



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: March 22, 2017**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**KENNY C. WEBSTER, JR. AND
HELENA M. WEBSTER,**

CASE NO. 15-03467-NPO

DEBTORS.

CHAPTER 7

MCCOMB FINANCIAL, INC

PLAINTIFF

VS.

ADV. PROC. NO. 16-00013-NPO

**HELENA MCDANIEL WEBSTER AND
KENNY CHARLES WEBSTER, JR.**

DEFENDANTS

**ORDER GRANTING DEFENDANT
KENNY C. WEBSTER, JR.'S MOTION TO DISMISS**

This matter came before the Court for hearing on March 17, 2017 (the "Hearing"), on the Defendant Kenny C. Webster, Jr.'s Motion to Dismiss (the "Motion to Dismiss") (Adv. Dkt. 69)¹ filed by the defendant, Kenny Charles Webster, Jr. ("Kenny Webster") and the Plaintiff's Response to Kenny C. Webster's Motion to Dismiss (Docket #69) (the "Response") (Adv. Dkt.

¹ The docket in the above-styled adversary proceeding (the "Adversary") will be cited as "(Adv. Dkt. ____)." The docket in the related chapter 7 bankruptcy proceeding, Case No. 15-03467-NPO (the "Bankruptcy Case"), will be cited as "(Bankr. Dkt. ____)."

74) filed by the plaintiff, McComb Financial Services, Inc. (“McComb Financial”) in the Adversary. At the Hearing, Arnold D. Lee (“Lee”) represented Kenny Webster and L. Jackson Lazarus (“Lazarus”) represented McComb Financial. After fully considering the matter and being fully advised in the premises, the Court granted the Motion to Dismiss from the bench. This Order memorializes and supplements the Court’s bench ruling.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Adversary pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

Facts

1. Kenny Webster and his wife, Helena M. Webster (“Helena Webster,” or, together with Kenny Webster, the “Debtors”), filed a joint voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on November 6, 2015 (Bankr. Dkt. 1).

2. The Debtors filed their statements and schedules on November 6, 2015 (Bankr. Dkt. 3). On Schedule F-Creditors Holding Unsecured Nonpriority Claims (Bankr. Dkt. 3 at 11-18), the Debtors listed McComb Financial as an unsecured creditor holding a claim in the amount of \$12,792.00.² (Bankr. Dkt. 3 at 14).

3. McComb Financial filed the Complaint to Declare Certain Debt Non-Dischargeable (the “First Complaint”) (Adv. Dkt. 1) on March 6, 2016. In the First Complaint, McComb Financial alleged that on August 23, 2011, Helena Webster “borrowed a sum of money from [McComb Financial] and pledged as collateral for said debt a certain 1995 MAGNA Pole Trailer (the “Trailer”)” (First Compl. at 1; Amended Compl. Ex. 1). McComb Financial

² In the Amended Complaint to Declare Certain Debt Non-Dischargeable (the “Amended Complaint”) (Adv. Dkt. 33), McComb Financial alleged that the “[t]otal debt of [the Debtors] to McComb Financial is approximately \$9,545.71.” (Amended Compl. at 2).

alleged that even though Helena Webster pledged the Trailer as collateral and claimed that she and Kenny Webster possessed the trailer, “the trailer had actually been intentionally destroyed, cut into small pieces and sold as scrap as early as 2009, by [Helena Webster’s] own admission.” (*Id.* at 2). McComb Financial subsequently filed the Amended Complaint,³ adding a claim for fraudulent conveyance. According to McComb Financial, it relied on Helena Webster’s representation that she possessed the Trailer when it “advanced an initial sum of money of at least \$3,500.00” to her. (Amended Compl. at 2). “McComb Financial relied on the debtor’s representation that she had valid and existing collateral, and advanced funds based upon said collateral. Without said collateral, [McComb Financial] would not have made the loan.” (*Id.*). Based on Helena Webster’s representation that she possessed the Trailer, McComb Financial claimed in the Amended Complaint that it loaned her an additional \$2,000.00 on July 8, 2013, and \$3,000.00 on August 12, 2014. (*Id.* at 3-4). Based on Helena Webster’s allegedly false representations, McComb Financial argued in the Amended Complaint that “[t]he entire indebtedness of [Helena Webster] to [McComb Financial] should be declared non-dischargeable, pursuant to 11 USC Section 523(a)(2) and 11 USC Section 523(a)(2)(A) and (B).” (*Id.* at 4). According to McComb Financial, Helena Webster’s total indebtedness is \$9,545.71. (*Id.* at 5). Attached to the Second Amended Complaint is the Certificate of Title for the Trailer (the “Title”) (Amended Compl. Ex. 1), which is solely in Helena Webster’s name.

4. The Debtors filed the Answer (Adv. Dkt. 9) on March 30, 2016, asserting affirmative defenses, denying a majority of the allegations contained in the First Complaint, and arguing that the First Complaint should be dismissed. (Adv. Dkt. 9 at 1-3). After McComb Financial filed the Amended Complaint, the Debtors filed the Answer to Amended Complaint

³ Hereinafter, unless indicated otherwise, the Court will refer to the First Complaint and the Amended Complaint collectively as the “Amended Complaint.”

(Adv. Dkt. 34), restating and incorporating their “admissions, denials, and defenses from their original answer . . .” and denying any new allegations contained in the Amended Complaint. (Adv. Dkt. 34 at 1).

5. Kenny Webster filed the Motion to Dismiss on January 31, 2017, arguing that the Amended Complaint should be dismissed against him because McComb Financial failed to state a claim under Federal Rule of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7012. Under the Rule 12(b)(6) standard, Kenny Webster argued that the Amended Complaint against him should be dismissed “because, despite being named a defendant in this action, there is not a single allegation in either complaint[] against Kenny.” (Mot. to Dismiss at 3). “All the allegations are against Mrs. Webster, not Kenny.” (*Id.*). Thus, according to Kenny Webster, dismissal is required by law “because the complaints lack allegations against Kenny regarding required elements necessary to obtain relief.” (*Id.*). Kenny Webster also argued in the Motion to Dismiss that McComb Financial cannot obtain relief from him because it “makes no allegation that Kenny even had a debt with [McComb Financial]. In fact, McComb [Financial] specifically states in its complaints that the subject debt is with Mrs. Webster.” (*Id.*). Thus, “there can be no declaration that such debt is non-dischargeable.” (*Id.*).

6. McComb Financial filed the Response on February 16, 2017. In the Response, McComb Financial contended that the debt should be declared non-dischargeable “as to both Kenny C. Webster and Helena M. Webster, even though only Helena M. Webster actually borrowed money from [McComb Financial]” because both Debtors received “the benefit of the money obtained.” (Resp. at 1). Although McComb Financial admitted that Kenny Webster did not execute the loan documents or security agreements and the Title was solely in Helena

Webster's name, "the allegations specifically set out that Kenny C. Webster acted in concert with others, and was active in the destruction of the Plaintiff's collateral, PRIOR to the making of the loans." (*Id.* at 2). According to McComb Financial, because both spouses can be held liable for the fraudulent activity of another if he or she had knowledge of the fraud, the Motion to Dismiss should be denied. (*Id.* at 3).

7. At the Hearing, Lee argued that the Amended Complaint should be dismissed against Kenny Webster under Rule 12(b)(6) because it did not contain any specific allegations against him—all of the allegations were related to Helena Webster. According to Lee, McComb Financial plead specific facts against Helena Webster, but none against Kenny Webster; therefore, no relief may be granted against him. Lee contended that the debt cannot be non-dischargeable as to Kenny Webster because it is not his debt.

8. Lazarus admitted at the Hearing that Helena Webster is the only person who made the loan and was involved with McComb Financial—Kenny Webster was not a party or a signatory to the loan, Helena Webster was the only person who made payments on the loan, and the Title was only in Helena Webster's name. (Hr'g at 10:05:40-10:06:30).⁴ According to Lazarus, however, Kenny Webster and Helena Webster are jointly liable because Kenny Webster operated the Trailer to conduct his "logging business." (Hr'g at 10:06:38). Based on the facts and circumstances, Lazarus contended that Kenny Webster should be liable as a co-debtor. After being questioned by the Court, Lazarus could not, however, identify a paragraph in the Amended Complaint that contained any allegations against Kenny Webster. Instead, Lazarus admitted that the language of the Amended Complaint only references allegations including Helena Webster.

⁴ The Hearing was not transcribed. Citations are to the timestamp of the audio recording.

Discussion

Federal Rule of Bankruptcy Procedure 7008(a) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. BANKR. P. 7008(a). FED. R. BANKR. P. 7008(a). Rule 12(b)(6) allows a party to move to dismiss a complaint based on a plaintiff’s “failure to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). In considering a Rule 12(b)(6) motion, the “court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004).

The Supreme Court of the United States has held that in order to overcome a 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Blackstock v. Sedgwick Claims Mgmt. Servs., Inc.*, 2009 WL 2754761, at *1 (N.D. Miss. Aug. 26, 2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. 544, 570 (2007)). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all allegations in the complaint are true (even if doubtful in fact).” *Blackstock*, 2009 WL 2754761, at *1 (*citing Twombly*, 550 U.S. at 555) (internal citations and footnote omitted). “Conversely, ‘when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, the basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.’” *Id.* (*quoting Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)). In other words, “a ‘naked assertion’ of wrongdoing devoid of ‘further factual enhancement’ falls short of the pleading requirements of Federal Rule of Civil Procedure 8(a)(2) [and Rule

7008(a)].” *Howard v. ABN AMRO Mortg. Grp., Inc.*, No. 1:13CV543-KS-MTP, 2014 WL 1237317, at *3 (S.D. Miss. Mar. 26, 2014) (quoting *Twombly*, 550 U.S. at 557).

Pursuant to the standards contained in Rule 12(b)(6) and articulated by the Supreme Court, McComb Financial failed to state a claim against Kenny Webster upon which relief can be granted. In other words, McComb Financial failed to plead facts against Kenny Webster that make a claim against him plausible on its face. In fact, McComb Financial plead no specific facts against Kenny Webster at all. The Amended Complaint does not allege that Kenny Webster engaged in any fraudulent activity and Lazarus admitted at the Hearing that Kenny Webster was not a signatory or party to the loan. Additionally, only Helena Webster’s name appears on the Title. Accepting the well-pleaded facts as true and considering them in a light most favorable to McComb Financial, it is clear that relief is not plausible against Kenny Webster. Thus, he cannot plausibly be liable for Helena Webster’s alleged misconduct related to the loan. Even assuming, *arguendo*, that the Court grants the relief requested in the Complaint, relief against Kenny Webster is not possible based on the well-pleaded facts in the Amended Complaint because the debt in question does not belong to Kenny Webster. Stated differently, Kenny Webster has no debt with McComb Financial, and there can be no finding that a non-existent debt is non-dischargeable based on the well-pleaded facts. Moreover, the Amended Complaint does not even include Kenny Webster by name in any of the relevant allegations. Thus, McComb Financial failed to state a claim against Kenny Webster under Rule 12(b)(6). Accordingly, the Motion to Dismiss should be granted.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss is hereby granted.

##END OF ORDER##