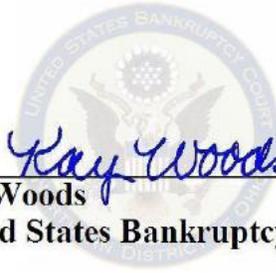


IT IS SO ORDERED.

Dated: August 28, 2012  
05:14:14 PM

  
*Kay Woods*  
\_\_\_\_\_  
Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

GERE JOSEPH SZOKE and  
LORI ELAINE SZOKE,

Debtors.

\* \* \* \* \*

GERE JOSEPH SZOKE and  
LORI ELAINE SZOKE,

Plaintiffs,

v.

CHASE HOME FINANCE, INC.,

Defendant.

CASE NUMBER 06-42182

ADVERSARY NUMBER 12-4048

HONORABLE KAY WOODS

\*\*\*\*\*  
MEMORANDUM OPINION REGARDING MOTION TO DISMISS  
\*\*\*\*\*

This cause is before the Court on Motion to Dismiss Complaint ("Motion to Dismiss") (Doc. # 10) filed by Defendant JPMorgan Chase Bank, National Association, successor by merger to Chase Home

Finance, LLC ("Chase"), on June 1, 2012. Chase requests the Court to dismiss the instant adversary proceeding pursuant to FED. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. On June 26, 2012,<sup>1</sup> Debtors/Plaintiffs Gere Joseph Szoke and Lori Elaine Szoke filed Memorandum in Opposition to Defendant's Motion to Dismiss ("Response") (Doc. # 15). For the reasons set forth herein, the Court will deny the Motion to Dismiss.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (Gen. Order Nos. 84 and 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Bankruptcy Case**

On December 28, 2006 ("Petition Date"), the Debtors filed a voluntary petition pursuant to chapter 13 of Title 11, United States Code, which was denominated Case No. 06-42182 ("Main Case").<sup>2</sup> The Debtors listed their residence as 825 Danbury Way, Columbiana, Ohio ("Residence"). (See Main Case, Pet. at 1.) The Debtors valued the Residence at \$235,000.00, subject to (i) a first mortgage held by

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<sup>1</sup>The Court granted the Debtors an extension of time to June 26, 2012, to respond to the Motion to Dismiss. (See Doc. # 13.)

<sup>2</sup>All docket references are to this adversary proceeding unless the Main Case is indicated.

First Place Bank in the amount of \$235,000.00 ("First Mortgage"); and (ii) a second mortgage held by First Place Bank in the amount of \$30,000.00 ("Second Mortgage"). (See Main Case, Sched. D at 1.)

On the Petition Date, the Debtors filed Debtor(s) [sic] Plan ("Plan") (Main Case, Doc. # 2), which the Court confirmed on February 28, 2007, upon entry of Order Confirming Plan (Main Case, Doc. # 19). The Plan provided that the First Mortgage and the Second Mortgage would "be paid directly outside the plan."<sup>3</sup> (Plan ¶ 2(C)-(D).)

First Place Bank filed two proofs of claim with respect to the Residence: (i) Claim No. 9-1 in the amount of \$39,834.80; and (ii) Claim No. 12-1 in the amount of \$210,652.70. First Place Bank asserted that the value of the Residence was approximately \$265,000.00 and, thus, that both of its claims were fully secured. Neither proof of claim indicated that an arrearage was due as of the Petition Date.

The Debtors received a discharge pursuant to 11 U.S.C. § 1328(a) on October 17, 2011. (See Main Case, Doc. # 53.) Subsequently, the bankruptcy case was closed on November 16, 2011. (See Main Case, Doc. # 56.) The Debtors moved to reopen their bankruptcy case to pursue alleged violations of the automatic stay (see Main Case, Doc. # 57) and, on January 31, 2012, the Court

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<sup>3</sup>On July 2, 2007, the Debtors filed Debtor(s) [sic] Plan-Amended (Main Case, Doc. # 27), which the Court approved on November 20, 2007 (see Main Case, Doc. # 36). The sole amendment to the Plan – *i.e.*, rejection of a vehicle lease – has no bearing on the matter presently before the Court. As a consequence, the term "Plan," as used in this Memorandum Opinion, shall refer to both the original plan (Main Case, Doc. # 2) and the amended plan (Main Case, Doc. # 27).

entered Order Granting Motion to Reopen Case (Main Case, Doc. # 58).

**B. Adversary Proceeding**

On April 3, 2012, the Debtors filed Complaint for Violation of the Automatic Stay ("Complaint") (Doc. # 1), which commenced the instant adversary proceeding. The Complaint alleges one cause of action - *i.e.*, violation of the automatic stay provisions in 11 U.S.C. § 362(a)(3) and (6). The Debtors allege that Chase<sup>4</sup> misapplied the Debtors' monthly mortgage and escrow payments during the pendency of their bankruptcy case from April 2010 through October 2011 (collectively, "Payments").<sup>5</sup> The Debtors contend that, as a result of Chase's misallocation of the Payments, the Debtors were forced to "escrow more money than required by law" and Chase was able to "manufacture a default referring the loan to foreclosure once the bankruptcy discharged." (Compl. ¶ 46.) The Debtors assert that Chase's conduct constitutes a "gross and willful violation of the automatic stay as set forth in 11 U.S.C. §362(a)(3) and 362(a)(6)." (*Id.*)

**1. Motion to Dismiss**

Chase moves to dismiss the Complaint on the basis that the Debtors' allegations, even if accepted as true, do not state a cause of action for violation of the automatic stay. In particular, Chase

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<sup>4</sup>Assignment of Mortgage, attached to the Motion to Dismiss as Exhibit B, indicates that First Place Bank assigned the First Mortgage to Chase on January 15, 2008.

<sup>5</sup>The Debtors do not specify whether the Payments relate to the First Mortgage, the Second Mortgage or both. As a consequence, the Court shall use the term "mortgage" generically in this Memorandum Opinion.

states, "Because the funds were received on account of post-petition obligations and the internal allocation of such funds is not an act with respect to property of the estate, the Complaint fails to state a claim for violation of the automatic stay . . . ." (Mot. to Dismiss at 3.)

First, Chase argues that its internal application of payments from the Debtors, whether or not accurate, does not implicate the automatic stay in § 362(a)(3) because the posting of a payment from one internal account to another is not an act to obtain possession of or exercise control over property of the bankruptcy estate. Chase avers, "[O]nce a creditor receives a payment from the debtor, the funds received are no longer estate property. Rather, upon receipt of a debtor's payment by a creditor, the deposited funds become the creditor's property." (*Id.* at 6 (citing *Cano v. GMAC Mortg. Corp. (In re Cano)*, 410 B.R. 506, 524-25 (Bankr. S.D. Tex. 2009)) (internal citation omitted).)

Second, Chase argues that § 362(a)(6) is not applicable because Chase did not attempt to collect or recover a pre-petition debt. Chase asserts that a pre-petition claim provided for in a confirmed plan is no longer a pre-petition claim but, instead, a right to payment arising from the confirmed plan. Because the mortgage was provided for in the confirmed Plan, Chase contends that the mortgage is not a pre-petition debt. As a consequence, Chase asserts that the Debtors have failed to state a claim for violation of § 362(a)(6).

## 2. Response

In the Response, the Debtors argue that Chase's legal conclusions are against the greater weight of authority. In particular, the Debtors cite a previous ruling by this Court that a mortgage servicer may violate the automatic stay by misapplying a chapter 13 debtor's mortgage payments. (See Resp. at 1 (citing *Villwock v. Citi Residential Lending (In re Villwock)*, Adv. No. 09-4319, \*15 (Bankr. N.D. Ohio Aug. 10, 2010) (unpublished), available at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov))). The Debtors request the Court to deny the Motion to Dismiss based upon the analysis set forth in *Villwock*.

## II. STANDARD OF REVIEW

FED. R. CIV. P. 8(a)(2), made applicable to this proceeding by FED. R. BANKR. P. 7008(a), requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2) (West 2012). The complaint "does not need detailed factual allegations," but it must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted).

FED. R. CIV. P. 12(b)(6), made applicable to this proceeding by FED. R. BANKR. P. 7012(b), allows a defendant to move for dismissal of a complaint that fails "to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6) (West 2012). The motion to dismiss will be denied if the complaint contains "enough facts to

state a claim to relief that is plausible on its face." *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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

"According to the Supreme Court, 'plausibility' occupies that wide space between 'possibility' and 'probability.'" *Keys v. Humana, Inc.*, Case No. 11-5472, 2012 U.S. App. LEXIS 13427, \*12 (6th Cir. July 2, 2012) (citing *Iqbal*, 556 U.S. at 678). "If a reasonable court can draw the necessary inference from the factual material stated in the complaint, the plausibility standard has been satisfied." *Id.* Thus, "to survive a motion to dismiss, the complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory." *Eidson v. Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 634 (6th Cir. 2007) (citation omitted).

When evaluating a motion to dismiss, the court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Tam Travel, Inc. v. Delta Airlines, Inc. (In re Travel Agent Comm'n Antitrust Litig.)*, 583 F.3d 896, 903 (6th Cir. 2009) (quotation marks and citation omitted). However, "conclusory allegations or legal conclusions masquerading as factual allegations will not suffice." *Watson Carpet & Floor Covering, Inc. v. Mohawk*

*Indus., Inc.*, 648 F.3d 452, 457 (6th Cir. 2011) (quotation marks and citation omitted).

### **III. ANALYSIS**

The Debtors claim that Chase violated the automatic stay provisions in § 362(a)(3) and (6), which provide:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –

\* \* \*

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

\* \* \*

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. § 362(a)(3), (6) (West 2012). “The purpose of the stay is twofold: (1) to ensure the orderly liquidation of the debtor’s bankruptcy estate; and (2) to provide the debtor with a breathing spell from creditors’ collection efforts.” *In re Perviz*, 302 B.R. 357, 365 (Bankr. N.D. Ohio 2003) (citing *U.S. v. Nicolet, Inc.*, 857 F.2d 202, 207 (3d Cir. 1988)).

#### **A. Section 362(a)(3)**

The principal issue presented in the Motion to Dismiss is whether a creditor’s misapplication of debt payments made by a chapter 13 debtor pursuant to the terms of a confirmed plan may constitute a violation of the automatic stay. The Sixth Circuit

Court of Appeals has not addressed this issue and a split of authority exists outside the Sixth Circuit, as demonstrated in the case law cited by Chase and the Debtors. *Cf. Cano v. GMAC Mortg. Corp. (In re Cano)*, 410 B.R. 506 (Bankr. S.D. Tex. 2009) (misapplication of payments does not violate the automatic stay), with *Mattox v. Wells Fargo, NA (In re Mattox)*, Adv. No. 10-5041, 2011 Bankr. LEXIS 3139 (Bankr. E.D. Ky. Aug. 17, 2011) (misapplication of payments violates the automatic stay). For the reasons set forth below, this Court concludes that allegations of a creditor's misapplication of payments made by a chapter 13 debtor pursuant to a confirmed plan are sufficient to state a cause of action for violation of the automatic stay in § 362(a)(3) and, thus, defeat the Motion to Dismiss.

This Court previously addressed a similar issue in *Villwock v. Citi Residential Lending (In re Villwock)*, Adv. No. 09-4319 (Bankr. N.D. Ohio Aug. 10, 2010) (unpublished), available at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov). In *Villwock*, the debtor asserted that her mortgage servicer violated the automatic stay provisions in § 362(a)(3) through (6) by misapplying her (i) mortgage payments, which were made directly to the mortgage servicer; and (ii) her mortgage arrearage payments, which were made through the chapter 13 trustee. The mortgage servicer, on the other hand, argued that it merely kept internal records of the allegedly improper charges assessed to the debtor's mortgage account, but that it never attempted to collect those charges. Accepting the debtor's

allegations as true for purposes of the mortgage servicer's motion to dismiss, the Court concluded, "To the extent [the debtor] alleges [the mortgage servicer] misapplied Plan payments from the Chapter 13 Trustee and/or Mortgage payments from [the debtor] during the pendency of [the debtor]'s bankruptcy case, [the debtor] has pled sufficient facts to state a claim for violation of the automatic stay." *Id.* at \*15. However, the instant proceeding is distinguishable from *Villwock* because Chase bases its Motion to Dismiss upon the argument that, as a matter of law, its internal application or misapplication of the Payments is not an act with respect to property of the estate.<sup>6</sup>

In *Jones v. Wells Fargo Home Mortg. (In re Jones)*, 366 B.R. 584 (Bankr. E.D. La. 2007), *aff'd on other grounds, in part, by* 391 B.R. 577 (E.D. La. 2008), the chapter 13 debtor alleged that the mortgagee violated the automatic stay in § 362(a)(3) and (6) by overstating the mortgage payoff amount and collecting undisclosed fees during the debtor's bankruptcy case. The Bankruptcy Court for the Eastern District of Louisiana found that the mortgagee violated the automatic stay when it applied the debtor's post-petition mortgage payments to undisclosed fees:

While [the mortgagee] argues that the accrual of fees is not a violation of the automatic stay, the application of estate funds to their payment without Court authority is clearly a violation. In this instance, [the mortgagee] assessed *and paid* itself for additional pre and postpetition charges from payments designed to satisfy

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<sup>6</sup>Nor does Chase admit that it misapplied the Debtors' Payments. (See Mot. to Dismiss at 6 ("Chase disputes these allegations . . . .").)

. . . accruing postpetition installment payments. The payments were tendered by Debtor . . . for the specific purposes outlined in Debtor's plan and authorized by the Order confirming same. [The mortgagee] had absolutely no right to divert these payments to other obligations without Court authority.

*Id.* at 600. The bankruptcy court further stated that, if a creditor were permitted to apply a debtor's payments to debts other than those for which the plan provided, "a debtor might or might not satisfy the obligations contemplated by his or her plan. To allow such a practice is to eviscerate the provisions of the automatic stay and this Court's power to protect Debtor and property of the estate." *Id.* at 603 (n.73 omitted).

The Bankruptcy Court for the Middle District of Louisiana examined a similar issue in *Myles v. Wells Fargo Bank, N.A. (In re Myles)*, 395 B.R. 599 (Bankr. M.D. La. 2008), in which the debtors' class-action complaint alleged that the mortgagee wrongfully treated the debtors' mortgage accounts as though they were in default throughout their bankruptcy cases. As a result of the accounts being deemed in default, the debtors' monthly mortgage payments were held in suspense and the debtors were charged late fees. The bankruptcy court rejected the mortgagee's characterization of its conduct as internal bookkeeping and stated, "[The complaint] alleges that [the mortgagee] actually billed for and collected from the debtors amounts that it was not owed as a result of its misapplication of the debtors' plan payments. The allegations state a claim for violation of the automatic stay under 11 U.S.C. §362(k)." *Id.* at 606-07.

The holdings in *Jones* and *Myles* were cited with approval by the Bankruptcy Court for the Eastern District of Kentucky in *Mattox v. Wells Fargo, NA (In re Mattox)*, Adv. No. 10-5041, 2011 Bankr. LEXIS 3139 (Bankr. E.D. Ky. Aug. 17, 2011) (collecting cases). The debtor in *Mattox* alleged misapplication of post-petition mortgage payments to a variety of charges labeled "corporate advances." Like Chase in the present proceeding, the creditor argued that it could not have violated the automatic stay because, "even if it did arguably misapply the [debtor]'s monthly payments," it did not attempt to obtain possession of or exercise control over estate property. *Id.* at \*18. The bankruptcy court disagreed and concluded that misapplication of payments could violate § 362(a)(3):

[The creditor] does not, and cannot, argue that the [debtor]'s post-petition income used to pay her Mortgage payments . . . is not property of the Chapter 13 estate. [The creditor] argues instead that upon payment, this characterization no longer applies. This Court disagrees. . . . A creditor's "misapplication" of payments may be viewed as a creditor exercising improper control over property of the estate. The confirmed Plan, binding upon [the creditor] pursuant to 11 U.S.C §1327, specified the extent to which [the creditor] could properly exercise control over payments made by the Debtor and acts in contravention of that Plan may rise to the level of a willful violation of the stay.

*Id.* at \*\*18-19.

To support its position, Chase extensively cites the holding of the Bankruptcy Court for the Southern District of Texas in *Cano v. GMAC Mortg. Corp. (In re Cano)*, 410 B.R. 506 (Bankr. S.D. Tex. 2009), in which the court dismissed the debtors' class claim that the mortgagee violated the automatic stay by misallocating payments

to arrearages, fees and costs. The bankruptcy court found that such conduct did not violate the automatic stay in § 362(a)(3) because the mortgagee did not seek to enforce its claims against property of the estates. The court explained, "The conduct in question involved two separate acts: an initial deposit within a general account, and a latter allocation from the general account to individual accounts. The first act involved 'property of the estate,' the second did not. Only the second act, involving non-estate property, was allegedly wrongful." *Id.* at 524.

The bankruptcy court in *Cano* largely based its analysis upon the holding of the Supreme Court in *Citizens Bank v. Strumpf*, 516 U.S. 16 (1995). See, e.g., *Cano*, 410 B.R. at 524 (citing *Strumpf*, 516 U.S. at 21) ("Once [the mortgagee] deposited the payments into its own account, the funds were no longer property of the estate.") However, the facts presently before this Court are distinguishable from the facts in *Strumpf*. The Supreme Court held in *Strumpf* that a bank's placement of an administrative hold on a debtor's checking account did not violate the automatic stay because it was "neither a taking of possession of [the debtor]'s property nor an exercising of control over it, but merely a refusal [by the bank] to perform its promise." *Strumpf*, 516 U.S. at 21. The Court explained:

[The debtor]'s reliance on [§ 362(a)(3) and (6)] rests on the false premise that [the bank]'s administrative hold took something from [the debtor], or exercised dominion over property that belonged to [the debtor]. That view of things might be arguable if a bank account consisted of money belonging to the depositor and held by the bank. In fact, however, it consists of nothing more or less than a promise to pay, from the bank to the depositor.

*Id.* (citations omitted). To hold otherwise, the Supreme Court concluded, would proscribe a creditor's rights under 11 U.S.C. § 542(b), which permits a creditor to offset a claim against the debtor in turning over estate property, and 11 U.S.C. § 553(a), which generally preserves a creditor's right to offset mutual pre-petition debts. The Court stated that §§ 542(b) and 553(a) were "plainly intended to permit[] the temporary refusal of a creditor to pay a debt that is subject to setoff against a debt owed by the bankrupt." *Id.* (n\* omitted).

This Court finds that the holding in *Strumpf* does not dictate the outcome of the present proceeding. Although in a different context, the Bankruptcy Court for the Central District of California similarly found *Strumpf* to be a more limited holding than suggested by Chase and the *Cano* court:

The U.S. Supreme Court found that the bank's administrative hold did not constitute an exercise of control or dominion over property of the estate; it was merely a refusal to perform its promise. Thus, the U.S. Supreme Court ruling rested not on a limitation of the scope of Section 362(a)(3), but only on its finding that the action at issue did not deprive the estate of property.

*In re Nat'l Env'tl. Waste Corp.*, 191 B.R. 832, 836 (Bankr. C.D. Cal. 1996). Furthermore, the Supreme Court was required in *Strumpf* to account for a creditor's rights to setoff under §§ 542(b) and 553(a), neither of which are implicated in this proceeding.

The Debtors allege that Chase divested the estate of property in violation of § 362(a)(3) when Chase improperly allocated the Payments. Specifically, the Debtors state:

[B]ecause of the way that [Chase] applied the payments, causing a contractual default, [Chase] continued to demand the higher monthly payment long after it was required to be made. This resulted in even further monthly delinquency and additional estate money being placed into the escrow account instead of refunded to the borrower or applied to the loan to bring the loan current as it should have been.

(Compl. ¶ 41.) As a result of Chase's alleged actions, the Debtors contend they suffered damages in the form of "several thousand dollars in escrow overage and misapplied payments." (*Id.* ¶ 44.)

Taking into consideration the case law examined herein and the arguments of the parties, this Court concludes that a creditor's misapplication of payments made by a chapter 13 debtor pursuant to a confirmed plan may constitute an improper exercise of control over estate property in violation of § 362(a)(3). As a consequence, the Court finds that the Debtors have stated a plausible claim for alleged violation of the automatic stay in § 362(a)(3). Accordingly, the Court will deny Chase's Motion to Dismiss.

**B. Section 362(a)(6)**

The Complaint contains a single cause of action – *i.e.*, alleged violation of the automatic stay in § 362(a)(3) and (6). Chase argues that it could not have violated § 362(a)(6) because the mortgage is not a pre-petition debt. Specifically, Chase maintains that the mortgage debt is a right to payment arising from the confirmed Plan and, thus, is no longer a pre-petition debt. Because the Court finds that the Debtors have stated a plausible claim for alleged violation of the automatic stay in § 362(a)(3), the Court does not need to determine if the Complaint also states a plausible

claim for violation of § 362(a)(6). Accordingly, the Court will not address whether § 362(a)(6) is applicable to the mortgage debt owed to Chase.

**IV. CONCLUSION**

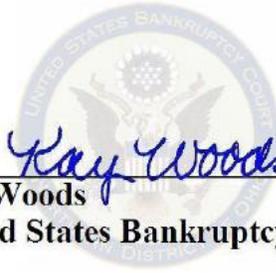
For the reasons set forth above, the Court finds that the Debtors have stated a plausible claim against Chase for alleged violation of the automatic stay in 11 U.S.C. § 362(a)(3). In particular, the Court concludes that misapplication of payments provided for in a confirmed chapter 13 debtor's plan may constitute a violation of § 362(a)(3) as an improper exercise of control over property of the estate. As a consequence, the Court will deny Chase's Motion to Dismiss.

An appropriate order will follow.

# # #

IT IS SO ORDERED.

Dated: August 28, 2012  
05:14:14 PM



*Kay Woods*  
 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

GERE JOSEPH SZOKE and  
LORI ELAINE SZOKE,

Debtors.

\* \* \* \* \*

GERE JOSEPH SZOKE and  
LORI ELAINE SZOKE,

Plaintiffs,

v.

CHASE HOME FINANCE, INC.,

Defendant.

CASE NUMBER 06-42182

ADVERSARY NUMBER 12-4048

HONORABLE KAY WOODS

\*\*\*\*\*  
ORDER DENYING MOTION TO DISMISS  
\*\*\*\*\*

This cause is before the Court on Motion to Dismiss Complaint ("Motion to Dismiss") (Doc. # 10) filed by Defendant JPMorgan Chase Bank, National Association, successor by merger to Chase Home

Finance, LLC ("Chase"), on June 1, 2012. Chase requests the Court to dismiss the instant adversary proceeding pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted. On June 26, 2012, Debtors/Plaintiffs Gere Joseph Szoke and Lori Elaine Szoke filed Memorandum in Opposition to Defendant's Motion to Dismiss (Doc. # 15).

For the reasons set forth in this Court's Memorandum Opinion Regarding Motion to Dismiss entered on this date, the Court hereby:

1. Finds that a creditor's misapplication of payments provided for in a confirmed chapter 13 plan may constitute a violation of 11 U.S.C. § 362(a)(3) as an improper exercise of control over property of the estate;
2. Finds that the Debtors have stated a plausible claim against Chase for alleged violation of the automatic stay contained in 11 U.S.C. § 362(a)(3); and
3. Denies Chase's Motion to Dismiss.

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