

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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In re:)	
)	
MEGAN CHRISTINE FIEDLER,)	Case No. 23-20862
)	
Debtor.)	
_____)	Adv. Pro. No. 2023-02038-C
)	
THE GOLDEN ONE CREDIT UNION,)	
a California Corporation,)	
)	
Plaintiff,)	
v.)	
)	
MEGAN CHRISTINE FIEDLER, an)	
individual,)	
)	
Defendant.)	

ORDER TO SHOW CAUSE

This Order directs Plaintiff The Golden One Credit Union, Karel Rocha, Esq., and the law firm of Prenovost, Normandin, Dawe & Rocha, each to SHOW CAUSE why Federal Rule of Bankruptcy Procedure 9011(b) was not violated by the filing of the Complaint in this adversary proceeding and why sanctions should not on that account be imposed against The Golden One Credit Union, Karel Rocha, and Prenovost, Normandin, Dawe & Rocha.

This Order also directs The Golden One Credit Union to SHOW CAUSE why this court should not make an award under 11 U.S.C. § 523(d) to Defendant, Megan Christine Fielder.

Federal Rule of Bankruptcy Procedure 9011(b)

The requirements of Rule 9011(b) have been explained at length by this court in In re Estate of Taplin, 641 B.R. 236,

1 245-52 (Bankr. E.D. Cal. 2022), the analysis of such case is
2 incorporated herein.

3 The attorney filing the complaint, Karel Rocha, Esq.,
4 certified that he had made "an inquiry reasonable under the
5 circumstances" before filing the complaint. Fed. R. Bankr. P.
6 9011(b).

7 Karel Rocha further certified that the factual contentions
8 in the Complaint have evidentiary support. Fed. R. Bankr. P.
9 9011(b)(3).

10 Karel Rocha further certified that the legal contentions in
11 the Complaint were warranted by existing law or nonfrivolous
12 argument for change to existing law. Fed. R. Bankr. P.
13 9011(b)(2).

14 Karel Rocha further certified that the Complaint was not
15 filed for an improper purpose. Fed. R. Bankr. P. 9011(b)(1).

16

17 The Filed Complaint

18 This adversary proceeding alleging one count of
19 nondischargeable fraud under 11 U.S.C. § 523(a)(2) was filed
20 April 25, 2023, against the Defendant chapter 7 debtor with
21 respect to a \$9,000 loan made November 3, 2022, for the stated
22 purpose of refinancing credit card debt.

23 The Defendant's chapter 7 case was filed March 21, 2023. The
24 Meeting of Creditors was April 18, 2023. The deadline for filing
25 nondischargeability actions was fixed for June 20, 2023.

26 The Complaint filed April 25, 2023, alleged in 22 paragraphs
27 that because no payment was made on December 20, 2022, when the
28 first payment came due, it follows that the debtor must have

1 committed actual fraud at the inception of the loan back on
2 November 3, 2022, by making false representations regarding her
3 intent to make payments. It is alleged she knew on November 3,
4 2022, that her representations regarding intent to pay were
5 false. Plaintiff further alleged that the debt is not a "consumer
6 debt" as defined in the Bankruptcy Code.

7 The defendant, representing herself, filed on May 8, 2023, a
8 document titled "Defendant's Statement of Undisputed Facts in
9 Support of Her Motion for Bankruptcy," which this court later
10 deemed to constitute an Answer. Dkt. #8.

11 She explained that she obtained the \$9,000 loan on advice of
12 one of Plaintiff's loan officers who represented that it would
13 help her resolve her \$11,000 credit card debt and that she
14 immediately paid all the loan proceeds to her credit card. By
15 mid-December, however, after she had to incur more credit card
16 debt to avoid a default on another debt (apparently her car loan
17 owed to Plaintiff, which is the only secured debt identified on
18 the schedules), she explained that she realized that Plaintiff's
19 advice had not helped solve her financial problems and, in mid-
20 December, she began to explore bankruptcy. The bankruptcy
21 attorney she consulted in December advised her to stop paying
22 unsecured debt so as to save funds to be able to pay the
23 bankruptcy filing fee and the bankruptcy attorney's fee.

24 25 Proceedings

26 This court held a pretrial status conference on June 28,
27 2023.

28 At the conference, Plaintiff' counsel, aside from the naked

1 fact of subsequent nonpayment when due on December 20, 2022, upon
2 inquiry from this Court was not able to point to any evidence of
3 fraud at the inception of the loan on November 3, 2022.

4 Concluding that discovery would not be warranted on this
5 \$9,000 unsecured debt, and there having been no contention that a
6 reasonable opportunity for further investigation or discovery was
7 either necessary or appropriate, this court dispensed with other
8 pretrial procedures and set trial for July 18, 2023.

9 At trial, Plaintiff would be able to proffer its evidence
10 (presumably, at a minimum, a Credit Union witness and the Credit
11 Union loan file, which it should have identified as part of its
12 Rule 9011 "inquiry reasonable under the circumstances").
13 Likewise, Defendant could testify under oath, be cross-examined,
14 and proffer other pertinent evidence, so that this court could
15 determine whether to believe her assertions in defense.

16 Three business days after the pretrial status conference,
17 Plaintiff filed a Request for Dismissal on July 5, 2023.

18 This court dismissed the adversary proceeding on July 7,
19 2023, reserving jurisdiction over issues under 11 U.S.C. § 523(d)
20 and over issues arising under Federal Rule of Bankruptcy
21 Procedure 9011. Dkt #17.

22

23

Rule 9011 Issues

24 The timing of the Request for Dismissal invites three
25 inferences: (1) that the Complaint was not well-founded; (2) that
26 there was not a pre-filing "inquiry reasonable under the
27 circumstances" in light of the timing the filing of the Complaint
28 56 days before the filing deadline; and (3) that the Complaint

1 was filed for the improper purpose of implementing a strategy of
2 suing impecunious consumers on small claims on little or no
3 pretext so as to extract payments by way of default judgment or
4 "settlement" in lieu of trial because of the high transaction
5 costs of defending litigation.

6 The 22 paragraph Complaint alleging fraud specifies only two
7 concrete facts: (1) the \$9,000 loan on November 3 and (2)
8 nonpayment of the first installment on its December 20 due date.

9 Those two factual allegations, without more, amount to
10 nothing more than one of the most elementary logical fallacies in
11 the books - post hoc ergo propter hoc (because this, then that:
12 otherwise stated, George Washington married Martha Custis and, in
13 due course, became Father of His Country).

14 Not only is Plaintiff's sole reliance on the naked post-hoc-
15 ergo-propter-hoc fallacy insulting to a trained legal mind, it
16 flunks the specificity pleading requirements of Rule 7009 and,
17 even if accepted as true by a trier of fact, could not plausibly
18 support entry of a default judgment for fraud. Fed. R. Bankr. P.
19 7009, incorporating Fed. R. Civ. P. 9(b).

20

21 Inquiry Reasonable Under the Circumstances

22 The fact that only two concrete facts that could be mustered
23 to support the Complaint were fallacious per se on a Complaint
24 that Rule 7009 requires be pled with specificity suggests that
25 Rule 9011 was violated by not making an "inquiry reasonable under
26 the circumstances" required by Rule 9011.

27

28

1 Improper Purpose

2 The fact that the only two concrete facts alleged cannot
3 support a cause of action for nondischargeable fraud likewise
4 supports an inference of improper purpose of trying to bludgeon
5 payment in "settlement" on a flimsy cause of action so lacking in
6 merit that it could not support a default judgment.

7
8 Unwarranted Legal Contention

9 Paragraph 14 of the Complaint alleges: "The Defendant's
10 obligations to Plaintiff are not consumer debts as defined in 11
11 U.S.C. § 101(8) to the extent that they were based upon fraud and
12 willful, malicious, and tortious injury to Plaintiff."

13 This court is unaware of any support in decisional law that
14 a debt incurred "primarily for a personal, family, or household
15 purpose" is nevertheless not a "consumer debt" if motivated by
16 fraudulent intent. 11 U.S.C. § 101(8). Hence, it appears that
17 paragraph 14 is not warranted by existing law.

18 To be sure, Rule 9011(b)(2) tolerates "nonfrivolous
19 argument for change to existing law" as a safe harbor. But it
20 does not tolerate frivolous argument.

21 In context paragraph 14 appears to serve only the purpose of
22 attempting to elude Plaintiff's potential liability for fees and
23 costs under of 11 U.S.C. § 523(d) that follow from a § 523(a)(2)
24 fraud complaint on a "consumer debt" that winds up being
25 discharged and in which the Plaintiff's position is not
26 "substantially justified."

27 The purpose of paragraph 14 appears to be frivolous because
28 any consumer debt that is judicially determined to "based upon

1 fraud and willful, malicious, and tortious injury to Plaintiff”
2 in a § 523(a) nondischargeability action will, by definition, be
3 excepted from discharge. Hence, the allegation of paragraph 14
4 serves no purpose, except possibly to intimidate (which, itself,
5 is an improper purpose). In short, it appears unlikely that
6 paragraph 14 could qualify for the safe harbor as a nonfrivolous
7 argument for change to existing law.

8
9 Considerations for Rule 9011 Sanctions

10 Rule 9011(b) requires all litigants to “stop and think”
11 before making legal or factual contentions. Estate of Taplin, 641
12 B.R. at 246; In re LeGrand, 638 B.R. 151, 156 (Bankr. E.D. Cal.
13 2022); Adv. Comm. Note to 1997 Amendment to Rule 9011.

14 Rule 9011(c) exposes attorneys, law firms, and parties to an
15 “appropriate sanction” for violations of Rule 9011(b). Fed. R.
16 Bankr. P. 9011(c)(2). “Appropriate sanctions” under Rule
17 9011(c)(2) include monetary or nonmonetary sanctions, as well as
18 attorneys’ fees and other expenses.

19 Although represented parties, such as Plaintiff in this
20 case, are protected from monetary sanctions for violations of
21 Rule 9011(b)(2), they are not protected from nonmonetary
22 sanctions for such violations. Fed. R. Bankr. P. 9011(c)(2)(A).

23 Represented parties, however, are not protected from
24 monetary sanctions for violation of Rule 9011(b)(1).

25 Any party may be held accountable under Rule 9011(c) if it
26 is “responsible for the violation” of Rule 9011(b).

27 As the Complaint was voluntarily dismissed by Plaintiff
28 before this Order to Show Cause is being issued, this court will

1 be limited to nonmonetary sanctions for Rule 9011 violations.
2 Fed. R. Bankr. P. 9011(c)(2).

3

4 11 U.S.C. § 523(d) Award

5 When a nondischargeability action is filed under § 523(a)(2)
6 with respect to a "consumer debt" as defined at § 101(8) but does
7 not result in excepting the debt from discharge, the court "shall
8 grant judgment in favor of the debtor for the costs of, and a
9 reasonable attorney's fee for, the proceeding if the court finds
10 that the position of the creditor was not substantially
11 justified" unless "special circumstances would make an the award
12 unjust." 11 U.S.C. § 523(d) (emphasis supplied).

13 When this court dismissed the Complaint, it expressly
14 reserved jurisdiction over issues under § 523(d). Accordingly, it
15 intends to consider whether the position of Golden One was
16 "substantially justified" and whether "special circumstances"
17 would make unjust an award to the Defendant under that provision.

18 It is noted that the Defendant has supplied evidence of her
19 hourly rate of income from employment from which this court
20 plausibly could estimate the time, effort, and cost entailed in
21 preparing her written response to the complaint and travel time
22 entailed in traveling to the Sacramento courthouse to represent
23 herself in her defense.

24 She is welcome, but not required, to provide more specific
25 information about her costs. For example, she may have incurred
26 time to consult with her counsel in her parent chapter 7 case
27 about how best to defend herself in this adversary proceeding;
28 while local rules permit debtors' counsel, as here, to exclude

1 adversary proceedings for their attorney-client contracts,
2 conscientious counsel nevertheless often devote some time to
3 advising clients how to represent themselves. If she can
4 document any such time, this court will entertain it if it makes
5 a § 523(d) award.

6 Similarly, the Defendant is welcome, but not required, to
7 attend the hearing that will occur on the question of whether to
8 make a § 523(d) award. If she chooses to do so, then her time and
9 expense in so doing would be eligible for inclusion. If her
10 bankruptcy counsel can provide evidence documenting time devoted
11 to advising the Defendant about this adversary proceeding, such
12 evidence will be considered.

13 14 Hearing

15 In view of the foregoing, IT IS ORDERED THAT Karel Rocha and
16 the law firm of Prenovost, Normandin, Dawe & Rocha, and an
17 Officer of Plaintiff Golden One Credit Union shall appear in
18 person in the Sacramento Courtroom of the undersigned Bankruptcy
19 Judge on August 22, 2023, at 10:00 a.m. to SHOW CAUSE why they
20 have not violated Federal Rule of Bankruptcy Procedure 9011(b) in
21 this adversary proceeding and why sanctions limited to "what is
22 sufficient to deter repetition of such conduct or of comparable
23 conduct by others similarly situated" per Rule 9011(c)(2) should
24 not be imposed.

25 AND, IT IS ORDERED THAT Plaintiff Golden One Credit Union,
26 represented by one of its Officers and by counsel, shall appear
27 in person in the Sacramento Courtroom of the undersigned
28 Bankruptcy Judge on August 22, 2023, at 10:00 a.m. to SHOW CAUSE


1 why this court should not make an award under 11 U.S.C. § 523(d).

2 There will be no remote appearances by Zoom, Court Call, or
3 other remote means and no appearance by an appearance attorney.
4 The Golden One Credit Union must attend in the person of an
5 Officer it designates under the standards specified by Federal
6 Rule of Civil Procedure 30(b)(6) for deposition of a party-
7 opponent.

8 The Defendant is permitted, but not required, to attend. Any
9 expense she incurs in that respect, as well as any expense her
10 bankruptcy counsel can document, will be eligible for inclusion
11 in any § 523(d) award.

12 IT IS: SO ORDERED.

13 **Dated: August 02, 2023**

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United States Bankruptcy Judge

**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

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The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Karel Rocha
2122 N. Broadway
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Santa Ana, CA 92706

Prenovost, Normandin, Dawe & Rocha
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