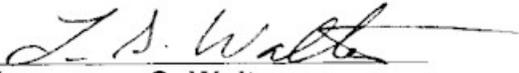


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.




Lawrence S. Walter
United States Bankruptcy Judge

Dated: August 25, 2010

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: KIRK W.M. TYSON,

Debtor

Case No. 09-34301

Adv. No. 10-3035

JOSEPH H.A.M. RODENBERG,

Plaintiff

Judge L. S. Walter
Chapter 7

v.

KIRK W.M. TYSON,

Defendant

**DECISION GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF'S MOTION
TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES**

This matter is before the court on the *Plaintiff's Motion to Strike Defendant's Affirmative Defenses* (Adv. Doc. 11); *Response of Defendant to Plaintiff's Motion to Strike Defendant's Affirmative Defenses* (Adv. Doc. 14); and the *Reply to Defendant's Response to Plaintiff's*

Motion to Strike Defendant's Affirmative Defenses (Adv. Doc. 16). The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

BACKGROUND

On February 1, 2010, Plaintiff Joseph H.A.M. Rodenberg ("Plaintiff") filed a Complaint against Debtor-Defendant Kirk W.M. Tyson ("Debtor") alleging two causes of action: 1) a request for a determination that the debt owed to the Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), what is commonly know as the fraud exception, and 2) an objection to the Debtor's discharge pursuant to 11 U.S.C. § 727(a). Subsequently, the Plaintiff's § 727(a) action was dismissed by the court leaving only the action to determine the dischargeability of a debt pursuant to § 523(a)(2) (Adv. Docs. 19 & 22).

On March 17, 2010, the Debtor filed his Answer (Adv. Doc. 7, Debtor's Answer ("Ans.)) and on April 6, 2010, the Plaintiff filed a motion to strike seven defenses listed in the Debtor's Answer. The defenses that the Plaintiff seeks to strike include the following:

Second Defense: The debt claimed by Plaintiff is a business debt that was intended to be personally guaranteed.

Third Defense: The debt claimed by Plaintiff was discharged by the 2000 Tyson Bankruptcy, of which Plaintiff had actual knowledge before the deadline to file a proof of claim and before the deadline to file an action pursuant to 11 U.S.C. § 523 and/or 727.

Fourth Defense: The instant action was not timely filed pursuant to F.R.B.P. 4004 and/or 4007.

Fifth Defense: Defendant avers that Plaintiff has failed to mitigate its alleged and claimed damages.

Sixth Defense: Defendant avers that Plaintiff's Complaint is barred by the equitable doctrines of waiver, release and estoppel.

Seventh Defense: Defendant avers that Plaintiff's Complaint is barred by set-off.

Eighth Defense: Defendant avers that no act or omission or knowledge of the Defendant was the proximate cause of any damages allegedly sustained by Plaintiff.

(Ans., ¶¶ 47-53).

Also relevant are certain factual admissions that appear in the Answer and provide important background on the dispute: On or about January 24, 2000, the Plaintiff agreed to loan the Debtor approximately \$50,000 (Ans., ¶ 7).¹ On or about February 18, 2000, the Debtor executed a promissory note dated January 15, 2000, a copy of which is attached to the Plaintiff's Complaint as Ex. D (Adv. Doc. 1, Plaintiff's Complaint ("Compl."), Ex. D; Ans., ¶ 9). The promissory note states that Kirk W.M. Tyson [Debtor] agrees to pay Joseph Rodenberg [Plaintiff] "the principal sum of US \$51,388, together with interest from date hereof until paid, at the rate of seven percent per annum" (Compl., Ex. D; Ans., ¶ 9). Under the terms of the note, the entire principal amount was to be "repaid within twelve months" (Compl., Ex. D; Ans., ¶ 9).²

On December 27, 2000, less than a month before the loan was due, the Debtor filed a Chapter 7 bankruptcy case in the United States Bankruptcy Court for the Eastern District of Wisconsin captioned *In re Kirk W. Tyson*, Case No. 00-31907 ("2000 Tyson bankruptcy") (Ans., ¶ 12). As of the bankruptcy filing date, the Debtor made no payments on the loan (*Id.*). Debtor did not list the Plaintiff as a creditor on the schedules in the 2000 Tyson bankruptcy³ (*Id.*, ¶ 14) and Plaintiff did not file a proof of claim (*Id.*, ¶ 16). Debtor and Plaintiff disagree regarding whether Plaintiff was otherwise made aware of the 2000 Tyson bankruptcy (Compl., ¶ 24; Ans., ¶¶ 14-16). On or about April 5, 2001, the Debtor received a discharge (Ans., ¶ 20).

¹ Throughout the discussion of the facts, the court references the paragraphs in the Debtor's Answer where he admits factual allegations in the Plaintiff's Complaint.

² The Debtor avers that the promissory note was intended as a personal guaranty (Ans., ¶ 9).

³ The Debtor asserts that he did not list the Plaintiff because his prior bankruptcy counsel "advised [the Debtor] that it was not necessary to list International Creditors on his schedules" (Ans., ¶ 14).

During the summer of 2004, the Debtor's communication with the Plaintiff regarding repayment of the loan ceased (*Id.*, ¶ 25). On November 3, 2004, the Plaintiff filed a complaint against the Debtor in the Law Division of the Circuit Court of Cook County Illinois alleging breach of contract ("Illinois state court case") (*Id.*, ¶ 27). On November 4, 2005, a judgment order was entered in the Illinois state court case ("Illinois judgment order") (*Id.*, ¶ 32). The Debtor admits that a "true and correct" copy of the Illinois judgment order is attached to the Plaintiff's Complaint as Exhibit F (*Id.*). The Illinois judgment order, rendered upon the Plaintiff's motion for summary judgment, included a determination that the Debtor is liable to the Plaintiff in the total amount of \$76,502.24 (*Id.*). Significantly, the Illinois state court also made the following finding:

AFTER HEARING ORAL ARGUMENTS, THE COURT FINDS:

1. Pursuant to 11 U.S.C. § 523(a)(3)(A), the debt of \$51,388.00, plus 7% interest calculated from January 15, 2000 (the "Debt"), owed by the Defendant to Plaintiff was not discharged in Defendant's bankruptcy case in the Eastern District of Wisconsin, captioned: In re Tyson; Case No. 00-31907[.]

(Compl., Ex. F).

On or about October 6, 2003, following the entry of the Illinois judgment order, the Debtor incorporated Kirk W.M. Tyson LLC ("Tyson LLC") in the State of Ohio (*Ans.*, ¶ 38). Debtor is the sole member and owner of Tyson LLC (*Id.*). The Debtor subsequently filed his current Chapter 7 petition in the United States Bankruptcy Court for the Southern District of Ohio on July 15, 2009 (*Id.*, ¶ 41.) At the time of the current bankruptcy filing, the Plaintiff had commenced an action in Ohio to have a receiver appointed to take control of Tyson LLC (*Id.*).

LEGAL ANALYSIS

A. Standard for Striking Defenses Pursuant to Rule 12(f)

Plaintiff timely filed his motion to strike defenses pursuant to Fed. R. Civ. P. 12(f), incorporated in bankruptcy adversary proceedings via Fed. R. Bankr. P. 7012(b), asserting that the defenses raised by Debtor must fail as a matter of law. Fed. R. Civ. P. 12(f) permits a party to file a motion to strike within a prescribed time period after receipt of a pleading. It provides as follows:

Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: 1) on its own; or 2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Fed. R. Civ. P. 12(f). Motions to strike are generally disfavored although they are within the sound discretion of the court. *Federal Savings and Loan Ins. Corp. v. Burdette*, 696 F. Supp. 1183, 1186 (E.D. Tenn. 1988). *See also Fullen v. City of Columbus*, 2008 WL 4762763, at *2 (S.D. Ohio Oct. 24, 2008).

As its terms imply, a party filing a Rule 12(f) motion seeks to strike defenses that are, among other things, insufficient or immaterial. *Federal Savings*, 696 F.Supp. at 1186. A defense is immaterial “if it bears no essential or important relationship to the primary claim for relief” *Id.* A defense is insufficient “if, as a matter of law, the defense cannot succeed under any circumstances.” *Id.*; *Official Comm. of Unsecured Creditors v. Callahan (In re Crowley, Milner and Co.)*, 299 B.R. 830, 841 (Bankr. E.D. Mich. 2003) *citing Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953) (explaining that a “motion to strike should be granted only when the pleading to be stricken has no possible relation to the controversy”).

“Generally, a 12(f) ‘motion to strike will not be granted if the insufficiency of the defense is not clearly apparent, or if it raises factual issues that should be determined on a hearing on the merits.’” *Fullen*, 2008 WL 4762763, at *2 (citing *United States v. Pretty Products, Inc.*, 780 F.Supp. 1488, 1498 (S.D. Ohio 1991)). However, in spite of the high standard governing motions to strike defenses, the motions can “‘serve a useful purpose by eliminating insufficient defenses and saving the time and expense which would otherwise be spent in litigating issues which would not affect the outcome of the case.’” *Pretty Products, Inc.*, 780 F.Supp. at 1498. *See also Fullen*, 2008 WL 4762763, at *2 (noting that motions to strike defenses, when appropriately filed, aid in eliminating spurious issues before trial and streamlining litigation).

B. Debtor’s Second Defense

The Plaintiff asserts that the Debtor’s Second Defense, that the debt is a business debt intended to be personally guaranteed (Ans., ¶ 47), is insufficient and does not constitute a defense in a § 523(a)(2) action. The Debtor counters that the characterization of the debt and the intent of the Debtor are relevant facts pertaining to whether the Debtor intended to repay the debt. The Debtor’s intent to repay is a critical element cited in the Plaintiff’s § 523(a)(2) action (Compl., ¶¶ 67-71). While the Plaintiff may disagree with the Debtor’s factual characterization of the debt as a business debt intended to be personally guaranteed by the Debtor, factual disputes are resolved at trial, not upon a party’s motion to strike. *See Fullen*, 2008 WL 4762763, at *2; *Pretty Products, Inc.*, 780 F.Supp. at 1498.

The court concludes that the Debtor’s Second Defense raises facts relevant to the elements of the Plaintiff’s § 523(a)(2) action. Consequently, the court will not strike the defense.

C. Debtor’s Third Defense

In his Third Defense, the Debtor asserts:

The debt claimed by Plaintiff was discharged by the 2000 Tyson Bankruptcy, of which Plaintiff had actual knowledge before the deadline to file a proof of claim and before the deadline to file an action pursuant to 11 U.S.C. § 523 and/or 727.

(Ans., ¶ 48). The Plaintiff argues that this defense must fail because, prior to the present bankruptcy filing, the Illinois state court issued a judgment order determining that the debt was not discharged in the 2000 Tyson bankruptcy. The Plaintiff asserts that the Illinois judgment order has preclusive effect barring the Debtor, and this bankruptcy court, from revisiting the subject. In response, the Debtor suggests that the Illinois state court lacked authority to determine whether the debt was discharged in the 2000 Tyson bankruptcy. Furthermore, the Debtor asserts that there is no evidence of record to support that the Illinois judgment order is entitled to preclusive effect.

To analyze these issues, the court must return to the language of the Illinois judgment order. As noted before, the Debtor has admitted that a “true and correct” copy of the judgment order is attached to the Plaintiff’s Complaint as Exhibit F (Ans., ¶ 32). In that order, the Illinois state court awarded judgment on the debt owed by the Debtor to the Plaintiff in the amount of \$76,502.24 and concluded that: “[p]ursuant to 11 U.S.C. § 523(a)(3)(A), the debt . . . was not discharged in [Debtor’s] bankruptcy case in the Eastern District of Wisconsin, captioned: In re Tyson; Case No. 00-31907” (Compl., Ex. F).

Significantly, the Illinois state court cited § 523(a)(3)(A),⁴ the nondischargeability provision pertaining to omitted creditors, as the basis for its determination that the debt was not

⁴ Section 523(a)(3) provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of

discharged. While state courts lack jurisdiction to determine the dischargeability of debts under certain provisions of § 523,⁵ state courts have concurrent jurisdiction with bankruptcy courts to determine the dischargeability of debts pursuant to § 523(a)(3). See *In re Scott*, 244 B.R. 885, 887 (Bankr. E.D. Mich. 1999); *In re Milburn*, 218 B.R. 862, 864 (Bankr. W.D. Ky. 1998).

The Debtor, relying on a Sixth Circuit opinion, argues that state court authority is actually much more limited. Citing *Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367 (6th Cir. 2008), the Debtor asserts that a state court's interpretation of a prior bankruptcy discharge order must be correct in order to be protected from collateral attack under the Rooker-Feldman doctrine. In *Hamilton*, the Sixth Circuit concluded that a state court determination that necessarily involved an interpretation or modification of a debtor's discharge order was void ab initio to the extent that the state court's determination was actually incorrect. *Id.*, at 372-75.

However, *Hamilton* presented a very different scenario from the case at hand. The state court judgment order analyzed in *Hamilton* did not involve a determination that a specific debt was dischargeable under one of the provisions of 11 U.S.C. § 523. Instead, the state court made the erroneous determination that a debtor had waived his right to assert his prior bankruptcy discharge by failing to raise it as an affirmative defense in the subsequent state court proceeding involving a discharged debt, a determination that the Sixth Circuit found to effectively modify the discharge order pursuant to 11 U.S.C. § 524. *Id.*, at 373. The Sixth Circuit was careful to make a distinction between a state court determination of the dischargeability of a specific debt under § 523 and a state court interpretation or modification of the discharge injunction pursuant

such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]

⁵ Generally, state courts lack jurisdiction to determine the dischargeability of those types of debts for which the nondischargeability complaint must be filed within 60 days after the date first set for the § 341 meeting of creditors. *In re Scott*, 244 B.R. 885, 887 (Bankr. E.D. Mich. 1999); *In re Milburn*, 218 B.R. 862, 864-65 (Bankr. W.D. Ky. 1998). Fed. R. Bankr. P. 4007(c) imposes the 60 day deadline on the types of debts enumerated in § 523(c) which, post-BAPCPA, include the provisions of § 523(a)(2), (a)(4) and (a)(6). See *Scott*, 244 B.R. at 887; *Milburn*, 218 B.R. at 865.

to § 524(a). Relying in part on a decision rendered by the Ninth Circuit Bankruptcy Appellate Panel, the Sixth Circuit contrasted the “unbridled” authority of state courts to determine the dischargeability of most debts with the much more limited authority of state courts to interpret a bankruptcy court’s discharge order. *Id.* at 373-75 (citing *Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP (In re Pavelich)*, 229 B.R. 777, 783 (B.A.P. 9th Cir. 1999)). Because states have concurrent jurisdiction to determine whether a particular debt is excepted from discharge pursuant to most provisions of § 523, any error made by a state court in making the determination would be mere legal error requiring correction through ordinary direct review processes. *Pavelich*, 229 B.R. at 784.

In the present case, the language in the Illinois state court order is limited to a determination that a specific debt was not discharged in the 2000 Tyson bankruptcy pursuant to 11 U.S.C. § 523(a)(3)(A), a determination which the state court had concurrent jurisdiction with federal courts to make. As such, the Debtor’s reliance on the Sixth Circuit’s *Hamilton* decision is misplaced.

Nonetheless, the fact that the Illinois state court had authority to determine the dischargeability of the debt in the 2000 Tyson bankruptcy does not necessarily mean that the Illinois judgment order is entitled to preclusive effect. Pursuant to 28 U.S.C. § 1738, a federal court is to give the same preclusive effect to a state court judgment as another court of that state would give. *Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 189 (B.A.P. 6th Cir. 2002) (citing *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 461 (6th Cir. 1999)). Under Illinois law, collateral estoppel, also called issue preclusion, applies ““when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction.”” *In re*

Nikitas, 326 B.R. 127, 130 (Bankr. N.D. Ill. 2005) (citing *Nowak v. St. Rita High School*, 197 Ill.2d 381, 389-90, 757 N.E.2d 471, 477 (2001)). The doctrine has three basic requirements: “(1) a prior case presented an identical issue; (2) the case ended in a final judgment; and (3) the party against whom estoppel is asserted was a party to the case.” *Id.* Importantly, collateral estoppel applies only to a “point or question *actually litigated* and determined.” *Id.* at 130-31 (noting that “actually litigated” means that the parties disputed the issue and the trier of fact resolved it). In the case at hand, these elements are not discussed in the pleadings and, consequently, there is no factual record to establish whether the Illinois judgment order is entitled to preclusive effect under the doctrine of collateral estoppel.

Similarly, the applicability of the Rooker-Feldman doctrine to the Illinois judgment order may depend on facts not before the court. Generally, Rooker-Feldman prevents a losing party in a state court proceeding from asking a lower federal court to entertain an appeal of the state court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (noting that it prevents: “. . . cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments”). Although Rooker-Feldman has broad application, there are exceptions. For example, Rooker-Feldman may not apply where the state court judgment was “procured through fraud, deception, accident or mistake.” *Singleton v. Fifth Third Bank of Western Ohio (In re Singleton)*, 230 B.R. 533, 538 (B.A.P. 6th Cir. 1999). Also, some courts have determined that Rooker-Feldman will not apply when the party had no reasonable opportunity to raise his federal claim in the state proceedings. *Id.*

Again, without a factual record, the court cannot determine the applicability of the Rooker-Feldman doctrine to the Illinois judgment order. For this reason, the court will deny the Plaintiff’s motion to strike the Debtor’s Third Defense.

D. Debtor's Fourth Defense

Next, the Plaintiff requests that the Debtor's Fourth Defense, attacking the timeliness of the causes of action in the Plaintiff's Complaint, be stricken because the issue will be resolved when the court rules on the Debtor's motion to dismiss. Subsequent to the filing of the Plaintiff's motion to strike, the court did rule on the Debtor's motion to dismiss holding that the Plaintiff's second cause of action in the Complaint, an objection to / request for denial of the Debtor's discharge pursuant to § 727(a), was untimely pursuant to Fed. R. Bankr. P. 4004. The cause of action was dismissed by the court on June 24, 2010 (Adv. Docs. 19 & 22). In the same ruling, the court concluded that the Plaintiff received an extension of time to file the first cause of action in the Complaint, a request that a specific debt be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2) (Adv. Doc. 22). The Complaint was filed within the extended time period with respect to the § 523(a)(2) action.

The court agrees with the Plaintiff that the court's ruling on the Debtor's motion to dismiss renders the Debtor's Fourth Defense moot. Consequently, the court will strike the Fourth Defense.

E. Debtor's Fifth, Sixth and Seventh Defenses

In the Fifth, Sixth and Seventh Defenses, the Debtor asserts the affirmative defenses of failure to mitigate, the equitable doctrines of waiver, release and estoppel and set-off (Ans., ¶¶ 50-52). The Plaintiff argues that these defenses should be stricken because they are not proper defenses to a § 523 nondischargeability action. Instead, they are defenses to the appropriate level of damages and are issues that should have been raised in the Illinois state court case. In response, the Debtor asserts that the defenses are relevant to the extent that the Illinois judgment order is not entitled to preclusive effect and the bankruptcy court will be required to determine the level of damages that are nondischargeable. Furthermore, the Debtor asserts that these

defenses are relevant to the extent that the Plaintiff seeks attorney fees or other damages for a period of time following the entry of the Illinois judgment order.

The court notes that the Plaintiff includes no request for attorney fees or other damages for the time period following the entry of the Illinois judgment order in the Complaint; instead, the Plaintiff limits his request for relief to a determination that the debt is nondischargeable. Nonetheless, the court agrees with the Debtor that, until the preclusive effect of the Illinois judgment order is determined, these defenses remain material to the remote but potential need to litigate the underlying breach of contract claim and determine the amount of damages at issue in this nondischargeability proceeding.⁶ For these reasons, the court will deny the Plaintiff's request to strike the Debtor's Fifth, Sixth and Seventh Defenses.

F. Debtor's Eighth Defense

As his Eighth Defense, the Debtor asserts that no act, omission or knowledge of the Debtor was the proximate cause of the Plaintiff's damages (Ans., ¶ 53). The Plaintiff requests that this defense be stricken because proximate cause, to the extent relevant to the underlying contract claim, should have been raised in the state court matter and is not a viable defense to a § 523 nondischargeability action. The Debtor responds that the Plaintiff, himself, raises proximate

⁶ Pursuant to the doctrines of res judicata (claim preclusion) and/or Rooker-Feldman, a final state court judgment that establishes the debtor's liability to a creditor on a state law claim and liquidates the amount owed is generally entitled to preclusive effect as to liability and amount owed in a subsequent adversary proceeding to determine the same debt's dischargeability. See *Sliva v. May (In re May)*, 321 B.R. 462, 465-67 (Bankr. N.D. Ohio 2004) (noting that claim preclusion generally prevents a bankruptcy court from re-evaluating a state court judgment finding a debtor liable for a specific amount of damages on an underlying state law claim like breach of contract). However, there is no factual record before the court to establish the applicability of those doctrines at this point in the litigation. See *Dollie's Playhouse, Inc. v. Nable Excavating, Inc. (In re Dollie's Playhouse, Inc.)*, 481 F.3d 998, 1001 (7th Cir. 2007) (describing the general requirements of claim preclusion under Illinois state law). Although the doctrines can be confusing when applied in a nondischargeability adversary proceeding, it is generally res judicata that prevents the relitigation of liability and amount owed on the underlying debt and collateral estoppel (issue preclusion) which precludes the relitigation of specific findings made by the state court relevant to the elements of the nondischargeability cause of action. Understanding the differences between these doctrines can be significant, especially with respect to the preclusive effect of default judgments. See *Sliva*, 321 B.R. at 466-67.

cause in the Complaint by asserting that the Plaintiff “has sustained and continues to sustain damages proximately caused by the Debtor’s representations” (Compl., ¶ 75).

The Debtor’s Eighth Defense is generally written, but responsive to issues raised in the Complaint. *See Lawrence v. Chabot*, 182 Fed. Appx. 442, 456-57, 2006 WL 1342316, at *12 (6th Cir. May 16, 2006) (noting that a defendant may plead affirmative defenses in general terms, even bare “one-liners,” as long as they provide fair notice). Also, like the previous defenses, it may be material if the Illinois judgment order is not entitled to preclusive effect. For these reasons, the court will deny the Plaintiff’s request to strike the Debtor’s Eighth Defense.

CONCLUSION

With respect to all but the Fourth Defense, the Plaintiff’s motion to strike the Debtor’s defenses is premature and the issues raised cannot be decided without a factual record before the court. Consistent with the reasons provided herein, the court strikes the Debtor’s Fourth Defense as moot. The remainder of the Plaintiff’s motion to strike is **DENIED**.

SO ORDERED.

cc:

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