



**SO ORDERED.**

**SIGNED this 29 day of January, 2010.**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.**

A handwritten signature in black ink that reads "Marcia P. Parsons".

**Marcia Phillips Parsons  
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

In re

IMAGEPOINT, INC.,

Debtor.

No. 09-31225  
Chapter 7

DAVID H. JONES, Trustee,

Plaintiff,

vs.

PRADO ENTERPRISES, INC.,

Defendants.

Adv. Pro. No. 09-3089

**MEMORANDUM OPINION AND ORDER**

Prior to the debtor's bankruptcy filing, the debtor ImagePoint, Inc. and Prado Enterprises, Inc. ("Prado") entered into a contract whereby the debtor manufactured and installed certain signage at a McDonald's restaurant owned by Prado. In this adversary proceeding, the chapter 7 trustee seeks pursuant to 11 U.S.C. § 542(b) to recover the sum of \$71,879.42 owed by Prado under that contract as property of the bankruptcy estate. In its motion to dismiss presently before the court, Prado states that the signage installed by the debtor was not constructed and does not function properly. Prado argues that because it disputes the debt owed to the estate, then the debt is "not on

account of a debt that is matured, payable upon demand, or payable to order as required by 11 U.S.C. § 542(b).”

Prado does not reference any particular rule of procedure as the basis for its dismissal motion, and has not yet filed an answer to the complaint. Federal Rule of Civil Procedure 12(b)(6), applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b), provides for dismissal of a complaint that fails to state a claim upon which relief can be granted. In this regard, the Sixth Circuit Court of Appeals has explained that:

The moving party has the burden of proving that no claim exists. Although a complaint is to be liberally construed, it is still necessary that the complaint contain more than bare assertions or legal conclusions. *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir.1993) (citing *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir.1988)). All factual allegations in the complaint must be presumed to be true, and reasonable inferences must be made in favor of the non-moving party. *Great Lakes Steel v. Degendorf*, 716 F.2d 1101, 1105 (6th Cir.1983); 2 Moore’s Federal Practice § 12.34[1][b] (Matthew Bender 3d ed. 2003). The court need not, however, accept unwarranted factual inferences. *Morgan v. Church’s Fried Chicken*, 829 F.2d 10, 12 (6th Cir.1987). To survive a motion to dismiss, the complaint must present “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).

*Total Benefits Planning Agency, Inc. v. Anthem Blue Cross and Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008).

As noted, the trustee seeks recovery against Prado pursuant to 11 U.S.C. § 542(b). Subject to two exceptions inapplicable here, this subsection of the Bankruptcy Code provides that “an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent such debt may be offset under section 553 of this title against a claim against the debtor.” The phrase “matured, payable on demand, or payable on order” is commonly interpreted as debts that are “presently payable, as opposed to those that are contingent and become payable only upon the occurrence of a certain act or event.” *Calhoun v. Copeland Corp. (In re Gordons Transports, Inc.)*, 51 B.R. 633, 636 (Bankr. W.D. Tenn. 1985).

As is evident, there is no express requirement in § 542(b) that a debt be undisputed in order

to be subject to turnover. Nonetheless, there is some case authority for this proposition. *See, e.g., Charter Crude Oil Co. v. Exxon Co. (In re Charter Co.)*, 913 F.2d 1575, 1579 (11th Cir. 1990) (“Congress envisioned the turnover provision of § 542 of the Code . . . to apply to tangible property and money due to the debtor without dispute which are fully matured and payable on demand); *Tri County Health Servs., Inc. v. United States Dept. of Health and Human Servs. (In re Tri County Home Health Servs., Inc.)*, 230 B.R. 106, 112 n.2 (Bankr. W.D. Tenn. 1999) (“In creating turnover provisions, Congress intended that a debtor be allowed to obtain ‘not all funds, only those which are not in dispute.’”). *See also Commercial Fin. Servs., Inc. v. Bartmann (In re Commercial Fin. Servs., Inc.)*, 251 B.R. 414, 422 (Bankr. N. D. Okla. 2000) (noting divergent rulings on the issue of whether a debt that is property of the estate must be liquidated and undisputed in order to be subject to the equitable remedy of turnover).

The Sixth Circuit Court of Appeals has not addressed this precise issue. Upon careful consideration of § 542(b)’s plain language and the case law considering this issue, this court rejects the assertion that a debt must be undisputed in order to be recoverable under § 542(b) or that “matured, payable on demand, or payable on order” means “undisputed.” As explained by the bankruptcy court in *Gordons Transports*, a defendant’s mere denial that a debt exists does not mean the debt is not “matured” or not “payable on demand” or “on order.” *In re Gordons Transports, Inc.*, 51 B.R. at 636. Instead, a dispute as to the existence of the debt is a question that can be decided by the court during the course of the adversary proceeding. *Id.* “To hold otherwise would mean that a defendant could defeat all turnover claims by merely denying that money was owed.” *Kids World of Am., Inc. v. Ga. Dept of Early Care and Learning (In re Kids World of Am., Inc.)*, 349 B.R. 152, 164 (Bankr. W.D. Ky. 2006).

Moreover, it must be noted that § 542(b) expressly contemplates that payment of a debt may be subject to claims of setoff. As such, asserted setoff claims as well as defenses to the payment of the debt appear to be inherent aspects of litigating the turnover action, rather than improprieties that render the turnover action invalid. *Allegheny, Inc. v. Laniado Wholesale Co. (In re Allegheny, Inc.)*, 68 B.R. 183, 190 (Bankr. W.D. Pa. 1986).

Under § 542(b), a debt, which is not otherwise subject to setoff, must be paid to the trustee

if two conditions are satisfied: (1) the debt is “property of the estate;” and (2) the debt is matured, payable on demand, or payable on order. The complaint filed in this case alleges that the debt owed by Prado is property of the estate. While there is no express allegation that the debt is “matured, payable on demand, or payable on order,” there is an allegation that “after all credits are applied by plaintiff, defendant owes plaintiff \$71,879.42.” Reasonable inferences from this statement as well as averments in the complaint that the debt is for goods sold to Prado and that demand has been made for payment suggest that the debt is presently payable. Accordingly, the complaint sets forth a claim for relief under 11 U.S.C. § 542(b). Prado’s motion to dismiss is denied.

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