

**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: CASE NO. 14-20058	)	
	)	
DENNIS L. LORENZ	)	
	)	
Debtor	)	
	)	
	)	
RYAN D. WELLS	)	
	)	
Plaintiff	)	
	)	
vs.	)	PROC. NO. 14-2074
	)	
DENNIS L. LORENZ	)	
	)	
Defendant	)	

**DECISION AND ORDER DENYING MOTION TO DISMISS**

At Fort Wayne, Indiana, on November 6, 2014.

By this adversary proceeding, the plaintiff seeks a declaration that the debtor’s obligation to him is non-dischargeable due to fraud. 11 U.S.C. § 523(a)(2). The plaintiff also asks the court to deny the debtor a discharge due to fraudulent transfers. 11 U.S.C. § 727(a)(2). The matter is before the court on the defendant’s motion to dismiss due to the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. Rule 12(b)(6).

Fraud must be pleaded with particularity. Fed. R. Civ. P. Rule 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). Plaintiff's claims have been alleged with all the particularity one could reasonably desire and provide all the who, what, when, and where one could ask for. Defendant's motion is not based so much upon a lack of particularity but upon the argument that the alleged misrepresentations cannot support a claim of fraud under § 523(a)(2). Those misrepresentations were that "Debtor had possession and/or control of hay of sufficient quality and quantity to complete the delivery obligations" contracted for. Defendant contends that this is a statement of the debtor's financial condition and, since it was not in writing, will not support a claim of non-dischargeability. See, 11 U.S.C. § 523(a)(2)(b). Defendant also argues that the representation was not a statement of present fact, but an expression of future intent which will not support a claim of fraud.

As for the first argument – that the plaintiff's claim is based upon an unwritten statement concerning financial condition – what constitutes a statement of financial condition is not defined by the Bankruptcy Code and is the subject of somewhat different views. Nonetheless, whether you accept the narrow view that such a statement must relate to the debtor's overall financial health, see e.g., Cadwell v. Joelson, 427 F.3d 700, 714 (10th Cir. 2005); Land Inv. Club, Inc. v. Lauer 371 F.3d 406, 413-14 (8th Cir. 2004); In re Cassel, 322 B.R. 363, 374-75 (Bankr. C.D. Ill. 2005); In re Brzakala, 305 B.R. 705, 709-10 (Bankr. N.D. Ill. 2004); Household Credit Services., Inc. v. Peterson, 182 B.R. 877, 880 (Bankr. N.D. Okla. 1995) Gehlhausen v. Olinger, 160 B.R. 1004, 1010-11 (Bankr. S.D. Ind. 1993), or the broader view that such a statement is anything that conveys significant information about the debtor's finances, see e.g., Engler v. Van Steinburg, 744 F.2d 1060, 1061 (4th Cir.1984); In re Redburn, 202 B.R. 917, 927-28 (Bankr. W.D. Mich. 1996); In re Boice, 149 B.R. 40, 46 (Bankr. S.D. N.Y. 1992), the most minimal requirement for both views is that the

statement must provide financial information. See, In re Belice, 461 B.R. 564, 574-75 (9th Cir. BAP 2011); In re Copeland, 291 B.R. 740, 783 (Bankr. E.D. Tenn. 2003) (quoting Skull Valley Band of Goshute Indians v. Chivers, 275 B.R. 606, 615 (Bankr. D. Utah 2002)). See also, Stelmokas v. Kodzius, 460 Fed. Appx. 600, 603-04 (7th Cir. 2012). Representations regarding the ownership, possession, or control of property are not statements concerning one’s finances, overall financial health or financial information. In re Bandi, 683 F.3d 671, 676 (5th Cir. 2012) (“A representation that one owns . . . property says nothing about the overall financial condition of the person making the representation or the ability to repay debt.”); In re Joelson, 427 F.3d 700, 714-15 (10th Cir. 2005) (“Ownership Representations do not qualify as ‘respecting the debtor’s . . . financial condition’”); In re Tucci, 462 B.R. 278, 283 (Bankr. D. Mass. 2011).

Defendant’s second argument is that the claimed misrepresentations relate to future events – not past or existing facts – and so cannot be fraudulent under Indiana law. See e.g., Smith v. Colgate–Palmolive Co., 752 F. Supp. 273, 278 (S.D. Ind. 1990), *aff’d* 943 F.2d 764 (7th Cir.1991)). Lycan v. Walters, 904 F. Supp. 884, 897 (S.D. Ind. 1995); Sachs v. Blewett, 185 N.E. 856, 858 (Ind. 1933). Assuming that Indiana law controls what constitutes fraud for the purposes of federal bankruptcy law, the argument lacks merit. The essence of the claimed misrepresentation was that “Debtor had possession and/or control of hay . . . .” That is a statement of present fact, not future events or promises. See, R.R.S. II Enterprises, Inc. v. Regency Associates, 646 N.E.2d 56, 59 (Ind. Ct. App. 1995) (representation that shopping mall plan provided double lane access was a statement of present fact); Bailey v. London Guarantee & Acceptance Co., 121 N.E. 128, 133-34 (Ind Ct. App. 1918) (physician’s statement that fractured bones had good union and leg would be all right were statements of present fact).

As for the denial of discharge under § 727(a)(2), the plaintiff alleges that the debtor was the alter ego of his corporation, Lorenz Farms, and that he transferred its property and business opportunities to another corporation he created, North American Agri-services, with the intent to hinder, delay or defraud creditors. Defendant contends these allegations do not support a claim for the denial of the debtor's discharge because the property that was fraudulently transferred was not the debtor's property but the property of Lorenz Farms. While it is true that § 727(a)(2) refers to property of the debtor, the plaintiff has alleged that the defendant was the alter ego of his corporations, such that the corporate veil should be pierced and its property treated as his. That constitutes a plausible claim under § 727(a)(2). See, In re Pisculli, 426 B.R.52, 60 (E.D. N.Y. 2010).

Defendant's motion to dismiss is denied. The defendant shall file an answer to the plaintiff's complaint within fourteen (14) days.

SO ORDERED.

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