



SO ORDERED.

SIGNED this 25 day of November, 2009.

Janice Miller Karlin
JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:)	
)	
JOHN L. SIMS,)	Case No. 08-41668
)	Chapter 7
Debtor.)	
_____)	
)	
ST. CHARLES, A LIMITED)	
LIABILITY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Adv. No. 09-7022
)	
JOHN L. SIMS,)	
)	
Defendant.)	
_____)	

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIMS

This matter is before the Court on Plaintiff, St. Charles, A Limited Liability Company,
Motion to Dismiss Counterclaims Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).¹ Plaintiff

¹Doc. 29.

claims that the counterclaims brought by Defendant, John L. Sims, should be dismissed because the claims are property of the bankruptcy estate and Defendant lacks standing to pursue them.² Defendant requests the motion be denied, claiming that he has standing to pursue these claims or, in the alternative, that the Chapter 7 Trustee should be allowed to intervene in this case and be substituted as the proper party in interest.

The facts and arguments made in the motion to dismiss these counterclaims are identical, on all relevant matters, to those made in a similar adversary proceeding filed against Defendant, *Parkdale, LLC v. Sims*.³ The only differences between the two motions are the name of the Plaintiff, the land that is owned by the LLC, and the amount of damages ultimately sought by Plaintiff in the adversary proceeding. On November 25, 2009, the Court entered a Memorandum Opinion and Order Granting Plaintiff's Motion to Dismiss Defendant's Counterclaims in the *Parkdale* case.⁴ Rather than repeat the same findings of fact and legal analysis here, the Court incorporates by reference that opinion, as if set forth in full in this opinion.

For the reasons set forth in the Memorandum Opinion and Order Granting Plaintiff's Motion to Dismiss Defendant's Counterclaims filed in *Parkdale, LLC v. Sims*, the Court finds Plaintiff's Motion to Dismiss Counterclaims should be granted on the basis that Defendant lacks standing to pursue these affirmative claims. The counterclaims raised by Defendant are property of the Chapter 7 estate, and only the Trustee has standing to pursue these claims. The Trustee

²Plaintiff also claims that Defendant fails to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6), and that Defendant agreed to arbitrate such claims. However, because the Court finds Defendant lacks standing to bring his counterclaims, the Court will not address these additional bases for dismissal.

³Adv. No. 09-7023.

⁴Doc. 38.

has not sought to intervene or be substituted as the proper party in interest in this case, and a reasonable amount of time has passed for him to do so if he intended to do so.

In the event the Trustee later seeks to intervene in this case, or if the counterclaims cease to be part of the bankruptcy estate through abandonment by the Trustee, the proper party may seek to reassert these claims at that time.⁵ However, because these claims are not presently being pursued by the real party in interest, they must be dismissed.

IT IS, THEREFORE, BY THE COURT ORDERED that Plaintiff's Motion to Dismiss Counterclaims is granted.

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⁵*Ardese v. DCT, Inc.*, 2006 WL 3757916 at * 4 n.2 (holding that the debtor may regain standing to pursue a cause of action if the cause of action is abandoned).