

Not Intended for Publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 13-12717)	
)	
REBECCA LYNN LOEFFLER)	
)	
Debtor)	
)	
)	
REBECCA LYNN LEFFLER)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 14-1142
)	
ORTHOPAEDICS INDIANAPOLIS, INC.)	
)	
Defendant)	

DECISION AND ORDER DENYING MOTION TO DISMISS

On February 6, 2015.

The plaintiff/debtor initiated this adversary proceeding seeking damages for the defendant’s alleged violations of the automatic stay and the discharge injunction. 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).

Defendant’s motion is based on the proposition that, because the relief sought is in the nature of contempt, the debtor should have filed a motion and cannot maintain an adversary proceeding. See, In re Consolidated Industries, 360 F.3d 712, 716 (7th Cir. 2004). While a motion may have been a permissible option, the court does not see any reason why an adversary proceeding would be so irremediably defective that it should be prohibited. To the contrary, it is not uncommon to enforce the discharge injunction through an adversary proceeding, In re Motichko, 395 B.R. 25, 33

(Bankr. N.D. Ohio 2008), and it could well be the preferable option. Furthermore, the defendant does not explain how it might possibly be disadvantaged by the plaintiff's procedural choice and, given the extra protections afforded by adversary proceedings, see, In re Wagner, 87 B.R. 612, 619 (Bankr. C.D. Cal. 1988) ("An adversary proceeding provides the parties with more, not less, procedural protections than what are available in a contested matter by way of motion"); Motichko, 395 B.R. at 33, is actually benefitted by it.

The motion to dismiss is DENIED. The defendant shall file and serve any answer to the plaintiff's complaint within fourteen (14) days.

SO ORDERED.

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