

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re:	:	
SEAN T. HEALEY	:	BK No. 01-12418
Debtor	:	Chapter 7
	:	
MARTIN PESKIN, individually and as	:	
Trustee of the MARTIN J. PESKIN,	:	
D.D.S., LTD. PENSION PLAN	:	
Plaintiff	:	
	:	
v.	:	A.P. No. 01-1117
	:	
SEAN T. HEALEY	:	
Defendant	:	

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TITLE: *Peskin v. Healey (In re Healey)*

CITATION: Unpublished

**ORDER GRANTING IN PART AND DENYING IN
PART DEFENDANT'S MOTION TO DISMISS**

Heard on the Defendant's Motion to Dismiss the above captioned adversary proceeding. The Defendant seeks dismissal of Count I of Plaintiff's Complaint for failure to plead fraud with particularity, see Fed. R. Civ. P. 9(b),¹ and he seeks dismissal of Count II of the Complaint for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).² Upon

¹ Rule 9(b) of the Federal Rules of Civil Procedure is incorporated into bankruptcy by Fed. R. Bankr. P. 7009.

² Rule 12(b)(6) of the Federal Rules of Civil Procedure is incorporated into bankruptcy by Fed. R. Bankr. P. 7012(b).

consideration of the pleadings, memoranda, and arguments of counsel, and for the reasons argued by the Defendant which are adopted and incorporated herein by reference, I conclude that Count I of the Complaint fails to plead fraud with sufficient particularity, and the Motion to Dismiss as to Count I is GRANTED. The Plaintiff has fifteen (15) days to file an amended complaint satisfying the pleading requirements of Rule 9(b). The Defendant's Motion to Dismiss Count II is DENIED, as Count II states a claim based on the principles of collateral estoppel.

Dated at Providence, Rhode Island, this 22nd day of February, 2002.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge