

Dismissal of affirmative defenses
Unclean Hands defense
Judgment on the Pleadings
Dischargeability: 11 USC
§523(a)(2)(A)

OCCU v Angulo, Adversary No. 10-6061
Modesto Angulo, Case No. 09-67031

8/11/2010 FRA

Unpublished

Plaintiff filed a Complaint seeking nondischargeability of its claim against Defendant/Debtor on the grounds that the claim arises out of Defendant's fraudulent provision of a Social Security number to obtain financing for the purchase of a motor vehicle.

Defendant's Answer contains three affirmative defenses, each alleging "unclean hands" on the part of the Plaintiff for failing to comply with various financial and reporting requirements contained in federal and state law. Plaintiff filed a motion for partial judgment on the pleadings, seeking dismissal of the affirmative defenses.

The Court granted Plaintiff's motion, finding that none of state and federal laws and regulations cited in the affirmative defenses constituted a defense to the Plaintiff's right to collect its claim or to a dischargeability action.

E10-9(6)

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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In Re:) Bankruptcy Case
11 MODESTO VIDANA ANGULO,) No. 09-67031-fra7
12 _____ Debtor.)
13 OREGON COMMUNITY CREDIT UNION,) Adversary Proceeding
14 Plaintiff,) No. 10-6061-fra
15 vs.)
16 MODESTO V. ANGULO,)
17 _____ Defendant.) MEMORANDUM OPINION

18 I. INTRODUCTION

19 Plaintiff seeks a judgment excepting its claim against the
20 Debtor/Defendant from discharge, pursuant to 11 U.S.C. § 523(a)(2).
21 Specifically, the Plaintiff alleges that the claim arises out of
22 Defendant's fraudulent provision of a Social Security number that was not
23 his.

24 Defendant denies that the Social Security number he provided
25 was not his, that he obtained money from the Plaintiff by false
26 pretenses, a false representation, or actual fraud, and that the

1 Plaintiff reasonably relied on Defendant's representation with regard to
2 his Social Security number. The answer goes on to raise three
3 affirmative defenses, each of which asserts that the Plaintiff comes to
4 Court with unclean hands, and therefore is not entitled to relief. The
5 specific allegations are:

6 1. That Plaintiff failed to comply with financial record-
7 keeping and reporting requirements of Title 31 of the United States Code,
8 as set out in 31 CFR Part 103;

9 2. That Plaintiff failed to comply with the reporting
10 requirements set out in 12 CFR Part 748; and

11 3. That Plaintiff, in connection with its dealings with
12 Defendant, is in violation of O.R.S. 723.816, establishing prohibited
13 acts for officers, directors, employees or agents of credit unions.

14 Plaintiff filed a motion for partial judgment on the pleadings
15 with respect to Defendant's affirmative defenses.

16 II. JUDGMENT ON THE PLEADINGS

17 A motion for judgment on the pleadings under Fed.R.Civ.P. 12(c)
18 is governed by the same standards as a motion to dismiss under
19 Fed.R.Civ.P. 12(b)(6). Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir.
20 1999).

21 Review of a pleading under Fed.R.Civ.P. 12(b)(6)¹ is based on
22 the contents of the pleading, the allegations of which are accepted as
23 true and construed in the light most favorable to the plaintiff. North
24 Slope Borough v. Rogstad (*In Re Rogstad*), 126 F.3d 1224, 1228 (9th Cir.

25
26 ¹Fed.R.Civ.P. 12(b)(6) is made applicable by Fed.R.Bankr.P. 7012(b).

1 1997) (citations omitted). "[O]nce a claim has been adequately stated, it
2 may be supported by showing any set of facts consistent with the
3 allegations in the complaint [in the present case, the Answer]." Bell
4 Atlantic Corp. v. Twombly, 127 S.Ct.1955, 1969 (2007) (internal citation
5 omitted).² This standard requires "enough fact to raise a reasonable
6 expectation that discovery will reveal evidence [supporting the cause of
7 action]. Id. at 1965. "A well-pleaded complaint may proceed even if it
8 strikes a savvy judge that actual proof of those facts is improbable, and
9 'that a recovery is very remote and unlikely.'" Id. (internal citation
10 omitted). However, the court need not accept as true unreasonable
11 inferences or conclusory legal allegations cast in the form of factual
12 allegations. Naert v. Daff, (*In Re Washington Trust Deed Service Corp.*),
13 224 B.R. 109, 112 (BAP 9th Cir. 1998).

14 III. DISCUSSION

15 Plaintiff asserts that its claim is excepted from discharge by
16 11 U.S.C. § 523(a) (2) (A):

17 A discharge under section 727....of this title does
18 not discharge an individual from any debt -

19 (2) for money, property services or an extension,
20 renewal or refinancing of credit, to the extent
21 obtained by -

(A) false pretenses, a false representation,
22 or actual fraud, other than a statement respecting
23 the debtor's or an insider's financial condition.

24 Defendant asserts as affirmatives defenses violations of

24 ²The Bell Atlantic Corp. opinion supercedes that part of Conley v.
25 Gibson, 355 U.S. 41, 45-46 (1957), wherein the Supreme Court stated that
26 dismissal for failure to state a claim is improper unless it appears
beyond a doubt that the plaintiff can prove no set of facts to support
his claim or entitle him to relief.

1 various regulatory rules or statutes. In essence, it is Defendant's
2 position that, having violated these regulations, Plaintiff has forfeited
3 the right to have its claim against the Defendant excepted from
4 discharge. The Court does not agree. Taking each of the specific
5 allegations in turn:

6 1. Patriot Act Violation: Pursuant to the so-called USA
7 Patriot Act, Pub. L. No. 107-56, 115 Stat 272 (2001), the Secretary of
8 the Treasury promulgated anti-money laundering programs in Subpart 1 of
9 31 CFR Chapter 1. As part of these regulations, 31 CFR § 103.121
10 established a customer identification program for banks, credit unions,
11 and other depository institutions. The regulations require lenders, in
12 connection with new loans, to collect and verify certain information from
13 the borrower. The purpose of the program is evident from the sample
14 notice prescribed by 31 CFR § 103.121(b)(5)(iii):

15 IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A
16 NEW ACCOUNT

17 To help the government fight the funding of terrorism
18 and money laundering activities, federal law requires
19 all financial institutions to obtain, verify, and
20 record information that identifies each person who
21 opens an account.

22 What this means for you: when you open an account, we
23 will ask for your name, address, date of birth, and
24 other information that will allow us to identify you.
25 We may also ask to see your driver's license or other
26 identifying documents.

27 The purpose of the USA Patriot Act and its attendant
28 regulations is to protect the nation from money laundering and terrorist
29 activities. It has no bearing on a lending institution's rights to
30 collect what is owed, or to object to discharge of its claims in
31 bankruptcy. Plaintiff's alleged failure to comply with mandated client

1 more, operates to deny the relief sought by the Plaintiff.

2 An order will be entered allowing the Plaintiff's motion for
3 partial judgment on the pleadings, and striking Defendant's affirmative
4 defenses.



6 FRANK R. ALLEY, III
7 Bankruptcy Judge

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