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FILED & ENTERED
FEB 05 2016
CLERK U.S. BANKRUPTCY COURT
Central District of California
Pratum DEPUTY CLERK

ORDER NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
ANGEL R. ROBINSON-MALDONADO,
Debtor.
JOSEPHINE JEANE S. ROBINSON,
Plaintiff,
vs.
ANGEL R. ROBINSON-MALDONADO,
Defendant.

Case No. 2:14-bk-22962-RK
Chapter 7
Adv. No. 2:14-ap-01660-RK

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS, VACATING
HEARING ON MOTION TO DISMISS
AND STATUS CONFERENCE, AND
RESETTING STATUS
CONFERENCE**

Pending before the court is the motion of defendant Angel R. Robinson-Maldonado ("Defendant") to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Bankruptcy Procedure 7012, making Federal Rule of Civil Procedure 12(b)(6) applicable to this adversary proceeding ("Motion"). ECF 32. Robert E. Brode, Attorney at Law, represents Defendant. Plaintiff Josephine Jeane S. Robinson ("Plaintiff"), who represents herself, did not file an opposition.

On October 16, 2014, Plaintiff filed her original complaint, ECF 1, the caption of which states "challenge dischargeability of certain debts." On October 30, 2014, Defendant served and filed an answer. ECF 4. On October 27, 2015 Plaintiff filed a

1 Motion to Amend Complaint. ECF 25. Even though Defendant served and filed an
2 answer to the original complaint, on November 16, 2015, Defendant filed a motion to
3 dismiss the original complaint under Rule 12(b)(6). ECF 28. At the November 17, 2015
4 hearing on Plaintiff's Motion to Amend Complaint, the court orally granted Plaintiff's
5 Motion to Amend Complaint in part. On December 1, 2015, the court entered its
6 Memorandum Decision and Order Granting in Part and Denying in Part Plaintiff's Motion
7 to Amend Complaint, Vacating November 18, 2015 and December 8, 2015 Hearings and
8 Setting Further Status Conference ("Memorandum Decision"), which reflected the court's
9 oral ruling on Plaintiff's Motion to Amend Complaint from the November 17, 2015 hearing.
10 The court's Memorandum Decision, in part, ordered that, "Plaintiff may proceed with her
11 claims in the amended complaint under 11 U.S.C. § 727(a) and under 11 U.S.C. §
12 523(a)(2) relating to the Best Buy Account debt, but she may not proceed with the claims
13 in the Amended Complaint under 11 U.S.C. § 523(a)(2) as to the other debts described
14 herein." ECF 31. Also on December 1, 2015, Defendant filed the instant Motion, which
15 sought to address the causes of action asserted in Plaintiff's Amended Complaint.

16 Having considered the Motion and the relevant record in this adversary
17 proceeding, the court determines that oral argument is not necessary, dispenses with it,
18 takes the Motion under submission, vacates the hearing on the Motion set for February 9,
19 2016 at 3:00 p.m. and denies the Motion for the following reasons.

20 Under Federal Rule of Civil Procedure 12(b)(6), made applicable to this adversary
21 proceeding under Federal Rule of Bankruptcy Procedure 7012, by motion, a party may
22 assert a defense for failure to state a claim upon which relief can be granted. In resolving
23 a Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most
24 favorable to the plaintiff, and accept as well-pleaded factual allegations as true. *Johnson*
25 *v. Riverside Healthcare System, LP*, 534 F.3d 1116, 1122 (9th Cir. 2001). Under
26 *Ashcroft v. Iqbal*:

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1 [t]o survive a motion to dismiss, a complaint must contain sufficient factual
2 matter, accepted as true, to state a claim to relief that is plausible on its face
3 . . . A claim has facial plausibility when the plaintiff pleads factual content
4 that allows the court to draw the reasonable inference that the defendant is
5 liable for the misconduct alleged . . . Threadbare recitals of the elements of
6 a cause of action, supported by mere conclusory statements, do not suffice.

7 556 U.S. 662, 679 (2009) (citations and internal quotations marks omitted). Furthermore,
8 a Rule 12(b)(6) motion “is *not* the proper vehicle to challenge claims or defenses as
9 lacking evidentiary support . . . because well-pleaded factual allegations in the complaint
10 or answer must be accepted as *true* for purposes of ruling on a Rule 12(b)(6) motion.” 3
11 Schwarzer, Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure*
12 *Before Trial*, ¶ 14:12 at 14-4 (2015).

13 The court determines that Plaintiff’s Amended Complaint contains sufficient factual
14 matter such that Plaintiff’s claims under 11 U.S.C. §§ 523(a)(2) and 727(a) asserted
15 therein are plausible on their face because Plaintiff pleaded sufficient factual content that
16 allows the court to draw a reasonable inference that Defendant is liable for the alleged
17 misconduct. The court observes that Plaintiff’s Amended Complaint alleges, among
18 other things, that Defendant’s petition documents fail to list sources of income, creditors,
19 the names of individuals that owe Defendant money, all of Defendant’s bank accounts
20 from the last four years, and transfers over \$500, facts that when taken as true, allow the
21 court to draw a reasonable inference that Defendant is liable under 11 U.S.C. §
22 727(a)(4). Furthermore, Plaintiff’s Amended Complaint also alleges, among other things,
23 that Defendant did not intend to repay a loan from Best Buy, which Plaintiff co-signed for
24 Defendant, facts that when taken as true, allow the court to draw a reasonable inference
25 that Defendant is liable under 11 U.S.C. § 523(a)(2). The court also notes that
26 Defendant’s Motion argues that Plaintiff’s Amended Complaint makes “bare, naked
27 allegation[s] without any proof,” Motion at 4, “does not offer evidence of fraud,” *Id.*, and
28 “there is no record of a such a loan being challenged at the Creditors hearing.” *Id.* at 5.
The court observes that such arguments are evidentiary in nature and are better suited

1 for a motion for summary judgment, not a Rule 12(b)(6) motion to dismiss. Accordingly,
2 for the foregoing reasons, the Motion is denied.

3 IT IS HEREBY ORDERED as follows:

- 4 1. Defendant's Motion to Dismiss for Failure to State a Claim, ECF 32, is denied.
- 5 2. Defendant is ordered to file and serve an answer to the Amended Complaint
6 within 14 days of the date of the entry of this order.
- 7 3. Plaintiff and Defendant are ordered to meet and confer in compliance with
8 Local Bankruptcy Rule 7026-1.
- 9 4. The hearing on Defendant's Motion to Dismiss for Failure to State a Claim,
10 ECF 32, which is set for February 9, 2016 at 3:00 p.m. is vacated.
- 11 5. The status conference set for February 9, 2016 at 1:30 p.m. is continued to
12 April 12, 2016 at 1:30 p.m. A joint status report must be filed by April 5, 2016.
- 13 6. No appearances are required on February 9, 2016.

14 IT IS SO ORDERED.

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23 Date: February 5, 2016



Robert Kwan
United States Bankruptcy Judge