The relief described hereinbelow is SO ORDERED.

SIGNED this 29th day of February, 2024.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

1 BIG RED, LLC,

Debtor.

Case No. 21-20044
Chapter 7

ORDER DENYING CALL FOR REMOVAL OF COUNSEL

This matter comes before the Court on Sean Tarpenning's "call for removal of counsel" for the Trustee of 1 Big Red's Chapter 7 bankruptcy estate.[1] The Trustee

[1] ECF 544. The Court only considers Tarpenning's request to the extent it applies to 1 Big Red; motions regarding its sister companies USREEB (Case No. 20-21358) and USREEB Dayton (Case No. 20-21359) are not appropriately filed in 1 Big Red's case.

objects on the ground that Tarpenning, who filed his own Chapter 7 case last year, lacks standing to make such a request.[2] Tarpenning replies that he has standing because he has the right to represent himself *pro se*.[3]

Tarpenning's reply confuses two separate legal concepts. *Pro se* representation is about *who* argues to the court on a party's behalf; standing is about *what* a party (whether through an attorney or not) can ask a court to do.[4] *Cf., e.g.*, *Warth v. Seldin*, 422 U.S. 490, 498 (1975) ("In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."). That Tarpenning has the right to represent himself *pro se* says nothing about whether he is entitled to a ruling on a particular issue.

Here, the Trustee argues that Tarpenning lacks standing because any claims Tarpenning might assert as a creditor or equity holder of 1 Big Red are property of his Chapter 7 bankruptcy estate.[5] "In the context of bankruptcy proceedings, it is

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Tarpenning appears *pro se*; the Trustee appears by attorney Eric Johnson. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is appropriate under 28 U.S.C. § 1409.

[2] ECF 551; *cf. In re Tarpenning*, Case No. 23-21455 (filed October 2, 2023).

[3] ECF 562.

[4] And whether a litigant has a *cause of action* is a separate question from standing. *See, e.g.*, *Hoeffner v. D'Amato*, 664 F. Supp. 3d 269, 272-73 (E.D.N.Y. 2023) (citing *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1620-21 (2020)).

[5] *See* ECF 551 at ¶¶ 7-8. The Trustee also notes—correctly—that Tarpenning cannot argue on behalf of 1 Big Red itself because (1) 1 Big Red is represented by counsel and (2) corporations cannot appear *pro se* in any event. *Id.* at ¶ 8; *see Harrison v. Wahatoyas, L.L.C.*, 253 F.3d 552, 556-57 (10th Cir. 2001) ("The rule is well established that a corporation can appear in a court of record only by an attorney at law."); *Bunn v. Perdue*, 966 F.3d 1094, 1098 (10th Cir. 2020) ("When

well understood that a trustee, as the representative of a bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate once the bankruptcy petition has been filed." *In re Cook*, 520 F. App'x 697 (10th Cir. 2013) (quoting *Moses v. Howard Univ. Hosp.*, 606 F.3d 789, 795 (D.C. Cir. 2010)). When Tarpenning filed for Chapter 7 bankruptcy on October 2, 2023, his claims against 1 Big Red and his equity in 1 Big Red became property of his Chapter 7 estate. Thus, the Trustee's argument is correct: all claims Tarpenning might assert as a creditor or equity holder of 1 Big Red are property of Tarpenning's Chapter 7 bankruptcy estate, and the trustee of that estate is the only party with standing to pursue them.

The next question, then, is whether Tarpenning makes any claims in his "call for removal" that do *not* arise out of his status as a creditor or shareholder of 1 Big Red. Having carefully reviewed the motion, the Court could identify only one: Tarpenning argues that the Trustee's counsel filed a "cookie-cutter" adversary proceeding against him without exercising "due diligence."[6] But "[s]tanding generally has three requirements: (1) an injury in fact; (2) causation; and (3) redressability." *Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir.

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individual parties have the assistance of counsel, courts need not consider any filings made *pro se*.").

[6] *See* ECF 544 at 10-13; *see also Williamson v. Always Ready, LLC*, Adv. No. 23-6001 (asserting claims against Tarpenning under 11 U.S.C. §§ 544(b), 548, and 550; for avoidance of claims under 11 U.S.C. § 502(d); and for breach of fiduciary duty). The Court notes that the Trustee's adversary complaint does not assert a claim under § 547 (the source of the due-diligence language) against Tarpenning himself—only against his LLC, Always Ready.

2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).[7] The first requirement, "injury in fact," is not satisfied by "a bare procedural violation . . . divorced from any concrete harm." *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)). Here, Tarpenning's argument fails to connect the alleged failure to conduct due diligence to the adversary complaint that was filed. (What would additional diligence have revealed? How would it have changed the complaint?) At best, Tarpenning alleges a procedural violation without concrete harm. His argument does not satisfy the injury-in-fact requirement.

To recap, and to the extent Tarpenning's call for removal concerns 1 Big Red:[8]

1. The trustee of Tarpenning's Chapter 7 bankruptcy estate is the only party with standing to assert claims arising out of Tarpenning's status as a creditor or equity shareholder of 1 Big Red; and

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[7] In other words, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan*, 504 U.S. at 560-61, and *Friends of the Earth, Inc. v. Laidlaw Env. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). The plaintiff has the burden of establishing these elements and must "clearly allege facts demonstrating" each one at the pleading stage. *Id.* (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990), and quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

[8] *Cf. supra* note 1 ("The Court only considers Tarpenning's request to the extent it applies to 1 Big Red.").

2. Tarpenning's claim that counsel for the Trustee failed to exercise due diligence before filing an adversary proceeding against him does not allege any "injury in fact" for standing purposes.

For those reasons, Tarpenning's call for removal of the Trustee's counsel in this case is hereby denied for lack of standing.

IT IS SO ORDERED.

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