

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 15-11855)
)
PAUL FRANCIS TWEDT)
)
Debtor)
)
)
GREASE MONKEY INTERNATIONAL,)
INC.)
)
Plaintiff)
)
vs.) PROC. NO. 15-1131
)
PAUL FRANCIS TWEDT)
)
Defendant)

DECISION AND ORDER DENYING MOTION TO DISMISS

On May 25, 2016.

The court previously granted the defendant's motion to dismiss the plaintiff's initial complaint. The plaintiff filed an amended complaint which is the subject of another motion to dismiss for the failure to state a claim. See, Fed. R. Civ. P. Rule 12(b)(6). It is that motion, together with the plaintiff's response thereto, which is presently before the court.

The plaintiff seeks a declaration that the debtor's obligation to it is non-dischargeable. It contends the debtor intentionally breached contractual obligations, fraudulently transferred property, tortiously interfered with business relationships, converted plaintiff's intellectual property and customer lists, and defied court orders, all as part of a scheme or course of conduct to frustrate plaintiff's efforts to enforce its rights under a franchise agreement between it and the debtor's corporation, JPT Enterprises, Inc. Plaintiff claims these actions render debtor's obligation to it non-

dischargeable under § 523(a)(6). Defendant’s motion to dismiss argues that his conduct does not constitute the kind of intentional torts § 523(a)(6) was designed to address. Kawaauhau v. Geiger, 523 U.S. 57, 61-62, 118 S. Ct. 974, 977 (1998).

To survive a motion to dismiss, the complaint must describe the claim in sufficient detail to give the defendant “fair notice of what the . . . claim is and the grounds upon which it rests” . . . Second, its allegations must plausibly suggest that the plaintiff has a right to relief raising the possibility above a “speculative level.” E.E.O.C. v. Concentra Health Services, Inc., 496 F. 3d 773, 776 (7th Cir. 2007) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007)) (internal citations omitted). See also, Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009); In re Eisaman, 387 B.R. 219, 222 (Bankr. N.D. Ind. 2008); In re Schmucker, 376 B.R. 256, 258 (Bankr. N.D. Ind. 2007). We should remember, however, that the focus of a complaint is upon the facts it alleges, not necessarily its legal theory.

Although it is common to draft complaints with multiple counts, each of which specifies a single statute or legal theory, nothing in the Rules of Civil Procedure requires this.

* * * *

[T]he complaint need not identify a legal theory, and specifying an incorrect theory is not fatal. Bartholet v. Reishauer A.G. (Zürich), 953 F.2d 1073, 1078 (7th Cir. 1992).

Focusing upon the facts alleged in the amended complaint, the court is satisfied that it states a claim for relief under one or more provisions of § 523(a). For example, it alleges the debtor conveyed JPT’s assets with the intent to hinder, delay or defraud the plaintiff in the enforcement of its rights under the franchise agreement, and that constitutes a claim for non-dischargeability under § 523(a)(2), as fraud. See, Husky Int’l Electronics, Inc v. Ritz, __ U.S. __, __ S.Ct. __, 2016 WL

2842452 (2016). It alleges the theft of plaintiff's intellectual property and that constitutes a claim under § 534(a)(4) for embezzlement or larceny, see, In re Sullivan, 305 B.R. 809, 826 (Bankr. W.D. Mich. 2004), or, possibly, for conversion under § 523(a)(6). See, In re Gabaldon, 55 B.R. 431, 432-33 (Bankr. D. N.M. 1985). It alleges that the debtor intentionally interfered with the contractual relations between the plaintiff and JPT; if so that may constitute an intentional tort, liability for which might be non-dischargeable under § 523(a)(6). See, In re Hernandez, 2011 WL 3300927 *5-6 (9th Cir. BAP 2011) That same section could also render non-dischargeable Defendant's liability for refusing to obey injunctions allegedly imposed by the state courts. See, In re Gotwald, 488 B.R. 854, 870-71 (Bankr. E.D. Pa. 2013); In re Butler, 297 B.R. 741, 747-48 (Bankr. C.D. Ill. 2003).

The allegations in the amended complaint implicate more than just one portion of § 523(a), and to try to pigeonhole them exclusively into § 523(a)(6) inappropriately focuses upon legal theories that address the consequences of what supposedly happened rather than upon the factual allegations that describe Plaintiff's claim and what the defendant is alleged to have done. Defendant's motion to dismiss is DENIED. The defendant shall file and serve any answer to the plaintiff's amended complaint within fourteen (14) days.

SO ORDERED.

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