

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 15-10476)
)
OJI AFIBA WASHINGTON)
)
Debtor)
)
)
STATE OF INDIANA on the relation of)
INDIANA DEPARTMENT OF)
WORKFORCE DEVELOPMENT)
)
Plaintiff)
)
vs.)
)
OJI AFIBA WASHINGTON)
)
Defendant)

NOT INTENDED FOR PUBLICATION

PROC. NO. 15-1064

DECISION AND ORDER

On March 23, 2016.

By this adversary proceeding, the plaintiff has asked the court to declare that the debtor’s obligation to it is nondischargeable due to fraud. See, 11 U.S.C. § 523(a)(2). The matter is before the court on the defendant’s motion to dismiss, filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which argues that the plaintiff has failed to plead fraud with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

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), as well as why the statements are

false. Skycom Corp. v. Telstar Corp., 813 F.2d 810, 818 (7th Cir. 1987).

The body of the present complaint does not allege fraud with the particularity required by Rule 9 and the plaintiff does not seriously argue that it does. Instead, it points to the exhibits attached to the complaint¹ and argues that, when they are considered, the complaint and the exhibits provide all the details Rule 9 requires. This might be called “pleading by exhibit” and, while not encouraged, persists because it is allowed to succeed. See, Matter of Conklin, 2010 Bankr. LEXIS 3257 (Bankr. N.D. Ind. 2010) (commenting and referencing cases).

Rule 10(c) of the Federal Rules of Civil Procedure treats a “written instrument that is an exhibit to a pleading [as] part of the pleading for all purposes.” In the Seventh Circuit, what qualifies as a “written instrument” goes far beyond the traditional understanding of the term, and seems to encompass anything attached to the complaint, that is referred to in the complaint and that to some degree is relied upon as support for a plaintiff’s claims. Williamson v. Curran, 714 F.3d 432, 436 (7th Cir. 2013). See also, Conklin, 2010 Bankr. LEXIS 3257. So long as the court must consider anything attached to a complaint as part of it when determining whether a plaintiff has stated a claim for relief, although the text of the present complaint may fall short of the mark, given the exhibits attached to it it pleads fraud with the requisite particularity.

Defendant’s motion to dismiss is DENIED.

SO ORDERED.

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

¹Plaintiff’s complaint is seven pages long and accompanied by twenty-three pages of exhibits, all of which it created and which may or may not make sense to someone not familiar with Department of Workforce Development forms and notices.