

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Barbara E. King Gohl

Case No. 04-43134

Chapter 7

Debtor.

David Gohl,

Plaintiff,

Adv. No. 04-4246

vs.

MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS
COMPLAINT

Barbara E. King Gohl,

Defendant.

Plaintiff David G. Gohl submits this Memorandum in Opposition to the motion of Defendant Barbara E King Gohl to dismiss his complaint to determine dischargeability of debt due to failure to state a claim.

FACTS

Defendant has moved to dismiss Plaintiff's Complaint on the grounds that it fails to state a claim arguing that the Complaint fails to state facts sufficient to state a claim. Relying on paragraph 14 only of the Complaint, Defendant claims that the complaint provides only:

The debts owed to Plaintiff by debtor pursuant to her indemnity obligations set forth in the Scott County Judgment and Decree are nondischargeable under 11 U.S.C. § 523(a)(15) as

they are within the purview of the discharge exception for debts incurred by the debtor in connection with a divorce decree and are not for alimony, maintenance or support.

Notice of Hearing and Motion, ¶ 6, citing ¶ 14 of the Complaint. Defendant then argues that this paragraph is conclusory and fails to state facts sufficient to state a claim. In bringing this motion, Defendant has ignored the many factual allegations of the Complaint, including:

- That the parties were former spouses and were divorced pursuant to a Judgment and Decree entered April 30, 2002 in Scott County, Minnesota, District Court File No. 2001-775. Complaint, ¶¶ 1 and 4.
- That Defendant was awarded in the divorce all right, title and interest in and to a business known as Secured Products Distributing, Inc. and was obliged to indemnify and hold harmless Plaintiff from any liability or obligation whatsoever regarding said business. Complaint, ¶ 5.
- That Secure Products and Defendant failed to pay the debts and obligations of Secure Products and Plaintiff was sued individually by two separate creditors of Secure Products due to the personal guarantees he had executed on behalf of Secure Products. Complaint, ¶ 7.
- That Plaintiff has had to pay Telex Communications, Inc, a creditor of Secure Products, the sum of \$7,000 as and for full and final payment of a judgment it had entered against him. Complaint, ¶ 8
- That Plaintiff is also a named defendant in a lawsuit commenced by Associated Bank Minnesota, NA (“Associated Bank”), another creditor of Secure Products and demand is being made for payment of \$26,693.82 plus per diem interest of \$4.74756 from March 12, 2004 on one loan and the sum of \$35,165.18 plus per diem interest of \$5.97352 from March 12, 2004 on the other loan, together with attorneys’ fees and collection costs. Complaint, ¶¶ 9, 10.
- That by Order dated May 26, 2004, the Hennepin County District Court entered judgment against Debtor and in favor of Plaintiff for any sums found owing to Associated Bank from Plaintiff. Judgment was also entered in favor of Plaintiff and against Debtor in the amount of \$6,126.20 as and for attorneys fees and costs incurred in connection with the proceeding. Complaint, ¶ 11.
- And finally, that the debts owed to Plaintiff by debtor pursuant to her indemnity obligations set forth in the Scott County Judgment and Decree are nondischargeable under 11 U.S.C. § 523(a) (15) as they are within the purview of the discharge exception for debts incurred by the debtor in connection with a divorce decree and are not for alimony, maintenance or support. Complaint, ¶14.

ARGUMENT

Rule 8 of the Federal Rules of Civil Procedure applies to adversary proceedings. Fed.R. Bankruptcy Proc. 7008. As such, all that is required is a “short and plain statement of the claim showing that the pleader is entitled to relief” and a demand for judgment. Fed.R.Civ.P. 8.

The allegations in the Complaint at issue give adequate notice of the claims and set forth a short and plain statement of the facts. The parties were divorced. Complaint, ¶¶ 1, 4. Defendant was awarded the business of Secure Products, was obliged to pay for the debts of Secure Products, and was ordered to indemnify Plaintiff for any liability there from. Id., ¶ 5. Plaintiff has now incurred liability with respect to the debts of Secure Products. Id. ¶ 8-10. Judgment was entered against Defendant for the liability incurred by Plaintiff as a result of her failure to satisfy her obligations under the divorce decree. Id., ¶ 11. The obligations of Plaintiff for which she is seeking discharge are nondischargeable under 11 U.S.C. § 523(a)(15) as they are within the purview of the discharge exception for debts incurred by the debtor in connection with a divorce decree and are not for alimony, maintenance or support. Id., ¶14.

The facts recited in the Complaint establish that the debt is divorce related and is not in the nature of alimony, support or maintenance. These facts are sufficient to provide notice to Defendant of the factual basis for the claims against her and are sufficient to state a claim.

CONCLUSION

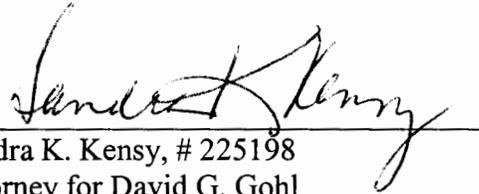
Defendant is provided with the factual allegations that support the claim, she has been given notice of the claims, and the Complaint adequately alleges facts sufficient to state a

claim for the nondischargeability of the debts at issue. Therefore, Plaintiff requests that Defendant's motion to dismiss be denied in its entirety. In the event that the Court deems that the Complaint is not sufficiently plead, then Plaintiff requests leave to amend the same.

Respectfully Submitted:

Dated: September 15, 2004

SANDRA K. KENSY

A handwritten signature in black ink, appearing to read "Sandra K. Kensy", written over a horizontal line.

Sandra K. Kensy, # 225198
Attorney for David G. Gohl
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(651) 494-9463

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**UNSWORN CERTIFICATE OF
SERVICE**

Barbara E. King Gohl,

Defendant.

Sandra K. Kensy, under penalty of perjury, states that she is an attorney representing Creditor David G. Gohl and in the course of said employment, on the 15th day of September, 2004, she served the Memorandum in Opposition to Debtor's Motion to Dismiss Complaint on the individuals or entities named herein by U.S. mail by depositing the same at the United States Mail at Shoreview, Minnesota.

Barbara E. Gohl
902 Forestlac Court,
St. Louis, MO 63141

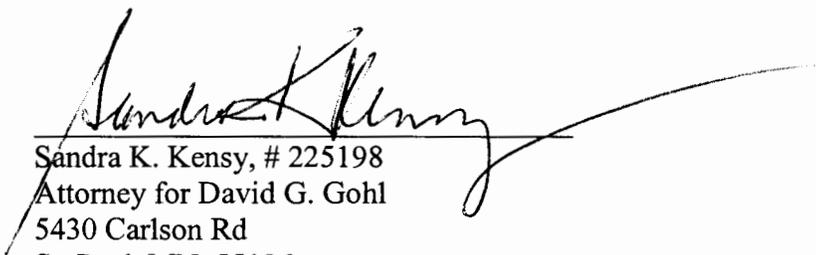
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Dated: September 15, 2004

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