

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JAMES L. LANGLEY,

Debtor.

Case No. DK 10-11900

Hon. Scott W. Dales

Chapter 7

STEPHEN L. LANGELAND, chapter 7
trustee,

Plaintiff,

Adversary Pro. No. 12-80327

v.

CHEMICAL BANK f/k/a BYRON BANK,
CITI GROUP GLOBAL MARKET, INC.,
d/b/a MORGAN STANLEY SMITH
BARNEY, BEVERLY A. BAIRD, CHAD
THOMAS MYERS, THOMAS ALLEN
MYERS, KRISTANN MARIE SNYDER
f/k/a KRISTANN MARIE WILCOX,
RICHARD L. STORER, ELIZABETH GESS
JONES a/k/a BETSY GESS, and TODD
MYERS,

Defendants.

MEMORANDUM ORDER DENYING
MOTION TO STRIKE ANSWERS

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Stephen L. Langeland (the "Plaintiff") filed a motion to strike the answers of Defendants Chad Meyers and Thomas Myers (the "Motion to Strike," DN 121) for failure to comply with the court's Order dated January 14, 2013 (the "Order," DN 85). The court held a hearing to consider the Motion to Strike in Grand Rapids, Michigan on April 12, 2013, at which Plaintiff's counsel, and counsel for Chemical Bank and Beverly A.

Baird, appeared. Thomas Myers, through counsel, filed a response, but Chad Myers did not. The only issue remaining at the hearing was whether the court should strike Chad Myers's answer.¹

The Order upon which the Plaintiff relies provided that all answers to the Second Amended Complaint, including those filed by any *pro se* defendants, must conform to Rules 8 and 10 of the Federal Rules of Civil Procedure. In addition, the Order stated that each answering paragraph in the Defendants' answers must recite, verbatim, the corresponding paragraphs of the Plaintiff's latest pleading. The Plaintiff contends that Chad Myers's pleading does not conform to the Order, or Rule 8,² or Rule 10 (a party must state claims and defenses in numbered paragraphs).

It is true that Chad Myers's pleading does not comply with the Order's instruction to recite the Plaintiff's allegations verbatim, a requirement mirroring M.C.R. 2.309(b)(2) (governing interrogatory responses in Michigan courts) but not included within the federal pleading rules. In that technical respect, the answer falls short of compliance with the Order. The failure, however, does not affect the Plaintiff's substantive rights, and the court will therefore disregard it. *See* Fed. R. Bankr. P. 9005 (incorporating harmless error rule of Fed. R. Civ. P. 61).

As for compliance with Rules 8 and 10, the court concludes that Chad Myers's answer substantially conforms to these rules. Addressing Rule 10 first, the answer includes a caption, and takes the form of a paragraph-by-paragraph response,

¹ Thomas Myers filed a second amended answer (DN 133) conforming to the Order, which prompted Plaintiff's counsel to report at the hearing that the Motion to Strike was "moot" as to that defendant.

² More specifically, the Plaintiff challenges Mr. Myers's compliance with Rule 8(b)(2)(a denial must respond to the substance of the allegation); Rule 8(b)(4)(when denying only part of an allegation, a party must admit the part that is true); and Rule 8(b)(5)(if a party lacks knowledge or information sufficient to form a belief about the truth of an allegation, he must so state).

corresponding to the Plaintiff's numbered allegations. It therefore satisfies Rule 10. As for Rule 8, the court concludes that each paragraph within the answer fairly responds to the substance of the Plaintiff's corresponding allegations, admitting some, denying others, and occasionally taking care to deny some but not all of a particular allegation. Moreover, the response to many allegations recites a lack of knowledge which, if true, satisfies Rule 8(b)(5), and in each instance constitutes a denial of the corresponding allegations.

Having carefully reviewed Chad Myers's answer (with the benefit of helpful comments from Chemical Bank's counsel at the hearing),³ the court declines to strike it. With respect to Thomas Myers's answer, as noted at the hearing, the Motion to Strike has been resolved.

Finally, during the hearing, Chemical Bank's counsel reported that co-defendant Richard Storer has filed a petition for relief under chapter 7 with this court, and the Hon. Jeffrey R. Hughes has entered a discharge and closed Mr. Storer's bankruptcy case. *See In re Storer*, Case No. 11-08663. The court is aware of the Plaintiff's contention that he (or his assignor) did not receive formal notice of Mr. Storer's bankruptcy filing. Similarly, the court notes Mr. Storer's failure to assert his discharge as a defense in this adversary proceeding.

Nevertheless, even though Mr. Storer has not raised his discharge as a defense,⁴ the court will regard the Plaintiff's claims against Mr. Storer as discharged in accordance

³ In preparing for the hearing, the court mistakenly reviewed Mr. Myers's original answer (DN 22), rather than his later answer (DN 114), a now-harmless misstep that might have been avoided had Mr. Myers favored the court with a response to the Motion to Strike.

⁴ The failure to assert the discharge as a defense is immaterial. *See generally* 11 U.S.C. § 524(a) (discharge effective "whether or not discharge of such debt is waived").

with *Zirnhelt v. Madaj, (In re Madaj)*, 149 F.3d 467 (1998),⁵ unless the Plaintiff obtains an order or judgment to the contrary in Mr. Storer's own bankruptcy case. Under the circumstances, Judge Hughes should have the opportunity to decide the scope of the discharge entered in the case over which he presided. *Cf. Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367, 375 (6th Cir. 2008) (state-court judgment that modifies a bankruptcy court's discharge order is void *ab initio* under § 524(a)).

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion to Strike (DN 121) is DENIED.

IT IS FURTHER ORDERED as follows:

(1) the Clerk shall take no further action in this adversary proceeding regarding the Plaintiff's claims against Mr. Storer, until further order of the court;

(2) if, within 45 days after entry of this Order, the Plaintiff fails to file in this adversary proceeding an affidavit or declaration under penalty of perjury establishing to the court's satisfaction that he has sought relief from Mr. Storer's discharge in Mr. Storer's bankruptcy case, the court will enter an order dismissing the Plaintiff's claims against Mr. Storer, without further notice; and

(3) the Clerk shall deliver a copy of this Order to the Hon. Jeffrey R. Hughes.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Scott

⁵ The claims to which the Plaintiff has succeeded arose before Mr. Storer filed his bankruptcy petition, and Mr. Storer's case was a "no asset" case.

Mancinelli, Esq., Andrew C. Shier, Esq., Eric A. Michaels, Esq., Glenn P. Berger, Esq.,
Chad Thomas Myers, Michael D. Almassian, Esq., Richard L. Storer, and Todd A.
Myers.

END OF ORDER

IT IS SO ORDERED.

Dated April 16, 2013



A handwritten signature in black ink, appearing to read "S. W. Dales".

Scott W. Dales
United States Bankruptcy Judge