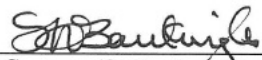




**SO ORDERED.**

**SIGNED this 3rd day of August, 2022**

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

  
Suzanne H. Bauknicht  
UNITED STATES BANKRUPTCY JUDGE

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

In re

EARL WAYNE HOSKINS  
MARSHA LYNN HOSKINS  
fka MARSHA LYNN MCCONKEY

Debtors

ESTATE OF DOLLIE DALLAS HOSKINS

Plaintiff

v.

EARL WAYNE HOSKINS,  
MARSHA LYNN HOSKINS, and  
ANN MOSTOLLER, TRUSTEE

Defendants

Case No. 3:20-bk-32538-SHB  
Chapter 7

Adv. Proc. No. 3:21-ap-3011-SHB

**MEMORANDUM AND ORDER  
ON MOTION TO DISMISS**

As authorized by the Court in its Order entered March 24, 2022 [Doc. 52], Plaintiff filed an Amended Complaint on March 25, 2022 [Doc. 53], which among other things, included the

addition of Ann Mostoller, the Chapter 7 Trustee in Debtors' underlying bankruptcy case ("the Trustee") as a party defendant.<sup>1</sup> The Amended Complaint for Conversion, Fraud, and Elder Abuse ("Amended Complaint") includes the following causes of action: "Count I – Determination that Certain Funds Held by Trustee are Traced from Plaintiff Funds"; "Count II – Conversion/Fraud"; "Count III – Exploitation of an Elderly Person Tenn. Code Ann. § 71-6-120"; and "Count IV – Conspiracy." [Doc. 53.] Plaintiff's prayer for relief seeks an order finding that the funds being held by the Trustee following the sale of the Lexus<sup>2</sup> can be traced from money fraudulently taken from a bank account held by Dollie D. Hoskins ("Ms. Hoskins") before her death and should be returned to Plaintiff; an order lifting the automatic stay under 11 U.S.C. § 362; a determination that the debt owed to Plaintiff is not dischargeable under 11 U.S.C. §§ 523(a)(2), (4), and (6); awards of economic, non-economic, and punitive damages for the conversion/fraud and exploitation of an elderly person counts; a joint-and-several award of compensatory and punitive damages for conspiracy; an award of attorney's fees under Tennessee Code Annotated section 71-6-120; and the costs taxed to Debtors. [Doc. 53 at pp. 10-11.]

On April 26, 2022, the Trustee filed a Motion to Dismiss Case Pursuant to Bankruptcy Rule 7012(b)(6) ("Motion to Dismiss") [Docs. 59, 60], arguing that "[t]he basis for the Amended Complaint appears to be that Plaintiff had or should have had an interest in the 2016 Lexus that the Trustee sold and from which sale she is holding the proceeds." [Doc. 60 at 1.] In her Motion to Dismiss, the Trustee asserts a single issue:<sup>3</sup> "Whether the Plaintiff may claim an interest in a motor vehicle where it did not note its lien on the title." [Doc. 60 at 2.] The Trustee argues that

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<sup>1</sup> Debtors filed an answer to the Amended Complaint on April 22, 2022.

<sup>2</sup> The vehicle at issue was a 2016 Lexus RX350 (the "Lexus").

<sup>3</sup> It appears that only Count I of the Amended Complaint seeks relief against the Trustee. Although the Trustee did not entitle her Motion to Dismiss as a partial motion to dismiss, the Court treats it as such because it addresses only Count I.

Plaintiff failed to allege or demonstrate that a lien had been noted on the Lexus's certificate of title, which is the only way to perfect a lien on a motor vehicle in the State of Tennessee. [Doc. 60 at 2-3.] Thus, the Trustee asserts, Plaintiff is not entitled to the funds received from the sale of the Lexus.. [*Id.*] Plaintiff opposes the Motion to Dismiss, arguing that the Trustee misreads the Amended Complaint and that because the Lexus was obtained through conversion and/or fraud, the sale proceeds are not an asset of the estate and the Tennessee certificate-of-title statutes are inapplicable to Plaintiff's claim. [Docs. 61, 62.] The Trustee did not seek to file a reply to Plaintiff's response.

Rule 12(b)(6) requires dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a).<sup>4</sup> When fraud is alleged, Rule 8 is read in conjunction with Rule 9(b),<sup>5</sup> which requires fraud to be pled with particularity so that the defendant has sufficient notice of the alleged misconduct. *U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 503 (6th Cir. 2007) (requiring that, "at a minimum, [the complaint] must 'allege the time, place, and content of the alleged misrepresentation on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud'" (quoting *Coffey v. Foamex L.P.*, 2 F.3d 157, 161-62 (6th Cir. 1993))).

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<sup>4</sup> Rule 8 is applicable in adversary proceedings under Rule 7008 of the Federal Rules of Bankruptcy Procedure.

<sup>5</sup> Rule 9 is applicable in adversary proceedings under Rule 7009 of the Federal Rules of Bankruptcy Procedure.

“To 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.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint need not contain “detailed factual allegations[; however,] a plaintiff’s obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 545.

[Although] a complaint will survive a motion to dismiss if it contains “either direct or inferential allegations respecting all material elements” necessary for recovery under a viable legal theory, [the] court “need not accept as true legal conclusions or unwarranted factual inferences, and conclusory allegations or legal conclusions masquerading as factual allegations will not suffice.”

*Philadelphia Indem. Ins. Co. v. Youth Alive, Inc.*, 732 F.3d 645, 649 (6th Cir. 2013) (quoting *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 275-76 (6th Cir. 2010)).

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

*Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556-57).

When deciding whether to dismiss under Rule 12(b)(6), the court “construe[s] the complaint in the light most favorable to the plaintiff, accept[s] its allegations as true, and draw[s] all reasonable inferences in favor of the plaintiff.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008) (quoting *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007)). The Court also “‘consider[s] the complaint in its entirety, as well as . . . documents incorporated into the complaint by reference, and matters of which a court may take judicial

notice.” *Solo v. United Parcel Serv. Co.*, 819 F.3d 788, 794 (6th Cir. 2016) (alteration in original) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

The Trustee correctly states in her Motion to Dismiss that “Plaintiff at no time in its Complaint alleges or demonstrates that it had a lien on the vehicle.” [Doc. 59 ¶ 3.] The Amended Complaint, however, does not assert a right to recovery of the sale proceeds as a secured creditor in collateral with a consensual lien. Instead, in Count I of the Amended Complaint, Plaintiff asks the Court (1) for a determination that the sale proceeds held by the Trustee are traceable to Ms. Hoskins’s bank account, which was used by Defendant Debtors to purchase the Lexus without Ms. Hoskins’s permission or knowledge, resulting in conversion or fraud so that (2) the funds should be disbursed to Plaintiff. [Doc. 53 ¶¶ 33-38, 50-51, Ex. B.]

The Court agrees with Plaintiff that the Trustee’s Motion to Dismiss does not address the allegations or claims stated by the Amended Complaint. Taking the allegations in totality and in a light most favorable to Plaintiff, the Court finds that Plaintiff pleaded sufficient facts that, if proven true, would entitle it to at least a portion of the requested relief sought from the Court, i.e., a determination that the funds being held by the Trustee can be traced to Ms. Hoskins’s bank account because the Lexus was obtained with funds directly from that account by Debtors’ conversion and/or fraud.

The Court, accordingly, directs the following:

1. The Motion to Dismiss Case Pursuant to Bankruptcy Rule 7012(b)(6) filed by the Trustee on April 26, 2022 [Doc. 59], is DENIED.

2. As required by Federal Rule of Civil Procedure 12(a)(4)(A), the Trustee shall file an answer to the Amended Complaint within fourteen days from entry of this Order.

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