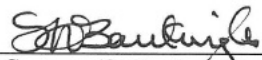




SO ORDERED.
SIGNED this 11th day of October, 2016

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 3:16-bk-31247-SHB

DERON LITTLE
fdba BIC CONCEPTS
fdba LITTLE VENTURES
fdba DL RESTAURANT
dba BIC VENTURES

Debtor

KELSEY R. WOOD

Plaintiff

v.

Adv. Proc. No. 3:16-ap-3022-SHB

DERON LITTLE

Defendant

**MEMORANDUM AND ORDER ON
MOTION TO DISMISS BY DEFENDANT**

Plaintiff filed the Complaint Objecting to the Discharge of Debt commencing this adversary proceeding on July 14, 2016, asking the Court to enter a judgment against Defendant including interest and attorney's fees; to set aside a pre-petition agreement entered into with

Defendant; to determine that the debt owed to Plaintiff by Defendant is nondischargeable under 11 U.S.C. § 523(a)(2); and to lift the automatic stay to allow Plaintiff to pursue collection remedies. On September 6, 2016, the Motion of Defendant to Dismiss Plaintiff's Complaint Objecting to the Discharge of Debt was filed. Plaintiff subsequently filed an Amended Complaint Objecting to the Discharge of Debt on September 23, 2016, and she timely filed Plaintiff's Response to Defendant's Motion to Dismiss on September 26, 2016.

Defendant does not aver in his Motion to Dismiss any legal basis for dismissal. Instead, the Motion to Dismiss is based purely on procedural deficiencies: that the Complaint did not contain a jurisdictional statement whether the adversary proceeding is core or non-core; that Plaintiff did not sufficiently serve the Chapter 13 Trustee or the United States Trustee with the Complaint; that relief from the automatic stay is a contested matter and must be sought through a motion rather than an adversary proceeding; and that Plaintiff failed to attach a coversheet to the Complaint. For the reasons stated below, Defendant's Motion to Dismiss shall be denied in part and granted in part.

Although Defendant is correct that a jurisdictional statement is required for all complaints pursuant to Rule 8(a) of the Federal Rules of Civil Procedure (applicable to adversary proceedings under Federal Rule of Bankruptcy Procedure 7008), the Amended Complaint filed by Plaintiff has cured that deficiency. Additionally, the Certificate of Service attached to the Amended Complaint reflects that Plaintiff served the Amended Complaint on Gwendolyn M. Kerney, Chapter 13 Trustee, and Tiffany DiIorio, attorney for the United States Trustee.¹

¹ In her Response, Plaintiff states she "has requested that the Clerk issue summons for Gwendolyn M. Kerney, Chapter 13 Trustee, and Tiffany DiIorio, attorney for the U.S. Trustee's Office, to allow for service and notice of this adversary proceeding, remedying the issues cited by Defendant's Motion to Dismiss." [Doc. 13 at ¶ 3.] Notwithstanding this assertion and that two requests for summons were filed by Plaintiff's counsel on September 23, 2016, they were filed in blank and, accordingly, have not been issued by the clerk's office. Furthermore, it is not necessary for summons to be issued to effectuate service of process. Summons are only issued to actual parties to an adversary proceeding, and the Amended Complaint does not name either Ms. Kerney or Ms. DiIorio as a party.

With respect to his averment that Plaintiff failed to attach a coversheet to the Complaint, Defendant has misread E.D. Tenn. LBR 7003-1, which requires a coversheet only in the event that a complaint is filed “conventionally,” i.e., in paper form. When a complaint is filed using the Court’s CM/ECF system, the coversheet is no longer required. Nevertheless, out of an abundance of caution, Plaintiff filed a coversheet with the Amended Complaint, thereby curing any potential deficiency.

Only the final component of Defendant’s Motion to Dismiss – that Plaintiff has incorrectly sought stay relief via adversary proceeding rather than motion as required by Rule 4001 of the Federal Rules of Bankruptcy Procedure – has merit. In addition to Rule 4001, motions for stay relief, which are contested matters, fall within the scope of Rule 9014 of the Federal Rules of Bankruptcy Procedure. Stay relief, however, is not included within the list of adversary proceedings set forth in Federal Rule of Bankruptcy Procedure 7001 and, therefore, is not sought by adversary proceeding. *See, e.g., Hall v. Carter (In re Carter)*, No. 13-32643, Adv. No. 13-3094, 2014 WL 4187123, at *1 (Bankr. E.D. Tenn. Aug. 21, 2014). The Amended Complaint contains, in paragraph 3 of the prayer, the request “[t]hat alternatively, the stay be lifted to allow Creditor to take back the interest servicing as collateral under the parties’ Agreement.” [Doc. 10.] To the extent that the Amended Complaint seeks stay relief, it must be dismissed without prejudice to Plaintiff filing an appropriate motion for stay relief in Defendant’s underlying bankruptcy case.

For these reasons, Defendant’s Motion to Dismiss is DENIED in part and GRANTED in part. The Amended Complaint is dismissed only as it relates to Plaintiff’s alternative request for relief from the automatic stay.

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