



IT IS ORDERED as set forth below:

Date: August 20, 2013

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:	:	Case No. 13-57592-MGD
	:	
MICHAEL CHERWENKA,	:	Chapter 7
	:	
	:	
Debtor.	:	Judge Diehl
	:	
RES-GA GOLD, LLC,	:	
	:	
Plaintiff,	:	Adversary Proceeding
v.	:	
	:	No. 13-5219
	:	
MICHAEL CHERWENKA,	:	
	:	
	:	
Defendant.	:	
	:	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Before the Court is Defendant's Motion to Dismiss ("Motion"). (Docket No. 9). Defendant presumably moves to dismiss under Rule 12(b)(6), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012, as he asserts Plaintiff's failure to state a claim for relief to be

granted. Defendant seeks dismissal of Plaintiff's turnover claims because Plaintiff is not a proper party to seek relief under Sections 542 and 543 of the Bankruptcy Code.¹ Plaintiff has failed to respond or otherwise respond to Defendant's motion. Defendant's motion is therefore deemed unopposed. BLR 7007-1(c), N.D.Ga.

Defendant has presented cause for this action to be dismissed. When a debtor files a Chapter 7 bankruptcy case, all the debtor's assets become property of the estate. 11 U.S.C. § 541(a). The Chapter 7 Trustee is charged to pursue any action involving property of the estate. § 704(1); *see In re Tessmer*, 329 B.R. 776, 778-79 (Bankr. M.D. Ga. 2005). Plaintiff, as creditor, does not have standing to pursue turnover claims. Accordingly, it is

ORDERED that Defendant's Motion to Dismiss is hereby **GRANTED**.

The Clerk's Office is directed to serve a copy of this Order upon Plaintiff and Plaintiff's Counsel, Defendant and Defendant's Counsel, and the Chapter 7 Trustee.

END OF DOCUMENT

¹ The Court has previously denied Plaintiff's emergency motion for a temporary restraining order (Docket No. 10).