



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, appearing to read "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.

T.M.P. MANAGEMENT CORPORATION
and MTLM, INC.,

Defendants.

Adv. Pro. No. 09-3106

MEMORANDUM OPINION AND ORDER

In this adversary proceeding, the chapter 7 trustee seeks to collect a debt owed to the bankruptcy estate. Presently before the court is the motion to dismiss for failure to state a claim filed by defendant MTLM, Inc. and the trustee's response in opposition thereto. More specifically, the trustee alleges in his amended complaint that "Defendants owe Plaintiff a debt of \$100,390.92 for products manufactured and sold to Defendants by Debtor," that "[d]espite demand, Defendants have not paid the amount owed," that the "amount owed by Defendant[s] to Debtor is property of the

bankruptcy estate pursuant to 11 U.S.C. § 541(a)” and that “[t]his is an action to recover a debt owed to the estate pursuant to 11 U.S.C. § 542(b).” In its motion to dismiss, MTLM argues that the amended complaint fails to state a claim upon which relief can be granted because it does not allege that the debt sought to be recovered is “undisputed.” According to MTLM, a “cause of action for turnover does not exist unless the property sought to be turned over belongs to the bankruptcy estate without dispute.”

Federal Rule of Bankruptcy Procedure 7012(b) incorporates Federal Rule of Civil Procedure 12(b)(6), which provides for dismissal of a complaint that fails to state a claim upon which relief can be granted. As explained by the Sixth Circuit Court of Appeals:

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 the defendants 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.” As is evident, there is no 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). Interrelated with this issue is the question of whether actions to collect accounts receivable are core proceedings under 28 U.S.C. § 157(b)(2), since as a general rule such actions only present issues of state law. *See BNI Telecommunications, Inc. v. Lomaz (In re BNI Telecommunications, Inc.)*, 246 B.R. 845, 849 (B.A.P. 6th Cir. 2000) (“There is an abundance of reported decisions with no clear consensus on that issue, the varying results typically being dependent upon the particular facts in each case.”); *McCrary & Dunlap Construction Co. v. CED Construction Partners, Ltd. (In re McCrary & Dunlap Construction Co.)*, 256 B.R. 264, 266-67 (Bankr. M.D. Tenn. 2000) (“Courts are split on whether ‘accounts receivable’ claims against strangers to the bankruptcy proceeding and other litigation based on pre-petition contract-based rights are core or non-core.”).

The Sixth Circuit Court of Appeals has not addressed the precise issue before this court, whether there must be an allegation that a debt is undisputed before a claim for relief is stated under § 542(b) of the Bankruptcy Code. As such, this court must be guided by the plain language of the statute which contains no express “undisputed” requirement. Under the plain language of the statute, a debt, which is not otherwise subject to setoff, must be paid to the trustee only if two conditions are satisfied: (a) the debt is “property of the estate;” and (2) the debt is “matured, payable on demand, or payable on order.” The latter terms refer to 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).

The amended complaint filed in this case alleges that the debt owed by the defendants is

property of the estate. And, while there is no express allegation that the debt is “matured, payable on demand, or payable on order,” reasonable inferences from the statements that the debt is for goods sold to the defendants and that demand has been made for payment suggest that the debt is presently payable. Accordingly, the amended complaint sets forth a claim for relief under 11 U.S.C. § 542(b).

MTLM has not yet filed an answer in this adversary proceeding. Its assertion that a debt must be undisputed to be recovered under § 542(b) is presumably based on its anticipated defense that the alleged debt is in dispute. However, as explained by the bankruptcy court in *Gordons Transports*, a defendant’s 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).

Based on all of the foregoing, the court concludes that MTLM’s motion to dismiss for failure to state a claim should be denied. Accordingly, the motion is denied.

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