IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE: KEVIN MICHAEL DUGAN and ELLEN BLAND DUGAN, Debtors	**4:11-bk-13039 CHAPTER 13**
KEVIN MICHAEL DUGAN and ELLEN BLAND DUGAN	**PLAINTIFFS**
v.	**AP NO.: 4:11-ap-1267**
U.S. BANK (OH)	**DEFENDANT**

ORDER GRANTING MOTION TO DISMISS COUNT I OF COMPLAINT

The Defendant's *Motion To Dismiss Count I of Complaint for Failure to State a Claim Upon Which Relief Can Be Granted* ("**Motion to Dismiss**") and brief in support as well as the Plaintiffs/Debtors' *Response to Defendant's Motion to Dismiss* are before the Court. Defendant moves pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012 to dismiss the Plaintiffs' *Complaint for Violation of the Automatic Stay and Motion to Turn Over Property of the Estate*. The parties did not request oral argument. The Court has considered the Defendant's Motion to Dismiss and the Plaintiffs' Response, and for the reasons stated below, Defendant's Motion to Dismiss is granted.

The standard for dismissal under Federal Rule of Bankruptcy Procedure 7012(b)(6) is as follows:

> [To survive a motion to dismiss pursuant to Rule 12(b)(6), as interpreted by the Supreme Court in *Bell Atlantic Corp. v. Twombley,* 550 U.S. 544, 127 S.Ct. 1955 (2007)], a plaintiff [must] plead facts sufficient to 'raise a right to relief above the speculative level.' 550 U.S. at 555, 127 S.Ct. 1955. While the pleadings need not show relief is probable, they must show the plaintiff's claims are 'plausible.' *Id.* at 556, 127 S.Ct. 1955; *Ashcroft v. Iqbal,* —– U.S. ——–, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). '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.' *Iqbal,* 129 S.Ct. at 1949. Courts must accept a plaintiff's specific factual allegations as true but are not required to accept a plaintiff's legal conclusions. *Twombly,* 550 U.S. at 556, 127 S.Ct. 1955. Further, documents attached to or incorporated within a complaint are considered part of the pleadings, and courts may look at such documents 'for all purposes,' Fed. R. Civ. P. 10(c), including to determine whether a plaintiff has stated a plausible claim, *see M.M. Silta v. Cleveland Cliffs, Inc.*, 616 F.3d 872, 876 (8th Cir. 2010) (reviewing the language of a contract included with the pleadings to gauge the sufficiency of a complaint); *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1063 n. 3 (8th Cir.2005).

Brown v. Medtronic, Inc., 628 F.3d 451, 459 -460 (8th Cir. 2010). Additionally,

> When a dispositive issue of law precludes a plaintiff from being entitled to relief regardless of the allegations of fact, the plaintiff might prove, Rule 12(b)(6) authorizes a court to dismiss that plaintiff's claims. *Neitzke v. Williams*, 490 U.S. 319, 326-327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); *Hishon v. King & Spalding,* 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). In order to streamline litigation and dispense with needless discovery and factfinding, courts are required to dismiss legal claims that are destined to fail regardless of whether they are nearly viable. *Neitzke,* 490 U.S. at 326-27 (stating "[n]othing in Rule 12(b)(6) confines its sweep to claims of law which are obviously insupportable. . . . [A] claim must be dismissed, without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one.").

Ray v. American Airlines, Inc., 2008 WL 3992644, *3 (W.D. Ark. 2008).

Plaintiffs allege in Count I of their Complaint that Defendant violated the automatic stay by seizing $10,000 in funds from Debtor Kevin M. Dugan's business account.

Defendant moves to dismiss Count I asserting, in part, that the automatic stay does not apply to the Debtor's business account because the business is a separate corporate entity.[1] Plaintiffs respond that although they do not allege any violation of the automatic stay for seizing the funds was willful, that said funds should be turned over to the Chapter 13 Trustee, and that the automatic stay applies to the business account because it was "under the control of Kevin Dugan" and also because he had a legal and equitable interest in all assets of his business. Yet, the Debtors' schedules show that the business is indeed a corporation of which Debtor Kevin Dugan owns 100% of the stock.

The Court agrees that the Plaintiffs have not stated a claim for relief for violation of the automatic stay in Count I because the actions complained of in Count I are with respect to a business account which is not property of the Debtors' estate subject to the automatic stay. "The automatic stay is broad in scope and applies to almost every formal and informal action against the debtor or property of the debtor, except as set forth under [362](b)." *Matter of Eugene L. Pieper, P.C.*, 202 B.R. 294, 297 (Bankr. D. Neb. 1996). As this Court stated in *In re Faulkner*, "[c]orporate assets are not property of an individual debtor's bankruptcy estate. 'A corporation has a separate legal existence from its shareholders, and

[1] The parties also argue about whether the automatic stay was in place during a time in which the Debtors' case was dismissed for failure to file schedules. The Court need not reach this issue because the automatic stay did not apply to a non-debtor business account in any case. However, the Court notes that despite Ms. Adams' assertion that she did not receive notice of the case's dismissal, the notice recipients attached to the Court's Order of Deficiencies (docket #6) shows that she was sent a copy of the Order by email. (It is a filing attorney's responsibility to ensure that the Court and the BNC Noticing Center have their current address. *See* Administrative Procedures for Electronically Filed Cases and Related Documents, p. 4 available at http://www.arb.uscourts.gov/orders-rules-opinions/orders/APGo19(6).pdf .)

the corporation, not its shareholders, owns the corporate assets and owes the corporate debts.'" 2002 WL 32114473 (Bankr. E.D. Ark. 2002) (quoting *In re Russell*, 121 B. R. 16, 17 (Bankr. W.D. Ark. 1990)). *See also In re Hoffman*, 70 B.R. 155, 160 (Bankr. W.D. Ark.1986) (stating property of corporation is not property of the estate of the debtor); *In re Peoples Bankshares, Ltd.*, 68 B.R. 536, 539 (Bankr. N.D. Iowa 1986) ("Although a debtor owns 100 percent of the stock of a corporation, the property interest of the debtor's bankruptcy estate extends only to the intangible personal property rights represented by the stock certificates; the technical, legal distinctions between corporations will be respected and applied with reference to the automatic stays of actions against property of the estate.") (citing *In re Loughnane*, 28 B.R. 940, 942 (Bankr. D. Colo. 1983)). Accordingly, the business account of Debtor Kevin Dugan is not protected by the automatic stay, and Count I of the Plaintiffs' Complaint must be dismissed.

Additionally, the Court notes that the co-debtor stay provided by § 1301 only protects individual co-debtors, not corporate co-debtors and is not applicable to Debtor's business account. *See generally In re Saleh*, 427 B.R. 415 (Bankr. S.D. Ohio 2010) (refusing to extend automatic stay via § 105 to non-debtor corporation wholly owned by debtor-husband because doing so would be inconsistent with the limited nature of co-debtor relief provided by § 1301).

For the reasons stated herein, it is hereby

ORDERED that the Defendant's Motion to Dismiss is **GRANTED;** trial on Count II of the Plaintiffs' complaint (which alleges the Defendant contacted Debtors for repayment of a debt) will be set for trial by subsequent notice)**.**

IT IS SO ORDERED.

Audrey R. Evans
United States Bankruptcy Judge
Dated: 06/20/2012

cc: Lauren Adams, attorney for Plaintiffs
Randy Grice, attorney for Defendant
Joyce Bradley Babin, Chapter 13 Trustee
U. S. Trustee