APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1280

DIANA LOUISE HOUCK,

Plaintiff - Appellant,

v.

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. David Shepardson Cayer, Magistrate Judge. (5:13-cv-00066-DSC)

Argued: May 4, 2022 Decided: July 19, 2022

Before NIEMEYER and DIAZ, Circuit Judges, and FLOYD, Senior Circuit Judge.

Appeal dismissed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Diaz and Senior Judge Floyd joined.

ARGUED: M. Shane Perry, COLLUM & PERRY, Mooresville, North Carolina, for Appellant. Ryan M. Gaylord, BELL, DAVIS & PITT, PA, Winston-Salem, North Carolina, for Appellees. **ON BRIEF:** Alan M. Ruley, BELL, DAVIS & PITT, PA, Winston-Salem, North Carolina, for Appellee LifeStore Bank. Robert A. Mays, MAYS JOHNSON LAW FIRM, Asheville, North Carolina, for Appellee Grid Financial Services, Inc.

NIEMEYER, Circuit Judge:

Diana Houck sued three defendants under 11 U.S.C. § 362 for violating a bankruptcy stay by their participation in the foreclosure and sale of her home while her bankruptcy petition was pending. The district court dismissed the claims against the first defendant but not the other two, and Houck appealed the dismissal order, even though it was interlocutory. While her appeal was pending before us, however, the district court dismissed the claims against the other two defendants and entered a final judgment in the case. That final judgment saved her appeal from dismissal in our court under the doctrine of "cumulative finality," as the district court had at that point adjudicated all claims as to all parties in the case.

We reviewed the order dismissing the first defendant and remanded the case for further proceedings against that defendant. Because Houck never appealed the dismissal of the other two defendants, however, we never had those defendants before us.

After a successful trial against the first defendant — resulting in a judgment of over $260,000 — Houck appealed the final judgment that she obtained against that defendant in order to challenge the earlier dismissals of the other two defendants.

We conclude that we lack jurisdiction over Houck's appeal of the final judgment in favor of the other two defendants, as it was untimely. *See* 28 U.S.C. § 2107; Fed. R. App. P. 4(a); *Bowles v. Russell*, 551 U.S. 205, 206 (2007). And in reaching this conclusion, we reject Houck's argument that we vacated that judgment in our decision reviewing the order dismissing the first defendant. Accordingly, we dismiss Houck's appeal.

I

After Diana Houck received homestead property in Ashe County, North Carolina, from her father, she obtained financing from LifeStore Bank, F.S.A., to remodel the farmhouse on the property. But shortly thereafter, she lost her job and asked LifeStore for a loan modification. LifeStore referred her to Grid Financial Services, Inc., a debt collection agency, which, after close to two years, denied her request because she remained unemployed. As a consequence, Houck defaulted on her loan, and Substitute Trustee Services, Inc., the "Substitute Trustee" on the loan documents, initiated foreclosure proceedings. To obtain a stay of those proceedings, Houck filed two separate Chapter 13 bankruptcy petitions, and while the second petition was pending, the Substitute Trustee sold her farm, forcing her to vacate the homestead.

Houck commenced this action against LifeStore, Grid Financial, and the Substitute Trustee under 11 U.S.C. § 362(k) for violation of the automatic stay, as well as related state law.

The Substitute Trustee filed a motion to dismiss the claims against it, which the district court granted by order dated October 1, 2013. Houck filed an appeal from that order, which was interlocutory, as the district court still had before it Houck's claims against LifeStore and Grid Financial. While that appeal was pending, however, the district court dismissed all the remaining claims against LifeStore and Grid Financial, resulting in all three defendants having been dismissed from the action. On February 20, 2014, the court accordingly entered a final judgment in the case. Houck, however, never filed an

appeal from the court's orders dismissing her claims against LifeStore and Grid Financial nor from the February 20, 2014 final judgment that followed.

While we recognized that Houck's appeal of the October 1, 2013 order dismissing the Substitute Trustee was interlocutory when filed, we concluded that it became one from a final judgment under the doctrine of cumulative finality when the remaining defendants were dismissed from the case by the district court. *See Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 478–79 (4th Cir. 2015). Accordingly, we concluded that we had jurisdiction to review the district court's order dismissing Houck's claims against the Substitute Trustee. *Id.* at 479. And on the merits, we held that "Houck stated a plausible claim for relief [against the Substitute Trustee] under § 362(k)." *Id.* at 486. Our mandate read accordingly:

> The judgment of the district court is vacated; the court's October 1, 2013 order dismissing Houck's § 362(k) claim against the Substitute Trustee is reversed; and the case is remanded for further proceedings.

Id. at 487.

On remand, the case was tried against the Substitute Trustee in the bankruptcy court, and following a bench trial, the court awarded Houck $260,175.27 in damages and attorneys fees for the violation of the automatic stay required by the Bankruptcy Code. It entered a final judgment on October 6, 2020. Though the Substitute Trustee appealed the bankruptcy court's judgment to the district court on October 20, 2020, shortly thereafter it filed a "Motion for Voluntary Dismissal of Notice of Appeal" upon reaching a settlement with Houck for satisfaction of the judgment. The bankruptcy court approved the voluntary

dismissal by order dated December 3, 2020, and on the same date, the clerk of the court entered a final judgment.

Three months later, on March 5, 2021, Houck filed a "Motion to Reopen Case" in the district court in order to seek review of that court's 2014 orders dismissing her claims against LifeStore and Grid Financial, and the district court granted the motion. But in its order dated March 8, 2021, the court simply adopted in full the bankruptcy court's findings of fact and legal reasoning — which pertained only to the Substitute Trustee — and entered a judgment for Houck in the amount of $260,175.27 in damages and attorneys fees, identical to the bankruptcy court's earlier judgment of October 6, 2020.

From the district court's judgment *in favor of Houck* against the Substitute Trustee, Houck nonetheless filed this appeal to seek review of the 2014 orders — entered over seven years before — that dismissed all of her claims against LifeStore and Grid Financial. LifeStore and Grid Financial contend, among other things, that the time for appealing the 2014 orders and the February 20, 2014 judgment that followed has long passed and that we do not now have jurisdiction to review them.

II

Stated broadly, Houck sued three defendants — the Substitute Trustee, LifeStore, and Grid Financial — and all three defendants were dismissed by the district court's various orders culminating in the February 20, 2014 final judgment. Houck appealed the first order dismissing the Substitute Trustee, but she never appealed the orders dismissing LifeStore and Grid Financial nor the final judgment of February 20, 2014.

Now, more than seven years later, Houck asks us to review the February 20, 2014 final judgment in favor of LifeStore and Grid Financial through her appeal of the final judgment *entered against the Substitute Trustee* in 2021, even though she had never appealed the former.

The most obvious obstacle to Houck's appeal of the February 2014 judgment is its timing. Specifically, we lack jurisdiction because Houck failed to appeal the February 2014 judgment within 30 days of its entry. Section 2107(a) of Title 28 provides that a party seeking appellate review of a judgment must file its notice of appeal within 30 days of the judgment's entry, subject to certain exceptions not relevant here. *See also* Fed. R. App. P. 4(a)(1)(A) (same). And the Supreme Court has held that this time requirement is "jurisdictional in nature." *Bowles v. Russell*, 551 U.S. 205, 206 (2007). While Houck did file an appeal within 30 days of the October 1, 2013 order dismissing the Substitute Trustee, which later became an appealable judgment under the cumulative finality doctrine, she did not similarly file a timely appeal from the February 20, 2014 judgment dismissing LifeStore and Grid Financial. Thus, for that reason, we lack jurisdiction to review Houck's claims against LifeStore and Grid Financial.

Houck attempts to evade her appeal's lack of timeliness by arguing that, in ruling on her prior appeal, we vacated the 2014 final judgment when we said, "The judgment of the district court is vacated." *Houck*, 791 F.3d at 487. She argues therefore that "there was no final judgment entered in this case as to all claims for all parties" until the district court again entered judgment on March 8, 2021. Accordingly, she reasons, she can, with this

appeal, assert arguments challenging the 2014 orders dismissing LifeStore and Grid Financial. This argument, however, fails for at least two reasons.

First, we need to point out that while our mandate in the prior appeal did indeed vacate "[t]he judgment of the district court," it was referring to the only judgment appealed and before us — the October 1, 2013 order that was rendered a judgment under the cumulative finality doctrine. *See* Fed. R. Civ. P. 54(a) (defining the term "judgment" as including "any order from which an appeal lies"). The mandate made this clear, stating in full:

> The judgment of the district court is vacated; the court's October 1, 2013 order dismissing Houck's § 362(k) claim against the Substitute Trustee is reversed; and the case is remanded for further proceedings.

Houck, 791 F.3d at 487. And consistent with this limitation, only the claim against the Substitute Trustee was tried on remand, and the final judgment entered on March 8, 2021, was only against the Substitute Trustee.

But more fundamentally, we rely on the fact that we did not, in the prior appeal, have jurisdiction to review the judgment dismissing LifeStore and Grid Financial. That appeal was taken from only the October 1, 2013 order dismissing the Substitute Trustee, which became a judgment on February 20, 2014 under the cumulative finality doctrine when the claims against LifeStore and Grid Financial were dismissed in the district court. Houck could have brought LifeStore and Grid Financial before us by appealing the February 20, 2014 judgment within 30 days of its entry, but she did not do so. As a result, we only adjudicated the claims against the Substitute Trustee, never addressing errors that Houck might have wanted to assert as to the other dismissed defendants. Because the

February 2014 judgment as to LifeStore and Grid Financial was not before us, we had no jurisdiction to vacate it. *See Jackson v. Lightsey*, 775 F.3d 170, 176–77 (4th Cir. 2014) (holding that we had jurisdiction over an appeal of a July 2013 order dismissing prison doctors from the case but not over a July 2012 order dismissing prison medical staff because (1) the 2013 order was the express subject of plaintiff's notice of appeal and (2) the medical staff had been dismissed and were not represented in the appellate proceedings).

While not briefed by the parties, we also point out that serious additional barriers to Houck's current appeal appear to exist. First, Houck reached a settlement agreement with the Substitute Trustee in late 2020, ending her claims against that party. Yet, in seeking to reopen the case, she gave no indication that she had repudiated the settlement agreement. Thus, her effort to reopen a case that had been settled should likely have been rejected. *See Fairfax Countywide Citizens Ass'n v. Cnty. of Fairfax, Va.*, 571 F.2d 1299, 1302–03 (4th Cir. 1978) (holding that "*upon repudiation of a settlement agreement* which had terminated litigation pending before it, a district court has the authority under Rule 60(b)(6) to vacate its prior dismissal order and restore the case to its docket" (emphasis added) (cleaned up)). And second, because the March 8, 2021 judgment was *in her favor*, Houck can hardly now seek to appeal it without showing that she was somehow "aggrieved" by the judgment. *See HCA Health Servs. of Va. v. Metro. Life Ins. Co.*, 957 F.2d 120, 123 (4th Cir. 1992) (recognizing that "[a] party must be 'aggrieved' by a district court judgment or order in order to have standing to appeal" and that "[g]enerally, a prevailing party is not aggrieved

by the judgment" (citation omitted)). But we need not rely on these additional deficiencies, as we dismiss this appeal under § 2107(a) and *Lightsey*.

To be sure, a degree of complexity is added by our prior application of the doctrine of cumulative finality, which allowed us to review what was originally an interlocutory order — the October 1, 2013 order dismissing the Substitute Trustee — based on the subsequent dismissal of the remaining defendants in the district court with the February 2014 judgment.

The cumulative finality doctrine allows us to consider an otherwise premature appeal when (1) "all joint claims or all multiple parties are dismissed prior to the consideration of the appeal," *Equip. Fin. Grp., Inc. v. Traverse Comput. Brokers*, 973 F.2d 345, 347 (4th Cir. 1992); and (2) "the appellant appeals from an order that the district court could have certified for immediate appeal under Rule 54(b)," *Houck*, 791 F.3d at 479. The doctrine therefore "allows an appeal from a non-final order to be 'saved' by subsequent events that establish finality." *In re Rimsat, Ltd.*, 212 F.3d 1039, 1044 (7th Cir. 2000).

That is precisely what happened in this case. When Houck appealed the October 1, 2013 order dismissing her claims against the Substitute Trustee, her appeal was premature "because LifeStore and Grid Financial were not parties to [the Substitute Trustee's motion to dismiss] and remained defendants in the action." *Houck*, 791 F.3d at 478. But the February 20, 2014 judgment "saved" Houck's once-premature appeal because the October 1, 2013 order became a final judgment when LifeStore and Grid Financial were removed from the case and thus all claims as to all parties were resolved. *Id.* at 478–79. Thus, the

February 2014 judgment established the cumulative finality needed for Houck to appeal the court's dismissal of her claims against the Substitute Trustee.

Our application of the cumulative finality doctrine, however, did not somehow open our appellate review to consideration of the judgment dismissing LifeStore and Grid Financial. Moreover, even if it did, we still would have lacked jurisdiction because those two other defendants were not before us. *See, e.g.*, *Sessler v. Allied Towing Corp.*, 538 F.2d 630, 633 (4th Cir. 1976) (holding on due process grounds that the court was unable to decide an issue pertaining to a company that was "not a party to [the] appeal"); *Speers Sand & Clay Works v. Am. Tr. Co.*, 37 F.2d 572, 573 (4th Cir. 1930) ("[I]t is clear that we have no power to review the decision of the court below in so far as it adjudicates [the] rights" of persons not made "party to the proceedings on appeal").

Ultimately, Houck cannot have it both ways. Having benefited from our determination that the February 2014 judgment was a final judgment that triggered cumulative finality because LifeStore and Grid Financial were no longer in the case, allowing her to appeal the October 1, 2013 order, she cannot now — more than seven years later — retroactively resurrect her claims against LifeStore and Grid Financial. The fact that the February 2014 judgment was a final judgment sufficient to grant cumulative finality means that Houck's appeal of that judgment was subject to the time requirements of § 2107(a), which she failed to satisfy.

* * *

For the reasons given, we dismiss Houck's appeal for lack of jurisdiction.

DISMISSED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO: 5:13-CV-66-DSC

DIANA LOUISE HOUCK, et. al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
LIFESTORE BANK, et. al.,	)
	)
Defendants.	)

MEMORANDUM AND ORDER

THIS MATTER is before the Court on "Defendant Substitute Trustee Services, Inc.'s Motion to Dismiss … Second Amended Complaint" (document #46), and the parties' associated briefs and exhibits. See documents ## 47, 49, and 50.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c). This Motion is now ripe for consideration.

Having fully considered the arguments, the record, and the applicable authority, the Court will grant the Motion to Dismiss, as discussed below.

This matter involves the foreclosure of a deed of trust on real property located at 318 Todd Railroad Grade Road ('the Property") in Todd, North Carolina. On February 22, 2007, Plaintiff Diana Louise Houck ("Houck") borrowed $123,000.00, as evidenced by a promissory note ("the Note") and secured by a Deed of Trust recorded in Book 361 at Page 2052 by the Ashe County Register of Deeds ("the Deed of Trust").

On or about July 19, 2011, Defendant Substitute Trustee Services, Inc. ("STS") initiated a foreclosure action in Ashe County Superior Court at the request of the Note holder, Defendant

LifeStore Bank Corporation.

On August 23, 2011, an Assistant Clerk of Superior Court issued an Order Allowing Foreclosure of the Property.

On September 12, 2011, Houck filed for Chapter 13 Bankruptcy Protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51141 (the "first petition"). According to the Second Amended Complaint, only Defendant LifeStore was sent notice of the petition. On the next day, the foreclosure proceeding was stayed.

On September 30, 2011, the Court dismissed the first petition.

On November 4, 2011, STS moved to re-open the foreclosure proceeding.

On December 16, 2011, Houck again filed for Chapter 13 Bankruptcy Protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51513 (the "second petition"). Houck failed to file a matrix, schedule and other information necessary to properly serve her creditors. That same day, the Court issued a Notice of Deficient Filing and Order to Appear and Show Cause (W.D.N.C. Bankr. 11-51513 Docs. 2 and 3). According to the Second Amended Complaint, as with the first petition, only Defendant LifeStore was sent notice of the second petition. There is no allegation that STS ever received notice of the second petition.

On December 20, 2011, STS sold the Property at a foreclosure sale.

On December 21, 2011, the second petition was dismissed (W.D.N.C. Bankr. 11-51513 Doc. 9).

On April 26, 2013, Plaintiffs filed their Complaint, which as amended, asserts a claim pursuant to 11 U.S.C. § 362 against STS for conducting a foreclosure sale in violation of the bankruptcy stay. Plaintiffs also assert state law claims for unfair and deceptive trade practices,

unfair debt collection, breach of contract, fraud, constructive fraud, intentional and negligent infliction of emotional distress, and civil conspiracy. The gravamen of Plaintiffs' state law claims against STS is that it had notice of the second petition and violated the bankruptcy stay by conducting a foreclosure sale.

On September 10, 2013, STS filed its Motion to Dismiss asserting among other things that Plaintiffs have failed to plead the requisite notice. Defendant's Motion has been fully briefed and is ripe for disposition.

In reviewing a Rule 12(b)(6) motion, "the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff." Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). The plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Id. at 563. A complaint attacked by a Rule 12(b)(6) motion to dismiss will survive if it contains enough facts to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "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." Id.

In Iqbal, the Supreme Court articulated a two-step process for determining whether a complaint meets this plausibility standard. First, the court identifies allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555) (allegation that government officials adopted

challenged policy "because of" its adverse effects on protected group was conclusory and not assumed to be true). Although the pleading requirements stated in "Rule 8 [of the Federal Rules of Civil Procedure] mark[] a notable and generous departure from the hyper-technical, code-pleading regime of a prior era ... it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Id. at 678-79.

Second, to the extent there are well-pleaded factual allegations, the court should assume their truth and then determine whether they plausibly give rise to an entitlement to relief. Id. at 679. "Determining whether a complaint contains sufficient facts to state a plausible claim for relief "will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.. "Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-'that the pleader is entitled to relief,'" and therefore should be dismissed. Id. (quoting Fed. R. Civ. P. 8(a)(2)). In other words, if after taking the complaint's well-pleaded factual allegations as true, a lawful alternative explanation appears a "more likely" cause of the complained of behavior, the claim for relief is not plausible. Id.

Applying those legal principles to the factual allegations here, Plaintiffs have failed to state a claim against STS. The Second Amended Complaint is replete with generalized and conclusory allegations that the sale was "improper" or "conducted improperly." The only specific factual allegation against STS is that it conducted the foreclosure sale in violation of the bankruptcy stay.

In order to prevail on a claim for a violation of an automatic stay, the debtor must show "(1) injury to the debtor (2) cause[d] by a 'willful' violation of the stay." In re Peterson, 297 B.R. 467, 470 (W.D.N.C 2003)(citing In re Hamrick, 175 B.R. 890, 893 (W.D.N.C. 1994)). The

debtor must establish that: (1) the creditor knew of the existence of the stay; (2) the creditor's actions were willful; and (3) the creditor's actions violated the stay. Campbell v. Countrywide Home Loans, Inc., 545 F.3d 348, 355 (5th Cir. 2008). Despite amending their Complaint twice, Plaintiffs have failed to allege that they sent notice of the second petition to STS or that STS had any notice of the petition.

Absent sufficient allegations that STS conducted the foreclosure sale in violation of the bankruptcy stay, Plaintiffs' state law claims fail as well. See, e.g., Bob Timberlake Collection v. Edwards, 176 N.C. App. 33, 39 (2006) (claim for fraud requires false representation or concealment of material fact and intent to deceive); Davis Lake Comm. Ass'n, Inc. v. Feldman, 138 N.C. App. 252 (2000)(claim for unfair debt collection requires unfair act); Furr v. Fonville Morisey Realty, Inc., 130 N.C. App. 541 (1998) (claim for unfair and deceptive trade practices requires unfair or deceptive practice); Fletcher v. Fletcher, 123 N.C. App. 744, 752 (1996) ("breach of contract is only actionable if a material breach occurs -- one that substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform"). Bald assertions that the foreclosure sale was "improper" are insufficient. Twombly, 550 U.S. at 555.

For these reasons, and the other reasons stated in Defendant's briefs, its Motion to Dismiss is granted.

IT IS THEREFORE ORDERED THAT:

1. "Defendant Substitute Trustee Services, Inc.'s Motion to Dismiss … Second Amended Complaint" (document #46) is **GRANTED**. The Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to Defendant Substitute Trustee Services, Inc.

2. The Clerk is directed to send copies of this Order to the parties' counsel.

SO ORDERED.

Signed: October 1, 2013

David S. Cayer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO: 5:13-CV-66-DSC

DIANA LOUISE HOUCK, et. al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
LIFESTORE BANK, et. al.,	)
	)
Defendants.	)

MEMORANDUM AND ORDER

THIS MATTER is before the Court on "Defendant Lifestore Bank F.S.A.'s Motion to Dismiss Second Amended Complaint or, in the alternative, … Motion for Summary Judgment" (document #52) and "Defendant Grid Financial Services, Inc.'s Motion to Dismiss … Second Amended Complaint or, in the alternative, … Motion for Summary Judgment" (document #54), as well as the parties' associated briefs and exhibits. See documents ## 52-56, and 65.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c). These Motions are now ripe for consideration.

Having fully considered the arguments, the record, and the applicable authority, the Court will grant in part and deny in part the Motions to Dismiss, as discussed below.

I. FACTUAL AND PROCEDRURAL BACKGROUND

This matter involves the foreclosure of a deed of trust on real property located at 318 Todd Railroad Grade Road ('the Property") in Todd, North Carolina. On February 22, 2007, Plaintiff Diana Louise Houck ("Houck") borrowed $123,000.00, as evidenced by a promissory

note ("the Note") and secured by a Deed of Trust recorded in Book 361 at Page 2052 by the Ashe County Register of Deeds ("the Deed of Trust").

Plaintiffs allege that sometime in July or August 2009, Diana Houck contacted the Note holder, Defendant LifeStore Bank Corporation, F.S.A. ("Lifestore") requesting a loan modification and lower monthly payments. Lifestore referred her to Defendant Grid Financial Services, Inc. ("Grid"), which was acting as the collection agent on the delinquent loan. Plaintiffs allege that a Grid employee advised Houck to stop making any mortgage payments so that she could qualify for a modification of the loan. Plaintiffs contend that the employee knew that Grid and Lifestore would not approve the modification.

On or about July 19, 2011, Defendant Substitute Trustee Services, Inc. ("STS") initiated a foreclosure action in Ashe County Superior Court at the request of Lifestore.

On August 23, 2011, an Assistant Clerk of Superior Court issued an Order Allowing Foreclosure of the Property.

On September 12, 2011, Houck filed for Chapter 13 Bankruptcy Protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51141 (the "first petition"). According to the Second Amended Complaint, only LifeStore was sent notice of the first petition. The foreclosure proceeding was stayed the following day.

On September 30, 2011, the Court dismissed the first petition.

On November 4, 2011, STS moved to re-open the foreclosure proceeding.

On December 16, 2011, Houck again filed for Chapter 13 Bankruptcy Protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51513 (the "second petition"). Houck failed to file a matrix, schedule and other information necessary to properly serve her creditors. That same day, the Court issued a Notice of Deficient Filing and

Order to Appear and Show Cause (W.D.N.C. Bankr. 11-51513 Docs. 2 and 3). According to the Second Amended Complaint, only LifeStore was sent notice of the second petition. There is no allegation that Grid ever received notice of the second petition.

On December 20, 2011, STS sold the Property at a foreclosure sale.

On December 21, 2011, the second petition was dismissed (W.D.N.C. Bankr. 11-51513 Doc. 9).

On April 26, 2013, Plaintiffs filed their Complaint, which as amended, asserts a claim pursuant to 11 U.S.C. § 362(k) for conducting a foreclosure sale in violation of the bankruptcy stay. Plaintiffs also assert state law claims for unfair and deceptive trade practices, unfair debt collection, breach of contract, fraud, constructive fraud, intentional and negligent infliction of emotional distress, and civil conspiracy. These claims are asserted against both Defendants. The gravamen of the claims is that Lifestore and Grid conspired to cause Plaintiffs to fall behind on mortgage payments so that Lifestore could foreclose. Plaintffs assert that Lifestore had notice of the second petition and violated the bankruptcy stay by conducting the foreclosure sale.

On October 1, 2013, the Court granted Defendant STS's Motion to Dismiss. The only claims pled against STS were for violation of the bankruptcy stay. Plaintiffs did not allege that STS had notice of the second petition. See "Memorandum and Order" at 4-5 (document #51).

On October 7, 2013, Lifestore and Grid filed their respective Motions to Dismiss which have been fully briefed and are ripe for disposition.

II. DISCUSSION

A. Standard of Review

In reviewing a Rule 12(b)(6) motion, "the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff." Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). The plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Id. at 563. A complaint attacked by a Rule 12(b)(6) motion to dismiss will survive if it contains enough facts to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "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." Id.

In Iqbal, the Supreme Court articulated a two-step process for determining whether a complaint meets this plausibility standard. First, the court identifies allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555) (allegation that government officials adopted challenged policy "because of" its adverse effects on protected group was conclusory and not assumed to be true). Although the pleading requirements stated in "Rule 8 [of the Federal Rules of Civil Procedure] mark[] a notable and generous departure from the hyper-technical, code-pleading regime of a prior era ... it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Id. at 678-79.

Second, to the extent there are well-pleaded factual allegations, the court should assume

their truth and then determine whether they plausibly give rise to an entitlement to relief. Id. at 679. "Determining whether a complaint contains sufficient facts to state a plausible claim for relief "will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.. "Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-'that the pleader is entitled to relief,'" and therefore should be dismissed. Id. (quoting Fed. R. Civ. P. 8(a)(2)). In other words, if after taking the complaint's well-pleaded factual allegations as true, a lawful alternative explanation appears a "more likely" cause of the complained of behavior, the claim for relief is not plausible. Id.

B. Claims Related to Violation of Bankruptcy Stay

Applying those legal principles to the factual allegations here, Plaintiffs have failed to state a claim against Grid under 11 U.S.C. § 362(k). The Second Amended Complaint is replete with generalized and conclusory allegations that the sale was "improper" or "conducted improperly." The only specific factual allegation against Grid is that the foreclosure sale was conducted in violation of the bankruptcy stay.

In order to prevail on a claim for a violation of an automatic stay, the debtor must show "(1) injury to the debtor (2) cause[d] by a 'willful' violation of the stay." In re Peterson, 297 B.R. 467, 470 (W.D.N.C 2003)(citing In re Hamrick, 175 B.R. 890, 893 (W.D.N.C. 1994)). The debtor must establish that: (1) the creditor knew of the existence of the stay; (2) the creditor's actions were willful; and (3) the creditor's actions violated the stay. Campbell v. Countrywide Home Loans, Inc., 545 F.3d 348, 355 (5th Cir. 2008). Despite amending their Complaint twice, Plaintiffs have failed to allege that they sent notice of the second petition to Grid or that Grid had

any notice of the petition.

Absent sufficient allegations that Grid had notice of the bankruptcy stay, Plaintiffs' state law claims for unfair debt collection (N.C. Gen. Stat § 75-55) and breach of contract fail as well. See, e.g., Davis Lake Comm. Ass'n, Inc. v. Feldman, 138 N.C. App. 252 (2000)(claim for unfair debt collection requires unfair act); Fletcher v. Fletcher, 123 N.C. App. 744, 752 (1996) ("breach of contract is only actionable if a material breach occurs -- one that substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform"). Bald assertions that the foreclosure sale was "improper" are insufficient. Twombly, 550 U.S. at 555.

For these reasons, and the other reasons stated in Defendant Grid's briefs, its Motion to Dismiss is granted as to Plaintiffs' claims under 11 U.S.C. § 362(k), N.C. Gen. Stat § 75-55, and for breach of contract.

Plaintiffs have alleged that Lifestore received notice of the second petition. For this reason, and the other reasons stated in Plaintiffs' briefs, Defendant Lifestore's Motion to Dismiss is denied as to those claims.

C. Claims Related to Civil Conspiracy

The remainder of Plaintiffs' claims rest on the allegation that Grid and Lifestore conspired to facilitate a foreclosure by causing Plaintiff to fall behind on her mortgage payments.

The elements of a claim for intentional infliction of emotional distress are extreme and outrageous conduct, which is intended to cause and does cause severe emotional distress to another. Dickens v. Puryear, 302 N.C. 437, 452, 276 S.E.2d 325, 334-35 (1981). The initial determination of whether conduct is extreme and outrageous is a question of law for the court.

Briggs v. Rosenthal, 73 N.C. App. 672, 676, 327 S.E.2d 308, 311 (1985).

The Second Amended Complaint contains only general and conclusory allegations that do not show the extreme and outrageous conduct necessary for intentional infliction of emotional distress.

The Second Amended Compliant is also devoid of factual allegations to support a claim for negligent infliction of emotional distress. To be actionable, the alleged tortuous action must proximately cause a "severe and disabling emotional or mental condition which [is] generally recognized and diagnosed by professionals trained to do so." Johnson v. Ruark Obstetrics & Gynecology Assocs., P.A., 327 N.C. 283, 304 (1990). Although Plaintiffs allege that Diana Houck has suffered "severe emotional distress" and "mental anguish," they fail to allege that she has suffered any recognized and diagnosed mental condition. See Horne v. Cumberland County Hosp. Sys., 746 S.E.2d 13, 20 (N.C. Ct. App. 2013) (affirming dismissal of negligent infliction of emotional distress claim where "the complaint merely asserts that [Defendant's] actions were 'the direct and proximate cause of [plaintiff]'s severe emotional distress' - without any factual allegations regarding the type, manner, or degree of severe emotional distress she claims to have experienced").

For these reasons, and the other reasons stated in Defendants' briefs, their Motions to Dismiss are granted as to Plaintiff's claims for intentional and negligent infliction of emotional distress.

For the reasons stated in Plaintiffs' briefs, Defendants' Motions are denied as to Plaintiffs' remaining claims.

III. ORDER

IT IS THEREFORE ORDERED THAT:

1. "Defendant Lifestore Bank's, F.S.A.'s Motion to Dismiss Second Amended Complaint" (document #52) is **GRANTED IN PART and DENIED IN PART**, that is, is **GRANTED** as to Plaintiffs' claims for intentional and negligent infliction of emotional distress. The Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to those claims. The Motion is **DENIED** in all other respects.

2. "Defendant Grid Financial Services, Inc.'s Motion to Dismiss … Second Amended Complaint" (document #54) is **GRANTED IN PART and DENIED IN PART**, that is, is **GRANTED** as to Plaintiffs' claims under 11 U.S.C. § 362(k), under N.C. Gen. Stat § 75-55, for breach of contract, and for intentional and negligent infliction of emotional distress. The Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to those claims. The Motion is **DENIED** in all other respects.

3. The Clerk is directed to send copies of this Memorandum and Order to the parties' counsel.

SO ORDERED.

Signed: January 15, 2014

David S. Cayer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO: 5:13-CV-66-DSC

DIANA LOUISE HOUCK, et. al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
LIFESTORE BANK, et. al.,	)
	)
Defendants.	)

MEMORANDUM AND ORDER

THIS MATTER is before the Court on "Defendant Grid Financial Services, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction" (document #70) and "Brief in Support …" (document #70-1), both filed January 22, 2014. Plaintiffs have not filed a response and the time for filing one has expired. The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c). This Motion is now ripe for consideration.

This matter involves the foreclosure of a deed of trust on real property located at 318 Todd Railroad Grade Road ('the Property") in Todd, North Carolina. On February 22, 2007, Plaintiff Diana Louise Houck ("Houck") borrowed $123,000.00, as evidenced by a promissory note ("the Note") and secured by a Deed of Trust recorded in Book 361 at Page 2052 by the Ashe County Register of Deeds ("the Deed of Trust").

Plaintiffs allege that sometime in July or August 2009, Diana Houck contacted the Note holder, Defendant LifeStore Bank Corporation, F.S.A. ("Lifestore") seeking a loan modification and lower monthly payments. Lifestore referred her to Defendant Grid Financial Services, Inc. ("Grid"), which was acting as the collection agent on the delinquent loan. Plaintiffs allege that a

Grid employee advised Houck to stop making any mortgage payments so that she could qualify for a modification of the loan. Plaintiffs contend that the employee knew that Grid and Lifestore would not approve a modification.

On or about July 19, 2011, Defendant Substitute Trustee Services, Inc. ("STS") initiated a foreclosure action in Ashe County Superior Court at the request of Lifestore.

On August 23, 2011, an Assistant Clerk of Superior Court issued an Order Allowing Foreclosure of the Property.

On September 12, 2011, Houck filed for Chapter 13 Bankruptcy protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51141 (the "first petition"). According to the Second Amended Complaint, only LifeStore was sent notice of the first petition. The foreclosure proceeding was stayed the following day.

On September 30, 2011, the Court dismissed the first petition.

On November 4, 2011, STS moved to re-open the foreclosure proceeding.

On December 16, 2011, Houck again filed for Chapter 13 Bankruptcy protection in the United States Bankruptcy Court for the Western District of North Carolina, Case No.: 11-51513 (the "second petition"). Houck failed to file a matrix, schedule and other information necessary to properly serve her creditors. That same day, the Court issued a Notice of Deficient Filing and Order to Appear and Show Cause (W.D.N.C. Bankr. 11-51513 Docs. 2 and 3). According to the Second Amended Complaint, only LifeStore was sent notice of the second petition. There is no allegation that Grid ever received notice of the second petition.

On December 20, 2011, STS sold the Property at a foreclosure sale.

On December 21, 2011, the second petition was dismissed (W.D.N.C. Bankr. 11-51513 Doc. 9).

On April 26, 2013, Plaintiffs filed their Complaint, which as amended, asserts a claim pursuant to 11 U.S.C. § 362(k) for conducting a foreclosure sale in violation of the bankruptcy stay. Plaintiffs also assert state law claims for unfair and deceptive trade practices, unfair debt collection, breach of contract, fraud, constructive fraud, intentional and negligent infliction of emotional distress, and civil conspiracy. The gravamen of the claims is that Lifestore and Grid conspired to cause Plaintiffs to fall behind on their mortgage payments so that Lifestore could foreclose. Plaintiffs assert that Lifestore had notice of the second petition and violated the bankruptcy stay by conducting the foreclosure sale.

On October 1, 2013, the Court granted Defendant STS's Motion to Dismiss. The only claims pled against STS were for violation of the bankruptcy stay. Plaintiffs did not allege that STS had notice of the second petition. See "Memorandum and Order" at 4-5 (document #51).

On January 15, 2014, the Court granted in part Lifestore's "Motion to Dismiss Second Amended Complaint" (document #52) as to Plaintiffs' claims for intentional and negligent infliction of emotional distress. See "Memorandum and Order" (document #69). The Court also granted in part Grid's "Motion to Dismiss … Second Amended Complaint" (document #54) as to Plaintiffs' claims brought under 11 U.S.C. § 362(k) and N.C. Gen. Stat § 75-55, as well as those for breach of contract and intentional and negligent infliction of emotional distress.

On January 22, 2014, Grid filed its Motion to Dismiss for lack of subject matter jurisdiction. As Grid argues, "11 U.S.C. §§ 362 does not create a private cause of action outside of the Bankruptcy Court for violations of the automatic stay." Scott v. Wells Fargo Home Mortgage Inc., 326 F. Supp. 2d 709, 719 (E.D. Va. 2003)), aff'd sub nom., 67 Fed. App. 238 (4th Cir. 2003) (per curiam); see also Bankruptcy Law Manual § 7.57 ("[T]he bankruptcy court has exclusive jurisdiction to adjudicate a debtor's claim for damages under this provision of the

Code.") (citing Eastern Equipment & Servs. Corp. v. Factory Point Nat. Bank, 236 F.3d 117 (2d Cir. 2001)). Houck's second petition was dismissed by the Bankruptcy Court. Therefore, dismissal of the § 362 claim is the appropriate remedy here.

Once all federal claims have been dismissed, district courts may decline to exercise supplemental jurisdiction over remaining state law claims. 28 U.S.C. § 1367(c)(3); Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995) (under § 1367(c), the district courts "enjoy wide latitude in determining whether or not to retain [supplemental] jurisdiction over state claims when all federal claims have been extinguished") (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988)). Declining supplemental jurisdiction where all federal claims have been dismissed is consistent with the general principle that federal jurisdiction is limited. Chesapeake Ranch Water Co. v. Board of Com'rs of Calvert County, 401 F.3d 274, 277 (4th Cir. 2005) (having dismissed federal claims, district court properly declined supplemental jurisdiction of state claims). See also Mercer v. Duke University, 401 F.3d 199, 202 (4th Cir. 2005); Pineville Real Estate Operation Corp. v. Michael, 32 F.3d 88, 90 (4th Cir. 1994).

"[I]t is well-settled that a district court's power to remand pendent state claims to state court is inherent in statutory authorization to decline supplemental jurisdiction under § 1367(c)." Battle v. Seibels Bruce Ins. Co., 288 F.3d 596, 606 (4th Cir. 2002) (citing Hinson v. Norwest Fin. S.C., Inc., 239 F.3d 611, 617 (4th Cir. 2001) (noting that circuit courts of appeal unanimously hold that power to remand is inherent in § 1367(c))).

Accordingly, the Court declines supplemental jurisdiction of Plaintiff's surviving state law claims.

III. ORDER

IT IS THEREFORE ORDERED THAT:

1. "Defendant Grid Financial Services, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction" (document #70) is **GRANTED**. The Second Amended Complaint is **DISMISSED WITHOUT PREJUDICE.**

2. The Clerk is directed to send copies of this Memorandum and Order to the parties' counsel.

SO ORDERED.

Signed: February 20, 2014

David S. Cayer
United States Magistrate Judge

United States District Court
Western District of North Carolina
Statesville Division

Diana Louise Houck, et al,	)	JUDGMENT IN CASE
	)	
Plaintiff(s),	)	5:13-cv-00066-DSC
	)	
vs.	)	
	)	
LifeStore Bank, et al,	)	
	)	
Defendant(s).	)	

DECISION BY COURT. This action having come before the Court by Motion and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's February 20, 2014 Memorandum and Order.

February 20, 2014

Frank G. Johns, Clerk
United States District Court

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2326

DIANA LOUISE HOUCK; STEVEN G. TATE,

Plaintiffs - Appellants,

v.

SUBSTITUTE TRUSTEE SERVICES, INC.,

Defendant – Appellee,

and

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.,

Defendants.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. David S. Cayer, Magistrate Judge. (5:13-cv-00066-DSC)

Submitted: July 28, 2014 Decided: August 27, 2014

Before KEENAN and FLOYD, Circuit Judges, and DAVIS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

M. Shane Perry, COLLUM & PERRY, Mooresville, North Carolina, for Appellants. Jeffrey A. Bunda, HUTCHENS LAW FIRM, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Diana Louise Houck and Steven G. Tate seek to appeal the district court's order entered October 1, 2013, dismissing all claims as to one of the defendants in the underlying civil action. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-46 (1949). The order appellants seek to appeal is neither a final order nor an appealable interlocutory or collateral order.* Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

* We note that, after the notice of appeal was filed, the district court entered orders dismissing claims against the remaining two defendants. Under the doctrine of cumulative finality, see Equip. Fin. Grp., Inc. v. Traverse Computer Brokers, 973 F.2d 345, 347-48 (4th Cir. 1992), it is possible to cure the jurisdictional defect resulting from the appeal of a non-final order if the district court enters final judgment prior to this court's consideration of the appeal. However, because at least some claims against defendant Lifestore Bank are still pending in the district court, a final order has not yet been entered.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DIANA LOUISE HOUCK and STEVEN G. TATE **Plaintiff – Appellants** **v.** **SUBSTITUTE TRUSTEE SERVICES, INC.** **Defendant – Appellee** **and** **LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.** **Defendants**	**Case No. 13-2326** **(5:13-cv-00066-DSC)**

MOTION FOR CLARIFICATION

COMES NOW counsel for Plaintiff-Appellants and respectfully moves the Court for clarification of the previous order entered August 27, 2014, which dismissed this appeal as interlocutory. Appellants hope to resolve discord between that order and the recent order from the lower court in this matter, entered on October 14, 2014. In support of this motion, the Appellants show this Court the following:

1. On September 1, 2013, the magistrate court, acting as the trial court with consent of all parties, entered a memorandum and order dismissing the complaint against Defendant-Appellee Substitute Trustee Services, Inc.

(STS). That dismissal is the subject of this appeal. In the order, the lower court stated:

> 1. Defendant Substitute Trustee Services, Inc.'s Motion to Dismiss … Second Amended Complaint" (document #46) is **GRANTED**. The Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to Defendant Substitute Trustee Services, Inc.

Houck v. Lifestore, et al., 5:113-CV-66-DSC, Memorandum and Order, p.6 (Doc. 51) (W.D.N.C. Sept. 1, 2013) (emphasis in the original).

2. On January 15, 2014, after motions to dismiss filed separately and supported by separate briefs by Defendants Lifestore Bank, F.S.A. (Lifestore) and Grid Financial Services, Inc. (Grid), the magistrate court dismissed some claims, while other claims survived against both defendants. In that order the magistrate court stated:

> 1. "Defendant Lifestore Bank's, F.S.A.'s Motion to Dismiss Second Amended Complaint" (document #52) is **GRANTED IN PART and DENIED IN PART**, that is, is **GRANTED** as to Plaintiffs' claims for intentional and negligent infliction of emotional distress. The Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to those claims. The Motion is **DENIED** in all other respects.
>
> 2. "Defendant Grid Financial Services, Inc.'s Motion to Dismiss … Second Amended Complaint" (document #54) is **GRANTED IN PART and DENIED IN PART**, that is, is **GRANTED** as to Plaintiffs' claims under 11 U.S.C. § 362(k), under N.C. Gen. Stat § 75-55, for breach of contract, and for intentional and negligent infliction of emotional distress. The Second Amended Complaint is **DISMISSED WITH**

> **PREJUDICE** as to those claims. The Motion is **DENIED** in all other respects.

Houck v. Lifestore, et al., 5:13-CV-66-DSC, Memorandum and Order, p.8 (Doc. 69) (W.D.N.C. Jan 15, 2014) (emphasis in the original).

3. On January 22, 2014, Grid filed a second motion to dismiss with a supporting brief which argued that the district court does not have jurisdiction over claims arising under 11 U.S.C. § 362.

4. Lifestore did not file a similar motion, was not mentioned in Grid's motion and did not brief Grid's motion.

5. On February 20, 2014, in response to Grid's motion to dismiss, the magistrate court entered an order which stated:

> 1. "Defendant Grid Financial Services, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction" (document #70) is **GRANTED**. The Second Amended Complaint is **DISMISSED WITHOUT PREJUDICE.**

Houck v. Lifestore, et al., 5:13-CV-66-DSC, Memorandum and Order, p.5 (Doc. 71) (W.D.N.C. Jan 20, 2014) (emphasis in the original).

6. On March 6, 2014, STS filed the Brief of Defendant-Appellee in this appeal. In the Appellee's jurisdictional statement, it stated that the case in the lower court had been dismissed against all remaining parties and the appeal was no longer interlocutory.

7. Shortly thereafter, Appellant's counsel contacted the Clerk of Court in the Western Division of North Carolina to verify this and found the case closed. Upon further inquiry, the Magistrate's clerk confirmed the lower court case was dismissed and closed.

8. On August 27, 2014, this Court dismissed this appeal as interlocutory. In the *per curiam* opinion this Court stated:

> We note that, after the notice of appeal was filed, the district court entered orders dismissing claims against the remaining two defendants. Under the doctrine of cumulative finality, *see Equip. Fin. Grp., Inc. v. Traverse Computer Brokers*, 973 F.2d 345, 347-48 (4th Cir. 1992), it is possible to cure the jurisdictional defect resulting from the appeal of a non-final order if the district court enters final judgment prior to this court's consideration of the appeal. **However, because at least some claims against defendant Lifestore Bank are still pending in the district court, a final order has not yet been entered.**

Houck and Tate v. Substitute Trustee Services, Inc., 13-2326, Unpublished Opinion, fn. p. 3 (Doc. 32) (4th Cir., August 27, 2014) (emphasis supplied).

9. On August 29, 2014, Plaintiff-Appellants filed a motion with supporting memorandum to reopen the case in the lower court. Plaintiffs based this motion on this Court's dismissal of the instant appeal and its statement that claims are still pending against Lifestore in the lower court. Plaintiffs reasoned that if claims were not still pending, the Fourth Circuit would have

entered an order on the merits of the appeal and would not have said there were claims still pending.

10. On September 12, 2014, STS responded to the Plaintiffs' motion in the lower court.

11. On September 15, 2014, Plaintiffs filed in the lower court a Motion and Memorandum for reconsideration of the order dismissing STS and the claims against Lifestore and Grid based on the newly proffered *Exec. Bens. Ins. Agency v. Arkison*, 134 S. Ct. 2165 (U.S. 2014).

12. On September 24, 2014, STS objected to the motion for reconsideration with a Response and Memorandum. In its memorandum, STS stated:

> In a footnote to its unpublished opinion, the Court of Appeals declined to treat subsequent events in this Court as having cured the defect in the appeal, and stated that there remains at least one pending claim against Defendant LifeStore Bank. Plaintiff has seized on this statement and has used it as the basis for a motion to reopen the case, and, now, its second motion to reconsider the Court's February 20 Order.
>
> The statement in the Court of Appeal's footnote is clearly in error.

Houck v. Lifestore, et al., 5:13-CV-66-DSC, Defendant Grid Financial Services, Inc.'s Response in Opposition to Plaintiff's Motion for Reconsideration, p.2 (Doc. 79) (W.D.N.C. September 24, 2014).

13. On October 14, 2014, the magistrate court denied both the Plaintiff's motion to reopen the case and the motion for reconsideration. In the order, the Magistrate stated:

> For the reasons stated in Defendants' briefs in opposition (documents ## 76 and 79), Plaintiffs' "Motion to Reopen Case" (document #75) and "Motion for Reconsideration" (document #77) are **DENIED**.

Houck v. Lifestore, et al., 5:13-CV-66-DSC, Memorandum and Order, p.1 (Doc. 80) (W.D.N.C. Oct. 14, 2014) (emphasis in the original). In other words, the lower court held that the Fourth Circuit is clearly in error.

14. At this point, a clarification is necessary to resolve the conflict between the courts. The Appellants are stuck – because certain claims are still pending in the federal district court, Appellants cannot file these same claims in state court. Appellants disagree that there is no subject matter jurisdiction in the magistrate court, given that 28 U.S.C. 1334 grants original and exclusive jurisdiction to District Court for all claims arising under Title 11, but if the claims are to be dismissed, Plaintiff-Appellants need to file the state claims in state court within 30 days of the dismissal pursuant to 29 U.S.C. 1367(d). Yet, as this Court held, the claims have not been dismissed. Such was the entire basis for this Court finding this appeal to be interlocutory. It was not a mere misstatement in a footnote.

15. If Appellants file these claims in state court in the current posture of the case, a defense will certainly be raised that the Appellants intentionally filed claims in state Court that they knew were still pending in federal court per this Court's opinion. Not only does this give the Defendants a strong basis for dismissal in the state court, it also subjects Appellant and Appellant's counsel to Rule 11 sanctions and is grounds for a malpractice action against Appellant's counsel. Moreover, it is simply wrong.

16. At this point, the conflict would resolve if this Court could either clarify that Lifestore is not yet dismissed from the district case, or determine that all claims against Lifestore were dismissed and take the appeal up for consideration since, in that case, any interlocutory defect would have been cured. Otherwise this case is in limbo and cannot be properly resolved.

WHEREFORE, Appellant respectfully requests a clarification from this Court of Appeals in this matter.

Respectfully submitted today, October 16, 2014.

/s/ M. Shane Perry
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DIANA LOUISE HOUCK and STEVEN G. TATE **Plaintiff – Appellants** **v.** **SUBSTITUTE TRUSTEE SERVICES, INC.** **Defendant – Appellee** **and** **LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.** **Defendants**	**Case No. 13-2326** **(5:13-cv-00066-DSC)**

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, I electronically filed the foregoing Motion with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

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/s/ M. Shane Perry
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FILED: December 17, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2326
(5:13-cv-00066-DSC)

DIANA LOUISE HOUCK; STEVEN G. TATE

Plaintiffs - Appellants

v.

SUBSTITUTE TRUSTEE SERVICES, INC.

Defendant - Appellee

and

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.

Defendants

O R D E R

Upon consideration of appellants' motion for clarification of this court's August 27, 2014, opinion and judgment dismissing this appeal as interlocutory, the court recalls its mandate and grants panel rehearing.

The clerk shall set a supplemental briefing schedule and tentatively calendar

this case for oral argument at the next available session.

Entered at the direction of Judge Floyd with the concurrence of Judge Keenan and Senior Judge Davis.

For the Court

/s/ Patricia S. Connor, Clerk

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2326

DIANA LOUISE HOUCK; STEVEN G. TATE,

Plaintiffs - Appellants,

v.

SUBSTITUTE TRUSTEE SERVICES, INC.,

Defendant - Appellee,

and

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.,

Defendants.

PAULA STEINHILBER BERAN,

Court-Assigned Amicus Counsel.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. David S. Cayer, Magistrate Judge. (5:13-cv-00066-DSC)

Argued: May 12, 2015 Decided: July 1, 2015

Before NIEMEYER, DIAZ, and FLOYD, Circuit Judges.

Vacated, reversed in part, and remanded by published opinion. Judge Niemeyer wrote the opinion, in which Judge Diaz and Judge Floyd joined.

M. Shane Perry, COLLUM & PERRY, Mooresville, North Carolina, for Appellants. Jeffrey Allen Bunda, HUTCHENS LAW FIRM, Charlotte, North Carolina, for Appellee. Paula Steinhilber Beran, TAVENNER & BERAN, PLC, Richmond, Virginia, as Court-Assigned Amicus Counsel.

NIEMEYER, Circuit Judge:

Diana Houck commenced this action under 11 U.S.C. § 362(k), alleging that the defendants foreclosed on and sold her homestead in violation of the automatic stay triggered by her filing of a Chapter 13 bankruptcy petition. The district court granted the motion to dismiss filed by one of the defendants, Substitute Trustee Services, Inc. (the "Substitute Trustee"), concluding that Houck failed to allege facts that plausibly supported her allegation that the violation of the automatic stay was willful, a necessary element of a § 362(k) claim. Because we find to the contrary, we vacate the district court's judgment, reverse its order dismissing Houck's claims against the Substitute Trustee, and remand for further proceedings.

I

In 2000, Houck's father deeded to her part of the family farm located in Ashe County, North Carolina. After Houck had secured financing from a predecessor to LifeStore Bank, F.S.A., she and her then-fiancé, Ricky Penley, placed a mobile home on part of the homestead.

In 2007, Houck refinanced the loan so that she and Penley could remodel the family farmhouse, but within a year, she lost her job and began having difficulty making her loan payments. In the summer of 2009, after she and Penley were married, Houck

asked LifeStore for a loan modification. LifeStore, however, referred her to Grid Financial Services, Inc., a debt collection agency, which denied her request because she was unemployed. Houck thereafter defaulted on her loan.

In July 2011, the Hutchens Law Firm (formerly Hutchens, Senter, Kellam & Pettit, P.A.) served Penley with a notice of foreclosure. To stop the foreclosure proceedings, Houck, acting pro se, filed a Chapter 13 bankruptcy petition on September 12, 2011. The next day, the Hutchens Law Firm notified the Clerk of the Superior Court of Ashe County that Houck had filed a bankruptcy petition and consequently that all foreclosure proceedings had to be stayed. A few weeks later, however, the bankruptcy court dismissed Houck's petition because she had failed to file certain schedules and statements in accordance with applicable bankruptcy rules, and the Substitute Trustee, by its counsel, the Hutchens Law Firm, reactivated the foreclosure proceedings.

On December 16, 2011, Houck, again acting pro se, filed a second Chapter 13 bankruptcy petition, again to stop the foreclosure proceedings. On that same day, Penley called the Hutchens Law Firm to notify it of the bankruptcy filing. The employee of the Firm with whom Penley spoke acknowledged that the Firm had a file for Houck. Penley told the employee that Houck had filed a second bankruptcy petition earlier that day,

and he provided the employee with the new case number. On that same day, Penley also contacted LifeStore to notify it of the new bankruptcy petition. LifeStore told Penley that it intended to wait for notice from the bankruptcy court before taking any action.

On December 18, 2011, two days after Houck had filed her second bankruptcy petition, the bankruptcy court ordered Houck to appear and show cause why her petition should not be dismissed. Two days later, on December 20, 2011, the Substitute Trustee, represented by the Hutchens Law Firm, sold Houck's homestead at a foreclosure sale. The following day, the bankruptcy court dismissed Houck's second bankruptcy petition. Because Houck had filed the second petition with the purpose of preventing the sale of her homestead and it had already been sold, she did not object to the petition's dismissal. Thereafter, Penley endeavored unsuccessfully to undo the sale. In March 2012, after the sheriff issued a notice to vacate, Houck and Penley left the homestead and moved into a small cabin.

Houck retained counsel and commenced this action, naming as defendants LifeStore, Grid Financial, and the Substitute Trustee and asserting a claim against them under 11 U.S.C. § 362(k) for violation of the automatic stay. She also asserted several related state law claims.

The Substitute Trustee filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), contending that the complaint had failed to allege that the Substitute Trustee was aware of the second bankruptcy petition's filing at the time it conducted the foreclosure sale of Houck's homestead. The district court granted the motion by order dated October 1, 2013, concluding that Houck had "failed to allege that [she] sent notice of the second petition to [the Substitute Trustee] or that [the Substitute Trustee] had any notice of the [bankruptcy] petition." Based on that deficiency, the court also dismissed Houck's related state law claims. On October 28, 2013, Houck filed an interlocutory appeal from the district court's order dismissing her claims against the Substitute Trustee.

The remaining defendants, LifeStore and Grid Financial, thereafter filed various motions to dismiss or for summary judgment. In one of those motions, Grid Financial contended that the district court lacked subject matter jurisdiction over Houck's § 362(k) claim, maintaining that the provision did not create a private cause of action that could be adjudicated outside of the bankruptcy court. By order dated February 20, 2014, the district court granted Grid Financial's motion and dismissed Houck's complaint, agreeing that it lacked subject matter jurisdiction over Houck's federal claim for violation of

the automatic stay and declining to exercise its discretion to adjudicate her state law claims. The Clerk of Court thereafter entered judgment and closed the case.

Subsequently, we, sua sponte, dismissed Houck's pending appeal of the district court's October 1, 2013 order dismissing the Substitute Trustee because it had been taken from an interlocutory order. Houck v. Substitute Tr. Servs., Inc., 582 F. App'x 230, 230 (4th Cir. 2014) (per curiam). We concluded further that the jurisdictional defect was not cured by the district court's February 20, 2014 order granting Grid Financial's motion to dismiss for lack of subject matter jurisdiction, as that order was also not final. Id. at 230 n.*.

Thereafter, Houck filed motions requesting that the district court reopen the case and reconsider its February 20, 2014 order. The district court denied the motions, reiterating that it had finally decided the case with that order. Houck then filed an unopposed motion in our court for clarification, seeking to resolve her procedural predicament created by the district court's statement that its February 20, 2014 order finally closed the case and our contrary statement that that order was not final. In response, we recalled the mandate issued on our dismissal of Houck's appeal and granted panel rehearing.

In her now-reopened appeal, Houck contends that, in dismissing her § 362(k) claim against the Substitute Trustee, the district court applied the wrong legal standard for ruling on a Rule 12(b)(6) motion and erroneously concluded that her complaint failed to allege sufficient facts to state a plausible claim for relief.

II

At the outset, we determine whether we have jurisdiction to hear Houck's appeal. See, e.g., Chevron Corp. v. Page (In re Naranjo), 768 F.3d 332, 342 (4th Cir. 2014).

In its October 1, 2013 order, the district court granted the Substitute Trustee's motion to dismiss on the ground that Houck's complaint failed to allege that she had given the Substitute Trustee notice of her bankruptcy petition before the Substitute Trustee sold her homestead, thus precluding any claim that the Substitute Trustee's conduct was willful. But because LifeStore and Grid Financial were not parties to that motion and remained defendants in the action, Houck's appeal of the October 1 dismissal order was interlocutory. Moreover, Houck made no request that the district court certify the order as a final judgment under Federal Rule of Civil Procedure 54(b), although it appears that she could have satisfied that rule's requirement. See, e.g., Nystedt v. Nigro, 700 F.3d 25, 29 (1st

Cir. 2012) (upholding a Rule 54(b) certification of an order granting a Rule 12(b)(6) motion to dismiss filed by some but not all of the defendants). Consequently, we dismissed Houck's appeal sua sponte because it was not taken from a final decision, as required by 28 U.S.C. § 1291(a). Houck, 582 F. App'x at 230.

After Houck requested that we reconsider the effect of the district court's February 20, 2014 order granting Grid Financial's motion to dismiss for lack of subject matter jurisdiction, we recalled our mandate and now hear this appeal to consider her arguments.

If the district court's February 20, 2014 order, entered several months after the court had dismissed Houck's claims against the Substitute Trustee, was a final judgment, then Houck's appeal might be reviewable under the doctrine of cumulative finality -- a finality achieved by the cumulative effect of the October 1, 2013 dismissal order and the February 20, 2014 dismissal order. See Equip. Fin. Grp., Inc. v. Traverse Computer Brokers, 973 F.2d 345, 347 (4th Cir. 1992) (recognizing cumulative finality in circumstances where all claims are dismissed, albeit at different times, before the appeal taken from the first dismissal order is considered).

Upon close review of the district court's February 20, 2014 order, we conclude that it was indeed a final judgment. In that

order, the district court granted Grid Financial's motion to dismiss -- LifeStore was not a party to the motion -- concluding that it did not have subject matter jurisdiction over Houck's § 362(k) claim for violation of the Bankruptcy Code's automatic stay. Because subject matter jurisdiction goes to the power of the court to adjudicate a claim, an order dismissing a claim for lack of subject matter jurisdiction necessarily dismisses the claim as to all defendants. And, indeed, the district court's February 20, 2014 order reflected this effect by dismissing the entire complaint without limiting its ruling to any particular party. Consistently, the district court also directed the Clerk of Court to enter judgment by way of a separate docket entry, as required by Federal Rule of Civil Procedure 58 for entry of a final judgment. Finally, the court later confirmed that it had intended to dismiss the entire case when it denied Houck's motions to reopen the case and to reconsider its February 20, 2014 ruling. Specifically, it stated that "[o]n February 20, 2014, the Court dismissed [Houck's] only federal claim," and it declined to exercise supplemental jurisdiction over her pendent state law claims. Because the district court's February 20, 2014 order disposed of the entire case, "leav[ing] nothing for [it] to do," United States v. Breeden, 366 F.3d 369, 372 (4th Cir. 2004) (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 467 (1978)) (internal quotation marks omitted), the order was a

final judgment. This brings us to consideration of the doctrine of cumulative finality.

In Equipment Finance, we articulated the requirements for application of the doctrine. There, the district court granted summary judgment to one of two defendants, and the plaintiff appealed the district court's order. Equip. Fin., 973 F.2d at 346-47. While the appeal was pending, the plaintiff voluntarily dismissed its claim against the second defendant. Id. at 347. On appeal, we rejected the first defendant's argument that we lacked jurisdiction, concluding that the subsequent dismissal of the claim against the remaining defendant prior to our consideration of the appeal "effectively satisfie[d] the finality requirements of Rule 54(b)." Id. Noting that the case's "procedural circumstances . . . warrant[ed] a practical approach to finality," we recognized a doctrine of "cumulative finality where all joint claims or all multiple parties are dismissed prior to the consideration of the appeal." Id. The doctrine applies, however, only when the appellant appeals from an order that the district court could have certified for immediate appeal under Rule 54(b). See In re Bryson, 406 F.3d 284, 287-89 (4th Cir. 2005).

In this case, the district court dismissed completely Houck's claims against the Substitute Trustee in its October 1, 2013 order, leaving open only her claims against LifeStore and

Grid Financial. Because the court could have certified such an order as a final judgment under Rule 54(b) and because the court later entered final judgment against the remaining defendants with its February 20, 2014 order before we considered Houck's interlocutory appeal, we conclude that the doctrine of cumulative finality applies and that we therefore have jurisdiction to hear her appeal.[1]

III

A second jurisdictional issue is presented by the district court's February 20, 2014 order, in which the court dismissed Houck's federal claim on the ground that it lacked subject matter jurisdiction. Of course, if the court lacked subject matter jurisdiction to hear Houck's § 362(k) claim, it could not have ruled on the Substitute Trustee's Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted.

As noted above, on February 20, 2014, the district court concluded, without further discussion, that a claim under

[1] Houck argues, unnecessarily as it turns out, that we could hear her appeal under the collateral order doctrine. That doctrine, however, would not be applicable here, because Houck's claim against the Substitute Trustee was not a collateral matter and Houck could well have obtained review of the dismissal order on appeal from the final judgment. See generally Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009); Swint v. Chambers Cnty. Comm'n, 514 U.S. 35 (1995).

§ 362(k) for violation of the automatic stay could only be brought in a bankruptcy court, not in a district court. It relied for support on Scott v. Wells Fargo Home Mortgage, Inc., 326 F. Supp. 2d 709, 719 (E.D. Va.), aff'd sub nom. Scott v. Wells Fargo & Co., 67 F. App'x 238 (4th Cir. 2003) (per curiam), where the district court stated, "[I]t is doubtful that a violation of § 362[k] is cognizable in this Court. While § 362[k] arguably creates [a] private right of action for willful violation of [the] automatic stay, [it] does not create a private cause of action outside of the Bankruptcy Court for violations of [the] automatic stay." (Citation omitted). The Scott court in turn relied for support on Dashner v. Cate, 65 B.R. 492 (N.D. Iowa 1986).

But in Dashner, the district court did not consider § 362(k) because, at the time of the stay violation at issue there, § 362(k) had not yet been enacted. 65 B.R. at 494. The Dashner court simply held that before 1984 -- i.e., before the creation of what is now a § 362(k) cause of action -- nothing in the Bankruptcy Code "indicate[d] that Congress intended to create a private right of action outside of [the] bankruptcy court" for a violation of the automatic stay. Id. at 495. To reach that conclusion, the court pointed to Stacy v. Roanoke Mem'l Hosps. (In re Stacy), 21 B.R. 49 (Bankr. W.D. Va. 1982). The Stacy court likewise considered a pre-1984 violation of the

automatic stay and concluded, "The proscriptive provision of the Code in question here, the § 362 automatic stay provision, is not a proscription to be enforced by a debtor or any third party. A stay is an order of the [bankruptcy] court, to be enforced by the [bankruptcy] court." Id. at 52.

Thus, both Dashner and Stacy, on which Scott relied, analyzed the pre-1984 version of § 362, which lacked subsection (k)'s private cause of action, and therefore are inapposite. For that reason, neither the district court's opinion in Scott nor our unpublished, one-paragraph affirmance of that decision supports the district court's determination below that only a bankruptcy court may entertain a § 362(k) claim.

Both Houck and the Substitute Trustee now agree that the district court erred in determining that it lacked jurisdiction to adjudicate Houck's § 362(k) claim. But because subject matter jurisdiction cannot be conferred by agreement, see McCorkle v. First Pa. Banking & Trust Co., 459 F.2d 243, 251 (4th Cir. 1972), we appointed counsel to submit an amicus curiae brief defending the district court's position on the issue.[2] We turn now to whether the district court erred in concluding that it lacked subject matter jurisdiction to adjudicate a claim brought under § 362(k).

[2] We are grateful to Paula Steinhilber Beran, Esq., for providing this "friend of the court" service to us.

As background, the filing of a bankruptcy petition operates immediately to stay creditors from pursuing certain enumerated collection actions against the debtor or the debtor's estate. See 11 U.S.C. § 362(a). This automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws." S. Rep. No. 95-989, at 54 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840. "It gives the debtor a breathing spell from his creditors" and "stops all collection efforts, all harassment, and all foreclosure actions." Id.

Before 1984, when Congress enacted § 362(k) (designated § 362(h) when enacted), the automatic stay appeared to be merely proscriptive. Section 362(a) provided that the filing of a bankruptcy petition "operates as a stay," without prescribing any sanction for its violation. 11 U.S.C. § 362(a). The Bankruptcy Code simply gave the bankruptcy court authority to administer the proscription. For example, § 362(d) authorized the bankruptcy court to "grant relief from the stay," and § 362(e) and § 362(f) otherwise authorized the bankruptcy court to regulate the stay's length, conditions, and termination. Thus, courts had held that the § 362(a) automatic-stay provision did not provide a party with an independent right of action for damages but rather with a procedural mechanism to be regulated and enforced by the bankruptcy court. See, e.g., Stacy, 21 B.R. at 52.

In 1984, however, with the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified in scattered sections of 11 and 28 U.S.C.), Congress created a private cause of action for the willful violation of a stay, authorizing an individual injured by any such violation to recover damages. See 11 U.S.C. § 362(k).[3] In creating the cause of action, Congress did not specify which courts possess jurisdiction over a § 362(k) claim for violation of the automatic stay.

Under the Bankruptcy Amendments and Federal Judgeship Act, the district courts were given "original and exclusive jurisdiction in all cases under title 11," 28 U.S.C. § 1334(a), and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11," id. § 1334(b). But they were also

[3] Section 362(k) reads in full:

> (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
>
> (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

authorized to refer to bankruptcy judges any such cases or proceedings. See id. § 157(a); Exec. Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165, 2171 (2014). In addition, the Act authorized the district courts to withdraw, in whole or in part, any case or proceeding that they had referred. See 28 U.S.C. § 157(d). In short, while the district courts were given jurisdiction over bankruptcy cases, Congress also delegated to the bankruptcy courts, "as judicial officers of the [district courts]," Wellness Int'l, Ltd. v. Sharif, 135 S. Ct. 1932, 1945 (2015) (quoting 28 U.S.C. § 151) (internal quotation marks omitted), adjudicatory authority, subject to the district courts' supervision as particularized in § 157 and the limits imposed by the Constitution. In no circumstance, however, did the Act, in conferring such adjudicatory authority, give a bankruptcy court jurisdiction to the exclusion of a district court.

A claim under § 362(k) for violation of the automatic stay is a cause of action arising under Title 11, and as such, a district court has jurisdiction over it. Of course, under § 157(a), a district court may refer a § 362(k) claim to the bankruptcy court. If the § 362(k) claim did not "stem[] from the bankruptcy itself or would [not] necessarily be resolved in the claims allowance process," Stern v. Marshall, 131 S. Ct. 2594, 2618 (2011), or would only "augment the bankruptcy estate

and would otherwise exis[t] without regard to any bankruptcy proceeding," Wellness, 135 S. Ct. at 1941 (alteration in original) (citation and internal quotation marks omitted), the § 157 referral would be for recommended findings of fact and conclusions of law, see Exec. Benefits, 134 S. Ct. at 2171-72, 2175. But even if the § 157 referral authorized the bankruptcy court to adjudicate the claim to final judgment, it would not deprive the district court of jurisdiction. See 28 U.S.C. § 1334(b); see also Justice Cometh, Ltd. v. Lambert, 426 F.3d 1342, 1343 (11th Cir. 2005) (per curiam); Price v. Rochford, 947 F.2d 829, 832 n.1 (7th Cir. 1991). But see Eastern Equip. & Servs. Corp. v. Factory Point Nat'l Bank, 236 F.3d 117, 121 (2d Cir. 2001) (per curiam) (stating, without considering 28 U.S.C. § 1334, that a § 362(k) claim "must be brought in the bankruptcy court, rather than in the district court, which only has appellate jurisdiction over bankruptcy cases").

The amicus contends that jurisdiction to hear Houck's § 362(k) claim was vested solely in the bankruptcy court because of a standing referral order, entered under § 157(a), which has been in place in one form or another in the Western District of North Carolina since July 30, 1984. At the time relevant to this case, that order provided that "all bankruptcy matters" were "automatically referred" to the bankruptcy judge. The amicus argues that, under § 157(d), until such time as that

reference is withdrawn, the district court has ceded its jurisdiction to the bankruptcy court. She maintains that § 157(d)'s requirement that "cause" be shown for a discretionary withdrawal of a referral confirms her interpretation. See 28 U.S.C. § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown" (emphasis added)).

But nowhere in the text of § 157 is there any indication that the provision is jurisdictional, as the amicus claims. The text indicates that § 157 is simply a procedural mechanism authorizing a bankruptcy court, upon referral from a district court (1) to hear constitutionally core claims to final judgment, subject to appeal in the district court, and (2) to recommend findings of fact and conclusions of law to the district court in constitutionally non-core matters for de novo review and final judgment by the district court. See Exec. Benefits, 134 S. Ct. at 2171-72, 2175. Indeed, in Stern, the Court observed that § 157 is little more than a traffic regulator, directing where adjudication of bankruptcy matters can take place, and that it does not implicate subject matter jurisdiction. 131 S. Ct. at 2607. As the Court stated:

> Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district

> court. That allocation does not implicate questions of subject matter jurisdiction.

Id. (emphasis added) (citation omitted); see also Home Ins. Co. of Ill. v. Adco Oil Co., 154 F.3d 739, 742 (7th Cir. 1998) ("[A] judge's failure to follow orderly procedures [under § 157] for allocating bankruptcy matters within a district court does not deprive the court of subject-matter jurisdiction"). Consistent with its ruling, the Stern Court held that because the provisions of § 157 were not jurisdictional, their proscriptions could be waived. 131 S. Ct. at 2607-08.

In the same vein, the fact that litigants may consent to a bankruptcy court's adjudication of a non-core proceeding also indicates that § 157 is not jurisdictional. See 28 U.S.C. § 157(c)(2) (permitting bankruptcy courts to adjudicate statutorily non-core proceedings with the parties' consent); Wellness, 135 S. Ct. at 1939 (holding that bankruptcy courts may, with the parties' knowing and voluntary consent, adjudicate Stern claims -- i.e., statutorily core but constitutionally non-core proceedings).

Thus, even if Houck's § 362(k) claim was indeed subject to the Western District of North Carolina's standing order referring "all bankruptcy matters" to the bankruptcy court, the district court's failure to follow the procedural rule did not deprive it of subject matter jurisdiction. The district court

always had original jurisdiction over any bankruptcy matter, and any breach of § 157 would "not implicate questions of subject matter jurisdiction." Stern, 131 S. Ct. at 2607; see also Home Ins. Co., 154 F.3d at 742. While it may be that the district court should have sent Houck's § 362(k) claim to the bankruptcy court in accordance with its standing order, the amicus has failed to explain how not doing so deprived the district court of the original jurisdiction that Congress bestowed upon it by way of § 1334. See Justice Cometh, 426 F.3d at 1343 (stating that, although the district courts may refer to the bankruptcy courts proceedings arising under Title 11, "the explicit § 1334 grant of original jurisdiction over Title 11 cases clearly forecloses a conclusion that the district court[s] lack[] subject matter jurisdiction over [§ 362(k) claims]"); Price, 947 F.2d at 832 n.1 (observing that the plaintiff's claim for willful violation of the automatic stay "should probably have been referred to the bankruptcy court under [the district court's standing order of reference]," but deciding that "the defect [was] not jurisdictional").

Moreover, neither Houck nor the Substitute Trustee objected to the district court's failure to refer this case to the bankruptcy court. Accordingly, any claim that the case should have been tried in the bankruptcy court was waived or forfeited. See Stern, 131 S. Ct. at 2607-08 (holding that the failure to

raise the statutory limitations of § 157 amounted to a waiver or forfeiture); Home Ins. Co., 154 F.3d at 742 (finding that the district court had committed no reversible error in failing to refer the matter to the bankruptcy court because, in part, neither of the parties challenged the district court's decision to hear the case).

At bottom, we hold that the district court had subject matter jurisdiction over Houck's § 362(k) claim and therefore that the court had authority to rule on the Substitute Trustee's motion to dismiss Houck's claims against it, to which we now turn.

IV

On the merits, Houck contends that the district court erred in dismissing, under Federal Rule of Civil Procedure 12(b)(6), her § 362(k) claim against the Substitute Trustee, arguing that the court applied the wrong legal standard and that her complaint was legally sufficient under the proper standard.

In dismissing her claim, the district court applied the standard: "[I]f after taking the complaint's well-pleaded factual allegations as true, a lawful alternative explanation appears a more likely cause of the complained of behavior, the claim for relief is not plausible." (Citation and internal quotation marks omitted). The court then found that the

complaint was "replete with generalized and conclusory allegations that the [foreclosure] sale was 'improper' or 'conducted improperly'" and that "[t]he only specific factual allegation against [the Substitute Trustee was] that it conducted the foreclosure sale in violation of the bankruptcy stay." More specifically, the court focused on the elements of a § 362(k) claim and noted that Houck had "failed to allege that [she] sent notice of the second [bankruptcy] petition to [the Substitute Trustee] or that [the Substitute Trustee] had any notice of the petition," thus precluding any allegation of willfulness.

Houck argues that the district court improperly created a balancing test for ruling on a Rule 12(b)(6) motion and that we should "summarily reject[]" it because "it has no legal basis and is logically unworkable." And as to the court's finding that the complaint was factually insufficient, she argues simply that the complaint did sufficiently allege that the Substitute Trustee had notice of her bankruptcy petition, pointing to numerous paragraphs in her complaint.

It is well established that a motion filed under Rule 12(b)(6) challenges the legal sufficiency of a complaint, see Francis v. Giacomelli, 588 F.3d 186, 192 (4th Cir. 2009), and that the legal sufficiency is determined by assessing whether the complaint contains sufficient facts, when 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)). This plausibility standard requires only that the complaint's factual allegations "be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555.

In light of these well-established principles, we agree with Houck that the district court's articulated standard was erroneous. While the court correctly accepted the complaint's factual allegations as true, it incorrectly undertook to determine whether a lawful alternative explanation appeared more likely. To survive a motion to dismiss, a plaintiff need not demonstrate that her right to relief is probable or that alternative explanations are less likely; rather, she must merely advance her claim "across the line from conceivable to plausible." Twombly, 550 U.S. at 570. If her explanation is plausible, her complaint survives a motion to dismiss under Rule 12(b)(6), regardless of whether there is a more plausible alternative explanation. The district court's inquiry into whether an alternative explanation was more probable undermined the well-established plausibility standard.

Turning to Houck's complaint, it sought to state a claim for relief under 11 U.S.C. § 362(k), which, as we have noted, creates a cause of action for an individual injured by a

violation of the automatic stay imposed by § 362(a). To recover under § 362(k), a plaintiff must show (1) that the defendant violated the stay imposed by § 362(a), (2) that the violation was willful, and (3) that the plaintiff was injured by the violation. See, e.g., Garden v. Cent. Neb. Hous. Corp., 719 F.3d 899, 906 (8th Cir. 2013).

The district court acknowledged that Houck's complaint adequately alleged that the Substitute Trustee violated the stay imposed by § 362(a). But the court determined that the complaint insufficiently alleged that the Substitute Trustee had notice of Houck's second bankruptcy petition and thus acted willfully when it sold her homestead in foreclosure. The court did not address the Substitute Trustee's additional argument that the complaint also failed to allege adequately that Houck had been injured by the automatic-stay violation. Upon our examination of the complaint, however, we conclude that neither position can be sustained, as the complaint adequately alleged that the Substitute Trustee had notice of Houck's second bankruptcy petition and that Houck sustained injury as a result of the violation.

By way of background, the complaint alleged that LifeStore was Houck's lender; that Grid Financial was the collection agency for LifeStore; that the Substitute Trustee conducted the foreclosure sale on behalf of LifeStore and Grid Financial; and

that the Hutchens Law Firm represented these defendants in the foreclosure proceedings.

The complaint then alleged that on December 16, 2011, Houck filed a Chapter 13 bankruptcy petition "to stop the foreclosure and keep the homestead." Compl. ¶ 62. It alleged that in her bankruptcy petition, Houck "noticed LifeStore Bank," Compl. ¶ 64, and that, on the same day that Houck filed the petition, her husband "called [the Hutchens Law Firm] and notified them of the bankruptcy filing," Compl. ¶ 65. It detailed that call as follows:

> [Houck's husband] told the person who answered the phone that [Houck] had filed her bankruptcy petition. The person on the phone said, "Hold on." She then told him that she pulled up the file for Diana Houck and acknowledged that they had a file for her. [Houck's husband] gave her the new bankruptcy case number at that time. He mentioned that it was a new filing, filed that day. That was the end of the phone call.

Compl. ¶ 65. The complaint further alleged that on the same day that Houck filed the petition, her husband also "contacted LifeStore by telephone and spoke with Anne Jones." Compl. ¶ 66. And it also detailed that call as follows:

> He told her that [Houck] had filed a bankruptcy [petition] that day. Ms. Jones said that people often claim to have filed a bankruptcy without actually filing and that [LifeStore] intended to wait for the Court's notice, or words to that effect.

Compl. ¶ 66. The complaint further alleged that, "[u]pon information and belief[,] LifeStore received notice from the

AACER system of the bankruptcy filing on December 16, 2011, the date that [Houck] filed the petition." Compl. ¶ 67. Finally, it alleged that the defendants "were noticed of the second petition the same way they were under notice of the first petition." Compl. ¶ 69. Based on these allegations of notice, the complaint concluded that the defendants "violated 11 U.S.C. § 362 by intentionally and knowingly foreclosing on [Houck's] real property while they knew that [Houck] was under the protection of the automatic stay." Compl. ¶ 93 (emphasis added). It is difficult to imagine that a court could demand more specificity with respect to the allegations of notice than the details that Houck provided in her complaint.

With respect to the Substitute Trustee's argument that Houck failed to allege injury, the complaint is likewise adequately detailed. The complaint alleged that Houck's homestead was sold in violation of the automatic stay on December 20, 2011, to Fannie Mae, the insurer of LifeStore's loan, although the exhibits to the complaint show that it was "Life Store Bank c/o Grid Financial Services, Inc.," that purchased the property. Compl. ¶ 74 & Ex. K. The complaint further alleged that, "[u]pon information and belief, [Fannie Mae] returned the homestead to LifeStore," which "is presently attempting to develop the land for sale." Compl. ¶¶ 86-87.

Finally, with respect to how the violation of the stay injured her, the complaint alleged:

> Because [Houck] and [her husband] were forced to move from the homestead to a smaller cabin, they suffered unreasonable loss including but not limited to:
>
> a) Loss of the rental income from the smaller cabin as [Houck] and [her husband] were forced to move into the cabin.
>
> b) Loss of [Houck's] grandmother's antiques as there was nowhere to store them.
>
> c) Loss of value of four collector cars as they are no longer being stored in a garage.
>
> d) Loss of income from [Houck's] produce stand.
>
> e) Loss of barn where [Houck] kept farm equipment and vegetables prior to sale.
>
> f) Loss of furniture because of smaller space.
>
> g) Loss of all of their seasonal clothing because of loss of storage space.
>
> h) Lost all of their sentimental possessions because of loss of storage space.
>
> i) Emotional injury.

Compl. ¶ 89.

In sum, we conclude that the complaint alleged facts that more than adequately support Houck's claims (1) that she gave the defendants, including the Substitute Trustee through its attorneys, notice of her December 16, 2011 bankruptcy filing and

(2) that as a result of the defendants' violation of the stay, she was injured.

Rather than address Houck's factual allegations in any detail, the Substitute Trustee argues that Houck failed to allege that she provided it with notice of her bankruptcy petition in writing, which, it argues, she was required to do under 11 U.S.C. § 342(c)(1) ("If notice is required to be given by the debtor to a creditor . . . , such notice shall contain the name, address, and last 4 digits of the [social security] number of the debtor"). The Substitute Trustee reasons that, because it did not receive such written notice before it sold Houck's homestead, it could not have willfully violated the automatic stay. This argument, however, distorts the requirements of § 362(k), which does not include any provision that a particular form of notice be given. Rather, it imposes liability for a willful violation of the automatic stay. We agree with Houck that, because the complaint alleges that the Substitute Trustee had actual notice of her December 16, 2011 bankruptcy petition when it sold her homestead, it sufficiently alleges that the Substitute Trustee's sale of her homestead on December 20 with such notice was willful. See Alan N. Resnick & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 362.02, at 362-21 (16th ed. 2011) ("A party that has received notice of the bankruptcy case, even if only oral notice, can be sanctioned for

violation of the stay"); see also ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1008 (9th Cir. 2006) ("'[A] party with knowledge of bankruptcy proceedings is charged with knowledge of the automatic stay' for purposes of awarding damages under [§ 362(k)]" (quoting Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003))).

At bottom, we conclude that Houck stated a plausible claim for relief under § 362(k).

V

As an alternative ground for dismissal of Houck's claims, the Substitute Trustee contends that Houck was not an "eligible debtor" when she filed her second bankruptcy petition within 180 days of her first petition and therefore that the second petition, filed on December 16, 2011, did not automatically trigger the stay under § 362(a).

It is true that even though the automatic stay generally operates "without the necessity for judicial intervention," Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 113 (1st Cir. 1994), certain filings do not trigger the stay. For example, a filing under 11 U.S.C. § 301, like Houck's Chapter 13 petitions, does not operate as a stay "of any act to enforce any lien against or security interest in real property . . . if the debtor is ineligible under [11 U.S.C. §] 109(g) to be a debtor in a case

under [Title 11]." 11 U.S.C. § 362(b)(21)(A). Section 109(g) in turn provides in relevant part:

> Notwithstanding any other provision of this section, no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if --
>
> (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case . . . .

The 180-day filing ban is "an extraordinary statutory remedy for perceived abuses of the [Bankruptcy] Code." Frieouf v. United States (In re Frieouf), 938 F.2d 1099, 1104 (10th Cir. 1991) (second emphasis added) (citation and internal quotation marks omitted).

While Houck's second bankruptcy petition was filed within 180 days after the dismissal of her first petition, the Substitute Trustee has not shown that the first petition was dismissed because Houck willfully failed to abide by the bankruptcy court's orders or to appear in proper prosecution of her case. Indeed, the record shows to the contrary. The bankruptcy court dismissed Houck's first petition, which she filed pro se, because she "failed to file certain schedules, statements, or other documents." It made no mention of Houck's failure being willful -- i.e., knowing and deliberate. And tellingly, the bankruptcy court did not dismiss her case with

prejudice, which bankruptcy courts "frequently" do when imposing the 180-day filing ban authorized by § 109(g). See Colonial Auto Ctr. v. Tomlin (In re Tomlin), 105 F.3d 933, 937 (4th Cir. 1997).

Moreover, when Houck filed her second petition within 180 days of her first petition's dismissal, no party to the second petition questioned whether Houck was an eligible debtor. Similarly, when the bankruptcy court ultimately dismissed Houck's second petition, it did so because she failed to satisfy § 109(h)(1)'s credit-counseling requirement, not because she failed to qualify as a debtor pursuant to § 109(g)(1).

Whether Houck was an eligible debtor when she filed her second petition is a fact-bound question that requires evidentiary support. Finding no such evidence in the record, we reject the Substitute Trustee's alternative ground for dismissal.

VI

Based on its conclusion that Houck's allegations were insufficient to state a claim under § 362(k), the district court also concluded that her "state law claims fail as well." Because the court predicated its dismissal of the state law claims on a finding that we now reverse, we vacate its order dismissing those claims as well. In remanding them to the

district court, however, we express no opinion as to their merit.

* * *

The judgment of the district court is vacated; the court's October 1, 2013 order dismissing Houck's § 362(k) claim against the Substitute Trustee is reversed; and the case is remanded for further proceedings.

VACATED, REVERSED IN PART, AND REMANDED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:13-CV-00066-DSC
[Consolidated with Civil Action No: 5:18-CV-22-MOC]

DIANA LOUISE HOUCK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
LIFESTORE BANK et. al.,	)	
	)	
Defendants.	)	

THIS MATTER is before the Court upon review of the "Findings of Fact, Conclusions of Law, and Order Granting Judgment to the Plaintiff" (document #105) entered by Chief United States Bankruptcy Judge Laura T. Beyer on October 6, 2020. On October 20, 2020, Defendant Substitute Trustee Services Inc. filed a Notice of Appeal. (Document #106). On December 3, 2020, Defendant voluntarily withdrew its appeal. Id. No other appeal nor any objections have been filed. The time for filing objections or an appeal to the District Court has expired.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c).

On September 22, 2015, the Court referred this matter to the Bankruptcy Court for recommended findings of fact and conclusions of law in Plaintiff's cause of action under 11 U.S.C. § 362(k) for violation of an automatic stay. "Order of Referral to the Bankruptcy Court" (document #92).

On October 6, 2020, Judge Beyer issued a thorough and well-reasoned Order awarding Plaintiff damages against Defendant Substitute Trustee Services Inc. in the amount of "$260,175.27, made up of $20,857.11 in actual damages other than attorney's fees, $109,318.16 in attorney's fees, and $130,000 in punitive damages." Document #105 at 57. Judgment was

entered in the Bankruptcy Court in the principal amount plus interest at the federal rate from October 6, 2020 until paid. Document #105-1.

Congress has mandated in 28 U.S.C. § 157(c)(1) that district courts only conduct de novo review in non-core bankruptcy proceedings. As to matters touching on core proceedings, the bankruptcy court's findings of fact will not be overturned on appeal unless they are clearly erroneous, Bankr. R. 8013, and due regard will be given to the bankruptcy court's ability to evaluate the credibility of witnesses. Id.; In re Biondo, 180 F.3d 126, 130 (4th Cir. 1999). The conclusions of law of the bankruptcy court are reviewed de novo. Schlossberg v. Barney, 380 F.3d 174, 178 (4th Cir. 2004).

As noted above, the appeal has been withdrawn and no objections were filed.

The Court has carefully conducted a de novo review of the Order as well as the legal authorities and all other relevant portions of the record. For the reasons stated therein, the Court affirms and adopts Judge Beyer's Order.

IT IS HEREBY ORDERED that:

1. The "Findings of Fact, Conclusions of Law, and Order Granting Judgment to the Plaintiff" (document #105) is **ADOPTED** and **AFFIRMED** in its entirety.
2. Plaintiff is **AWARDED** damages on her claim under 11 U.S.C. § 362(k) for violation of an automatic stay in the amount of $260,175.27, consisting of $20,857.11 in actual damages, $109,318.16 in attorney's fees, and $130,000 in punitive damages.
3. Plaintiff is **AWARDED** post-judgment interest at the federal rate from October 6, 2020 until paid.
4. The Clerk of Court is directed to re-open this file for docketing of this Order and entry of a Judgment consistent with this Order. The Clerk shall then close the file.

5. The Clerk is directed to send copies of this Order to counsel for the parties and to the Honorable Laura T. Beyer.

SO ORDERED.

Signed: March 8, 2021

David S. Cayer
United States Magistrate Judge

United States District Court
Western District of North Carolina
Statesville Division

Diana Louise Houck, Plaintiff(s), vs. LifeStore Bank, et al, Defendant(s).	JUDGMENT IN CASE 5:13-cv-00066-DSC

DECISION BY COURT. This action having come before the Court and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's March 8, 2021 Order.

March 8, 2021

Frank G. Johns, Clerk
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501, Richmond, Virginia 23219

March 22, 2021

No. 21-1280
(5:13-cv-00066-DSC)
(5:18-CV-22-MOC)

DIANA LOUISE HOUCK

Plaintiff - Appellant

v.

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.

Defendants - Appellees

AMENDED CAPTION NOTICE

TO: Counsel and Parties

The caption of this appeal has been amended as shown above. If additional corrections or modifications are needed for the caption, please file a motion to amend the caption.

Emily Borneisen, Deputy Clerk
804-916-2704

FILED: August 13, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1280
(5:13-cv-00066-DSC; 5:18-CV-22-MOC)

DIANA LOUISE HOUCK,

Plaintiff - Appellant,

v.

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.,

Defendants - Appellees.

O R D E R

Upon review of the submissions relative to the Appellees' motion to dismiss, the court denies the motion. The briefing schedule will be reinstated by separate order.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: August 17, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1280
(5:13-cv-00066-DSC)
(5:18-CV-22-MOC)

DIANA LOUISE HOUCK

Plaintiff - Appellant

v.

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Diaz, and Senior Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 10, 2022

Mr. Micheal Shane Perry
Collum & Perry
109 W. Statesville Ave.
Mooresville, NC 28115

Re: Diana Louise Houck
v. Lifestore Bank, et al.
Application No. 22A421

Dear Mr. Perry:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on November 10, 2022, extended the time to and including January 14, 2023.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Clayton Higgins
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Micheal Shane Perry
Collum & Perry
109 W. Statesville Ave.
Mooresville, NC 28115

Clerk
United States Court of Appeals for the Fourth Circuit
1100 East Main Street
Room 501
Richmond, VA 23219