

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 13-10529)
)
ZACHARIA DUANE BOLEN)
BETHANI LEERIN HINDENLANG-BOLEN)
Debtors)
)
)
DUSTIN M. ROACH)
Plaintiff)
)
vs.)
)
STEVEN E. BARCUS)
KARI J. ROMNEY)
DOUGLAS P. ROMNEY)
Defendants)
)
STEVEN E. BARCUS)
Counter-Claimant)
)
vs.)
)
DUSTIN M. ROACH)
Counter-Defendant)

PROC. NO. 14-1123

DECISION AND ORDER GRANTING MOTION TO DISMISS COUNTER-CLAIM

On November 6, 2014.

This adversary proceeding was recently removed from the Allen Superior Court. See, 28 U.S.C. § 1452; Fed. R. Bankr. P. Rule 9027. The matter before the court involves the plaintiff/trustee's motion to dismiss the defendant's counterclaim. The trustee argues that it fails to state a claim upon which relief can be granted. See, Fed. R. Civ P. Rule 12(b)(6).

The counterclaim seeks relief as the result of some form of malicious prosecution. Restated in its entirety the defendant alleges:

1. On June 30, 2014, Plaintiff filed his Complaint.
2. Plaintiff's claims are frivolous.
3. Plaintiff's claims are barred by statute.
4. Good grounds do not exist to support Plaintiff's claims.
5. Defendant is entitled to any and all fees incurred by Defendant as a result of Plaintiff's complaint.
6. On information and belief, the estate at issue is insolvent. Accordingly, any such award of fees is enforceable against Dustin M. Roach and his counsel.

The plaintiff argues that the defendant has failed to plead sufficient facts that plausibly demonstrate a claim for relief. Alternatively, he argues that because the trustee is immune from personal liability, the defendant is not entitled to the relief sought, and, as a result, no claim has been stated.

“Once a case has been removed to federal court, it is settled that federal rather than state law governs the future course of proceedings, notwithstanding state court orders issued prior to removal,” Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alameda County, 415 U.S. 423, 437, 94 S.Ct. 1113 (1974). Despite this, when addressing the sufficiency of any pleadings filed in state court, prior to removal, the court is to use the state's pleading standards.¹ Ciomber v. Cooperative Plus, Inc., 527 F.3d 635, 644 (7th Cir. 2008). Under Indiana law, to survive a motion to dismiss the test is “whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief.” Trail v. Boys and Girls Clubs of Northwest Indiana, 845 N.E. 2d 130, 134 (Ind. 2006). Nonetheless, the plaintiff “must still plead the operative facts necessary to set forth an actionable claim.” Id. at 135 (emphasis

¹Both parties have argued the issue under the federal pleading standard governing motions to dismiss, see, Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009), Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964). Given that it is more stringent than Indiana's standard – plausible claim for relief versus conceivable claim – the outcome does not depend upon which standard the court applies.

added).

In response to the motion, the defendant argues that he has recited the “exact language of Indiana Rule of Trial Procedure 11” and that this satisfies the minimum pleading requirements. Yet, he provides no authority under Indiana law to support the assertion that simply reciting the language of Trial Rule 11 is sufficient to state a claim for relief and the court has not been able to locate any. That is not surprising, because even under Indiana law, a counterclaim “must state facts sufficient to constitute a cause of action in favor of the defendant.” Braden v. Braden, 575 N.E.2d 293, 295 (Ind. Ct. App. 1991) (emphasis added). See also, In re Potter, 88 B.R. 843, 847 (Bankr. N.D. Ill. 1988) (“‘fair notice requires something more than a quotation from the statute,’ it requires facts in support of the allegations.”). Simply parroting the language of a rule is not enough to state an effective claim. See, Potter, 88 B.R. at 847. See also, Huss v. Goldman, Sachs & Co., 635 F. Supp. 1227, 1228 (N.D. Ill. 1986) (“a plaintiff’s Pavlovian inclusion of a RICO claim need not induce an equally Pavlovian acceptance of those claims by a district court.”). Furthermore, the contention that a plaintiff’s lawsuit constitutes malicious prosecution is not a cognizable counterclaim and is properly dismissed. Hunter v. Milhous, 305 N.E. 2d 448, 452-53 (Ind. Ct. App. 1973).

Plaintiff’s motion is GRANTED and Defendant’s counterclaim is DISMISSED.

SO ORDERED.

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