

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEW MEXICO**

In re: SHAMASH S. JAFFER,  
Debtor.

No. 7-15-11535 JA

---

MARIA MARTINEZ,  
Plaintiff,

v.

Adversary No. 16-1054 J

SHAMASH S. JAFFER,  
Defendant.

**ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE**

THIS MATTER is before the Court on the Defendant's Motion to Dismiss Adversary Proceeding ("Motion to Dismiss") filed September 22, 2016. *See* Docket No. 3. Since the filing of the Motion to Dismiss, Plaintiff filed an amended complaint which superseded the original complaint. *See* Docket No. 6.<sup>1</sup> The Motion to Dismiss thus seeks to dismiss a complaint that is no longer in effect. The Court will, therefore, deny the Motion to Dismiss without prejudice.

**PROCEDURAL HISTORY AND DISCUSSION**

Plaintiff Maria Martinez initiated this adversary proceeding by filing a Complaint for Determination Excepting Debt from Dischargeability and to Deny Defendant's Discharge ("Complaint") on September 16, 2016. *See* Docket No. 1. Instead of filing an answer to the Complaint, on September 22, 2016 Defendant filed the Motion to Dismiss and served a copy on Plaintiff's counsel. *See* Docket No. 3. Plaintiff certified that she served the summons and a copy of the Complaint by mail to Defendant's bankruptcy counsel on September 30, 2016, within

---

<sup>1</sup> Defendant filed another Motion to Dismiss Adversary Proceeding ("Second Motion to Dismiss") requesting dismissal of the amended complaint. *See* Docket No. 11. The deadline to respond to the Second Motion to Dismiss has not passed.

seven days of the issuance of the Summons and Notice of Scheduling Conference in an Adversary Proceeding. *See* Docket No. 5. *See also*, Fed.R.Bankr.P. 7004(e) (“if service is by . . . mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued.”).<sup>2</sup>

On October 11, 2016, Plaintiff filed a response to the Motion to Dismiss (Docket No. 7) and an Amended Complaint for Determination Excepting Debt from Dischargeability (“Amended Complaint”) (Docket No. 6). Federal Rule of Civil Procedure 15, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7015, governs amended pleadings. It provides, in relevant part:

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under 12(b), (e), or (f), whichever is earlier.

Fed.R.Civ.P. 15(a)(1).

Plaintiff filed the Amended Complaint within 21 days after service of the summons and Complaint, and within 21 days after service of the Motion to Dismiss.<sup>3</sup> Plaintiff’s Amended Complaint was, therefore, filed as a matter of right, consistent with the requirements of Fed.R.Civ.P. 15(a)(1).

---

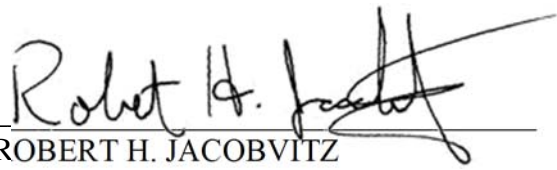
<sup>2</sup> If the debtor is represented by bankruptcy counsel, service of an adversary proceeding upon a debtor requires service upon both the debtor and the debtor’s counsel. *See* Fed.R.Bankr.P. 7004(g) (“If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor’s attorney by any means authorized under Rule 5(b) F.R.Civ.P.”).

<sup>3</sup>

<b>Document</b>	<b>Date Served</b>	<b>Date Filed</b>	<b>Date Difference</b>
Summons and Complaint	September 30, 2016		11 days (9/30/16 – 10/11/16)
Amended Complaint		October 11, 2016	
Motion to Dismiss	September 22, 2016		19 days (9/22/16 – 10/11/16)

“[A]n amended complaint ‘supercedes an original complaint and renders the original complaint without legal effect.’” *Mink v. Suthers*, 482 F.3d 1244, 1254 (10<sup>th</sup> Cir. 2007) (quoting *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8<sup>th</sup> Cir. 2000)). Where the original complaint has been superceded by an amended complaint filed in accordance with Fed.R.Civ.P. 15, the Court must look to the amended complaint to assess the Plaintiff’s claims. *See Southern Utah Wilderness Alliance v. Palma*, 707 F.3d 1143, 1152-1153 (10<sup>th</sup> Cir. 2013) (“Where . . . the original complaint has been superceded by an amended complaint, we examine the amended complaint in assessing a plaintiff’s claims . . .”) (citations and internal quotation marks omitted). The Motion to Dismiss is directed to the Complaint, which has now been superceded by the Amended Complaint. The Motion to Dismiss is, therefore, moot because it is directed at a pleading that no longer has any legal effect.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED, without prejudice to the filing of a motion to dismiss the Amended Complaint.

  
ROBERT H. JACOBVITZ  
United States Bankruptcy Judge

Date entered on docket: November 16, 2016

COPY TO:

Aliza Gail Organick  
Clinical Law Program, UNM School of Law  
Attorney for Plaintiff  
UNM MSC 11-6070  
Albuquerque, NM 87131-0001

Christopher M. Gatton  
Attorney for Defendant  
10400 Academy Rd., #350  
Albuquerque, NM 87111