


Dated: March 20, 2025
The following is ORDERED:




Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
LISA R. BAKER and
EDDIE WHITE,
Debtors.

Case No. 23-23553-L
Chapter 7

LISA R. BAKER and
EDDIE WHITE,
Plaintiffs,

v.
US DEPARTMENT OF TREASURY - IRS,
Defendant.

Adv. Proc. No. 24-00131

ORDER DISMISSING COMPLAINT

THE PLAINTIFFS filed their *Complaint for Turnover of Property of the Estate* on November 18, 2024 [AP Dkt. No. 1]. They seek return of \$1,559.00 offset by the Internal Revenue Service against their outstanding tax obligation. The Defendant US Department of Treasury – IRS responded by filing its *Motion to Dismiss* on January 23, 2025 [AP Dkt. No. 9]. The Plaintiffs were provided notice of the filing of the motion to dismiss and given until February 26, 2025, to file

their response [AP Dkt. No. 13]. The Defendant asserts that the complaint should be dismissed pursuant to Rule 12(b)(1) and (6), *Federal Rules of Civil Procedure*, made applicable to this adversary proceeding by Rule 7012(b), *Federal Rules of Bankruptcy Procedure*. The motion avers that the “Plaintiffs lack subject matter jurisdiction to bring the complaint because only a trustee may bring a turnover action.” Second, the motion avers that the complaint fails to state a claim upon which relief can be granted “because the Commissioner rightfully offset the debt during the time when the proceeding was dismissed.” The Plaintiffs filed no response and the Motion to Dismiss is ready for decision.

JURISDICTION AND AUTHORITY

Jurisdiction over all civil proceedings arising in cases under title 11 lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The complaint contains only a conclusory statement concerning the authority of this Court to enter a final order in this adversary proceeding. The Defendant has not raised an issue concerning the nature of the proceeding as core or non-core but has asserted that the Plaintiffs lack “subject matter jurisdiction” to obtain turnover of property of the bankruptcy estate. Plaintiffs generally do not have jurisdiction (courts do), but they must have standing, meaning they must have a personal stake in the outcome of the proceeding. Setting aside that issue for the moment, this adversary proceeding is couched as a complaint for turnover of property of the bankruptcy estate, one of the listed examples of core bankruptcy proceedings at 28 U.S.C. § 157(b)(2)(E). Therefore, even though the Court has decided

that it must dismiss the complaint for lack of standing and other reasons, the Court has authority to enter a final order in this proceeding subject only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this adversary proceeding is proper to the Western District of Tennessee because it arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

FACTUAL BACKGROUND

THE FOLLOWING FACTS appear from court records in the Plaintiffs' bankruptcy case.¹ The plaintiffs, a married couple, commenced their bankruptcy case by filing a joint petition for relief under Chapter 13 of the Bankruptcy Code on July 13, 2023. The United States filed a claim in the amount of \$5,126.98. Proof of Claim No. 5-1. The Chapter 13 Trustee filed a motion to dismiss the case on December 6, 2023, for failure to make plan payments [BK Dkt. No. 21]. While that motion was pending, the case was dismissed on January 24, 2024 [BK Dkt. No. 29].

The Plaintiffs paid the case filing fee on February 6 and filed an expedited motion to vacate the order of dismissal on February 7 [BK Dkt. No. 33]. At the hearing on the motion to vacate, counsel for the Trustee indicated that no plan payment had been made, consistent with the allegations in the Trustee's original motion. The Trustee argued that the Plaintiffs' motion should be denied based on her original motion to dismiss for failure to make plan payments. The Court entered an order on March 8, 2024, conditionally granting the Plaintiffs' motion to vacate conditioned upon them timely making their plan payment [BK Dkt. No. 36]. The Plaintiffs apparently failed to make their required payment because the Trustee filed another motion to dismiss for failure to pay on April 25, 2024 [BK Dkt. No. 42]. After a number of continuances, the

¹ In appropriate circumstances, the Court may take judicial notice of the schedules, statements, and pleadings filed in the underlying bankruptcy case. *See In re DeVries*, 650 B.R. 869, 873, n. 3 (Bankr. N.D. Ohio 2023); *In re Johnson*, 210 B.R. 134, 135, n.1 (Bankr. W.D. Tenn. 1997).

case was dismissed again on July 23, 2024, based upon the failure of the Plaintiffs to satisfy the condition of the previous order [BK Dkt. No. 44].

The Plaintiffs filed another expedited motion to vacate this second order of dismissal on August 8, 2024 [BK Dkt. No. 47]. In their motion, the Plaintiffs identified the setoff of their tax refund as the reason for seeking relief from the prior order. They indicated that they intended to convert their case to Chapter 7 once they received the refund from the Internal Revenue Service. The Court granted the motion to vacate for the limited purpose of converting the case to Chapter 7 [BK Dkt. No. 50].

The Plaintiffs filed their Notice of Conversion to Chapter 7 on October 16, 2024 [BK Dkt. No. 52]. Brian M. Glass was appointed trustee in bankruptcy that same day [BK Dkt. No. 54]. Mr. Glass conducted the meeting of creditors on December 16, 2024, and filed a report that no distribution to creditors is anticipated [BK Dkt. No. 71].

The Plaintiffs commenced this adversary proceeding on November 18, 2024, and the United States filed its motion to dismiss on January 23, 2025, after receiving an extension of time to answer or respond.

STANDARD FOR CONSIDERING MOTIONS TO DISMISS

The Defendant moves to dismiss the Complaint pursuant to Rule 12(b)(1), *Federal Rules of Civil Procedure* for “lack of subject matter jurisdiction,” and (6) for “failure to state a claim upon which relief can be granted,” made applicable in bankruptcy by Rule 7012(b), *Federal Rules of Bankruptcy Procedure*. In support of its Rule 12(b)(1) assertion, the Defendant contends that only the trustee in a Chapter 7 may bring an action for turnover, and the Plaintiffs have no standing to do so.

It is well settled 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, 107 L.Ed.2d 603 (1990). In fact, a “trial court, or any appellate court, may sua sponte deny any claim for lack of standing of the party attempting to bring the claim.” *Normali v. O’Donnell (In re O’Donnell)*, 326 B.R. 901 (Table), 2005 WL 1279268, *3 (B.A.P. 6th Cir. 2005). “Standing in bankruptcy cases is narrower than Article III standing To have standing to object to a bankruptcy court’s order, a person must have “a pecuniary interest in the outcome of the bankruptcy proceedings.” *In re Adams*, 424 B.R. 434, 435 (Bankr. N.D. Ill. 2010), citing, *In re Ray*, 597 F.3d 871, 873–74 (7th Cir. 2010); *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir.1998). A Chapter 7 debtor rarely has the pecuniary interest necessary to give him standing because a debtor receives a distribution from the bankruptcy estate only after the claims of all the creditors have been paid in full. The liabilities of most Chapter 7 debtors exceed their assets. *Adams* at 435-36. Additionally, with respect to turnover actions in chapter 7 cases, Bankruptcy Code section 542(a) confers the right to bring an action for turnover upon the trustee. The Chapter 7 debtor is not mentioned. *In re Freeman*, 331 B.R. 327, 329 (Bankr. N.D. Ohio 2005).

Rule 8(a), *Federal Rules of Civil Procedure*, made applicable in bankruptcy proceedings by Rule 7008(a), *Federal Rules of Bankruptcy Procedure*, directs that pleadings provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Pursuant to Rule 12(b)(6), a complaint may be dismissed if it fails to state a claim upon which relief can be granted. In reviewing a motion to dismiss a complaint for failure to state a claim upon which relief can be granted the trial court must “(1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M&G Polymers, USA, LLC*, 561

F.3d 478, 488 (6th Cir. 2009). A motion to dismiss pursuant to Rule 12(b)(6) “should only be granted when the court, upon review of the complaint, is convinced that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Garzoni v. K-Mart Corp. (In re Garzoni)*, 35 Fed. Appx. 182 (6th Cir. 2002).

Although, “[a]s a general rule, matters outside the pleadings may not be considered in ruling on a 12(b)(6) motion to dismiss unless the motion is converted to one for summary judgment under Fed. R. Civ. P. 56[,] . . . when a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.” *Bash v. Textron Fin. Corp. (In re Fair Fin. Company)*, 834 F.3d 651, 656-657, n.1 (6th Cir. 2016). Accordingly, “[i]n addition to the allegations in the complaint, the court may also consider other materials that are integral to the complaint, are public records, or are otherwise appropriate for the taking of judicial notice” when determining whether a complaint states a claim upon which relief can be granted. *Wyser-Pratte Management. Co., Inc. v. Telxon Corp.*, 413 F.3d 553, 560 (6th Cir. 2005).

DISCUSSION

A. Property of the Estate

The property of a bankruptcy estate consists of all legal or equitable interests of the debtor in property, wherever located and by whomever held, as of the commencement of the case. 11 U.S.C. § 541(a). The Plaintiffs’ bankruptcy case was commenced on July 13, 2023. They were not at that time entitled to a refund for the 2023 tax year. The Plaintiffs listed no tax refunds owed to them when their petition was filed. *See* Schedule A/B, item 28 [BK Dkt No.1]. Remarkably, they also listed no tax refund owed to them when they converted their case to Chapter 7 and filed amended schedules and statements nor did they claim an exemption in a tax refund at amended

Schedule C. *See* Amended Schedule A/B and C, filed November 1, 2024 [BK Dkt. No. 63]. This is true even though they gave their desire to obtain recovery of the tax refund as the reason for filing their second motion to vacate the second order of dismissal.

A voluntary bankruptcy case is commenced by the filing of a petition. 11 U.S.C. § 301(a). Property of the estate is thus determined, for the most part, at the time of the filing of the original petition. In a case that is converted from Chapter 13, however, property of the estate in the converted case includes property acquired after the original petition was filed but only if the case was converted in bad faith. 11 U.S.C. § 348(f)(2). No one has suggested that the Plaintiffs' case was converted to Chapter 7 in bad faith, so an argument could be made that the tax refund resulting from the filing of the 2023 tax return is not property of the bankruptcy estate. No one has raised or briefed this issue, however. The parties have instead proceeded under the assumption that the tax refund is property of the bankruptcy estate.

B. Setoff

Even though tax refunds are often treated as property, they are better understood as a debt owed to the taxpayer. Debts owed to the debtor may be subject to turnover under section 542(b) of the Bankruptcy Code. Such debts shall be paid “to, or on the order of, the trustee except to the extent that such debt may be offset under section 553 of [title 11] against a claim against the debtor.” 11 U.S.C. § 542(b).

Two things are important here. First, debts owed to debtors which constitute property of the estate must be paid to the trustee, not to the debtor. Even property subject to turnover under subsection (a) of section 542 must be turned over to the trustee. 11 U.S.C. § 542(a). In Chapter 7 cases, property of the estate comes into the hands of the trustee. If it is subject to exemption, the

trustee in turn distributes it to the debtor. *See* 11 U.S.C. § 522(c).² In all events, it is the trustee who is charged with collecting and accounting for property of the bankruptcy estate.

Second, debts that constitute property of the bankruptcy estate may be offset against debts owed by the estate. Section 553(b)(1) provides the trustee the ability to recover an offset that occurs on or within 90 days before the date of the filing of the petition to the extent that any insufficiency on the date of offset is less than the insufficiency on the later of 90 days before the date of the filing of the petition or the first date during the 90 days preceding the filing date of the petition on which there is an insufficiency. The insufficiency described in this section is the amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of that claim. 11 U.S.C. § 553(b)(2). The United States filed a proof of claim in an amount that substantially exceeds the refund amount, and thus seems to be entitled to offset the refund against its claim in appropriate circumstances.

The parties raised and briefed none of these issues, however. The Court notes that the setoff is alleged by the Plaintiffs to have occurred “during a brief period in which the case was dismissed.” *Complaint*, ¶ 1. The Defendant avers in its motion to dismiss that the setoff occurred on March 4, 2024. *Motion to Dismiss*, ¶ 1. The Plaintiffs concede that the setoff was made while the case was dismissed. They do not allege that the Defendant violated the automatic stay when it applied the Plaintiffs’ refund to their outstanding tax liability.

² It is true that in Chapter 13, motions for turnover are often (or always) filed by the debtor who acts as a debtor in possession of property of the estate. *See* 11 U.S.C. § 1306(b); Fed. R. Bankr. P. 7001(a); *Hamilton v. Lanning*, 130 S. Ct. 2464, 2468–69, 560 U.S. 505, 508 (2010) (“[C]hapter 13 debtors are permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income, see §§ 1306(b), 1321, 1322(a)(1), 1328(a).”)

C. Standing to Recover Refund

Whenever the setoff occurred, the case is now proceeding under Chapter 7. If the Plaintiffs' right to refund constitutes property of the estate, it is the trustee in bankruptcy, not the Plaintiffs, who is authorized by the Bankruptcy Code to seek its recovery. The Plaintiffs failed to disclose their alleged entitlement to a tax refund in their amended schedules and did not include the trustee in bankruptcy, Mr. Glass, in their complaint. Mr. Glass is the proper party in interest to proceed (or not), to undo the setoff and recover the refund. Code section 542(a) enables the bankruptcy trustee, or the debtor-in-possession in a reorganization case to seek turnover of the debtors' assets, for the benefit of the estate. Indeed, in *U.S. v. Whiting Pools*, 462 U.S. 198, 103 S. Ct. 2309 (1983), it was the debtor-in-possession in a reorganization case that sought turnover. *In re Hernandez*, 483 B.R. 713, 725 (B.A.P. 9th Cir.2012). Under the statute, a Chapter 7 debtor is not mentioned, however, and generally has no standing to bring an action for turnover. See *Freeman*, 331 B.R. at 329 (Section 542, the general provision in the Bankruptcy Code governing turnover, confers this right upon the trustee; and then only to the extent it pertains to estate property); *In re Price*, 173 B.R. 434, 440 (Bankr.N.D.Ga.1994) (turnover action is one facet of a Chapter 7 trustee's general duties under Code section 704(1)). Actions for turnover inherently involve issues of whether property is property of the estate. *In re Molitor*, 183 B.R. 547, 553 (Bankr. E.D. Ark. 1995).

D. SETOFF WAS PROPER

In addition to its argument that the Plaintiffs lack standing to seek recovery of property of the estate, the Defendant also argues that the setoff was proper. The Court is not prepared to reach a decision concerning this argument without a more complete record and briefing. Although the Plaintiffs have not advanced a theory pursuant to which the setoff was improper, they are not the

real parties in interest. The trustee in bankruptcy should be given an opportunity to review the facts and make his own decision concerning what is in the best interest of creditors of the estate.

CONCLUSION

For the foregoing reasons, the complaint is DISMISSED because the Plaintiffs lack standing to proceed with recovery of property of the estate. The Court takes no position concerning whether the trustee in bankruptcy could recover the refund upon a proper pleading and takes no position on whether the Plaintiffs could recover the refund on the theory that the right to the refund, which arose after the filing of their Chapter 13 petition but before the conversion of their case to Chapter 7 is not property of the bankruptcy estate.

cc: Debtors-Plaintiffs
Attorney for Debtors-Plaintiffs
Creditor-Defendant
Attorney for Creditor-Defendant
Chapter 7 Trustee