

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE**  
Southern Division

In re

GINA M. CATAPANO SANJINES

Debtor

Bankruptcy Case  
No. 94-14080

JORGE ARIEL SANJINES

Plaintiff

Adversary Proceeding  
No. 96-1046

v.

GINA M. CATAPANO SANJINES

Defendant

**MEMORANDUM**

Appearances: Jorge Ariel Sanjines, Plaintiff, *Pro Se*

William H. Horton, Horton, Maddux & Anderson, Chattanooga,  
Tennessee, Attorney for Defendant

R. Thomas Stinnett, United States Bankruptcy Judge

The debtor, Gina M. C. Sanjines, filed bankruptcy in November 1994 and received a discharge of her debts in March 1995. The plaintiff, Dr. Sanjines, is the debtor's ex-husband. He brought this suit to revoke the debtor's discharge. The debtor filed an answer and then filed a motion for judgment on the pleadings. This memorandum deals with the debtor's motion for judgment on the pleadings.

The debtor's motion asserts that the complaint fails to state a claim upon which relief can be granted. Rule 12(b)(6) allows a defendant to file a motion to dismiss on this ground, but the motion must be filed before the defendant files an answer. *Fed. R. Bankr. P. 7012(a); Fed. R. Civ. P. 12(b)(6)*. After filing an answer, however, the defendant can raise the same ground for dismissal by filing a motion for judgment on the pleadings. *Fed. R. Bankr. P. 7012(a); Fed. R. Civ. P. 12(c) & 12(h)(2)*. The debtor has followed this course of action.

The court must treat the motion for judgment on the pleadings the same as a motion under Rule 12(b)(6) to dismiss for failure to state a claim. *Morgan v. Church's Fried Chicken*, 829 F.2d 10 (6th Cir. 1987); *Amersbach v. City of Cleveland*, 598 F.2d 1033 (6th Cir. 1979). Therefore, the court must examine the allegations of the complaint in light of the grounds for revoking a discharge.

The grounds for revoking a discharge are set out in § 727(d) of the Bankruptcy Code, 11 U.S.C. § 727(d), with a reference to § 727(c)(6). Section 727(d) provides:

(d) On request of a party in interest, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge . . . if

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(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of, or entitlement to, such property, or to deliver or surrender such property to the trustee; or

(3) the debtor . . . [has refused, in the case —  
(A) to obey any lawful order of the court other than an order to respond to a material question or to testify; (B) on the ground of the privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify.]

11 U.S.C. § 727(d) & § 727(c)(6).

The complaint makes the following allegations:

Certain personal property was awarded to the plaintiff when he and the debtor were divorced in 1992.

The divorce decree allowed the personal property to remain in the former marital home until the home was sold, but when it was sold, the personal property was to be turned over to the plaintiff.

The plaintiff saw the property in the house in February 1994. The debtor sold the house in May 1995.

The debtor turned over to the plaintiff only two items of the personal property, a computer and

his medical books. The debtor sold at least one item, a desk, in violation of the divorce decree.

The debtor filed bankruptcy on November 15, 1994 and received a discharge of her debts on March 16, 1995.

The statement of financial affairs filed by the debtor in her bankruptcy case reveals that she sold furniture in May 1994. It also states that at the time of filing bankruptcy she was not holding any property belonging to anyone else.

Plaintiff did not give the debtor permission to sell any of the items or acquiesce in their sale.

Plaintiff did not learn these facts until after debtor received a discharge of her debts.

Debtor falsely stated in her bankruptcy schedules that plaintiff forged the name of Steve Tompkins on a mortgage.

The debtor's statement of financial affairs fails to reveal income she received in 1992 as a co-owner and operator of Perkins Family Restaurant.

Debtor received additional income from Perkins Family restaurant by misappropriating company funds, while she was acting in a fiduciary capacity, but this also is not revealed by the statement of financial affairs.

Debtor's statement of financial affairs states that in 1992 she received child support and alimony of \$12,500 but she actually received \$19,500 plus \$26,000 of maintenance and support.

Debtor's statement of financial affairs states that she received child support and alimony of \$30,000 in 1993, but she actually received \$33,500 plus another \$20,000 in non-deductible alimony.

Debtor's statement of financial affairs states that she received child support in the amount of \$2,500 in 1994 when she in fact received \$5,500.

The complaint does not allege any facts tending to show that the debtor acquired, or became entitled to acquire, property of the bankruptcy estate and concealed it or failed to turn it over. The complaint also does not allege any facts tending to show that the debtor failed or refused to obey any order of the court, including an order to answer a question or to testify. Therefore, the complaint does not state a claim under subparagraphs (2) or (3) of § 727(d). *Anderson v. Poole (In re Poole)*, 177 B.R. 235 (Bankr. E. D. Pa. 1995).

Much of the complaint concerns the debtor's alleged failure to return personal property to the plaintiff. The complaint alleges that the debtor wrongfully disposed of the property before her bankruptcy. For the purpose of considering the debtor's motion, the court assumes the truth of these allegations. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S.Ct. 2729, note 1 at 2732, 111 L.Ed.2d 52 (1990); *Bower v. Federal Express Corp.*, 96 F.3d 200, 203 (6th Cir. 1996).

These allegations can not make out a claim under paragraph (1) of § 727(d) for obtaining a discharge by fraud. Section 727(d)(1) applies to fraud committed by the debtor in obtaining the discharge, not wrongs allegedly done to the plaintiff long before the filing of the bankruptcy case. *First National Bank v. Jones (In re Jones)*, 71 B.R. 682 (S. D. Ill. 1987); *Citibank v. Emery (In re Emery)*, 170 B.R. 777 (Bankr. E. D. N. Y. 1995); *Hiersche v. Brassard (In re Brassard)*, 162 B.R. 375 (Bankr. D. Me. 1994). For the same

reason, the allegation that the debtor fraudulently misappropriated money from Perkins Family Restaurant does not state a claim under § 727(d)(1).

This leaves only the allegations that the debtor understated her income for the years 1992 – 1994 and wrongfully stated that the plaintiff forged a signature on a mortgage. The plaintiff bears the burden of proof on all the facts that must be proved in order to revoke a discharge under § 727(d)(1), including proof that the plaintiff did not have knowledge of the fraud before the discharge. See, e.g. *Hunter v. Hall (In re Hall)*, 84 B.R. 472 (Bankr. N. D. Ohio 1987); *Werner v. Puente (Puente)*, 49 B.R. 966 (Bankr. W. D. N. Y. 1985). To state a claim under § 727(d)(1) the complaint must allege that the plaintiff did not have knowledge of the fraud before the discharge was granted. The complaint contains no such allegation with regard to the allegation that the debtor understated her income or with regard to the allegation that she wrongfully accused the plaintiff of forgery. Therefore, the complaint fails to state a claim under paragraph (1) of § 727(d).

Of course, this reasoning also applies with regard to the entire complaint. None of the allegations make out a claim under § 727(d)(1) because the complaint fails to allege that the plaintiff did not know of the alleged fraud until after the discharge was granted.

The courts construe *pro se* pleadings less strictly than pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972); *Myers v. United States*, 636 F.2d 166, 168-169 (6th Cir. 1981). This rule, however, does not mean a complaint will be saved from dismissal under Rule 12(b)(6) when it totally omits any allegation of a fact that must be proved in order to state a claim. Cf. *Pilgrim v.*

*Littlefield*, 92 F.3d 413 (6th Cir. 1996). The court will enter an order dismissing the complaint.

This memorandum constitutes the court's findings of fact and conclusions of law. *Fed. R. Bankr. P. 7052*.

At Chattanooga, Tennessee

BY THE COURT

entered 10/16/1997

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R. Thomas Stinnett  
United States Bankruptcy Judge