

NOT INTENDED FOR PUBLICATION OR CITATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 10-40443)	
)	
GREGORY A. JACOBS)	
JERRIELYN JACOBS)	
)	
Debtors)	
)	
)	
GORDON E. GOUVEIA, TRUSTEE)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 11-4015
)	
GREGORY A. JACOBS)	
)	
Defendant)	

DECISION AND ORDER DENYING PLAINTIFF'S MOTION TO STRIKE

At Fort Wayne, Indiana, on May 9, 2012.

The plaintiff in the adversary proceeding has filed a motion to strike the defendant's answer to the complaint because he believes it was not properly signed by the defendant or his counsel, as required by Rule 9011(a) of the Federal Rules of Bankruptcy Procedures or the court's local rules. Alternatively, he asks particular paragraphs of the debtor/defendant's answer be stricken or the complaint's allegations deemed admitted because those responses fail to comply with Rule 8(b) of the Federal Rules of Civil Procedure as they do not clearly admit or deny the allegations in the complaint. It is that motion that is presently before the court.

Motions to strike pursuant to Rule 12(f) are generally disfavored, particularly when they only serve to delay proceedings. See, Heller Fin., Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294 (7th Cir.1989). They are addressed to the court's discretion. Cleveland v. Porca Co. 38 F.3d 289,

297 (7th Cir. 1994); Talbot v. Robert Matthews Distrib. Co., 961 F.2d 654, 665 (7th Cir. 1992). In the court's opinion, such motions serve a very limited function. In addition to the situations identified in Rule 12(f) of the Federal Rules of Civil Procedure, the function of a motion to strike should be limited to removing from the docket things that are so woefully inadequate that they do not even deserve to be filed.

Rule 9011(a) requires that all pleadings "shall be signed by at least one attorney of record" unless the party is proceeding pro se. Unsigned papers are to "be stricken unless the omission of the signature is corrected promptly" Fed. R. Bankr. P. Rule 9011(a). See also, Fifth Amended Order Authorizing Electronic Case Filing, ¶ 11(a) (describing the signature requirements for electronically filed documents).

Defendant's answer was electronically filed on February 28, 2012, by debtor's bankruptcy counsel, Mr. O'Brien, but it only bore the signature of the debtor/defendant. Not only did Mr. O'Brien neglect to sign the document he had filed, see Fifth Amended Order, ¶11(a), he had also neglected to file an appearance in this adversary proceeding. See, N.D. Ind. L.B.R. B-9010-2(a)(1), (c). Because he filed the answer without having first filed a notice of appearance, on February 28, 2012 the court ordered Mr. O'Brien to file an appearance; noting that the failure to do so might result in the answer being stricken. This prompted Mr. O'Brien to file an appearance, but he did not amend the answer to include his signature. This prompted the plaintiff to file the present motion to strike. Soon thereafter, Mr. Rosenthal filed his own appearance on behalf of the defendant, Mr. O'Brien then sought to withdraw, and during the course of briefing the plaintiff's motion, Mr. Rosenthal filed a properly signed answer. Thus, the lack of counsel's signature has been corrected and the requirements of Rule 9011(a) have been satisfied.

The plaintiff has also argued that the initial answer should be stricken because it bore a

typewritten signature of the debtor/defendant, not a handwritten signature. Yet, it is only documents which are filed under oath that must bear a handwritten signature of the debtor/defendant. See, Fifth Amended Order Authorizing Electronic Case Filing, ¶11(d). See also, Fed. R. Civ. P. Rule 5(d)(3). Because an answer to a complaint is not a document filed under oath, the debtor's typewritten signature was perfectly acceptable.

As an alternative to striking the entire answer because of signature issues, the plaintiff asks that the defendant's answers to paragraphs 14, 15, 20, 22, 23 and 26 be stricken or the original allegations be deemed admitted because the answer does not comply with Rule 8(b) of the Federal Rules of Civil Procedure because it does not specifically admit or deny the complaint's allegations or state that the defendant lacks sufficient knowledge to admit or deny them.

Pursuant to Rule 12(f), a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The trustee does not argue that the answer contains any insufficient defenses or that any of the debtor's responses are redundant, immaterial, impertinent, or scandalous. Instead, it is because the debtor did not specifically admit or deny those allegations, that he has asked that they be stricken or the allegations deemed admitted. That is not properly the subject of a motion to strike. See e.g., J.F. Edwards Const. Co. v. Anderson Safeway Guard Rail Corp., 542 F.2d 1318, 1325 (7th Cir. 1976); ezGDS, Inc. v. Kayak Software Corp., 2010 WL 1838300 (S.D. Cal. 2010); Brenston v. Hammond Housing Authority, 2005 WL 2204865 *2 (N.D. Ind. 2005) (motions to strike limited to the causes enumerated in the rule).

While the defendant's responses to the paragraphs in question do not specifically admit or deny the allegations in the complaint, see, Fed. R. Civ. P. Rule 8(b)(1)(B), that seems to be because the defendant is trying to honestly provide an accurate response to the allegations and that could not

be done by simply admitting, denying, or averring lack of sufficient knowledge. For example, when asked if he entered into an agreement in June 2007 to transfer property to his father and a living trust, Trustee's Complaint Objecting to Discharge, ¶14, the debtor responded that he signed something, but believed the document was only for the discussion which took place. Debtor's Response to trustee's Objection to Discharge, ¶14. Similarly, when responding to the trustee's allegation that the debtor testified at his Rule 2004 examination that his expenditures related to the Lake Freeman Development were between \$700,000-\$900,000, the debtor admitted making the statement, but says it was misunderstood. The court cannot conclude that such responses "have no possible bearing on the subject matter of the litigation." EzGDS, Inc., 2010 WL 1838300 at *4. Although the answer which was filed is not a model pleading, it is sufficient to provide a basis for the parties to move forward and any clarity the plaintiff might want can be obtained during the discovery process.

Plaintiff's motion to strike is, therefore, DENIED.

SO ORDERED.

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