

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-32616

HILTON LEROY CONNER, JR.  
d/b/a CIRCLE RB ENTERPRISES and  
BONNIE IONE CONNER  
d/b/a CIRCLE RB ENTERPRISES

Debtors

PAULYNN WRIGHT and  
KARL WRIGHT

Plaintiffs

v.

Adv. Proc. No. 01-3121

HILTON L. CONNER, JR. and  
BONNIE I. CONNER

Defendants

**MEMORANDUM ON MOTION TO DISMISS**

APPEARANCES: O'CONNOR, PETTY, CHILD & BOSWELL  
Wade M. Boswell, Esq.  
Post Office Box 219  
Knoxville, Tennessee 37901  
Attorneys for Plaintiffs

MOSTOLLER, STULBERG & WHITFIELD  
Ann Mostoller, Esq.  
136 S. Illinois Avenue  
Suite 104  
Oak Ridge, Tennessee 37830  
Attorneys for Defendants

**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

Defendant Bonnie Conner filed a Motion to Dismiss on December 6, 2001, asking the court to dismiss the Plaintiffs' Complaint, as to her only, for failure to state a claim upon which relief can be granted. The Plaintiffs filed a Response to Motion to Dismiss on December 17, 2001. Each party has briefed its position to the court.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 1993).

## I

Defendants Hilton Conner and Bonnie Conner filed a joint Chapter 7 Petition, pursuant to 11 U.S.C.A. § 302(a) (West 1993), on May 24, 2001. In addition to their individual names, Mr. and Mrs. Conner each filed under the trade name "Circle RB Enterprises" (Circle RB). According to the Conners' Statement of Financial Affairs, Circle RB was a construction business operated from December 1999 through December 2000.

Schedule F to the Chapter 7 Petition lists the Plaintiffs as creditors of both Mr. and Mrs. Conner. The Plaintiffs' Complaint, filed on September 4, 2001, seeks damages for allegedly defective construction work performed on the Plaintiffs' residence by Circle RB. The Complaint additionally asks that all damages awarded be held nondischargeable pursuant to 11 U.S.C.A. § 523(a)(2)(A)<sup>1</sup> and/or (a)(6)<sup>2</sup> (West 1993). The Complaint alleges that Mr. Conner fraudulently misstated Circle RB's qualifications and that the work performed by the Conners was defective.

---

<sup>1</sup> ?A discharge [under Chapter 7] does not discharge an individual debtor from any debt for money . . . to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]” 11 U.S.C.A. § 523(a)(2)(A).

<sup>2</sup> ?A discharge [under Chapter 7] does not discharge an individual debtor from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity[.]” 11 U.S.C.A. § 523(a)(6).

## II

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a complaint may be dismissed for “failure to state a claim upon which relief can be granted.” See *also* FED. R. BANKR. P. 7012(b) (“Rule 12(b) . . . applies in adversary proceedings.”). When deciding a 12(b)(6) motion, the court must accept as true every factual allegation in the complaint. See *Windsor v. Tennessean*, 719 F.2d 155, 158 (6<sup>th</sup> Cir. 1983). The claim should only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts warranting the requested relief. *Id.*

In support of her Rule 12(b)(6) motion, Mrs. Conner contends that the Complaint contains no specific allegations against her that would support a cause of action under § 523(a). The court disagrees.

On her Chapter 7 Petition, Mrs. Conner acknowledges doing business as Circle RB. The Complaint alleges defective work by the Defendants and “under defendants’ direction” in support of the § 523(a)(6) claim of willful and malicious injury. The Complaint also alleges “defendants’ misrepresentations” in support of the § 523(a)(2)(A) claim. Although the specific misrepresentations cited were all verbalized by Mr. Conner, it is not beyond doubt that Mrs. Conner, as a participant in the joint business, could also be responsible for the alleged false statements.

Mrs. Conner’s Motion to Dismiss must therefore be denied. An appropriate order will be entered.

FILED: January 4, 2002

BY THE COURT

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-32616

HILTON LEROY CONNER, JR.  
d/b/a CIRCLE RB ENTERPRISES and  
BONNIE IONE CONNER  
d/b/a CIRCLE RB ENTERPRISES

Debtors

PAULYNN WRIGHT and  
KARL WRIGHT

Plaintiffs

v.

Adv. Proc. No. 01-3121

HILTON L. CONNER, JR. and  
BONNIE I. CONNER

Defendants

**ORDER**

For the reasons stated in the Memorandum on Motion to Dismiss filed this date, the court directs that the Motion to Dismiss filed by the Defendant Bonnie Conner on December 6, 2001, is DENIED.

SO ORDERED.

ENTER: January 4, 2002

BY THE COURT

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE