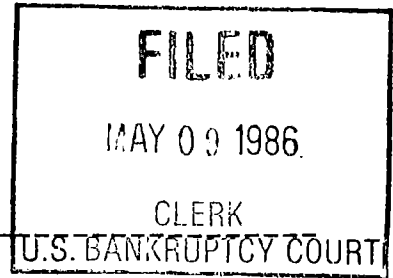


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

BRUCE A. BAUER  
CHARLENE C. BAUER

EF7-85-02230

Debtors.

GERALD JAMES BOWEN,

Plaintiff,

Adversary Number:

v.

86-0036-7

BRUCE BAUER,

Defendant.

OPINION AND ORDER

Gerald Bowen (plaintiff), by Steven Nosek, initiated this adversary proceeding requesting the court to determine that certain debts owed to the plaintiff by the debtor be declared non-dischargeable pursuant to 11 U.S.C. § 523(c). The debtor (defendant) appears by Peter Grosskopf, and has filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Bankruptcy Rule 7012. The debtors also motion the court to dismiss the complaint for failure to join an indispensable party, the trustee, pursuant to Rule

12(b)(7) of the Federal Rules of Civil Procedure. Bankruptcy Rule 7012.

Generally, allegations of a complaint should be liberally construed. Sinclair v. Kleindienst, 711 F.2d 291 (D.C. Cir. 1983). On a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the court should presume that all factual allegations of the complaint are true. Miree v. Dekalb County, 433 U.S. 25 (1977). The burden of demonstrating that no claim is made is upon the movant, the defendant. Johnsrud v. Carter, 620 F.2d 29 (3d Cir. 1980).

The complaint alleges the existence of a contract between the plaintiff and the defendant. This contract is in the nature of a share-crop agreement. The plaintiff alleges that the defendant intentionally secreted or converted crops and/or the proceeds of crops that the plaintiff had an interest in pursuant to said agreement. The defendant's brief primarily focuses on arguing and disputing the factual allegations of the plaintiff's complaint. This factual argument is inapplicable to the determination of the sufficiency of the plaintiff's complaint. A complaint is supposed to be in the form of notice pleading. American Nurses' Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986). The determination as to disputed facts should be left until after the pleadings and wait until discovery has been completed.

The plaintiff has alleged that the defendant has intentionally converted or secreted assets in which the plaintiff has an

interest. If the plaintiff can prove this allegation the debt will be non-dischargeable. The defendant has not succeeded in carrying his burden of proving that the complaint does not state a claim upon which relief can be granted. It is the conclusion of the court that the defendant's motion should be denied.

The debtors also motion the court to dismiss the complaint for failure to join an indispensable party. Bankruptcy Rule 7012. The court finds that the trustee is an indispensable party. Bankruptcy Rule 7019. However, dismissal of this complaint would be inappropriate in this case where the trustee can be joined as a party. United States v. Gurasky, 349 F. Supp. 1200, 1203 (E.D. Wis. 1972). It is the conclusion of the court that the trustee shall be joined as a party to this proceeding.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

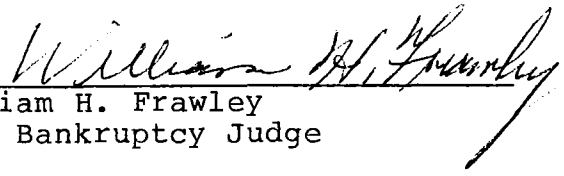
NOW, THEREFORE, IT IS ORDERED THAT, the defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted is hereby denied.

IT IS FURTHER ORDERED THAT, the trustee shall be joined as a party to this proceeding.

IT IS FURTHER ORDERED THAT, the debtor and the trustee shall have 30 days to file an answer to the plaintiff's complaint.

Dated: May 9, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Steven Nosek  
Attorney Peter Grosskopf  
Attorney Peter Herrell