

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

THOMAS R. KELLY and  
SANDRA K. KELLY,

Case No. 87-2718-C

Debtors.

DONALD F. NEIMAN, TRUSTEE,

Adversary No. 88-0056

Plaintiff,

vs.

THOMAS R. KELLY and  
SANDRA K. KELLY,

Defendants.

ORDER MOTION FOR MORE SPECIFIC STATEMENT

The debtor/defendants have filed a motion for a more specific statement. They pray that the plaintiff be required to amend the complaint by pleading the nature and subject matter of any recorded information, books, documents, records, or papers which were allegedly falsified, including the information allegedly falsified; the nature and subject matter of any recorded information and records which was allegedly concealed, destroyed, mutilated, failed to keep or preserve, including the information such records purported to contain, and how such information was not kept or preserved; the identity of the probate estate allegedly falsified; the nature and subject matter of the records allegedly falsified in the probate estate, including the information allegedly falsified; the basis for the allegations that the defendant/debtors gave,

offered, received, or attempted to obtain money, property, or advantage for acting or forbearing to act, in violation of the provisions of 11 U.S.C. §727(a) (4) (c); the nature and subject matter of such action or failure to act; and, whether such actions or forbearances were to obtain money, property, or advantage.

#### DISCUSSION

Bankruptcy Rule 7012 incorporates F.R. Civ.P. 12(b)-(h) in adversary proceedings. Provision for a motion for more specific statement is set forth in Rule 12(e). That rule provides that if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to form a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading.

Rule 12(e) must be read in conjunction with Rule 8, F.R. Civ.P., (Bankruptcy Rule 7008) which sets forth the general rules of pleading, Hodgson v. Virginia Baptist Hospital., 482 F.2d 821, 822 (CA 4 1973), and cannot be construed to repeal Rule 8. Agricultural Lands, Inc. v. Panhandle & S.F.R. Co., 60 F. Supp. 108, 110 (D.C. Mo. 1945). The general philosophy of the pleading rules is that they should give fair notice and should be liberally construed. Hunt v. Penn Cent. Transp. Co., 414 F. Supp. 1157, 1160 (W.D. P.A. 1976)

A motion for more specific statement may be granted only if the information sought is necessary to form a responsive pleading and not for the purpose of obtaining information necessary to prepare for trial. Wycoff v. Nichols, 32 F.R.D. 369, 370 (W.D. Mo. 1962). Motions under Rule 12(e) are not favored by the courts, Sopkin v. Missouri Natl. Life Ins. Co., 222 F. Supp. 984, 985 (W.D. Mo. 1963), and are not to be used as a means of discovery. Automatic Washer Co. v. Easy Washing Mach. Corp., 9 F.R.D. 335. (D.C. N.Y. 1949).

In this case the complaint is not so vague and obscure that a response is difficult. The allegations of the complaint satisfy the liberal requirements of Rule 8. The complaint fairly notifies the defendant/debtors of the nature of the claims. Granting the motion as framed would require the plaintiff to plead evidence which is better gained through the discovery process, and would have the effect of enlarging the complaint to proportions beyond those contemplated by Rule 8.

IT IS ACCORDINGLY ORDERED that defendant/debtors' motion for a more specific statement is OVERRULED.

Dated this 21<sup>st</sup> day of April, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE