

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

| | | |
|----------------------------|---|-------------------|
| IN RE: CASE NO. 08-13016 |) | |
| |) | |
| TECHLINE ENGINEERING, INC. |) | |
| |) | |
| Debtor |) | |
| |) | |
| |) | |
| MARTIN E. SEIFERT, TRUSTEE |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| vs. |) | PROC. NO. 11-1005 |
| |) | |
| JAMES P. LEDONNE, LOREN D. |) | |
| HEIRBRANDT, GLOBAL VEHICLE |) | |
| TECHNOLOGIES LLC, L & H |) | |
| PARTNERS LLC |) | |
| |) | |
| Defendants |) | |

DECISION AND ORDER

At Fort Wayne, Indiana, on May 24, 2011.

By its complaint in this adversary proceeding, the plaintiff seeks to recover damages for, inter alia, the alleged breach of a contract for sale of the debtor's assets and a declaratory judgment that the defendant, L& H Partners, has no interest in funds related to an auction contract, which were deposited in escrow. L & H Partners responded by filing a motion to dismiss counts two and three of the complaint arguing that they fail to state a claim upon which relief can be granted. Fed. R. Civ. P. Rule 12(b)(6).

The current standard governing a motion to dismiss requires that:

First, the complaint must describe the claim in sufficient detail to give the defendant "fair notice of what the . . . claim is and the grounds upon which it rests" . . . Second, its allegations must plausibly suggest that the plaintiff has a right to relief raising the

possibility above a “speculative level”; if they do not, the plaintiff pleads itself out of court. E.E.O.C. v. Concentra Health Services, Inc., 496 F. 3d 773, 776 (7th Cir. 2007) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964)(internal citations omitted). See also, Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949-51 (2009); In re Eisaman, 387 B.R. 219, 222 (Bankr. N.D. Ind. 2008); In re Schmucker, 376 B.R. 256, 258 (Bankr. N.D. Ind. 2007).

The essence of the motion is that both claims rely on the existence of an alleged contract between the estate and the defendant and that, by failing to attach a copy of this contract to the complaint, the plaintiff has failed to satisfy the requirements of Rule 8(a). While the plaintiff certainly could have attached a copy of the contract, see, Fed. R. Civ. P. Rule 10(c) (“a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes”), and attaching it may have been desirable, and perhaps even preferable, there is no requirement in federal court that he do so, compare Ind. T.R. Rule 9.2(A) (“When any pleading allowed by these rules is founded on a written instrument, the original, or a copy thereof, must be included in or filed with the pleading”) with D.H.G. Properties, LLC v. Ginn Companies, LLC, 2010 WL 5584464 n.7 (M.D. Fla. 2010) (“In federal court, ‘a plaintiff is not required to attach a document to a pleading, even when that document serves as the basis for the plaintiff’s claim.’”) (quoting Marsh U.S.A., Inc. v. Walpole, Inc., 2005 WL 2372006 *2 (M.D. Fla. 2005); Securimetrics, Inc. v. Hartford Cas. Ins. Co., 2005 WL 1712008 (N.D. Cal. 2005) (“Federal law does not require Plaintiff to recite the contract terms verbatim or to attach a copy of the contract to the complaint.”), and the defendant cites no authority for any such requirement.

Although a copy of the contract was not attached to the complaint, the plaintiff has alleged the facts necessary to comply with the pleading requirements set forth in Iqbal and Twombly. He has identified the parties to the contract, the subject and terms of the agreement; also alleging that

L & H Partners breached the agreement and how. The same can be said of the count seeking a declaratory judgment concerning escrowed funds. He has identified the fund, its source and the time of its creation and alleges that the defendant has no interest in it. No more is required of either count.

L & H Partners' motion to dismiss is DENIED. It shall file an answer to the plaintiff's complaint within fourteen (14) days of this date.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court