UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Rus v. Neiman Marcus Group, LLC, et al.

Rus · No. Adversary No. 26-3032; Bankruptcy Case No. 26-90076 · Decided May 9, 2026

SUMMARY

The United States Bankruptcy Court for the Southern District of Texas grants the debtor’s motion to dismiss Andrei Rus’s adversary complaint without prejudice. The court concludes that the complaint fails to state plausible claims under 11 U.S.C. §§ 105, 503(b), 542, and 1106 concerning alleged spoliation, administrative expenses, and preservation or turnover of electronically stored information. The court permits amendment consistent with Fifth Circuit precedent regarding pro se dismissals.

CASE DETAILS

COURT	United States Bankruptcy Court for the Southern District of Texas, Houston Division
WRITING FOR THE COURT	Alfredo R. Pérez
JURISDICTION	United States Bankruptcy Court for the Southern District of Texas, Houston Division
DECIDED	May 9, 2026
DOCKET	Adversary No. 26-3032; Bankruptcy Case No. 26-90076
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought an adversary proceeding asserting claims under 11 U.S.C. §§ 105, 503(b), 542, and 1106. The debtor moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), as applied through Federal Rule of Bankruptcy Procedure 7012(b). The bankruptcy court granted the motion and dismissed the complaint without prejudice.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and views them in the light most favorable to the plaintiff, disregards conclusory allegations, and determines whether the complaint contains sufficient factual matter to state a claim that is plausible on its face. Pro se pleadings are held to a more lenient standard, but must still contain factual allegations raising the right to relief above a speculative level.

PRECEDENTIAL VALUE	Unpublished bankruptcy court memorandum opinion; precedential status unknown
PARTIES	Andrei Rus v. The Neiman Marcus Group, LLC, Littler Mendelson, P.C., Does 1–25

TOPICS

motions to dismiss · adversary proceedings · chapter 11 · bankruptcy · pleadings

PRACTICE AREAS

Bankruptcy · Civil procedure · Employment law · Remedies

QUESTIONS PRESENTED

1. Whether Rus stated a plausible claim under 11 U.S.C. § 105 based on alleged postpetition spoliation and failure to implement a litigation hold.
2. Whether Rus stated a plausible claim for an administrative expense under 11 U.S.C. § 503(b).
3. Whether Rus stated a plausible claim for turnover of estate property under 11 U.S.C. § 542.
4. Whether Rus stated a plausible claim under 11 U.S.C. § 1106 concerning trustee or examiner duties.

HOLDINGS

1. The complaint failed to state a plausible claim under § 105 because it did not identify a Bankruptcy Code provision that the requested relief would carry out and did not plausibly allege an abuse of the bankruptcy process warranting sanctions.
2. The complaint failed to state a plausible administrative-expense claim because it did not allege an actual or necessary cost or expense that benefited the bankruptcy estate and its creditors.
3. The complaint failed to state a claim under § 542 because Rus was not a trustee and did not allege facts supporting a plausible claim for turnover of estate property.
4. The complaint failed to state a plausible claim under § 1106 because Rus did not allege how he was entitled to relief or identify trustee duties that had been violated.

KEY QUOTATIONS

> *“Section 105 does not authorize bankruptcy courts to “create substantive rights that are otherwise unavailable”, and it does not give bankruptcy courts a “roving commission to do equity.””*

> *“A pleading that offers “labels and conclusions” or a “formulaic recitation of the elements of a cause of action will not do.””*

> *“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face[]””*

FACTUAL BACKGROUND

Andrei Rus, a former employee of Neiman Marcus Group, LLC, had filed a prepetition employment lawsuit in Hawaii asserting state and federal claims. After the debtor filed for Chapter 11, Rus alleged that the debtor and its counsel failed to confirm or implement a litigation hold and that electronically stored information relevant to the Hawaii lawsuit had been lost or was at risk of loss. He asserted claims for relief under 11 U.S.C. §§ 105, 503(b), 542, and 1106.

PROCEDURAL HISTORY

Rus was pursuing a prepetition employment lawsuit against Neiman Marcus Group, LLC in the District of Hawaii. After the debtor filed for Chapter 11, Rus commenced this adversary proceeding alleging postpetition spoliation, entitlement to an administrative expense, and failure to preserve and turn over estate property. The court previously denied Rus's request for a temporary restraining order, and after briefing and a hearing on the motion to dismiss, granted dismissal without prejudice.

DISPOSITION

dismissed

CASES CITED

- Stern v. Marshall, 564 U.S. 462, 486–87 (2011)
- Briceno-Belmontes v. Coastal Bend Coll., No. 2:20-CV-00114, 2022 U.S. Dist. LEXIS 39354, at *19 (S.D. Tex. Mar. 5, 2022)
- Bowlby v. City of Aberdeen, 681 F.3d 215, 219 (5th Cir. 2012)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678, 681 (2009)
- Southern Scrap Material Co. LLC v. ABC Ins. Co. (In re Southern Scrap Material Co. LLC), 541 F.3d 584, 587 (5th Cir. 2008)
- Chhim v. Univ. of Tex. at Austin, 836 F.3d 467, 469 (5th Cir. 2016)
- United States v. Sutton, 786 F.2d 1305, 1307–08 (5th Cir. 1986)
- Harrington v. Purdue Pharma L.P., 603 U.S. 204, 216 n.2 (2024)
- Caroll v. Abide (In re Carroll), 850 F.3d 811, 816 & n.3 (5th Cir. 2017)
- Garcia Grain Trading Corp. v. Plascencia (In re Garcia Grain Trading Corp.), No. 23-70028, 2024 Bankr. LEXIS 3015, at *14 (S.D. Tex. Dec. 17, 2024)
- In re Jartran, Inc., 732 F.2d 584, 587 (7th Cir. 1984)
- Browning v. Navarro, 826 F.2d 335, 340 (5th Cir. 1987)
- Good v. Allain, 823 F.2d 64, 67 (5th Cir. 1987)
- Moawad v. Childs, 673 F.2d 850, 851 (5th Cir. 1982)