

**Dated: January 20, 2024**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re  
**DELORES L. BROWN,**  
Debtor.

Case No. 22-20924  
Chapter 13

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**DELORES L. BROWN,**  
By and through her Attorney-in-fact,  
**PAMELA BROWN**  
Plaintiff.

vs.

Adv. Proc. No. 23-00021

**U.S. BANK, N.A., as Trustee for  
CB4b Grantor Trust 2016-1 and/or  
Bayview Opportunity Master Fund IVB  
Grantor Trust 2018-Rn6; ARGOLICA, LLC;  
LIMOSA, LLC; and  
LAND HOME FINANCIAL SERVICES, INC.,**  
Defendants.

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS COMPLAINT**

This proceeding came before the Court for a hearing on September 19, 2023, at 10:30

a.m., on Argolica, LLC, Limosa, LLC, and Land Home Financial Services, Inc.’s (“Defendants”) Motion to Dismiss the Amended Complaint (“Motion to Dismiss”)<sup>1</sup> and Delores L. Brown’s (“Plaintiff’s”) Response in Opposition to Defendants’ Motion to Dismiss (“Response”).<sup>2</sup> Upon review of the record, filed documents, and consideration of the argument from the parties, the Court denies the Motion to Dismiss for reasons outlined below.

### **BACKGROUND**

On March 11, 2022, Delores L. Brown filed a voluntary petition commencing a case under Chapter 13 of the Bankruptcy Code.<sup>3</sup> The bar date for filing claims was May 20, 2022. On March 16, 2022, Land Home Financial Services, Inc. and Limosa, LLC received the Notice of Chapter 13 Bankruptcy Case, but Argolica, LLC did not.<sup>4</sup> The notice included the date for the meeting of creditors and deadlines to file a complaint to challenge dischargeability of certain debts, deadline for all creditors to file a proof of claim, and the deadline for governmental units to file a proof of claim.<sup>5</sup> No proof of claim was filed on behalf of either of the three Defendants. On November 15, 2022, on behalf of the either Defendant, the Plaintiff filed proof of Claim 3-1 for the secured amount of \$7,500.00.<sup>6</sup> It is unclear from the record how the Plaintiff determined the amount stated in Claim 3-1.

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<sup>1</sup> See Adv. Proc. No. 23-00021, ECF No. 44.

<sup>2</sup> Adv. Proc. No. 23-00021, ECF No. 47.

<sup>3</sup> ECF No. 1.

<sup>4</sup> ECF No. 10.

<sup>5</sup> The deadline to file a complaint to challenge dischargeability was June 13, 2022; the deadline to file a proof of claim was May 20, 2022; and the deadline for governmental units to file a proof of claim was September 7, 2022.

<sup>6</sup> After the Court took this matter under advisement on October 3, 2023, Land Home Services Inc. filed amended proof of claim 3-2 in the amount of \$122,807.61 on November 21, 2023. On December 18, 2023, Plaintiff filed an objection to amended proof of claim 3-2. On January 16, 2024, Land Home Services, Inc. filed a response to the objection. The objection and response are scheduled for a preliminary hearing.

On November 21, 2022, Plaintiff's Chapter 13 Plan was confirmed, which included the secured amount from the Claim 3-1.<sup>7</sup> The deadline for objecting to confirmation was May 24, 2022. At no point before the confirmation of the plan did the Defendants file an objection to either Claim 3-1 or confirmation of the Chapter 13 Plan.

On February 25, 2023, Plaintiff filed complaint for declaratory judgment and injunctive relief against Defendants seeking to determine the validity and extent of Defendants' mortgage debt against the Plaintiff.<sup>8</sup>

On May 18, 2023, one of the named Defendants, Land Home Financial Services, Inc., filed a Motion to Dismiss Adversary Proceedings arguing that the Court lacks personal jurisdiction over the Defendant because there was insufficient service of process and the Plaintiff failed to state a claim upon which relief can be granted.<sup>9</sup>

On May 22, 2023, another named Defendant, Argolica, LLC, also filed a Motion to Dismiss Adversary Proceeding making the same arguments as Land Home Financial Services, Inc., that the Court lacks personal jurisdiction because the Defendant was improperly served, and the complaint does not state a claim upon which relief can be granted.<sup>10</sup>

On June 10, 2023, Plaintiff filed a Certificate of Service for Argolian, LLC.<sup>11</sup> On June

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<sup>7</sup> ECF No. 35.

<sup>8</sup> Adv. Proc. No. 23-00021, ECF No. 1.

<sup>9</sup> *Id.* at ECF No. 15. In Land Home Financial Services, LLC's Motion to Dismiss Adversary Proceeding, the Defendant explained that the Plaintiff's complaint incorrectly explained Alaska Louisiana Partners, LLC assigned the deed of trust to Argolian, LLC. The correct chronological history of the deed of trust is Alaska Louisiana Partners, LLC assigned the deed of trust to Argolica, LLC. Argolica then assigned the deed of trust to Limosa, LLC. Land Home Services, Inc. is the servicer of the loan, not the assignee of the deed of trust.

<sup>10</sup> *Id.* at ECF No. 18.

<sup>11</sup> Adv. Proc. No. 23-00021, ECF No. 21. Plaintiff's initial complaint and certificate of service incorrectly named "Argolian, LLC." The proper name of this Defendant is "Argolica, LLC." Argolica, LLC will be properly used throughout the order.

10, 2023, Plaintiff filed a Certificate of Service for U.S. Bank.<sup>12</sup>

On June 10, 2023, the Plaintiff filed responses to both motions to dismiss the adversary proceeding arguing in both responses that the issue of service has been resolved and requested leave to amend its Complaint to include another Defendant.<sup>13</sup>

On June 12, 2023, Defendants filed a reply to the Plaintiff's response.<sup>14</sup> Defendants' assert that regardless, if there were deficiencies with service, the Complaint and the Summons were not properly served. Defendants also argue that even if the Summons was properly mailed, Argolica was still not properly served because it was not addressed to the attention to an officer or managing agent as required by the Federal Rules of Bankruptcy Rule 7004.

On June 13, 2023, the Court held a hearing and dismissed the Plaintiff's case without prejudice to allow the Plaintiff to file an amended Complaint within twenty-eight days from the entry of the Court's order.

On July 11, 2023, Plaintiff filed an Amended Complaint and properly served Land Home Services, Inc, Limosa, LLC, and Argolica, LLC.<sup>15</sup> Plaintiff asserted the same arguments in the original Complaint, to determine the validity and extent of the mortgage loan against Plaintiff.

On August 21, 2023, Defendants filed a motion to dismiss the Amended Complaint contending that Plaintiff is barred by *res judicata* pursuant to the terms of the confirmed Chapter 13 plan.<sup>16</sup>

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<sup>12</sup> Adv. Proc. No. 23-00021, ECF No. 22.

<sup>13</sup> *Id.* at ECF No. 23 and 24.

<sup>14</sup> *Id.* at ECF No. 27.

<sup>15</sup> *Id.* at ECF No. 35.

<sup>16</sup> *Id.* at ECF No. 44.

On September 18, 2023, Plaintiff filed her Response, in which she contends that she is not barred by *res judicata* because there is no Sixth Circuit authority that prevents the Plaintiff from trying to establish the validity of the security interest when the Plaintiff filed on the Defendants' behalf a proof of claim so the plan could be confirmed.<sup>17</sup>

On September 19, 2023, the Court conducted a hearing on Defendants' Motion to Dismiss the Amended Complaint, and Plaintiff's Response. Upon further inquiry from the Court regarding whether Defendants accepted the amount stated in Claim 3-1 that is being paid through the confirmed Chapter 13 plan consistent with the *res judicata* argument, it was evident that Defendants believe the amount in Claim 3-1 was not accurate. Defendants did state the accurate mortgage amount but indicated that any additional mortgage balance would be continued to be owed. The Court allowed the Plaintiff and Defendants to file supplemental briefs, and the Court took this matter under advisement.

In the Plaintiff's supplemental brief, she argued that neither Debtor nor late husband received any proceeds of the loan agreement and Deed of Trust. Plaintiff agrees that *res judicata* of the confirmed plan bars the Defendants from objecting to the plan, which would leave the Defendants with the \$7,500 amount provided for in the plan. Further, if Plaintiff completes her Chapter 13 case, the alleged debt owed to Defendants would be. Plaintiff did not provide relevant legal support on its position.

Defendants acknowledge that they did not file a proof of claim in the Plaintiff's case and that the *res judicata* effect of the plan would preclude the Defendants from collecting any more than the amount included in the confirmed plan. However, Defendants assert that they are free to "look to its lien for full satisfaction of the debt without participating in the bankruptcy case"

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<sup>17</sup> *Id.* at ECF No. 47.

because the debt owed is “nondischargeable and nonmodifiable and there are no provisions in the confirmed plan that alter that conclusion.” Ultimately, Defendants argue that though \$7,500 is the confirmed amount in the plan, the Defendants can still collect the full amount owed. In support of their argument, Defendants cite to *In re Matteson*, which they assert is squarely controlled by this case.<sup>18</sup> In that case, the Sixth Circuit Bankruptcy Appellate Panel held that the bankruptcy court erred in reducing the amount owed to the bank and found there was not legal justification in reducing the amount.<sup>19</sup> Defendants also found *In re Bozeman* persuasive in that the Court held that the Creditor’s lien survived the debtor’s bankruptcy case, and the Creditor had a “substantive right to collect the full balance it lent to [Debtor] as well as the right to hold its lien on the property as collateral until the debt had been paid.”<sup>20</sup>

### **DISCUSSION**

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7012(b)(6), is only granted when the court is convinced that the plaintiff cannot prove any facts supporting his claim which would entitle him to relief.<sup>21</sup> Analyzing the four corners of the Complaint, “the court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine

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<sup>18</sup> *Matteson v. Bank of Am., N.A. (In re Matteson)*, 535 B.R. 156 (B.A.P. 6th Cir. 2015).

<sup>19</sup> *Id.* at 162.

<sup>20</sup> *Mortg. Co. of the S. v. Bozeman (In re Bozeman)*, 57 F.4th 895, 915–16 (11th Cir. 2023).

<sup>21</sup> *In re Goss*, 605 B.R. 189, 196–97 (Bankr. S.D. Ohio 2019) (citing *DBI Invs., LLC v. Blavin*, 617 F. App’x 374, 380 (6th Cir. 2015); and quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). (“When deciding a motion to dismiss for failure to state a claim upon which relief can be granted under Civil Rule 12(b)(6), ‘[c]ourts must accept as true the factual allegations pleaded in the complaint[,]’ [and ‘T]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.”’”).

whether the complaint ‘contains enough facts to state a claim to relief that is plausible on its face.’”<sup>22</sup>

In her amended Complaint, Plaintiff is seeking declaratory relief to determine the validity of an alleged loan agreement and Deed of Trust executed on or about April 2, 2008, and to clarify the rights of the parties to collect payment from the Plaintiff, and to exercise the Power of Sale clause in the Deed of Trust with respect to real property located at 4441 Windward Drive, Memphis, Tennessee 38109. Plaintiff extensively outlines the factual history of the loan. While the Defendants accept that *res judicata* prevents both the Plaintiff and Defendants from attacking the claim that is currently being paid through the confirmed chapter 13 plan, Defendants assert they are entitled to the true debt owed, even if the debt is not paid for through the bankruptcy. The Court concludes that the Amended Complaint states enough facts to state a claim upon which relief could be granted. The Amended Complaint survives dismissal.

### **CONCLUSION**

The Court finds and concludes that Plaintiff has alleged facts with enough specificity to have a plausible claim. Accordingly, it is **ORDERED**:

1. Defendants’ *Motion to Dismiss* is **DENIED**.
2. Defendants have twenty-eight (28) days from the entry of this order to file an Answer to the Plaintiff’s Amended Complaint.
3. A pre-trial conference will be scheduled at a date and time determined by the Court after the filing of Defendants’ Answer to Amended Complaint.

cc: Debtor Delores Brown

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<sup>22</sup> Even under a more heightened standard under Bankruptcy Rule 7009(b), which incorporates Rule 9(b), Fed. R. Civ. P., the complaint survives dismissal. *See United States v. Ford Motor Co.*, 532 F.3d 496, 502–03 (6th Cir. 2008) (“Under the special pleading rules contained in Rule 9(b), a complaint alleges sufficient facts to survive a motion to dismiss when the plaintiff states ‘with particularity the circumstances constituting fraud or mistake.’”).

Debtor's attorney  
Plaintiff's attorney  
Defendant's attorney  
Chapter 13 Trustee  
All Creditors on the Matrix