

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

5 Case No. F11-00939-HAR
6 In re DONALD A. TANGWALL,
7 Debtor(s)
8 DONALD A. TANGWALL, individually,
9 Plaintiff(s)
10 v.
11 WILLIAM J. EDWARDS; LARRY
12 DJERNES; JOEL MARKING; LANCE
13 LUNDEVALL; RON E. SIBLEY; JOHN
14 LAPIERRE, all individually, jointly and
15 severally; LARRY D. COMPTON,
16 individually and as trustee; UNKNOWN
17 OTHERS, individually, jointly and
18 severally.
19 Defendant(s)

In Chapter 7

Adv Proc No F15-90009-HAR

**MEMORANDUM SUPPORTING FINAL
ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE**

16 This memorandum is to explain why the court has dismissed Causes I and II and Counts IV
17 and V of the first amended complaint (ECF No. 12) against the Montana defendants (and,
18 possibly, in part against Larry Compton, too). Plaintiff has failed to state a plausible claim with
19 these four counts.

20 To state a plausible claim, a complaint must sufficiently set out the factual basis of the
21 claim.¹ Pleading legal conclusions does not satisfy this requirement.² The court's reasoning for
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25 ¹Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

26 ²Ashcroft v. Iqbal, at 678.

1 dismissing the original and first amend complaints has been set out in three previous memoranda
2 and will not be repeated here³.

3 The original and first amended complaints essentially allege: (a)Tangwall filed a pre-
4 bankruptcy Montana state court action against officials of Roundup, Montana; (b) the state court
5 judge declared Tangwall a vexatious litigant; (c) the state court judge issued a bench warrant with
6 a significant bond amount to obtain a release, *but no details are given as to why the warrant was*
7 *issued (was it for civil or criminal contempt)*; (d) Tangwall was arrested pre-bankruptcy at the
8 Alaska border on his way back to Montana on the basis of the warrant; (e) the Montana judge was
9 apprised of the bankruptcy, but reissued the warrant at the behest of the Montana defendants,
10 who argued that the automatic stay did not apply.

11 Without more detail, the complaint does not state a plausible claim against the Montana
12 defendants. For example, the complaint does not allege whether the warrant was based on a civil
13 contempt or criminal contempt. In Montana the classification is critical since it determines the
14 procedures a Montana district court must follow.⁴ And, these two types of contempt are generally
15 subject to differing rules under the bankruptcy code. A criminal contempt is subject to an
16 exception to 11 U.S.C. §362(a). Under §362(b)(1) concerning the prosecution of a criminal
17 proceeding. In its initial memorandum (the one dismissing the original complaint), the court
18 stated additional reasons that more facts had to be pled to determine if the claim is plausible.⁵
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23 ³ECF Nos. 8, 10 and 13.

24 ⁴Huffine v Montana Sixth Judicial Dist. Court, Park County, 945 P.2d 927, 929-30 (Mont. 1997).

25 ⁵ECF No. 8, Sec. 4.2 and 4.3.

1 Finally, in the Ninth Circuit even a civil contempt proceeding is not subject to the
2 automatic stay.⁶ This probably holds true with respect to the discharge injunction, 11 USC
3 §524(a) as well.

4 Tangwall still has the option to appeal the final order of dismissal of the first amended
5 complaint.

6 DATED: August 24, 2015

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8 /s/ Herb Ross
9 HERB ROSS
U.S. Bankruptcy Judge

10 Serve :

- 11 – Stonewall Jason Crawford, Esq., attorney for plaintiff
12 – Courtesy copy to R. Allan Payne, Esq., Doney Crowley, PC, 44 West 6th Avenue, Suite 200,
Helena MT 59601, for defendants in Case No. DV-11-08
13 – Courtesy copy to City of Roundup, PO Box 660, Roundup, MT 59072
14 – Courtesy copy, Cabot Christianson, Esq., attorney for the trustee
– Larry Compton, trustee
– Cheryl Rapp, Adv. Proc. Mgr.

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25 ⁶In re Dingley, 514 B.R. 591, 597-600 (9th Cir. BAP 2014) (although the BAP was uncomfortable with
the result, it felt bound by Ninth Circuit precedent which preceded the Bankruptcy Act of 1978).