IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of:

G&R Feed and Grain Co., Inc.	Case No. 13-00001-als7
Debtor	Chapter 7
Deborah L. Petersen	Adv. Pro. 13-30024-als
Plaintiff	
v.	
Cargill Incorporated	
Defendant	

MEMORANDUM OF DECISION
(date entered on docket: July 30, 2013)

Before the court is Defendant's ("Cargill") Motion to Dismiss the complaint filed against it by the Chapter 7 Trustee ("Trustee") for turnover of grain proceeds, injunctive relief and violation of the automatic stay. At the telephonic hearing conducted in this proceeding the Court granted the Motion to Dismiss as to Count II injunctive relief as moot. For the reasons stated herein the Court denies Cargill's Motion to Dismiss Counts I and III.

Motions to Dismiss are governed by Bankruptcy Rule 7012 which incorporates Federal Rule of Civil Procedure 12(b)(6). These rules adopt a standard that requires a court to construe all allegations as true and in favor of the non-moving party, affording the non-moving party all reasonable inferences from those allegations. Palmer v. Ill. Farmers Ins. Co., 666 F.3d 1081, 1083 (8th Cir.2012). To receive the benefit of this analysis, the complaint must contain more than mere conclusions of fact in support of the elements upon which the claim for relief is based. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

In its Motion, Cargill asserts that 11 U.S.C. sections 362(b)(6) and 556 prevent the Trustee from asserting any claim against it for turnover of proceeds related to grain delivered to it pre-petition because the account receivable generated was not property of the estate and that it has the right to set –off its claims under the code provisions it cites. In response, the Trustee argues that the parties are bound by the terms of each of the contracts in place between the Debtor and Cargill, and that any ambiguity arising must be construed against the Defendant. In

its first paragraph, the contract(s) indicate that the transaction "shall" be subject to the National Grain and Feed Trade and Arbitration Rules. In paragraph 12, the Defendant additionally reserved its rights under any applicable law, including bankruptcy code provisions.

Although Cargill vigorously argues that the bankruptcy code prohibits the Trustee from successfully obtaining turnover of the accounts receivable, its brief contains little case authority in support of its interpretation. Legislative history related to the application of 11 U.S.C. section 362(b)(6) shows that Congress intended to protect stability in the markets. See In re Weisberg, 136 F.3d 655, 659 (9th Cir. 1998). "It is essential that [commodity brokers and forward contract merchants]. . . be protected from the issuance of a court or administrative agency order which would stay the prompt liquidation of an insolvent's positions, because market fluctuations in the securities market create an inordinate risk that the insolvency of one party could trigger a chain reaction of insolvencies of the others . . . ." Id. (quoting 128 Cong. Rec. § 15981 (daily ed. July 13, 1982) (remarks of Sen. Dole)). Further explanation for the purpose underlying the Code provisions relied upon by Cargill is to prevent "a windfall" to a debtor "at the expense of other participants in the market." 5 Collier on Bankruptcy ¶ 556.01 n.4 (Matthew Bender 16th ed. 2013).

The Defendant appears to suggest that its interpretation of the statutory provisions is equivalent to an affirmative defense that requires dismissal of the Trustee's complaint. "Indeed, '[i]f an affirmative defense ... is apparent on the face of the complaint ... that [defense] can provide the basis for dismissal under Rule 12(b)(6).'" C.H. Robinson Worldwide, Inc. v. Lobrano, 695 F.3d 758, 764, (8th Cir. 2012) (quoting Noble Sys. Corp. v. Alorica Cent., LLC, 543 F.3d 978, 983 (8th Cir.2008) (addressing the ability to raise the affirmative defense of res judicata in the context of a motion to dismiss)). I do not find that the arguments asserted by Cargill rise to this level. Whether the exceptions provided for under the Code are applicable depend upon proof that Cargill fits the required definitions and the remedies taken were appropriate as to the contracts at issue.

"Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 563 (2007). The Trustee is required to plead only "enough facts to state a claim to relief that is plausible on its face." Id. at 570. The Trustee has met this standard. At this juncture, the Defendant has only raised various reasons it believes its actions related to the contracts were appropriate, which do not result in a showing that the Trustee has failed to allege a claim upon which relief can be granted.

It is therefore ORDERED that

1. The Defendant's Motion to Dismiss Counts I and III are denied.

2. The Defendant shall file its answer to the complaint no later than August 15, 2013.

3. On or before September 16, 2013, the parties shall file a stipulated scheduling order containing the deadlines for pleadings, discovery, dispositive motions and disclosure of experts or a status report related to the parties' election to arbitrate the claims made under the various contracts.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding