

NOT RECOMMENDED FOR PUBLICATION

No. 20-3528

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Nov 24, 2020

DEBORAH S. HUNT, Clerk

MARY J. FARRIER,

Plaintiff-Appellant,

V.

GEORGE PHILLIP LEICHT, et al.,

Defendants-Appellees.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF
OHIO

O R D E R

Before: GUY, KETHLEDGE, and NALBANDIAN, Circuit Judges.

Mary J. Farrier, a pro se Ohio litigant, appeals the district court's judgment dismissing her complaint arising out of her bankruptcy proceeding. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Farrier filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code in August 2017. George Leicht, the appointed trustee for the bankruptcy estate, filed an adversary proceeding to avoid the transfer of property at 1095 W. North Bend Road, Cincinnati, Ohio, that Farrier had transferred to her daughter for no consideration approximately four months before filing her bankruptcy petition. After Farrier's daughter transferred the North Bend property back to Farrier, Leicht filed a motion to sell the property. Farrier then transferred the North Bend property to her husband for \$1,000. Leicht filed an adversary proceeding to recover and sell the North Bend property and moved for summary judgment; the bankruptcy court granted Leicht's motion. Farrier subsequently sought termination of the bankruptcy case based on her failure to pay the filing fee. The bankruptcy court denied Farrier's request to dismiss the

case, stating that she “should not be permitted to orchestrate the dismissal of her chapter 7 case based on her own failure to pay the final \$83.75 installment payment.” The bankruptcy court also rejected Farrier’s allegations of wrongdoing against Leicht and approved Leicht’s motion to sell the North Bend property. After the North Bend property was sold, the bankruptcy court ordered payment of compensation and expenses to Leicht.

Thereafter, in July 2019, Farrier filed a complaint in the district court against Leicht, the United States Bankruptcy Court for the Southern District of Ohio, United States Bankruptcy Judge Beth A. Buchanan, and Ditech Financial, LLC. Farrier alleged that Ditech Financial sent her a foreclosure letter and also sent incorrect information to the credit bureau, resulting in a reduction in her borrowing ability and a decrease in her credit score. Ditech Financial ultimately corrected the false information, Farrier alleged, but some creditors had already received the false information. According to Farrier, she “panicked” and filed a bankruptcy petition under Chapter 7. Farrier alleged that Leicht told her at the § 341 meeting of creditors that she did nothing wrong by transferring her house to her daughter but later went behind her back and sued her daughter for the house. Farrier alleged that, without a trustee deed in his name or a court order, Leicht put the house on the market for sale through a realtor, put her name on an insurance policy without her consent, winterized the house, changed the locks, and locked her out of the house. Farrier also alleged that she transferred the house to her husband and that Judge Buchanan and Leicht denied her husband his dower rights. According to Farrier, Judge Buchanan and Leicht sold her house and kept the money without paying any creditors. Farrier further alleged that Judge Buchanan and Leicht held her bankruptcy case open to harass her and that Leicht prolonged the case to run up the costs. Farrier sought compensatory and punitive damages amounting to \$5 million from the defendants and also requested that her house be returned, that her name be cleared “from the Chapter 7 slander,” and that a letter be issued showing that her bills were not discharged and that no creditor filed a proof of claim by the deadline.

In his motion to dismiss Farrier's complaint, Leicht asserted that the district court did not have subject matter jurisdiction under the *Barton* doctrine and that he was immune from Farrier's claims. The bankruptcy court and Judge Buchanan also moved to dismiss Farrier's claims, asserting that the bankruptcy court was entitled to sovereign immunity and that Judge Buchanan was entitled to absolute judicial immunity. Ditech Financial filed a notice of bankruptcy and imposition of automatic stay, stating that it had commenced a voluntary bankruptcy case under Chapter 11 on February 11, 2019. Ditech Financial subsequently filed an updated notice that the bankruptcy court had entered an order confirming its Chapter 11 plan, which contained a permanent injunction prohibiting parties from prosecuting any action against Ditech Financial for monetary recovery on account of any claim arising prior to September 30, 2019.

A magistrate judge recommended that the defendants' motions to dismiss be granted, that Farrier's claims against Ditech Financial be dismissed, and that Farrier's pending motions be denied as moot. Over Farrier's objections, the district court adopted the magistrate judge's report and recommendation, granted the defendants' motions to dismiss, and dismissed Farrier's claims against the defendants. This timely appeal followed.

We review de novo the district court's dismissal for lack of subject matter jurisdiction. *Muniz-Muniz v. U.S. Border Patrol*, 741 F.3d 668, 671 (6th Cir. 2013). We also review de novo the district court's dismissal for failure to state a claim upon which relief can be granted. *Rieves v. Town of Smyrna, Tenn.*, 959 F.3d 678, 690 (6th Cir. 2020).

The district court dismissed Farrier's claims against the bankruptcy court based on sovereign immunity. "The doctrine of sovereign immunity shields the United States from lawsuits"; therefore, suits brought against the United States must be dismissed "unless a claimant can point to an express waiver of sovereign immunity." *Jackson v. United States*, 751 F.3d 712, 716 (6th Cir. 2014). The United States Bankruptcy Court of the Southern District of Ohio is a part of the United States government, see 28 U.S.C. § 151, and thus entitled to sovereign immunity absent an express waiver. See *Alston v. Admin. Offices of Del. Cts.*, 663 F. App'x 105, 108 (3d Cir. 2016); *Gregory v. United States*, 942 F.2d 1498, 1500 (10th Cir. 1991). Because the

United States has not waived the bankruptcy court's sovereign immunity, the district court properly dismissed Farrier's claims against the bankruptcy court for lack of subject matter jurisdiction.

The district court concluded that Farrier failed to state a claim against Judge Buchanan based on absolute judicial immunity. A judge performing judicial functions is absolutely immune from suit seeking monetary relief, even if the judge acts erroneously, maliciously, or in excess of her authority. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam); *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). Judicial immunity is overcome in only two circumstances: (1) when the judge acts in a non-judicial capacity or (2) when the judge acts in the complete absence of all jurisdiction. *Mireles*, 502 U.S. at 11-12. Neither exception applies: Farrier complained about Judge Buchanan's rulings in the bankruptcy proceedings over which the bankruptcy court had jurisdiction. Accordingly, the district court properly concluded that Judge Buchanan was entitled to absolute judicial immunity.

The district court dismissed Farrier's claims against Leicht based on the *Barton* doctrine. See *Barton v. Barbour*, 104 U.S. 126 (1881). "Under the *Barton* rule, leave of the bankruptcy court 'must be obtained by any party wishing to institute an action in [another] forum against a trustee, for acts done in the trustee's official capacity and within the trustee's authority as an officer of the court.'" *In re McKenzie*, 716 F.3d 404, 414 (6th Cir. 2013) (quoting *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir. 1993)). This common-law "requirement enables the Bankruptcy Court to maintain better control over the administration of the estate." *In re DeLorean Motor Co.*, 991 F.2d at 1240. There is a limited statutory exception to the *Barton* doctrine: A plaintiff may sue a trustee without leave of the bankruptcy court "with respect to any of [the trustee's] acts or transactions in carrying on business connected with [the estate] property." 28 U.S.C. § 959(a). But "[t]his exception does not apply to suits against the trustee for actions taken while administering the estate." *In re DeLorean Motor Co.*, 991 F.2d at 1241. "Merely collecting, taking steps to preserve, and/or holding assets, as well as other aspects of administering and liquidating the estate, do not constitute 'carrying on business' as that term has

been judicially interpreted.” *Id.* (quoting *In re Campbell*, 13 B.R. 974, 976 (Bankr. D. Idaho 1981)).

Farrier’s allegations against Leicht arose out of his official duties as trustee in recovering and preserving an asset of the bankruptcy estate—the North Bend property. Because Farrier did not obtain leave of the bankruptcy court to file this action against Leicht, the district court properly dismissed her claims against the trustee for lack of subject matter jurisdiction.

The district court dismissed Farrier’s claims against Ditech Financial based on the confirmation of its Chapter 11 plan. Under the Bankruptcy Code, “the confirmation of a plan . . . discharges the debtor from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). A “debt” means “liability on a claim.” 11 U.S.C. § 101(12). The Bankruptcy Code defines “claim” as a:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). This “broad definition of claim allows a bankruptcy court to deal fairly and comprehensively with all creditors in the case and, without which, a debtor’s ability to reorganize would be seriously threatened by the survival of lingering remote claims and potential litigation rooted in the debtor’s prepetition conduct.” *In re Huffy Corp.*, 424 B.R. 295, 301 (Bankr. S.D. Ohio 2010).

The confirmation of Ditech Financial’s Chapter 11 plan therefore discharged Farrier’s claims, which arose before Ditech Financial filed for bankruptcy protection. Moreover, the Chapter 11 plan included a permanent injunction prohibiting parties from commencing, conducting, or continuing any action against Ditech Financial for monetary recovery on account of any claim arising prior to the closing of transactions under the plan. Accordingly, the district

court properly dismissed Farrier's claims against Ditech Financial as discharged and enjoined in accordance with the confirmation of Ditech Financial's Chapter 11 plan.

For these reasons, we **AFFIRM** the district court's judgment dismissing Farrier's claims against the defendants.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

MARY FARRIER,

Plaintiff

v.

GEORGE LEICHT, et al.,

Defendants

Civil Action No. 1:19-cv-588

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the
defendant (name) _____ the amount of
_____ dollars (\$ _____), which includes prejudgment
interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____
_____ recover costs from the plaintiff (name) _____

☒ other: The Report and Recommendation (Doc. 25) is ADOPTED; The pending motions to dismiss (Docs. 8, 12) are GRANTED; Plaintiff's claims against Defendants are DISMISSED; Plaintiff's motion to start selecting jurors after the COVID-19 pandemic clears (Doc. 32) is DENIED as moot; and this case is TERMINATED from this Court's docket.

This action was (check one):

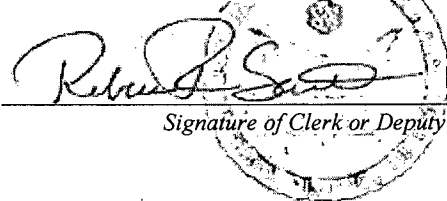
☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☒ decided by Judge Timothy S. Black, United States District Judge _____ on motions for
Report and Recommendation and to dismiss.

Date: 5/12/2020

CLERK OF COURT



Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARY FARRIER,	:	Case No. 1:19-cv-588
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	Magistrate Judge Karen L. Litkovitz
	:	
GEORGE LEICHT, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 25) AND
TERMINATING THIS CASE IN THIS COURT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and, on January 28, 2020, submitted a Report and Recommendation, recommending that the Court: (1) grant two pending motions to dismiss; and (2) dismiss Plaintiff's claims against Defendants. (Doc. 25). Plaintiff has filed numerous objections to the Report and Recommendation.¹ (Docs. 26, 27, 30, 31, 33). Plaintiff has also filed a motion to start selecting jurors after the COVID-19 pandemic clears. (Doc. 32).

¹ Plaintiff's objections are not well-taken. (Docs. 26, 27, 30, 31, 33). The objections restate the allegations/arguments set forth in Plaintiff's previous filings. (Docs. 1, 14, 15, 17, 18, 19, 20, 21, 23, 24). The Magistrate Judge has already considered these allegations/arguments in the Report and Recommendation, and the Magistrate Judge has already concluded that, notwithstanding them, Plaintiff's claims against Defendants must fail under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). (Doc. 25). This Court agrees entirely with the Magistrate Judge's well-reasoned analysis. Accordingly, the objections are overruled.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report and Recommendation should be and is hereby adopted in its entirety.

Accordingly, for the reasons stated above:

1. Plaintiff's objections (Docs. 26, 27, 30, 31, 33) are **OVERRULED**;
2. The Report and Recommendation (Doc. 25) is **ADOPTED**;
3. The pending motions to dismiss (Docs. 8, 12) are **GRANTED**;
4. Plaintiff's claims against Defendants are **DISMISSED**;
5. Plaintiff's motion to start selecting jurors after the COVID-19 pandemic clears (Doc. 32) is **DENIED** as moot; and
6. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** from this Court's docket.²

IT IS SO ORDERED.

Date: 5/12/2020

s/Timothy S. Black
Timothy S. Black
United States District Judge

² Plaintiff asks the Court to extend the deadline by which she must appeal this Order. (Doc. 26 at 4). Plaintiff argues that a multi-month extension is appropriate, because she is a *pro se* party who is advanced in years. (*Id.*) The Court cannot grant Plaintiff's request. Under Fed. R. App. P. 4(a)(5), the Court can only extend the notice of appeal deadline if the party seeking the extension makes a showing of either excusable neglect or good cause. *See Nicholson v. City of Warren*, 467 F.3d 525, 526 (6th Cir. 2006). Moreover, an extension, under Fed. R. App. P. 4(a)(5), cannot "exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later." Here, Plaintiff's general assertion, that she is a *pro se* party who is advanced in years, fails to establish either excusable neglect or good cause. *See Pitts v. Horton*, No. 86-7672, 1987 WL 44598, at *1 (4th Cir. 1987); *cf. Ganenas v. Merit Sys. Prot. Bd.*, No. 95-3004, 1995 WL 113501, at *1 (Fed. Cir. 1995). Additionally, Plaintiff's requested extension far exceeds that permitted by Fed. R. App. P. 4(a)(5). Accordingly, Plaintiff's request is **DENIED**.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARY J. FARRIER,
Plaintiff,

vs.

GEORGE LEICHT, et al.,
Defendants.

Case No. 1:19-cv-588
Black, J.
Litkovitz, M.J.

**ORDER AND REPORT AND
RECOMMENDATION**

Proceeding pro se, plaintiff brings this action against defendants George Leicht, United States Bankruptcy Court for the Southern District of Ohio ("Bankruptcy Court"), Judge Beth J. Buchanan, and Ditech Financial, LLC ("Ditech") in relation to actions taken during her bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Ohio. (Doc. 1). This matter is before the Court on defendant Leicht's motion to dismiss (Doc. 8), defendants Bankruptcy Court and Buchanan's motion to dismiss (Doc. 12), and defendant Ditech's notice of bankruptcy status (Doc. 22). Plaintiff has filed responses in opposition to the motions to dismiss and notice of bankruptcy status (Docs. 14, 15, 23). This matter is also before the Court on three pretrial motions filed by plaintiff (Docs. 18, 21, 24).

I. Background Facts

Plaintiff filed a petition for Chapter 7 bankruptcy in August 2017. (Ex. A, Doc. 12-1; Docket, U.S. Bankruptcy Court for the Southern District of Ohio, Case No. 1:17-bk-12858).¹ Defendant George Leicht, the Chapter 7 Trustee of the bankruptcy estate, commenced an

¹ In ruling on a motion to dismiss, the Court can consider "exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to [the] defendant[s'] motion to dismiss, so long as they are referred to in the Complaint and are central to the claims contained therein." *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). See also *Mediacom Southeast LLC v. BellSouth Telecommunications, Inc.*, 672 F.3d 396, 399 (6th Cir. 2012). Therefore, the Court will consider the records from the bankruptcy proceedings attached to defendants' motion to dismiss.



adversary proceeding on October 5, 2017 to avoid the transfer of property at 1095 North Bend Road in Cincinnati, Ohio that plaintiff had transferred to her daughter approximately four months before filing her bankruptcy petition. (*Id.* at 3 (Doc. 17), Doc. 12-3 at 3). Plaintiff's daughter transferred the property back to plaintiff. (Doc. 12-3 at 3). On January 31, 2018, Trustee Leicht filed a motion to sell the property. (Doc. 12-1 at 12 (Doc. 85)).

On February 15, 2018, plaintiff conveyed the property to her husband for \$1,000. (Doc. 12-3 at 3). Trustee Leicht filed another adversary proceeding to recover and sell the property under 11 U.S.C. §§ 363 and 359. (Doc. 12-1 at 12 (Doc. 93)). In the adversary proceeding, Trustee Leicht moved for summary judgment. (Doc. 12-2 at 2 (Doc. 4)). Judge Buchanan granted Trustee Leicht's motion for summary judgment and ordered the property conveyed from plaintiff's husband to Trustee Leicht. (Doc. 12-3). Plaintiff's husband appealed Judge Buchanan's decision to the Bankruptcy Appellate Panel. (Doc. 12-2 at 3 (Doc. 15)). The Bankruptcy Appellate Panel dismissed the appeal for lack of prosecution. (Doc. 12-4).

Plaintiff filed a "motion to review procedure" to end her Chapter 7 bankruptcy proceeding, which was denied by Judge Buchanan. (Doc. 12-1 at 11 (Doc. 83), 16 (Doc. 117)). Judge Buchanan held that plaintiff "should not be permitted to orchestrate the dismissal of her chapter 7 case based on her own failure to pay the final \$83.75 installment payment." (Doc. 12-5 at 4). Judge Buchanan determined that plaintiff's chapter 7 case "has been and continues to be an active and open chapter 7 bankruptcy proceeding." (*Id.*). Judge Buchanan also approved Trustee Leicht's motion to sell the property and employ a realtor. (*Id.* at 10).

On July 26, 2018, plaintiff appealed Judge Buchanan's decision. (Doc. 12-6). Plaintiff argued that "[t]his matter needs to be addressed and resolved in an outside US District Court with a good Lawyer." (*Id.*). Plaintiff questioned, "why should my Husband Be punished and

lose his rights to ownership, because I put an application in for a chapter 7 program?" (*Id.* at 3). In reviewing plaintiff's appeal, the Bankruptcy Appellate Panel interpreted her appeal as a request to have her case reviewed in district court. (Doc. 12-8). The Bankruptcy Appellate Panel transferred plaintiff's case to this Court, which docketed the case as Case No. 1:18-cv-539. (*Id.*). On October 17, 2019, the Court dismissed plaintiff's bankruptcy appeal in Case No. 1:18-cv-539 for lack of prosecution and noted that plaintiff had decided to pursue her concerns relating to the underlying bankruptcy case in a separate civil action, which is the case presently before this Court. (Case No. 1:18-cv-539 (Doc. 7)).

Plaintiff filed her complaint in this present case in July 2019. Plaintiff alleges that her mortgage company, Ditech, sent her a foreclosure letter in 2016, which caused her credit score to decrease. (Doc. 1 at 16). This foreclosure letter led plaintiff to "panic" and file a petition for Chapter 7 Bankruptcy. (*Id.*). During the proceedings, plaintiff alleges that she was misled by Trustee Leicht at the 341 meeting on September 12, 2017. (*Id.* at 3). Plaintiff alleges that Trustee Leicht informed her that she did "nothing wrong" by transferring her house to her daughter, but then he went behind her back and sued her daughter for the house. (*Id.*). Plaintiff alleges that Trustee Leicht failed to mention to plaintiff that he was going to pursue the house. (*Id.*). According to plaintiff, she was denied due process of law by Trustee Leicht because the case "would have automatically been put on the docket for the dispute to be heard in front of a judge," if Trustee Leicht told plaintiff he was going to "pursue the house." (*Id.*).

Thereafter, plaintiff alleges that Trustee Leicht did not notify her that the property would be seized. (*Id.* at 4). Plaintiff alleges that Trustee Leicht placed the house on the market for sale "through a realtor without a trustee deed in his name and no Court Order" and put her name on the insurance policy without her consent. (*Id.*). Plaintiff further alleges that Trustee Leicht

unlawfully winterized the house, changed the locks, and locked her out of the house without a trustee deed in his name or a Court Order. (*Id.*).

Plaintiff states that Trustee Leicht and Judge Buchanan informed her that the house needed to be sold to pay off the creditors, but plaintiff alleges no creditors were ever paid. (*Id.* at 5). Plaintiff asked Judge Buchanan not to sell the house because plaintiff believed it was a “personal gain” for the trustee. (*Id.* at 6). Plaintiff states that no creditors made claims on the bankruptcy estate and she received a dismissal notice in 2017. (*Id.*). According to plaintiff, Trustee Leicht filed an objection to the dismissal and “created the charges on his own.” (*Id.*). Almost two years later, plaintiff states that Judge Buchanan granted summary judgment in Trustee Leicht’s favor and granted a trustee deed. (*Id.* at 7). Plaintiff alleges that Judge Buchanan “aided” Trustee Leicht by taking biased actions against plaintiff during the course of the bankruptcy proceeding. (*Id.* at 9). Plaintiff alleges that Trustee Leicht “kept all the money from the sale of [her] house using a government facility for personal gain.” (*Id.* at 16). Plaintiff alleges that she feels “bamboozled.” (*Id.*). Plaintiff states that she does not have Chapter 7 Bankruptcy protection. (*Id.*).

As relief, plaintiff requests that her name be cleared from the “Chapter 7 Slander,” her house back, “a letter showing that [her] bills was [sic] not discharged and the creditors did not file proof of claim by the deadline,” an updated appraisal, and monetary damages in the amount of five million dollars. (*Id.* at 27).

II. Motions to Dismiss (Docs. 8, 12)

A. Standards

1. Lack of Subject Matter Jurisdiction

Under Fed. R. Civ. P. 12(b)(1), a party may attack a complaint for lack of subject matter jurisdiction. There are generally two types of motions challenging subject matter jurisdiction under Rule 12(b)(1). *DLX, Inc. v. Kentucky*, 381 F.3d 511, 516 (6th Cir. 2004) (citations omitted), *abrogated on other grounds by Lumbar v. City of Ann Arbor*, 913 F.3d 585 (6th Cir. 2019). A Rule 12(b)(1) motion can attack a party's claim of jurisdiction on its face or the motion can attack the factual basis for a claim of jurisdiction. *Id.* A facial attack questions the sufficiency of the pleading. *Campbell v. Miller*, 835 F. Supp. 2d 458, 463 (S.D. Ohio 2011) (citing *Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320 (6th Cir. 1990)). When reviewing this type of challenge to the court's jurisdiction, the court must take the allegations in the complaint as true and construe the complaint in a light most favorable to the non-moving party. *Id.* (citing *United States v. A.D. Roe Co., Inc.*, 186 F.3d 717, 721-22 (6th Cir. 1999)).

When a factual challenge is made under Rule 12(b)(1), the court considers evidence to determine if jurisdiction exists. *Id.* at 463-64 (citing *Nichols v. Muskingum Coll.*, 318 F.3d 674, 677 (6th Cir. 2003)). The trial court must weigh the conflicting evidence to make this determination. *Id.* (citing *Gentek Bldg. Products, Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007)). When a factual attack is made, the non-moving party bears the burden of proving that jurisdiction exists. *Id.* (citing *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005)). In such a case, there is no presumption of truthfulness on behalf of the non-moving party. *Id.* (citing *A.D. Roe Co., Inc.*, 186 F.3d at 722).

2. Failure to State a Claim

Under Fed. R. Civ. P. 12(b)(6), a party may challenge a complaint for failure to state a claim upon which relief can be granted. In deciding a motion to dismiss under Rule 12(b)(6), the Court must accept all factual allegations as true and make reasonable inferences in favor of the

non-moving party. *Keys v. Humana, Inc.*, 684 F.3d 605, 608 (6th Cir. 2012) (citing *Harbin-Bey v. Rutter*, 420 F.3d 571, 575 (6th Cir. 2005)). Only “a short and plain statement of the claim showing that the pleader is entitled to relief” is required. *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). “[T]he statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (internal quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007))). Although the plaintiff need not plead specific facts, the “[f]actual allegations must be enough to raise a right to relief above the speculative level” and to “state a claim to relief that is plausible on its face.” *Id.* (quoting *Twombly*, 550 U.S. at 555, 570). A plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

B. Resolution

1. Claims against the Bankruptcy Court and Judge Buchanan

Defendants Bankruptcy Court and Judge Buchanan move to dismiss plaintiff’s complaint on the grounds that the Court lacks subject matter jurisdiction because the United States has not waived sovereign immunity with respect to the claims asserted against the Bankruptcy Court. (Doc. 12 at 6). Defendants also argue that plaintiff has failed to state a claim upon which relief can be granted against Judge Buchanan because she is entitled to absolute judicial immunity from suit. (*Id.* at 7-8).

Dismissal of plaintiff’s claims against the Bankruptcy Court is warranted under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Subject matter jurisdiction is lacking in a lawsuit against the United States, or an agency of the United States, unless the government consents to suit. *United States v. Testan*, 424 U.S. 392, 399 (1976); *see also CareToLive v. von*

Eschenbach, 525 F. Supp. 2d 938, 950 (S.D. Ohio 2007) (the United States may not be sued without its consent, and consent is a prerequisite for jurisdiction) (citing *United States v. Mitchell*, 463 U.S. 206, 212 (1983); *Reed v. Reno*, 146 F.3d 392, 398 (6th Cir. 1998)), *aff'd sub nom. CareToLive v. Eschenbach*, 290 F. App'x 887 (6th Cir. 2008). Absent an express waiver of sovereign immunity, the district court lacks jurisdiction over a claim against the United States. *Id.* (citing *Mitchell*, 463 U.S. at 212). "Jurisdiction over any suit against the [United States] Government requires a clear statement from the United States waiving sovereign immunity . . . together with a claim falling within the terms of the waiver." *Id.* (citing *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003)). The plaintiff has the burden to identify a waiver of sovereign immunity in order to proceed with a claim against the United States. *Id.* (citing *Reetz v. United States*, 224 F.3d 794, 795 (6th Cir. 2000)). See also *Wojton v. U.S.*, 199 F. Supp. 2d 722, 726 (S.D. Ohio 2002) (plaintiff has the burden under Fed. R. Civ. P. 8 to set forth the grounds for the Court's jurisdiction).

Plaintiff's lawsuit against the Bankruptcy Court is a suit against the United States, which is entitled to sovereign immunity from suit. *Blade v. U.S. Bankr. Ct.*, 109 F. Supp. 2d 872, 874 (S.D. Ohio 2000) (upholding Report and Recommendation that the Bankruptcy Court had sovereign immunity from suit); *Surani v. U.S. Bankr. Ct.*, No. CIV. 13-931, 2013 WL 3279265, at *1 (D.D.C. June 28, 2013) (stating that the U.S. Bankruptcy Court is an instrumentality of the United States and entitled to sovereign immunity); *Dutton v. US Bankr. Ct. E. Dist. of Pa.*, No. CV 19-194, 2019 WL 251481, at *2 (E.D. Pa. Jan. 17, 2019) ("The United States Bankruptcy Court . . . is part of the judicial branch of the federal government, and is therefore entitled to sovereign immunity absent a waiver."). Plaintiff has not carried her burden to identify a waiver of sovereign immunity. Nor do the allegations of the complaint provide any factual content or



context from which the Court may reasonably infer that the Bankruptcy Court waived its sovereign immunity with respect to the matters at issue in this case. Moreover, Congress has not waived the Bankruptcy Court's sovereign immunity by statute in Title 11 of the United States Code. Accordingly, plaintiff's claims against the Bankruptcy Court should be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

In addition, plaintiff's claims against Judge Buchanan should be dismissed under Fed. R. Civ. P. 12(b)(6) because she is entitled to absolute judicial immunity. Judges are afforded absolute immunity from liability for acts they commit while functioning within their judicial capacity. "Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991); *Pierson v. Ray*, 386 U.S. 547 (1967); *Barrett v. Harrington*, 130 F.3d 246, 255 (6th Cir. 1997). Judges retain absolute immunity from liability even if they act maliciously or corruptly, as long as they are performing judicial acts and have jurisdiction over the subject matter giving rise to the suit against them. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). See also *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004); *Stern v. Mascio*, 262 F.3d 600, 607 (6th Cir. 2001). It is clear from the allegations in plaintiff's complaint that the decisions made by Judge Buchanan in the course of plaintiff's bankruptcy proceedings were functions normally performed by bankruptcy judges. *Stump*, 435 U.S. at 362. The allegations in plaintiff's complaint merely amount to dissatisfaction with Judge Buchanan's rulings in the bankruptcy proceedings, rather than any nonjudicial or personal acts by Judge Buchanan. In addition, plaintiff has alleged no facts indicating that Judge Buchanan acted "in the complete absence of all jurisdiction" in granting Trustee Leicht's motion for summary judgment and granting Trustee Leicht's motion to sell the

property. *See Stern*, 262 F.3d at 607. Therefore, Judge Buchanan is absolutely immune from civil liability in this matter.

2. Claims against Trustee Leicht

Defendant Leicht moves to dismiss plaintiff's complaint on the grounds that the Court lacks subject matter jurisdiction over all claims against him. (Doc. 8 at 5). Defendant Leicht argues that pursuant to the Barton doctrine, leave of the Bankruptcy Court must be obtained by any party wishing to institute an action against a trustee for acts performed in the trustee's official capacity. (*Id.*) (citing *In re DeLorean Motor Co.*, 991 F.2d 1236 (6th Cir. 1993)).

"It is well settled that leave of the appointing forum must be obtained by any party wishing to institute an action in a non-appointing forum against a trustee, for acts done in the trustee's official capacity and within the trustee's authority as an officer of the court." *In re DeLorean*, 991 F.2d at 1240. Section 959 of the Bankruptcy Code "serves as a limited exception to . . . the *Barton* [d]octrine, allowing suits against the trustees for actions taken while 'carrying on business.'" *Id.* at 1241 (citing 28 U.S.C. § 959(a)). Section 959(a) provides that trustees may be sued without leave of the appointing court with regard to "any of their acts or transactions in carrying on business with such property." 28 U.S.C. § 959(a)). However, the Sixth Circuit has held that the "carrying on business" exception does not include the acts of "[m]erely collecting, taking steps to preserve, and/or holding assets, as well as other aspects of administering and liquidating the estate." *In re DeLorean*, 991 F.2d at 1241.

Here, plaintiff's claims against Trustee Leicht relate only to Leicht's conduct during the underlying bankruptcy proceedings, such as the actions he took in recovering plaintiff's property. Plaintiff has not alleged that she received leave of the Bankruptcy Court to pursue an action against Trustee Leicht in this Court. Nor do the allegations in the complaint demonstrate that

Trustee Leicht's actions fall within the "carrying on business" exception. Rather, the allegations show that Trustee Leicht recovered plaintiff's property for the benefit of the estate by filing three adversary proceedings in the course of his trustee duties. As the undersigned finds that Trustee Leicht is protected from plaintiff's lawsuit under the *Barton* doctrine, plaintiff's claims against Trustee Leicht should be dismissed.

3. Remaining Claims against Ditech Financial

On December 6, 2019, counsel for defendant Ditech Financial filed a notice of Ditech's bankruptcy status on the docket of this Court. (Doc. 22).² The notice indicates that Ditech filed for Chapter 11 Bankruptcy with the United States Bankruptcy Court for the Southern District of New York. (*Id.* at 1). Ditech represents that in September 2019, the Bankruptcy Court for the Southern District of New York issued a Confirmation Order approving the terms of the Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors. (*Id.* at 2; Doc. 22-1); *In Re: Ditech Holding Corporation*, 1:19-BK-10412, (Doc. 1404)). The Chapter 11 Plan includes a permanent injunction that specifically prohibits parties from forever prosecuting any action against Ditech for monetary recovery on account of any claim arising prior to the closing of the transactions under the Plan—September 30, 2019. (*Id.*). The Plan's injunction does not prohibit parties from asserting certain nonmonetary claims in relation to foreclosure actions brought by Ditech. (Doc. 22 at 2). Pursuant to the Plan's injunction, Ditech argues that plaintiff is enjoined from continuing this action because she exclusively seeks monetary recovery against Ditech. (*Id.* at 3).

The Court agrees that Ditech's Confirmation Order and Bankruptcy Plan effectively bars plaintiff's claims against Ditech. Under the Bankruptcy Code, the "confirmation of a plan . . .

² Previously, on August 26, 2019, Ditech filed a notice of bankruptcy and the imposition of an automatic stay. (Doc. 9).

discharges the debtor from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). A discharge “operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any such debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2). “[A] discharge in bankruptcy serves as an injunction against actions to collect on the debtor’s personal liabilities.” *In re Federated Dep’t Stores, Inc.*, 328 F.3d 829, 832 (6th Cir. 2003) (citing 11 U.S.C. § 524(a)). Plaintiff complains about Ditech’s actions that occurred before the September 2019 Bankruptcy Plan and Confirmation Order. As such, plaintiff’s claims as to Ditech are discharged under 11 U.S.C. § 1141(d)(1). *See Bondurant v. Northwest Airlines Inc.*, No. 07-15383, 2008 WL 11355521, at *1 (E.D. Mich. Mar. 19, 2008). *See also Nadeem v. Gemini Air Cargo, Inc.*, No. 3:06 CV 594 H, 2007 WL 293827, at *1 (W.D. Ky. Jan. 26, 2007) (holding that Court lacked jurisdiction to consider plaintiff’s claims in light of bankruptcy plan and accompanying confirmation order). Accordingly, plaintiff’s claims against defendant Ditech should be dismissed.

III. Conclusion

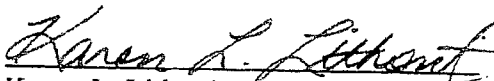
Based on the foregoing, it is **RECOMMENDED** that:

1. Defendant Leicht’s motion to dismiss (Doc. 8) be **GRANTED**.
2. Defendants Buchanan and Bankruptcy Court’s motion to dismiss (Doc. 12) be **GRANTED**.
3. Plaintiff’s claims against defendant Ditech Financial, LLC be **DISMISSED**.
4. This case is **CLOSED** off the docket of this Court.

Given that the undersigned has recommended that plaintiff’s complaint be dismissed against all defendants, it is **ORDERED** that:

1. Plaintiff's "motion to stop the discrimination, harassment, and retaliation" (Doc. 18) is **DENIED as MOOT.**
2. Plaintiff's "support motion for the civil lawsuit" (Doc. 21) is **DENIED as MOOT.**
3. Plaintiff's "motion to stop the harassment from Judge Beth Buchanan" (Doc. 24) is **DENIED as MOOT.**

Date: 1/28/20


Karen L. Litkovitz, Magistrate Judge
United States District Court