

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

Case No. 22-10088

Thalia G Wilson,

Debtor.

Lynn Harwell Andrews, Trustee,

Plaintiff,

v.

Adversary Case No. 22-1015

Regions Bank, N.A.,

Defendant.

ORDER GRANTING MOTION TO DISMISS

This case is before the court on defendant Regions Bank's motion to dismiss (doc. 8) the complaint against it by Lynn Harwell Andrews, Trustee, under Federal Rule of Bankruptcy Procedure 7012(b) (incorporating Federal Rule of Civil Procedure 12(b)), for failure to state a claim upon which relief may be granted. Thalia Wilson filed a chapter 7 bankruptcy on January 14, 2022, and Ms. Andrews was appointed as the chapter 7 trustee. According to the complaint (doc. 1), the debtor Ms. Wilson had "\$26,005.48 in a Regions Money Market Account[,] \$19,651.36 of which was nonexempt, when she filed for bankruptcy. (*See id.*, at ¶¶ 5, 9). The trustee alleges that Regions, with knowledge of the debtor's bankruptcy, allowed the debtor to withdraw \$17,434.62 in nonexempt funds from her Regions account; the complaint does not state when, but the parties in briefing say it was on January 25. (*See id.*, at ¶¶ 10-12). The trustee seeks a judgment against Regions for that \$17,434.62.

Analysis

The trustee's complaint includes two counts, for "Turnover of Estate Assets" under Bankruptcy Code § 542 (Count One) and for "Recovery of Post-Petition Transactions" under Code § 549 (Count Two). In considering the defendant's motion, the court views the allegations in the light most favorable to the trustee. *See Crowder v. Delta Air Lines, Inc.*, 963 F.3d 1197, 1202 (11th Cir. 2020). Having done so, and having carefully considered the parties' briefing, the arguments made at the hearing held on November 1, 2022, and the relevant law, the court finds that the complaint's allegations do not "raise a right to relief above the speculative level" and fail to state "a claim to relief that is plausible on its fact." *See id.* (citation and quotation marks omitted).

Bankruptcy Code § 542

The trustee states that under Code §§ "542(a) and (b) Regions is required to turn over all amounts owned by the [d]ebtor on the date of filing." (Compl., doc. 1, at ¶16). At the November 1 hearing, her counsel argued that § 542(a), not 542(b), applies.

Code § 542 states, in pertinent part:

(a) Except as provided in subsection (c) or (d) of this section, an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) Except as provided in subsection (c)¹ or (d) of this section, 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 estate that such debt may be offset under section 553 of this title against a claim of the debtor.

¹ It is unclear whether the "safe harbor" of § 542(c) applies, namely, whether Regions knew about the bankruptcy when the debtor withdrew the funds. The court is not reaching that issue in this ruling.

A bank account does not consist of “of money belonging to the depositor and held by the bank[, but instead] consists of nothing more or less than a promise to pay, from the bank to the depositor” See *Citizens Bank of Maryland v. Strupf*, 516 U.S. 16, 21 (1995). In other words, “the relationship of bank and depositor is that of debtor and creditor, founded upon contract[, and] the deposit of cash into a bank account creates nothing other than a debtor-creditor relationship, with the bank as debtor and the depositor as creditor.” See *In re Colonial BancGroup, Inc.*, No. 2:11CV133, 2012 WL 12878, at *4 (M.D. Ala. Jan. 4, 2012) (citations and quotation marks omitted); see also *In re Turner Grain Merch., Inc.*, 557 B.R. 147, 150 (Bankr. E.D. Ark. 2016) (“A bank account is a debt owed by a bank to the depositor that is payable on demand or on order.”). As a result, the more specific provision of § 542(b) governing debts owed to the estate controls turnover of funds in bank accounts. See, e.g., *In re Turner Grain*, 557 B.R. at 149-51; *In re Randolph Towers Coop., Inc.*, 458 B.R. 1, 5-6 (Bankr. D.D.C. 2011). The complaint does not state a claim under § 542(a).

Turning to § 542(b), that section is in the disjunctive: “pay such debt to, or on the order of, the trustee” (emphasis added). “The plain meaning of this language is that the Bank, upon learning of the . . . bankruptcy, was required to (a) immediately pay the funds in the account to the [t]rustee; or (b) if not immediately, then on the order of the [t]rustee.” See *In re Calvin*, 329 B.R. 589, 596 (Bankr. S.D. Tex. 2005). There is no allegation that the trustee made a demand of Regions for the funds before the debtor withdrew the funds. The complaint thus does not state a claim under § 542(b), either.² See, e.g., *In re Randolph Towers*, 458 B.R. at 6 (stating that “§ 542(b) is not self-

² The court agrees with Regions that a garnishee release by a creditor does not constitute a demand from the trustee. At the November 1 hearing, counsel for the trustee requested time to confirm with his client that she had not made a demand to Regions prior to the withdrawal. Counsel has now informed the court that the trustee did not, so the court is not granting leave to amend the complaint.

executing,” and discussing a trustee’s remedies for “refusal to honor a trustee’s demand for turnover pursuant to § 542(b)” (emphasis added).

Bankruptcy Code § 549

Code § 549 allows a trustee to avoid postpetition transfers by the debtor that were not authorized by the Bankruptcy Code or approved by the bankruptcy court and Code § 550 allows her to then recover those funds. But the express terms of § “550 direct[] that the recovery be made from the transferee of the property.” *See, e.g., In re Big Apple Scenic Studio*, 63 B.R. 85, 88 (Bankr. S.D.N.Y. 1986). A transferor – like Regions here – “cannot as a matter of law be held liable under” § 549 (or § 544, which the trustee mentions in Count One of the complaint). *See id.*; *see also In re Saraland LLLP*, No. 12-30113, 2014 WL 555805, at *5 (Bankr. S.D. Ga. Jan. 17, 2014). The complaint thus also fails to state a claim under § 549.

Conclusion

For the reasons above, the court grants that motion and dismisses this adversary proceeding. A separate judgment will be entered.

Dated: November 7, 2022


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE