

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

IN RE: DENNIS E. WHITE,)	
)	
Debtor)	Chapter 7
)	Case No. 07-71909
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)	
PAUL L. HUFFMAN, JR.,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding
)	08-07003
DENNIS E. WHITE,)	
)	
Defendant.)	

DECISION AND ORDER

This matter is before the court on the Defendant’s motion to dismiss for failure to state a claim upon which relief can be granted. The court has reviewed the arguments of both parties and for the reasons stated below, the Defendant’s motion to dismiss is DENIED.

Background

Dennis E. White (herein “Defendant”), filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code on November 30, 2007. On March 3, 2008, Paul L. Huffman, Jr. (herein “Plaintiff”) filed the above-captioned adversary proceeding to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2)(A). The complaint alleges that the Defendant knowingly made false statements with the specific intention of inducing the Plaintiff into a contractual agreement. (Compl. ¶ 5). The complaint states that as a result of the Defendant’s false statements, the Plaintiff did in fact enter into a contractual agreement for the Defendant to provide general contracting services for the construction of a

deck and outdoor living area on the Plaintiff's house. (Compl. ¶ 5). Furthermore, the Plaintiff alleges that the "Debtor never intended to do the work in the time, manner or quality promised."

(Compl. ¶ 8). The Defendant subsequently filed this motion to dismiss for failure to state a claim upon which relief can be granted. In his motion, the Defendant argues that the Plaintiff has only alleged a breach of the written contract in his complaint, and a debt resulting from a breach of contract is dischargeable in bankruptcy.

DISCUSSION

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) should be granted only if, "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999) (internal quotations and citations omitted).

Bankruptcy Code section 523(a)(2)(A) provides that a debtor will not receive a discharge from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by – (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A) (2006). In Marunaka Dainichi Co. v. Yamada (In re Yamada), 197 B.R. 37 (Bankr. E.D. Va. 1996), the court provided that:

The elements for finding a debt nondischargeable under § 523(a)(2)(A) are: (1) the debtor made misrepresentations, (2) at the time they were made, the debtor knew the representations were false, (3) the debtor made the misrepresentations

with the intention and purpose of deceiving the creditor, (4) the creditor relied on the representations, and (5) the creditor sustained loss and damage as the proximate result of the misrepresentations.

Id. at 39. The fact that these elements may happen to arise from the act of entering into a contract does not necessarily make any claim arising therefrom a breach of contract claim.¹ The court in Yamada, for instance, found sufficient facts to except from discharge under section 523(a)(2)(A) a debt created when the “debtor obtained 32,500,000 yen (used to purchase the Pennsylvania Avenue real estate) from the plaintiff by signing the documents comprising the agreement.” Id. After an analysis of the elements required for a finding of nondischargeability under section 523(a)(2)(A), the court found that “[b]ecause debtor has not overcome the inference that he intended to deceive plaintiff when he entered into the agreement, the court finds that all of the elements of section 523(a)(2)(A) have been met.” Id. at 40.

Similar to the facts in Yamada, the Plaintiff in this case has alleged that the Defendant intended to deceive the Plaintiff when he entered into the contract. Furthermore, the Plaintiff in this case has alleged the remaining elements necessary for finding a debt nondischargeable under section 523(a)(2)(A). Therefore, taking the Plaintiff’s well-pleaded allegations as true and drawing all reasonable inferences from those facts in the Plaintiff’s favor, it appears to the court that the Plaintiff could establish the elements necessary for a finding of nondischargeability pursuant to section 523(a)(2)(A). Accordingly, it is

¹ See Pruett v. Moon (In re Moon), 1997 Bankr. LEXIS 2346, *47 (Bankr. E.D. Va. 1997) (a “breach of contract does not, by itself, establish misrepresentation for purposes of section 523(a)(2)(A). However, if a debtor enters into a contract with no intent to fulfill the terms of the contract and later defaults, the contract may provide a basis for a nondischargeability claim based on fraud.”)

ORDERED:

That the Defendant's motion to dismiss is DENIED. It is

FURTHER ORDERED:

That a pre-trial conference in the above-captioned adversary proceeding will be held on September 4, 2008 at 3:00 p.m. in the Bankruptcy Courtroom, Second Floor, Old Federal Building, Corner of Second Street and Church Avenue, Roanoke, Virginia.

Copies of this order are directed to be sent to counsel for the Plaintiff, Harold David Gibson, Esquire; and to counsel for the Defendant, Michael Dean Hart, Esquire.

Dated: August 1, 2008

