

**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 13-12272	)	
	)	
RUSSELL D. ROSCO	)	
BONNIE R. ROSCO	)	
	)	
Debtors	)	
	)	
	)	
RUSSELL D. ROSCO	)	
BONNIE R. ROSCO	)	
	)	
Plaintiffs	)	
	)	
vs.	)	PROC. NO. 14-1071
	)	
ANTHONY LOCKHART	)	
	)	
Defendant	)	

**DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on October 10, 2014.

The plaintiffs in this adversary proceeding, who are proceeding pro se,<sup>1</sup> are seeking relief and/or damages, claiming that the defendant has violated the discharge injunction by, inter alia, filing a counter-claim against them in Allen Superior Court. The plaintiffs have filed a motion for summary judgment directed to that issue.<sup>2</sup> In addition to filing a response to the motion, the

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<sup>1</sup>As pro se litigants, their filings are construed more liberally than papers which are drafted by attorneys. Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992).

<sup>2</sup>The court notes that neither party has complied with N.D. Ind. L.B.R. B-7056-1. This rule requires the movant to file a statement of material facts, identifying the facts as to which it contends there is no genuine issue and to support those facts with appropriate citations to admissible evidence. The party opposing the motion is then required to file a statement of genuine issues, identifying the material facts as to which it contends there is a factual dispute and to support its contentions with appropriate citations to admissible evidence. Ordinarily, this means that the court would not proceed any further in its evaluation of the motion. See, Waldrige v. American Hoechst Corp., 24 F.3d 918,

defendant filed its own motion asking the court to strike the copy of a notice of a state court counterclaim the plaintiffs submitted in support of their motion.<sup>3</sup> It is these motions which are presently before the court.

Summary judgment is appropriate where there is “no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” See, Fed. R. Civ. P. Rule 56(c); Fed. R. Bankr. P. Rule 7056. The moving party must initially identify “those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Once it does so, the non-moving party must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct 1348, 1356 (1986). In ruling on the motion, the court accepts the non-

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923 (7th Cir. 1994) (Such statements are “roadmaps, and without them the court should not have to proceed further. . . .”). Here, however, the issue seems to be straight-forward enough and the court can easily decide the matter.

<sup>3</sup>Except as contemplated by Rule 12(f), the purpose of a motion to strike should be limited to removing things from the docket that are so woefully inadequate they do not deserve to be filed. It is not the proper vehicle to deal with things which qualify for filing but are simply not sufficient to accomplish their ostensible purpose. See, Colodny v. Iverson, Yoakum, Papiano & Hatch, 838 F. Supp. 572, 575 (D. M.D. Fla. 1994) (motion to strike is not an appropriate way to challenge the basis of factual allegations). Such deficiencies should be addressed in one’s normal response or reply to the submission, rather than by filing a separate motion asking the court to strike the offending document. Knudsen v. Liberty Mutual Ins. Co., 411 F.3d 805 (7th Cir. 2005) (“we hope that in the future [parties] will address the issues directly rather than move to strike the [opponent’s] papers.”). See also, S.D. Ind. L.R. 56.1(i) (“The court disfavors collateral motions – such as motions to strike – in the summary judgment process”). Defendant’s motion to strike is based upon perceived deficiencies in the evidentiary value of the material filed in support of the plaintiffs’ motion. As such, those arguments should have been advanced in the brief opposing the motion, not by filing a motion asking the court to strike the documents.

moving party's evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

A bankruptcy discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any debt as a personal liability of the debtor, whether or not discharge of such debt is waived.” 11 U.S.C. § 524(a)(2).

Like other injunctions, the discharge injunction of § 524 may be enforced through the civil contempt power in order to compel obedience to the court's order and to compensate for any damages caused by the non-compliance. Cox v. Zale Delaware, Inc., 239 F.2d 910, 915-16 (7th Cir. 2001); In re Cherry, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000); In re Pincombe, 256 B.R. 774, 782 (Bankr. N.D. Ill. 2000).

The state court litigation was commenced by the plaintiffs, apparently to recover a security deposit from the defendant. The defendant contends that he did not violate the discharge injunction because he was simply trying to setoff or recoup the debtors' security deposit against the unpaid amounts due him on account of a house he had leased to the plaintiffs.<sup>4</sup> Affidavit in Response to Motion for Partial Summary Judgment. See also, In re McMahon, 129 F.3d 93, 97 (2nd Cir. 1997) (retention of security deposit permitted as recoupment). Such actions do not violate the discharge injunction. In re Madigan, 270 B.R. 749, 754 (9th Cir. BAP 2001); Brown v. General Motors Corp.,

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<sup>4</sup>Recoupment “is the setting up of a demand arising from the same transaction as the plaintiff's cause of action, strictly for the purpose of abatement or reduction of such claim.” In re University Medical Center, 973 F.2d 1065, 1079 (3rd Cir. 1992) (quoting 4 Collier on Bankruptcy ¶ 553.03). Setoff, on the other hand, “allows a creditor to offset a debt it owes to a debtor against a debt owed to it by the debtor arising from a different transaction.” In re Fischbach, 464 B.R. 258, 262 (Bankr. D. S.C. 2012). The key distinction between the two is whether the debt owed the creditor arose out of the same transaction as that owed the debtor by the creditor. Id.

152 B.R. 935, 938 (W.D. Wis. 1993); In re Fischbach, 464 B.R. 258, 262 (Bankr. D. S.C. 2012).

There are genuine issues of material fact. Plaintiffs' partial motion for summary judgment is therefore DENIED.

SO ORDERED.

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