FILED & ENTERED

JAN 13 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re: Maynor Ramirez Vasquez, Debtor,	Case No.: 2:11-bk-21451-TD Adversary No.: 2:11-ap-02513-TD Chapter: 7 MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
Law Offices of Nejadpour, Plaintiff, Vs. Maynor Ramirez Vasquez, Defendant.	Date: December 22, 2011 Time: 11:00 a.m. Courtroom: 1345

FACTUAL AND PROCEDURAL BACKGROUND

From January 2008 to February 2010, Defendant Maynor Ramirez Vasquez (Vasquez) employed Plaintiff Law Offices of Nejadpour (Nejadpour) to represent him in his divorce proceedings. Vasquez agreed to pay Nejadpour an hourly fee for its services. As of February 20, 2010, Vasquez owed $149,816.06 to Nejadpour, including fees and expenses related to Nejadpour's representation in the divorce.

On March 17, 2011, Vasquez filed a voluntary chapter 7 petition. A notice of Vasquez's bankruptcy and a Notice of Meeting of Creditors pursuant to 11 U.S.C. § 341(a) (§ 341(a)

Notice) was mailed on March 17, 2011 to creditors, including Nejadpour. The § 341(a) Notice established a June 24, 2011 deadline to object to Vasquez's discharge or to challenge dischargeability of debts.

Based on Vasquez's declarations and schedules, the case appeared to be a no-asset case. However, on June 24, 2011, the law firm representing Vasquez's ex-wife, also a Vasquez creditor, filed an adversary proceeding objecting to discharge asserting that Vasquez had failed to disclose certain assets on his schedules. See Olsen v. Vasquez, Adv. No. 11-02398. On reading these allegations, Nejadpour filed its own adversary proceeding on July 20, 2011, objecting to discharge for substantially similar reasons. Vasquez moves to dismiss Nejadpour's complaint for failure to state a claim upon which relief can be granted. See Federal Rules of Bankruptcy Procedure (FRBP) 7012 (incorporating Federal Rules of Civil Procedure (FRCivP) 12(b)(6)).

MOTION TO DISMISS

Vasquez's motion seeks dismissal of Nejadpour's complaint as time-barred. As Nejadpour has conceded, Vasquez is correct. Nejadpour has nevertheless argued that its proof of claim was timely filed.

The deadine for filing a complaint objecting to the debtor's discharge is set pursuant to FRBP 4004(a), which states that a complaint filed in a chapter 7 case objecting to the debtor's discharge "shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)." As clearly stated in the § 341(a) Notice, the first date set for the meeting of creditors was April 25, 2011, and the deadline for filing objections was therefore June 24, 2011. There is no dispute that Nejadpour received the § 341(a) Notice, or that Nejadpour filed its complaint after the June 24 deadline. Accordingly, Nejadpour's complaint must be dismissed. Vasquez's motion to dismiss is granted.

Vasquez's motion is granted for the further reason that Nejadpour's complaint is a mishmash of ambiguous and confusing assertions of fact, conclusory statements and black letter law. It fails to set forth any "short and plain" statement of any claim that Nejadpour may have showing that Nejadpour is entitled to relief as required by FRBP 7008(a)(2). It fails to set forth any claim of fraud with particularity of the circumstances constituting fraud as required by FRBP 7009(b).

Nejadpour's complaint invokes § 727(e)(1), relating to revocation of discharge, and also § 523, confusingly quoted and without any supporting "simple and plain" statement of any claim showing that Nejadpour is entitled to relief under any portion of § 523. Vasquez's motion must be granted for those reasons as well.

PROOF OF CLAIM

Pursuant to FRBP 3002(c), "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for" the § 341(a) meeting of creditors. In this case, the 90-day deadline expired on July 25, 2011. Nejadpour asserts that it filed its proof of claim on July 19, 2011, though no such proof of claim was attached to Nejadpour's opposition to Vasquez's motion. Accordingly, the claim is timely and will stand, assuming no objection is filed.

REVOCATION OF DISCHARGE

The dismissal of Nejadpour's current complaint does not prevent Nejadpour's from filing a later complaint for revocation of discharge, so long as the complaint meets the statutory preconditions set forth in § 727(d)(1), (d)(2), or (d)(3). Pursuant to § 727(e), Nejadpour may seek revocation of discharge under § 727(d)(1) within one year after such discharge has been granted, and under §§ 727(d)(2) or (d)(3) before the later of one year after the discharge has been granted and the date the case is closed, if grounds for such a request exist. However,

no discharge has been issued in this case and the subject of revocation of discharge is not now properly before the court.

IT IS SO ORDERED.

DATED: January 13, 2012

United States Bankruptcy Judge

NOTE TO USERS OF THIS FORM:

1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) ***MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM*** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of ***January 11, 2012***, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Jerome Bennett Friedman on behalf of Defendant Maynor Ramirez
jfriedman@jbflawfirm.com, bbalonick@jbflawfirm.com;jmartinez@jbflawfirm.com

Fari B Nejadpour on behalf of Plaintiff Law Offices of Nejadpour
admin@divorcelaws.biz

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Maynor Ramirez
P.O Box 661420
Los Angeles, CA 90066

Law Offices of Nejadpour
3540 Wilshire Blvd, Suite 901
Los Angeles, CA 90010

United States Trustee (LA)
725 S Figueroa St., 26th Floor
Los Angeles, CA 90017

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III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

☐ Service information continued on attached page