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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 11-11959)	
)	
ERIC BLAINE FORD)	
ROBYN DENISE FORD)	
)	
Debtors)	
)	
)	
TERRY TAYLOR)	
KATHLEEN TAYLOR)	
)	
Plaintiffs)	
)	
vs.)	PROC. NO. 11-1151
)	
ERIC BLAINE FORD)	
ROBYN DENISE FORD)	
)	
Defendants)	

DECISION AND ORDER GRANTING MOTION TO DISMISS

At Fort Wayne, Indiana, on December 19, 2011.

In bankruptcy, claims for breach of contract are dischargeable debts. See, In re Whitters, 337 B.R. 326, 339 (Bankr. N.D. Ind. 2006); In re Barr, 194 B.R. 1009, 1017-18 (Bankr. N.D. Ill. 1996); In re Guy, 101 B.R. 961, 978-979 (Bankr. N.D. Ind. 1988); In re Cortese, 77 B.R. 961 (Bankr. S.D. Fla. 1987). Even an intentional breach of contract will not create a non-dischargeable debt, unless the breach is accompanied by conduct that is also tortious. In re Williams, 337 F.3d 504, 509-10 (5th Cir. 2003); Petralia v. Jerich, 238 F.3d 1202, 1205-06 (9th Cir. 2001); In re Riso, 978 F.2d 1151, 1154 (9th Cir. 1992). See also, In re Lazzara, 287 B.R. 714, 722 (Bankr. N.D. Ill. 2002) (applying §523(a)(6)). Debts for fraud and other intentional torts are, however, non-dischargeable. See, 11 U.S.C. §§ 523(a)(2), (4), (6). As a result, when an individual files bankruptcy, there is a very real

incentive for creditors to attempt to recharacterize what would otherwise be a dischargeable contract claim into some kind of non-dischargeable tort claim. That is the situation here.

The plaintiffs entered into a construction contract which was not performed to their satisfaction. They have filed a complaint claiming that the debtors are personally liable to them in connection with the deficient construction so that the debt is non-dischargeable, pursuant to § 523(a)(2), for fraud. The matter is before the court on defendants' motion to dismiss the complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, due to the failure to state a claim.

Although the Federal Rules of Civil Procedure generally require that a party's claims need only be set forth in short and plain statement, see Fed. R. Civ. P. 8(a), fraud and mistake must be pleaded with particularity. Fed. R. Civ. P. 9(b). This requires the complaint to state "the identity of the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff." Bankers Trust Co. v. Old Republic Insurance Co., 959 F.2d 677, 683 (7th Cir. 1992) (quoting Sears v. Likens, 912 F.2d 889, 893 (7th Cir. 1990)). See also, In re Rifkin, 142 B.R. 61, 67 (Bankr. E.D. N.Y. 1992). A complaint which fails to identify the fraudulent statements or the reasons why they are fraudulent does not satisfy the particularity requirement of Rule 9(b). Skycom Corp. v. Telstar Corp., 813 F.2d 810, 818 (7th Cir. 1987).

Defendants' motion to dismiss argues that plaintiffs' complaint (their second amended) does not allege fraud with the required particularity. In their response to the motion, the plaintiffs do not acknowledge, let alone attempt to apply, the requisite pleading standard or to defend the sufficiency of their complaint from the standpoint of whether or not it pleads fraud with particularity. It does

not. Greater specificity is necessary to support the conclusion that what they are complaining about somehow constitutes fraud and not just a breach of contract.

The defendants' motion to dismiss is GRANTED. Plaintiffs shall have fourteen (14) days from this date within which time to file any motion for leave to file a third amended complaint. See, Fed. R. Civ. P. Rule 15. See also, N.D. Ind. L.B.R. B-7007-1(a); B-7015-1(b). The failure to do so will result in this case being dismissed without further notice or hearing.

SO ORDERED.

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