ORDERED.

Dated: May 03, 2016

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
THE 283 BAYOU CIRCLE TRUST,	)	Case No. 6:13-bk-04561-KSJ
	)	Chapter 7
Debtor.	)	
	)	
SAM ZALLOUM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 6:15-ap-00153-KSJ
	)	
JP MORGAN CHASE BANK, N.A., et. al.,	)	
	)	
Defendants.	)	
	)	

ORDER GRANTING DEFENDANTS' MOTIONS
TO DISMISS AND DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT

This case came on for hearing on April 7, 2016. Defendants seek dismissal of this adversary proceeding asserting violations of the automatic stay and the Fair Debt Collections

Practices Act ("FDCPA").[1] Plaintiff, Sam Zalloum, wants to amend his complaint to *partially* address the deficiencies raised in the dismissal motions.[2] The Court now denies the Plaintiff's request to amend his complaint as futile and dismisses this adversary proceeding with prejudice.

The 283 Bayou Circle Trust is a land trust and the Debtor in this Chapter 7 bankruptcy case.[3] Debtor listed only one asset—the real property located at 283 Bayou Circle, DeBary, Florida, 32713 (the "Property").[4] Plaintiff, Sam Zalloum, after years of contesting Defendants' attempts to foreclose upon unpaid mortgages encumbering the Property, signed the Debtor's bare bones petition as "Trustee" of the Debtor trust.[5] In 2013, the Court entered an Order of Impending Dismissal because the Debtor was not represented by counsel.[6] Shortly thereafter, the Debtor retained counsel, filed amended schedules, and listed Mr. Zalloum as an unsecured creditor.[7] On its amended schedules, the Debtor still listed the Property as its only asset.[8]

Carla Musselman is the Chapter 7 Trustee in this bankruptcy case charged with liquidating assets and paying creditor claims. When two creditors sought relief from the automatic stay to pursue their *in rem* rights against the Property,[9] she concluded the amount due on their outstanding mortgage and home owners' association fees exceeded the value of the

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[1] Defendants, Phelan Hallinan Diamond & Jones, PLLC, Albertelli Law, JP Morgan Chase Bank, N.A., and U.S. Bank Trust, N.A., as Trustee, for LSF9 Master Participation Trust, filed separate motions to dismiss. Doc. Nos. 5, 7, 16, and 20.
[2] Doc. No. 23.
[3] Main Case No. 6:13-bk-04561-KSJ, filed April 15, 2013.
[4] Main Case Doc. No. 11. Debtor also listed Mr. Zalloum as a "co-debtor" liable for certain community association dues. *Id.* at P. 15.
[5] Main Case Doc. No. 1.
[6] Main Case Doc. No. 16. *See Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381 (11th Cir. 1985) ("'fictional legal persons … cannot appear for themselves personally'") (quoting *Taylor v. Montgomery*, 539 F.2d 715 (7th Cir. 1976)).
[7] Main Case Doc. No. 27.
[8] *Id.*
[9] River Oaks Community Services Association, Inc., filed its Motion for Relief from Automatic Stay on April 18, 2013. Main Case Doc. No. 6. River Oaks sought to enforce its in rem lien rights against the Debtor for unpaid assessments on the real property. *Id.* U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust filed its Motion for Relief from Automatic Stay on September 28, 2015. Main Case Doc. No. 102. U.S. Bank was the holder of a note secured by the mortgage encumbering the Property. *Id.*

Property, did not oppose stay relief,[10] and is administering this case as a no asset Chapter 7 bankruptcy case.

Mr. Zalloum, however, individually opposed the requests for stay relief. The Court granted relief from stay to allow both creditors to pursue their state court rights.[11] Plaintiff then appealed this Court's Order granting U.S. Bank's Motion for Relief from Stay.[12] That appeal is pending before the United States District Court for the Middle District of Florida.

Plaintiff, in his continuing efforts to prevent the foreclosure of the home owned by the Debtor, then filed his adversary complaint[13] primarily arguing that Defendants violated the automatic stay and the FDCPA in connection with their state court foreclosure action.[14] Defendants argue this complaint should be dismissed with prejudice primarily because the Plaintiff has no standing to pursue these causes of action. This Court agrees.

Upon the filing of a bankruptcy case, a bankruptcy estate is created. Section 541(a) of the Bankruptcy Code defines a debtor's bankruptcy estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case."[15] This includes all legal causes of action the debtor had against others as of the commencement of the bankruptcy case or that accrue during a Chapter 7 Trustee's administration of the case. Only a bankruptcy trustee, such as Ms. Musselman in this case, has standing to assert causes of action that belong to the estate. Further, similar lawsuits brought by individual creditors are subject to the automatic stay

[10] The note was dated June 29, 2007. The mortgage was dated July 18, 2007.
[11] Main Case Doc. Nos. 18 and 109.
[12] Main Case Doc. No. 112.
[13] Doc. No. 1, filed November 17, 2015.
[14] In one of the Motions to Dismiss, JPMorgan Chase Bank, N.A., also notes that the complaint "appears to allege fraud, slander of title, and that Chase's lien was invalid." Doc. No. 16, ¶ 9. The Court agrees the complaint is difficult to parse but that the only even arguable claims asserted are for violating the automatic stay and under the FDCPA.
[15] 11 U.S.C. § 541 (2012).

provision of § 362(a)(3). Creditors simply cannot willy-nilly assert claims that the Chapter 7 Trustee exclusively controls.

When this case was filed, Ms. Musselman as the Chapter 7 Trustee inherited all rights of the Trustee of the Debtor trust. Moreover, "[t]he [Chapter 7] Trustee is the representative of the estate in a chapter 7 case. As such, the Trustee is the only person with standing to collect and administer property of the estate for the benefit of creditors [and] it is the Trustee that has the right to use property of the estate."[16] "Chapter 7 Trustees are appointed to objectively evaluate the entire estate and to bring only those actions which are viable, cost effective and will benefit the estate."[17] Finally, "[a] complaint must be dismissed for lack of subject matter jurisdiction if the court has no basis for jurisdiction or if the plaintiff lacks standing to pursue the claims."[18]

Plaintiff is no longer the Trustee of the Debtor trust. Ms. Musselman controls the Debtor and all of its assets, including the right to consent to stay relief and to decide not to pursue claims for alleged violations of the automatic stay or the FDCPA. Zalloum has absolutely no right to pursue these claims either in his capacity as a former Trustee of the Debtor or in his tenuous role as a potential creditor of the Debtor's estate. Plaintiff's previous status as Trustee of the Debtor trust *does not* give Plaintiff standing to allege these causes of action. The Court finds Plaintiff has no personal or individual standing to assert these causes of action.

On Plaintiff's Motion to Amend, the Court finds that any amendment would be futile. The Court has carefully reviewed the Plaintiff's amended complaint and finds that it is still

[16] *In re Young*, 439 B.R. 211, 217 (Bankr. M.D. Fla. 2010) (citing 11 U.S.C. §§ 323, 704).
[17] *In re Harrold*, 296 B.R. 868, 873 (Bankr. M.D. Fla. 2003) (in the context of an individual creditor trying to pursue an avoidance action).
[18] *In re Anchor Glass Container Corp.*, 335 B.R. 193, 198 (Bankr. M.D. Fla. 2005).

subject to dismissal.[19] The proposed amended complaint does not cure the Plaintiff's lack of standing.[20]

Accordingly, it is

ORDERED:

1. Defendants' Motions to Dismiss (Doc. Nos. 5, 7, 16 and 20) are **GRANTED.**

2. Plaintiff's Motion to Amend Complaint (Doc. No. 23) is **DENIED.**

3. This adversary proceeding is dismissed **with prejudice**.

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The Clerk is directed to serve a copy of this order on all interested parties.

[19] *Echeverria v. Bank of Am., N.A.*, No. 14-15375, 2015 WL 7770182, at *2 (11th Cir. Dec. 3, 2015) ("'If a complaint as amended is still subject to dismissal,' then it is futile and 'leave to amend need not be given.'") (internal citations omitted).

[20] The proposed amended complaint seeks declaratory relief on the status of a mortgage, reiterates the FDCPA count, adds a FCCPA count, adds a perjury count, and adds a negligent misrepresentation count.