant argues that the Objection to Discharge failed to include a caption in the proper form or numbered paragraphs as required by Bankruptcy Rule 7010 and, therefore, failed to put the Defendant or the Court on notice with respect to the nature of Plaintiff's claims.

amendments requiring leave of court both necessitate the existence of an original pleading, decisions determining whether to grant leave to amend are helpful.

In this case, the Objection to Discharge is devoid of a caption, numbered paragraphs, a statement upon which court's jurisdiction depends and any reference to the district and division where the bankruptcy case is pending. See Bankr. R. 7008 & 7010. The Objection to Discharge also, arguably, fails to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); but cf. Anderson v. Foundation for Advancement, Educ. & Employment of Am. Indians, 155 F.3d 500, 505 (4th Cir. 1998) ("Federal 'notice' pleading standards require that the complaint be read liberally in favor of the plaintiff."); Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977) ("pro se complaints, however unskillfully pleaded, are to be liberally construed").

Courts freely grant a party leave to amend pleadings, even after dismissal for failure to comply with the Federal Rules of Civil Procedure. See, e.g., Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-32 (1970); Foman v. Davis, 371 U.S. 178, 182 (1962). Typically a motion to amend may only be denied for a substantial reason. The Fourth Circuit has held that delay alone is an insufficient reason to deny leave to amend, rather it should "only be denied when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." Laber v. Harvey, 438 F.3d 404, 426-27 (4th Cir. 2006) (citations omitted).

A bad faith inquiry requires an analysis of the plaintiff's motive for amending his

or her complaint. Adams v. Gould, Inc., 739 F.2d 858, 868 (3d Cir. 1984); see also Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986). In Pine Mt. Oil & Gas, Inc. v. Equitable Prod. Co., 446 F. Supp. 2d 643, 650 (W.D. Va. 2006), the district court denied the plaintiff's motion for leave to amend its complaint where the plaintiff sought to include additional causes of action. Id. at 647. In denying the plaintiff's motion to amend, the court noted that the plaintiff "could have asserted the proposed amendments earlier in the case, rendering a more efficient expenditure of judicial resources." Id. at 550. In support of its decision, the district court relied upon the rationale of Omni Outdoor Advertising, Inc. v. Columbia Outdoor Advertising, Inc., 974 F.2d 502 (4th Cir. 1992), which concluded that the federal rules do not "afford plaintiffs a tool to engage in the litigation of cases one theory at a time." Id. at 550. In the case at bar, Plaintiff filed the Amended Complaint only 21 days after filing his Objection to Discharge and before Defendant filed any responsive pleading. Plaintiff has made it clear in this case that his amendment was motivated by a desire to put the case in proper form and substance for adjudication. Therefore, Plaintiff did not file the Amended Complaint in bad faith.

The prejudicial effect of an amendment is determined by the nature and timing of the amendment. Laber, 438 F.3d at 427. In deciding whether to allow amendments under Rule 15, courts must also weigh the prejudice which would be suffered by the non-moving party if leave were granted against harm which would be suffered by the moving party if leave were denied. Foman, 371 U.S. at 182 (leave to amend may be denied when the prejudice to the non-moving party outweighs any harm to the moving party if leave is denied). In the case where a "defendant was from the outset made fully aware of the

events giving rise to the action, an allowance of the amendment could not in any way prejudice the preparation of defendant's case." Davis v. Piper Aircraft Corp., 615 F.2d 606, 613 (4th Cir. 1980); Laber, 438 F.3d at 427. In this case, Plaintiff relies on the same set of elementary facts in his Objection to Discharge and Amended Complaint. That is, Plaintiff alleges in both that Defendant failed to repair damage caused to Plaintiff's home during the course of Defendant's work and that Defendant misappropriated funds provided to fund work expenses. While it is true that the Plaintiff's Objection to Discharge failed to cite any statutory basis for the objection and the Amended Complaint does cite to a statute as the basis of recovery, the facts set forth in the Objection to Discharge made the Defendant fully aware of the events giving rise to the Objection to Discharge and Amended Complaint. Therefore, the Amended Complaint is not prejudicial to Defendant.

Leave to amend may also be denied for futility if the proposed amendment is insufficient, procedurally or substantively, on its face. Davis, 615 F.2d at 613 (citing DeLoach v. Woodley, 405 F.2d 496, 497 (5th Cir. 1968)). The Amended Complaint seeks to remedy the deficiencies of the Objection to Discharge and provides for specific theories of recovery under 11 U.S.C. § 523. The Amended Complaint also sets forth facts, which if proved, would be sufficient to support recovery under the relevant subsections of Section 523. As such, the Amended Complaint is not futile.

Based on the foregoing, this court concludes that, while dismissal of the Objection to Discharge for failure to comply with Bankruptcy Rules 7008 and 7010 may have been proper in response to a timely filed motion to dismiss, the Amended Complaint is neither

futile nor prejudicial to Defendant and there is no indication of bad faith on the part of the Plaintiff. As such, the Objection to Discharge constitutes an original complaint for purposes of Rule 15. Absent any reason to deny leave to amend, the Court must consider whether Plaintiff's Amended Complaint relates back to the timely filed Objection to Discharge for the purposes of Rule 15(c).

### **Relation Back of the Amended Complaint**

Rule 15 of the Federal Rules of Civil Procedure provides that the "amendment of a pleading relates back to the date of the original pleading." Fed. R. Civ. P. 15(c). In order for an amended pleading to relate back, a party must show that "the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Id. However, if the amendment concerns entirely different transactions than alleged in the original complaint, then relation back under subsection (c) will be denied. See In re Austin Driveway Services, Inc., 179 B.R. 390 (Bankr. S.D.N.Y. 1995). "The rationale of Rule 15(c) is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitations were intended to provide." Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 150 n. 3 (1984) (per curium).

According to the Fourth Circuit, "to relate back there must be a factual nexus between the amendment and the original complaint" and the defendant must have had notice of the original claim and not be prejudiced by the amendment. Gratten v. Burnett, 710 F.2d 160, 163 (4th Cir. 1983), aff'd on other grounds, 468 U.S. 42 (1984). Relation back applies under Rule 15(c) with respect to amendments that restate or amplify the

details of the original pleading. McClellon v. Lone Star Gas Co., 66 F.3d 98, 102-03 (5th Cir. 1985). The amendment will also related back if it expands upon the facts alleged in the original pleading. Id. Therefore, relation back in this case is not precluded because the Amended Complaint corrected deficiencies in the form of the Objection to Discharge. Nor is relation back precluded because the Amended Complaint expanded upon the facts alleged in the Objection to Discharge.

The critical analysis requires that the Amended Complaint arise out of the same transaction or occurrence as the Objection to Discharge, that the Objection to Discharge provided notice and that the Defendant is not prejudiced by the amendment. Gratten, 710 F.2d at 163. The content of Plaintiff's Amended Complaint arises out of the same transactions and occurrences which form the basis of the Objection to Discharge. The Objection to Discharge alleges that the Plaintiff paid Defendant to perform work on his home and that Defendant failed to complete the job, failed to return the payments, caused damage to Plaintiff's home and that Plaintiff objects to the discharge of debts related to these actions of the Defendant. The Amended Complaint expands upon these facts and alleges that the facts amount to multiple causes of action under 11 U.S.C. §523. Therefore, these allegations not only arise out the same transactions in both the Objection to Discharge and Amended Complaint, but this core of operative facts set forth in the Objection to Discharge placed Defendant on notice of other claims related to his work on plaintiff's home, including those alleged in the Amended Complaint. Finally, as discussed above, Defendant will not be prejudiced by the amendments. As such, the Court finds that Plaintiff's Amended Complaint relates back to Objection to Discharge filed on May 18,

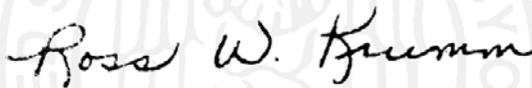
2006.

**CONCLUSION**

For the reasons stated above, the Court holds that the Amended Complaint is not time barred under Bankruptcy Rule 4007(c). Accordingly, it is

**ORDERED:**

That the Defendant's Motion to Dismiss the Amended Complaint for failure to timely file is DENIED.



Ross W. Krumm

---

Ross W. Krumm  
U. S. Bankruptcy Judge

Copies of this order are directed to be sent to Plaintiff, Joseph F. Haertsch, 115 Fairfield Estates Drive, Raphine, VA 24472-2723; Counsel for Debtor, Jeffrey A Ward, Franklin Franklin, Denney, Ward & Lawson PLC, P.O. Box 1140, Waynesboro, VA 22980; and George I. Vogel, Chapter 7 Trustee, P.O. Box 18188, Roanoke, VA 24014.