

MAR - 3 2004

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A01-75680-PWB
	:	
JOHN HOWARD GROTH,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
RAY MCQUAIG, INC.,	:	
	:	ADVERSARY PROCEEDING
Plaintiff	:	NO. 02-9102
	:	
v.	:	
	:	
JOHN HOWARD GROTH and	:	
GENERAL GLASS COMPANY, INC.,	:	JUDGE BONAPFEL
	:	
Defendants.	:	

ORDER OF ABSTENTION

Ray McQuaig, Inc. ("Plaintiff") commenced this adversary proceeding by filing a complaint to determine the dischargeability of a debt pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6) owed by the debtor, John Howard Groth ("Debtor"). Plaintiff's claim against Debtor arises from transactions between Plaintiff and General Glass Company, Inc. ("General Glass"), of which Debtor was the sole shareholder and controlling officer. Plaintiff contends that General Glass is an alter ego of the Debtor and that Debtor used General Glass to perpetrate a fraud upon Plaintiff.

On November 21, 2003, the Court entered judgment in favor of Debtor finding that his debts to Plaintiff are not excepted from discharge. Plaintiff now seeks entry of default judgment for money damages against General Glass, the co-defendant in this action. However, for the reasons stated herein, the Court shall abstain from any further determination in this proceeding.

Section 1334(b) of Title 28 provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases

under title 11." Thus, a bankruptcy court will have jurisdiction if a matter falls within one of three categories: (1) matters *arising under* title 11; (2) matters *arising in cases under* title 11; and (3) matters *related to* cases under title 11. Plaintiff seeks entry of a money judgment against General Glass, a non-debtor entity. This factual scenario fits neither the "arising under" category, as it does not invoke a substantive right created by Title 11, nor the "arising in cases under" category, as it does not involve an administrative-type matter. At best, the Plaintiff's action against General Glass may be "related to" the Debtor's bankruptcy proceeding because Debtor is the sole shareholder of General Glass. Assuming, without deciding, that this Court would even have "related to" jurisdiction,¹ Plaintiff's claim for money damages under state law is a non-core proceeding. As such, absent consent from all parties, this Court cannot enter a final default judgment in this proceeding, but instead must submit proposed findings of fact and conclusions of law to the district court. 28 U.S.C. § 157(c)(1); FED. R. BANKR. P. 9033.

Section 1334(c)(1) of Title 28 provides a court with the discretion to abstain from hearing a proceeding related to a case under title 11. 28 U.S.C. § 1334(c)(1) ("[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11"). Abstention may be appropriate in a non-core proceeding that only "relates to" a case under title 11. Several factors weigh in favor of abstention with respect to the remaining issues in this proceeding. Plaintiff seeks entry of default judgment against General Glass, a non-debtor. No section of the Bankruptcy Code is involved with the determination of Plaintiff's claim against General Glass. Plaintiff's action against General Glass is not done for the benefit of the estate, such as the recovery of an asset or avoidance of a transfer. Plaintiff's action is solely to obtain a default money judgment against General Glass under state law

¹See *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990).

theories. Plaintiff's action against General Glass has no impact on the handling and administration of the bankruptcy estate and no effect on the dischargeability of Debtor's liability for the debts. This adversary proceeding was and is primarily a dischargeability proceeding. The ancillary question of a non-debtor corporation's liability is a consideration better resolved by a state court.

Because the issues with respect to General Glass are non-core issues, this Court cannot itself enter a default judgment. 28 U.S.C. § 157(c)(1). Rather, the entry of default judgment would necessarily require this Court to make proposed findings of fact and conclusions of law for review by the district judge. FED. R. BANKR. P. 9033. Involving two judges in this matter that does not involve federal or bankruptcy issues is not an appropriate use of the judicial resources of the bankruptcy and district courts, both of which are courts of limited jurisdiction. Moreover, the Court is uncertain as to the time which might lapse before the non-core procedures could result in entry of a final judgment. In contrast, Plaintiff may be able to commence a state court action against General Glass, and if General Glass does not answer (as is the case here), obtain a default judgment rather expeditiously. Based on the foregoing, it is

ORDERED that the Court shall abstain from any further determination in this proceeding pursuant to 28 U.S.C. § 1334(c)(1). The Clerk is hereby directed to close this adversary proceeding.

The Clerk of Court is directed to serve copies of this Order on counsel for Plaintiff and the Defendant.

At Atlanta, Georgia, this 27 day of February, 2004.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE