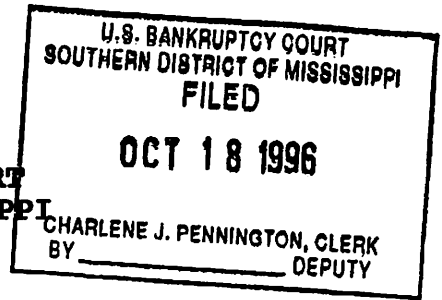


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



IN RE: CHARLES D. HOWINGTON AND
JUNE CLAIRENE HOWINGTON

CASE NO. 93-04081MEE

JACQUELINE HARRIS

PLAINTIFF

VS.

ADVERSARY NO. 9400078MEE

CHARLES D. HOWINGTON AND
JUNE CLAIRENE HOWINGTON

DEFENDANTS

Will Parker
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Meridian, MS 39302-1511

Attorney for Plaintiff

Walter T. Rogers
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Meridian, MS 39302-0291

Attorney for Defendants

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

The Court has before it a *Motion to Strike* filed by the Defendants, Charles D. Howington and June Clairene Howington, wherein the Defendants ask this Court to strike substantially all of the *Second Amended Complaint Objecting to Discharge of Debtor* filed by the Plaintiff, Jacqueline Harris. After considering the motion and being fully advised in the premises, the Court holds that the motion is not well taken and should be denied.

In December of 1993, the Defendants filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. This adversary proceeding was commenced in March of 1994, when the Plaintiff filed her complaint objecting to the discharge of the Debtors. An amended complaint was filed in April, 1994. In June of 1996, an order was entered allowing the Plaintiff to file a second amended complaint, which she filed in July of 1996. In response to the second amended complaint, the Defendants filed the present motion to strike along with their answer to the second amended complaint.

In their motion to strike, the Defendants request that the Court strike all of the second amended complaint except the first four paragraphs, the last paragraph, and the prayer for relief. Essentially, the Defendants ask the Court to strike all of the factual allegations upon which the complaint is based. In support of their motion, the Defendants assert various defenses to the allegations, i.e., claim is time barred, allegation is irrelevant, claim is moot.

Motions to strike are governed by Rule 12(f) of the Federal Rules of Civil Procedure, which is made applicable to this adversary proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. Rule 12(f) states that "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

A motion to strike under Rule 12(f) is the appropriate remedy for the elimination of redundant, immaterial, impertinent, or scandalous matter in any pleading, and is the

primary procedure for objecting to an insufficient defense. . . . However, it is neither an authorized nor a proper way to procure the dismissal of all or a part of a complaint, or a counterclaim, or to strike affidavits.

5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1380 (1990)(footnotes omitted). The denial of allegations as being untrue, or the existence of affirmative defenses to the claims for relief are not proper grounds for a motion to strike.

Since the pleading from which the Defendants seek to have material stricken is an amended complaint, they are not asking the Court to strike an insufficient defense. Further, they have not asserted that the portions of the complaint in question contain impertinent or scandalous material. Therefore, the only remaining basis for their motion to strike is that the portions of the complaint in question contain irrelevant or redundant material.

Regarding the Defendants' assertions that the allegations in question contain redundant or immaterial allegations:

The court possesses considerable discretion in disposing of a motion to strike redundant, impertinent, immaterial, or scandalous matter. However, because motions to strike on these grounds are not favored, often being considered 'time wasters,' they usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties.

5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1382 (1990)(footnotes omitted).

In her second amended complaint the Plaintiff objects to the discharge of the Debtors under § 727(a)(4) of the Bankruptcy

Code, alleging that the Debtors made certain false oaths. The Court does not agree with the Debtors' assertion that the allegations made by the Plaintiff are immaterial simply because the Debtors may have taken steps to correct alleged errors and misstatements which they may have made.

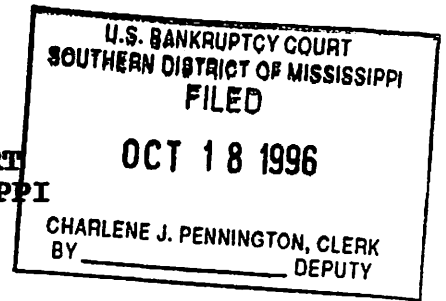
While the Debtors may have valid defenses to the allegations set forth in the second amended complaint, the Court holds that a motion to strike is not the appropriate vehicle for asserting those defenses. Therefore, the Defendants' motion to strike will be denied.

A separate order consistent with this opinion will be entered.

This the 17th day of October, 1996.


UNITED STATES BANKRUPTCY JUDGE

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ORDER DENYING MOTION TO STRIKE

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered that the Defendants' motion to strike is denied.

SO ORDERED this the 17th day of October, 1996.


UNITED STATES BANKRUPTCY JUDGE