



Dated: September 13, 2021
The following is ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
LATASHA CHANTA TENNIAL,
Debtor.

Case No. 18-28470-L
Chapter 13

LATASHA CHANTA TENNIAL,
Plaintiff,
v.
REI NATION, LLC
aka PREMIER PROPERTY
MANAGEMENT, LLC,
Defendant.

Adv. Proc. No. 20-00152

ORDER DISMISSING COMPLAINT FOR LACK OF STANDING

BEFORE THE COURT is the *Complaint for Turnover of Property to the Estate* filed by the Debtor/Plaintiff on December 21, 2020 [ECF No. 1] and the *Answer to Plaintiff, Latasha Chanta Tennial's Complaint for Turnover of Property of the Estate* timely filed by the Defendant, REI Nation, LLC aka Premier Property Management, LLC ("REI") on January 20, 2021 [ECF No. 3]. Although the Defendant has not filed a motion to dismiss for lack of standing, it has clearly asserted in its Answer that the Plaintiff lacks standing to bring this suit. The Supreme Court has

made clear that “[t]he federal courts are under an independent obligation to examine their own jurisdiction, and standing ‘is perhaps the most important of [the jurisdictional] doctrines.’” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231, 110 S.Ct. 596, 607 (1990). In order to establish standing, “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337, 136 S.Ct. 1540, 1547 (2016). The party invoking federal jurisdiction bears the burden of establishing standing and thus must allege facts demonstrating each element. *Id.* Facts demonstrating the Plaintiff’s lack of standing have now been established in related state court litigation between the parties. The Tennessee Court of Appeals has affirmed the decision of the Circuit Court for Shelby County that “REI Nation, LLC, is the owner of [the Property (described below)], and has the superior right to possession thereof, and that a final judgment should be entered accordingly.” *REI Nation, LLC v. Tennial*, 2020 WL 7055352, slip op. (Tenn. Ct. App. Dec. 1, 2020). As a result, as discussed more fully below, the Plaintiff lacks standing to proceed with this adversary proceeding.

The Complaint seeks turnover of real property known as 4573 Fawn Hollow Cove, Memphis, Tennessee (the “Property”), and perhaps some personal property that was located in and on the Property, pursuant to Federal Rule of Bankruptcy Procedure 7001(a) and 11 U.S.C. § 542(a). The Plaintiff, proceeding *pro se*, used a form for the Complaint that is ordinarily used to obtain recovery of a repossessed car. It contains only the bare minimum of allegations. It alleges that the Plaintiff seeks turnover of the “homestead and all other properties attached located [sic] at [the Property] believed to have been repossessed by the Defendant ... prior to the commencement of the case.” It alleges that the court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 157(a) and that this is a core proceeding. It alleges that, “[u]nder particular facts and circumstances, and

applicable law, the Plaintiff is entitled to possession of the above-described property of the estate for “use” as contemplated in 11 U.S.C. § 363.” There are no allegations of “particular facts and circumstances” in the Complaint that would entitle the Plaintiff to the relief she seeks although the Plaintiff attempted to add many, many allegations through her *Motion to Respond to the Defendant’s Answer to the Complaint to Turnover of Property to the Estate and to Argue* filed February 22, 2021. ECF No. 9. These allegations have been the subject of other litigation between the parties and between the Plaintiff and other persons as described below. The court has carefully considered these additional allegations as well as those in the original complaint but concludes that the Plaintiff cannot establish standing to proceed with her Complaint because she was not the owner of the Property when her bankruptcy petition was filed.

UNDISPUTED FACTS

The Property, formerly owned by the Plaintiff, was sold at foreclosure to Bank of America, N.A. on September 4, 2014. *Order Granting Motion for Relief from Automatic Stay*. Bankr. ECF No. 26.¹

The Plaintiff filed a series of eight Chapter 13 bankruptcy petitions before and after the foreclosure sale in an effort to save her home. The pending Chapter 13 case was commenced on October 10, 2018. Plaintiff’s *Response*, ECF No. 9, ¶ 4; records of the Bankruptcy Court.

The Plaintiff maintains that the foreclosure and sale to Bank of America was wrongful and filed suit in the Shelby County Chancery Court against Bank of America and Carrington Mortgage Services, LLC on February 24, 2016, Docket No. CH-16-0311 (the “Wrongful Foreclosure Suit”). Plaintiff’s *Response*, ECF No. 9, ¶ 14. The Wrongful Foreclosure Suit was removed to federal

¹ The court takes judicial notice of facts established in previous proceedings in the Debtor’s bankruptcy case and of facts established in final orders of the state courts. *See* FRE. 201(b)(2). The court also treats as true statements made by the Plaintiff in pleadings before this court.

court and was pending before the United States Court of Appeals for the Sixth Circuit when Bank of America obtained relief from the automatic stay. *Agreement*, Bankr. ECF No. 27.

Notwithstanding the termination of the automatic stay, Bank of America agreed that the Plaintiff could occupy the Property and that it would not pursue eviction while the appeal was pending so long as the Plaintiff made monthly payments to Carrington Mortgage Services. Bankr. ECF No. 27.

Bank of America sold the Property to REI on June 18, 2019. Plaintiff's *Response*, ECF No. 9, ¶ 21.

REI filed a detainer warrant to obtain possession of the Property in the General Sessions Court of Shelby County, Tennessee on July 2, 2019. Plaintiff's *Response*, ECF No. 9, ¶ 24.

The Plaintiff maintains that REI is a "strawman" of Bank of America and that the filing of the detainer warrant violated the automatic stay and the agreement between Bank of America and the Plaintiff concerning her use of the Property. Plaintiff's *Response*, ECF No. 9, ¶¶ 24, 26, 29, 31, and 32.

REI, however, obtained relief from the automatic stay by order entered September 11, 2019 (the "Stay Relief Order"). Bankr. ECF No. 50. The Stay Relief Order terminated the automatic stay "*nunc pro tunc* to March 25, 2019, for the purpose of allowing REI Nation, LLC, to exercise its state law remedies to obtain possession of the [Property]." The Stay Relief Order further waived the stay of the effectiveness of the order provided at Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Plaintiff filed an appeal from the Stay Relief Order, but the appeal was dismissed as untimely by the district court. The order of the district court was affirmed on appeal. *Tennial v. REI Nation LLC*, 978 F.3d 1022 (6th Cir. 2020).

Pursuant to the Stay Relief Order, REI was declared to have been free to pursue its remedies at state law from as early as March 25, 2019.

Following the entry of the Stay Relief Order, REI returned to General Sessions Court to pursue its detainer warrant. After trial, the General Sessions Court entered judgment for REI in October of 2019. The Defendant appealed to the Circuit Court for Shelby County for trial *de novo*. After trial on January 23, 2020, the Circuit Court also entered judgment for REI. The Defendant appealed to the Tennessee Court of Appeals, which affirmed the finding of the Circuit Court that REI ““is the owner of [the Property], and has the superior right to possession thereof.”” *REI Nation*, 2020 WL 7055352, slip op. at *3. The case was remanded to the Circuit Court solely for the collection of costs. *Id.*

The Plaintiff was evicted from the Property on March 5, 2020. Plaintiff’s *Response*, ECF No. 9, ¶ 35. The Plaintiff maintains that the eviction was wrongful. The Plaintiff also maintains that REI destroyed her moveable personal property and retained other property that was affixed to the Property. *Id.*

In the meantime, the Wrongful Foreclosure Suit made its way through the state and federal courts. It was removed to the United States District Court for the Western District of Tennessee on November 22, 2016. The district court granted Carrington Mortgage Services motion to dismiss (*Tennial v. Bank of America, N.A.*, 2017 WL 4707513, slip op. (W.D. Tenn. October 19, 2017)) and Bank of America’s motion for judgment on the pleadings (*Tennial v. Bank of America, N.A.*, 2017 WL 11589175 (W.D. Tenn. November 27, 2017)). The court of appeals, however, found that the parties were not completely diverse at the time of removal and remanded the case to the Chancery Court. *Tennial v. Bank of America, N.A.*, 2020 WL 2530872, slip op. (W.D. Tenn. April 15, 2020).

On April 1, 2021, the Chancery Court granted Bank of America and Carrington Mortgage Services' motion for summary judgment concluding that (1) the Plaintiff's claims were barred by judicial estoppel; and (2) the Plaintiff's claims for wrongful foreclosure failed as a matter of law because the defendants complied with all contractual and statutory foreclosure requirements. *Order Granting Defendant Bank of America, N.A. and Carrington Mortgage Services, LLC's Motion for Summary Judgment*, filed at ECF No. 19, Ex. A. The docket of the Chancery Court reflects that the Plaintiff's motion for reconsideration was denied and that an appeal from the summary judgment is pending.

ANALYSIS

The Complaint filed by the Plaintiff is based upon section 542(a) of the Bankruptcy Code, which provides: "Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Section 542(a) directs turnover of two classes of property: property that a trustee may use, sell, or lease pursuant to section 363, and property that the debtor may exempt under section 522. The form complaint used by the Plaintiff relies solely upon section 363 because it contemplates the need for a Chapter 13 debtor to use her repossessed vehicle to get to and from work in order to fund her plan. Section 363 specifically limits property that a trustee may use, sell, or lease to property of the bankruptcy estate. *See* 11 U.S.C. § 363(b)(1). Section 522, not relied upon by the Plaintiff, is concerned with exemptions the debtor may claim in property of the estate. *See* 11 U.S.C.

§ 522(b)(1). Both classes of property that must be turned over to a bankruptcy estate pursuant to section 542(a) are limited to “property of the estate.”

“Property of the estate” is a statutorily defined term that generally includes all legal and equitable interests of a debtor in property as of the commencement of his or her case. 11 U.S.C. § 541(a)(1). Although “property of the estate” is a concept of federal bankruptcy law, “property interests are created and defined by state law.” *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 918 (1979). The question of the Plaintiff’s interest in the Property was determined against her and in favor of REI in the General Sessions Court and again in the Circuit Court after de novo review. After trial, the Circuit Court found that REI was the owner of the Property and had the superior right to possession of it. This finding was affirmed on appeal by the Tennessee Court of Appeals. The Plaintiff is precluded by the doctrine of collateral estoppel from relitigating REI’s ownership of the Property in this bankruptcy court which granted relief from the automatic stay to REI to permit it to proceed to enforce its rights in state court.

The doctrine of collateral estoppel “precludes relitigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action.” *Gargallo v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 918 F.2d 658, 661 (6th Cir. 1990). In order for collateral estoppel to apply:

(1) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding; (2) determination of the issue must have been necessary to the outcome of the prior proceeding; (3) the prior proceeding must have resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Kosinski v. Comm’r, 541 F.3d 671, 675 (6th Cir.2008) (citation omitted). Each of these elements is satisfied with respect to the suit to obtain possession of the Property by REI. First, the precise issue of who was the owner of the Property was decided after trial in the General Sessions Court

and de novo review by the Circuit Court. Second, the issue of ownership of the Property was necessary to the judgment that REI had the superior right to possession of the Property. Third, the judgment of the Circuit Court was reviewed on appeal by the Tennessee Court of Appeals which affirmed the judgment. The judgment is now final. Fourth, the Plaintiff had a full and fair opportunity to litigate the question of ownership of the Property in the state courts. Thus, collateral estoppel prevents the Plaintiff from contesting ownership of the Property in this bankruptcy court.

REI obtained its interest in the Property from the Bank of America in 2019. The Bank of America obtained its interest in the Property through foreclosure in 2014. Necessary to the Circuit Court's judgment that REI is the owner of the Property was a finding that Bank of America was the owner of the Property before it. Thus, the Plaintiff is also estopped from contesting the prior ownership of the Property by Bank of America in this adversary proceeding.

Bank of America obtained title to the Property in 2014, well before the Plaintiff filed her bankruptcy petition in 2018. The Plaintiff had no legal interest in the Property when her petition was filed. Therefore, the Property did not become property of her bankruptcy estate and cannot be the subject of a complaint for turnover. The pendency of the appeal in the Wrongful Foreclosure Suit does not change this result because REI is not a party to that suit.

Turning now to the elements required to establish standing, the court must inquire whether the Plaintiff has alleged facts establishing that she has (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. She has not. The courts of the state of Tennessee have decided that the Plaintiff was not the owner of the Property when her bankruptcy petition was filed. Thus, the Property never became property of her bankruptcy estate and is not subject to turnover. REI has violated no provision of the Bankruptcy Code by retaining the Property it purchased from Bank of

America, and the bankruptcy estate has not been diminished by its retention of the Property because the Property was never among the assets of the estate. The Plaintiff has suffered no cognizable injury and has no available remedy under federal bankruptcy law.

The Complaint also refers to “properties attached located [sic] at [the Property] believed to have been repossessed by the Defendant.” The Plaintiff’s Amended Disclosures filed May 27, 2021, contain lists of personal property and fixtures under the heading “Property Damages.” ECF No. 28. Although most of her allegations relate to the Property (i.e., the real property), the Plaintiff does allege that in connection with her eviction, her personal property was destroyed, and certain items affixed to the Property were not returned to her. Plaintiff *Response*, ECF No. 9, ¶ 35. This court, however, granted relief to REI to permit it to pursue eviction under applicable state law. If the Plaintiff’s injuries resulted from violation of state law in the eviction process, her right of redress lies with the state courts.

CONCLUSION

For the foregoing reasons, the court concludes that the Plaintiff lacks standing to pursue the Complaint that she has filed. Accordingly, the Complaint is DISMISSED.

cc: Debtor/Plaintiff
Attorney for Debtor/Plaintiff (if any)
Defendant
Attorney for Defendant
Chapter 13 Trustee