United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Will This Opinion be Published Yes

Bankruptcy Caption: In re David B. Slagter

Bankruptcy No. 20 B 05112

Adversary Caption: Nancy R. Hauser et al. v. David B. Slagter

Adversary No. 20 A 00212

Date of Issuance: November 3, 2020

Judge: Donald R. Cassling

Appearance of Counsel:

Attorney for Plaintiffs:
James A Karamanis
Barney & Karamanis, LLP
180 N. Stetson, Ste. 3050
Chicago, IL 60602

Attorney for Defendant:
Dennis M Sbertoli
Sbertoli Law Office
P.O. Box 1482
La Grange Park, IL 60526

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Bankruptcy No. 20 B 05112
DAVID B. SLAGTER,	)	Chapter 7
	)	Judge Donald R. Cassling
Debtor.	)	
_____	)	
NANCY R. HAUSER ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No. 20 A 00212
	)	
DAVID B. SLAGTER,	)	
	)	
Defendant.	)	

ORDER GRANTING MOTION TO DISMISS (DKT. NO. 9)

Debtor challenges the sufficiency of the Complaint under Federal Rule 9(b). Having considered the parties' briefs and arguments, the Court agrees that the Complaint should be dismissed without prejudice because it is deficient under both Federal Rules 9(b) and 12(b)(6). Although Debtor based his motion solely on Federal Rule 9(b), the Court may sua sponte examine whether the Complaint passes muster under Federal Rule 12(b)(6). *See Ledford v. Sullivan*, 105 F.3d 354, 356 (7th Cir. 1997) (determining that the federal rules permit sua sponte dismissals under Federal Rule 12(b)(6)). The Court evaluates a pleading "*sua sponte* under Federal Rule 12(b)(6) using the same standards . . . [that apply to] a motion to dismiss from the opposing party." *Diedrich v. Ocwen Loan Servicing, LLC*, 839 F.3d 583, 588 n.3 (7th Cir. 2016).

To pass muster under Federal Rule 12(b)(6), a complaint need not be long or contain exhaustive detail. Instead, a complaint need only contain a "short and plain statement of the claim showing that the pleader is entitled to relief[.]" FED. R. CIV. P. 8(a)(2). But a complaint must

contain enough factual detail to provide a defendant "fair notice" of the claims and enable him to prepare a defense. *EEOC v. Concentra Health Servs.*, 496 F.3d 773, 776 (7th Cir. 2007). In addition, a plaintiff's obligation to state the grounds showing his entitlement to relief "requires more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When a plaintiff pleads facts rather than labels or confusions, facts which are well-pleaded must be accepted as true. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011).

As the preceding recitation suggests, most complaints dismissed under Federal Rule 12(b)(6) have been found insufficient because they are too short. They present too little information and often fail to allege facts (as opposed to labels or conclusions) that would support each element of the asserted cause of action. But a long complaint also runs afoul of Federal Rule 12(b)(6) if its content is so confusing that it fails to give the defendant fair notice of the plaintiff's claims.[1] The risk that a lengthy complaint becomes unintelligible is increased when a plaintiff incorporates multiple allegations and counts from a complaint filed against the defendant and other nonparties in a court of general jurisdiction and then tacks on a few paragraphs addressed specifically to the new court of limited jurisdiction. *See Customguide v. Careerbuilder, LLC*, 813 F. Supp.2d 990, 1001 (N.D. Ill. 2011) (explaining that incorporation of too many earlier allegations

[1] *See, e.g., Stanard v. Nygren*, 658 F.3d 792, 797-98 (7th Cir. 2011) ("Though length alone is generally insufficient to justify rejecting a complaint, unintelligibility is certainly a legitimate reason for doing so. Again, the issue is notice; where the lack of organization and basic coherence renders a complaint too confusing to determine the facts that constitute the alleged wrongful conduct, dismissal is an appropriate remedy."); *Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013) ("Length and unintelligibility, as grounds for dismissal of a complaint, need to be distinguished. District judges are busy, and therefore have a right to dismiss a complaint that is so long that it imposes an undue burden on the judge, to the prejudice of other litigants seeking the judge's attention. . . . But a complaint may be long not because the draftsman is incompetent or is seeking to obfuscate ('serving up a muddle' to the judge, as such complaints are sometimes described), but because it contains a large number of distinct charges.").

"makes it virtually impossible to know" which incorporated allegations are relevant to each count.).

Plaintiffs filed a 29-count civil complaint against Debtor and others in the Northern District of Illinois on December 16, 2017. (Compl. ¶ 9.) That action was stayed upon Debtor's bankruptcy filing on February 25, 2020. (*Id.* at ¶ 11.) The District Court complaint asserted claims against Debtor for RICO violations, common law fraud, civil conspiracy, breach of fiduciary duty, tortious inducement of breach of fiduciary duty, constructive trust, and unjust enrichment. (*Id.* at ¶ 12.) Some of these counts entitle a defendant to a trial by jury. In addition, while all the counts are within the District Court's jurisdiction, some fall outside the core jurisdiction of the Bankruptcy Court.

Notwithstanding these jurisdictional and jury-trial issues, the Complaint that Plaintiffs filed in this Court simply realleges and reasserts the contents of each count of the District Court complaint. (*Id.* at ¶ 13.) The prayer for relief for each count is also repeated, and Plaintiffs do not bother to provide a jurisdictional basis for this Court to rule on each of those counts. Nor do they even mention the Bankruptcy Court's inability (except in very unusual circumstances) to conduct jury trials.

After repeating each count of the District Court complaint, the Complaint pending in this Court adds a mere four pages devoted to the issue of whether the debts that Debtor owes to Plaintiffs should be excepted from his discharge. Significantly, those four new pages fail to clarify how the allegations incorporated from the District Court complaint support Plaintiffs' claims.

Instead, Plaintiffs appear to request that the Court go on a speculative hunt to locate which paragraphs of the District Court complaint might support their request for a nondischargeability determination. For example, page 72 of the Complaint is entitled "Denial of Dischargeability of

Claims" and then subtitled "Counts 1, 8, 15 and 22—RICO Claims." In support of that labelling, Plaintiffs allege that the debts asserted in the RICO claims should be found nondischargeable under § 523(a)(2)(A), (4), and (6). (*Id.* at ¶ 501.) But Plaintiffs do not bother to state how the facts alleged support that conclusion. Instead, they state in a conclusory fashion that Debtor made materially false statements about the handling and use of Plaintiffs' money, which Plaintiffs reasonably relied on; Debtor made the false statements while acting as a fiduciary of Plaintiffs; Debtor made the false statements with an intent to deceive; and Debtor received financial gain from his fraudulent scheme to the detriment of Plaintiffs. (*Id.*) Plaintiffs continue this pattern for each of the common law fraud counts, civil conspiracy counts, the breach of fiduciary duty claims, the tortious inducement of breach of fiduciary duty claims, the constructive trust claims, and the unjust enrichment claims.

In short, by simply realleging and incorporating all 481 paragraphs of the District Court complaint into the Complaint they filed in this Court, Plaintiffs have made it "impossible for the Court to decipher exactly which factual allegations are intended to support each [dischargeability] claim." *United States ex rel. Ceas v. Chrysler Group LLC*, 78 F. Supp. 3d 869, 880 (N.D. Ill. 2015). While Federal Rule 10(c) does permit Plaintiffs to incorporate allegations by reference, that right can be abused when used promiscuously.

Plaintiffs' discussion of the SEC complaint in which Debtor was a "relief defendant"[2] is similarly uninformative. (*See generally* Compl. ¶¶ 495-500.) The consent judgment entered by Judge Kendall in the SEC case provides on one hand that the allegations in the SEC complaint are

[2] Relief defendants are nominal, innocent parties who hold funds traceable to the receivership but have no legitimate claim or ownership interest in them. In the context of an SEC enforcement action, a relief defendant is a person who "holds the subject matter of the litigation in a subordinate or possessory capacity as to which there is no dispute." *SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir. 1991). Accordingly, a relief defendant is not a real party in interest and "can be joined to aid the recovery of relief without an assertion of subject matter jurisdiction" because he or she "has no ownership interest in the property which is the subject of litigation." *Id.*

deemed admitted for the purpose of nondischargeability litigation generally. On the other hand, it provides that the disgorgement judgment and other relief awarded against Debtor in the SEC case were nondischargeable debts under § 523(a)(19) specifically.[3] But Plaintiffs have not sought declaratory relief that Debtor's obligations to them are within the scope of the SEC consent judgment. *Klingman v. Levinson*, 831 F.2d 1292, 1296 (7th Cir. 1987) (holding that a consent judgment may collaterally estop a defendant from denying that the debt was nondischargeable). Nor do they seek entry of a judgment under § 523(a)(19). Instead, they seek a judgment of nondischargeability under § 523(a)(2)(A), (4), "and/or" (6). Plaintiffs do not explain how the SEC consent judgment and the 129 underlying paragraphs of allegations ostensibly admitted by operation of the SEC consent judgment are relevant to the Complaint filed in this Court.

It is not the Court's task to act as the Plaintiffs' lawyer by speculating about the possible relevance of the SEC consent judgment to the current Complaint. Instead, it is the Plaintiffs' lawyers' task to craft a complaint that will meet the liberal standards of Federal Rule 8. This Complaint, as drafted, does not clear that low bar.

There is more:

First, the dischargeability claims are not pleaded as separate counts. "This is an unacceptable method of pleading: each separate count must be totally exclusive of other counts in order for the court to avoid a total waste of time in reviewing each count separately by relation to

[3] In relevant part, the SEC consent judgment provided:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Relief Defendant Slagter, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Relief Defendant Slagter under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

See Compl. at p. 5 of Ex. B.

what went before." *Centier Bank v. Young (In re Young)*, 428 B.R. 804, 819 (Bankr. N.D. Ind. 2010). *See also* FED. R. CIV. P. 10(b) ("If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense."). In short, the Complaint fails to give fair notice of the dischargeability claims because it is almost impossible to decipher which allegations from the District Court and SEC complaints are relevant to the few new pages devoted to the those causes of action. Indeed, the disjunctive invocation of § 523(a)(2)(A), (4), and (6)—each of which has distinct elements—makes unknowable which nondischargeability theory Plaintiffs are pursuing in this Court as to each category of lumped conduct incorporated from the District Court complaint. *See also Swanson v. Citibank, N.A.*, 614 F.3d 400, 403 (7th Cir. 2010) (clarifying that "a plaintiff must do better than putting a few words on paper that, in the hands of an imaginative reader, *might* suggest that something has happened to her that *might* be redressed by the law.").

Second, Plaintiffs have incorporated not only the allegations of each count from the District Court complaint, but also the prayers for relief from each count. That is, Plaintiffs seek a judgment against Debtor on each RICO and fraud count, together with a request for treble damages for many of those counts. But in the last brief section dealing with the dischargeability issues unique to this Court, Plaintiffs ask the Court to except these alleged debts from discharge and to lift the automatic stay so that they may proceed against Debtor on the District Court complaint. This is not pleading in the alternative, which is permissible under the federal rules. FED. R. CIV. P. 8(d)(2)-(3). Rather, it is simultaneously requesting mutually inconsistent forms of relief, which is not. If Plaintiffs mean to request these remedies in the alternative, they should say so.[4] But they are not entitled to multiple recoveries for a single wrong.

[4] While Plaintiffs "need not use particular words to plead in the alternative, they must use a formulation from which it can be reasonably inferred that this is what they were doing." *Holman v. Indiana*, 211 F.3d 399, 407

Third, Plaintiffs fail to allege facially colorable bases for this Court to exercise jurisdiction over at least some of the counts incorporated from the District Court complaint, particularly those counts proceeding under RICO. This Court has an independent duty to examine whether it has jurisdiction to rule on the allegations of a complaint brought before it, and to dismiss a complaint that does not meet that standard. *Dexia Credit Local v. Rogan*, 602 F.3d 879, 884 (7th Cir. 2010). This defect includes Plaintiffs' failure to explain how a bankruptcy court can legitimately try those counts which require a trial by jury.

Plaintiffs' obligation to plead clearly does not require "lavishing attention on the complaint until [they] get[] it just right." *Scott v. City of Chicago*, 195 F.3d 950, 952 (7th Cir. 1999). But the deficiencies in this Complaint "crossed the line from just 'unnecessarily long' to 'unintelligible.'" *Stanard*, 658 F.3d at 798. Its defects require that the Complaint be dismissed with leave to amend.

The Court finally turns to Debtor's argument that the Complaint should be dismissed because it fails to plead fraud with the particularity required by Federal Rule 9(b) Proving particularity under Federal Rule 9(b) requires alleging "the who, what, when, where, and how of the fraud–the first paragraph of any newspaper story." *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 441-42 (7th Cir. 2011) (internal quotations omitted). When the Rule applies, this is a matter of supplementation rather than supplantation. *United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 376 (7th Cir. 2003). Federal Rule 9(b) does not override the principles of brevity and clarity for which Federal Rule 8 stands. *In re Initial Pub. Offering Sec. Litig.*, 241 F. Supp. 2d 281, 326 (S.D.N.Y. 2003) ("It is worth emphasizing that Rule

(7th Cir. 2000). *See also* 5 CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. § 1282 (3d ed. 2010) ("The right to plead alternatively or hypothetically does not sanction deviations from the basic obligation to plead comprehensibly. Indeed, it is in the context of alternative and hypothetical pleading that a party must exercise the greatest care so as not to transgress the requirement in Rule 8(d)(1) of simple, direct, and concise pleading.").

9(b) and Rule 8(a) are children of the same parents: their pleading requirements only differ in degree, not in kind."). Thus, allegations of fraud cannot dip below the *Twombly-Iqbal* notice-plus-plausibility floor. *Rocha v. Rudd*, 826 F.3d 905, 911 (7th Cir. 2016) ("Even if these allegations were able to satisfy the pleading requirements for fraud under Rule 9(b), they still fail to 'state a claim to relief that is plausible on its face.'"). Because the Complaint fails to clear even that hurdle, the Court agrees with Debtor that it also must be dismissed under Federal Rule 9(b).

Plaintiffs are given leave to amend the Complaint by or before December 3, 2020. A status hearing on this adversary proceeding is set for December 8, 2020 at 10:00 a.m.

ENTERED:

DATE: _____

_____
Donald R. Cassling
United States Bankruptcy Judge