

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAY S. PETERSON and DEBORAH
K. PETERSON,

Plaintiffs,

vs.

HAMILTON MORTGAGE
COMPANY, et al.,

Defendants.

8:13-CV-115

ORDER

This matter is before the Court on its own motion. In its Memorandum and Order of July 8, 2013 (filing [22](#)), the Court noted defects in the plaintiffs' complaint calling the Court's jurisdiction into question. And, the Court noted, it has an obligation to consider its subject matter jurisdiction where there is a reason to suspect that such jurisdiction is lacking. *See Hart v. United States*, [630 F.3d 1085, 1089 \(8th Cir. 2011\)](#).

The Court gave the plaintiffs until July 29, 2013, to file an amended complaint remedying the jurisdictional defects identified by the Court. *See* filing [22](#) at 3. They have not done so. Accordingly, for the reasons stated in the Court's Memorandum and Order of July 8, 2013 (filing [22](#)), the Court will dismiss the plaintiffs' complaint without prejudice based on lack of federal court jurisdiction. The Court finds that it has jurisdiction to dismiss the claims against the defendants in bankruptcy despite the automatic bankruptcy stay, as such a dismissal is not a "continuation" of a proceeding against the debtor within the meaning of [11 U.S.C. § 362\(a\)\(1\)](#). *See Dennis v. A.H. Robins Co., Inc.*, [860 F.2d 871, 872 \(8th Cir. 1988\)](#); *see also O'Donnell v. Vencor Inc.*, [466 F.3d 1104, 1110-11 \(9th Cir. 2006\)](#).

IT IS ORDERED:

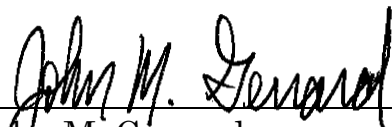
1. The plaintiffs' complaint is dismissed without prejudice based on lack of jurisdiction.
2. The debtors are not required to inform the Court of the status of their bankruptcy proceedings, and the status

report deadline set by the Court's Memorandum and Order of July 8, 2013 (filing [22](#)) is terminated.

3. All claims having been dismissed, this case is terminated.
4. A separate judgment will be entered.

Dated this 30th day of July, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge