

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE: :
: :
TERRY M. GAY and YVONNE W. GAY, : CASE NO. G04-30523-REB
: :
Debtors. : CHAPTER 7
: :

: :
YVONNE W. GAY, :
: :
Plaintiff, :
: ADVERSARY PROCEEDING
v. :
: NO. 05-2005
RABUN COUNTY BANK, :
AMERIQUEST MORTGAGE COMPANY, :
MARA SACKS, and :
ALBERT O. ENGLISH, :
: :
Defendants. : JUDGE BRIZENDINE

**ORDER GRANTING MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Before the Court is a motion to dismiss this action filed by Co-Defendant Albert O. English and a motion filed by Mara Sacks, among other things, to dismiss her as a party Co-Defendant. In the complaint as amended, Plaintiff-Debtor seeks to void a lien of Co-Defendant Rabun County Bank ("RCB"), essentially asking the Court to require RCB to cancel or satisfy its deed to secure debt held against certain real property of Plaintiff. Alternatively, Plaintiff seeks judgment through this Court's determination of two claims for legal malpractice regarding alleged failures by Co-Defendants English and Sacks, separately, to obtain accurate payoff amounts and/or to have the aforementioned deed to secure debt of RCB satisfied in connection with the refinancing of the debt on Plaintiff's real property. Based upon the following reasoning,

given the issues raised and addressed in said motions and Plaintiff's response, the Court concludes on its own motion that subject matter jurisdiction does not lie in this Court and this matter should be dismissed in its entirety.

Subject matter jurisdiction is an issue that can be raised at any time during a proceeding, including on the Court's own motion. *See Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4, *reh'g and suggestion for reh'g en banc denied*, 182 F.3d 938 (11th Cir.), *cert. denied*, 528 U.S. 931, 120 S.Ct. 329, 145 L.Ed.2d 256 (1999). Broad in scope, the subject matter jurisdiction of the bankruptcy courts allows them to hear and decide a wide variety of legal matters in connection with the administration of a bankruptcy estate, including state law questions, but such jurisdiction is limited by federal statute and case law precedent. Under 28 U.S.C. § 1334(a), jurisdiction "of all cases under title 11" of the U.S. Code is vested in the district courts and, as in this district, such jurisdiction has been referred to the bankruptcy courts as a unit of the district courts. *See generally* 28 U.S.C. § 157(a); Bankruptcy Local Rule 1070-1 (BLR 705-1); District Court Civil Local Rule of Practice, LR 83.7A (265-1(a)), N.D.Ga. Concerning the issues herein, under Section 1334(b), the court may entertain jurisdiction over *civil proceedings* generally described in terms of the following categories: '(1) arising under title 11, (2) arising in a case under title 11, and (3) related to cases under title 11.' *See* 1 Alan Resnick Et Al., *Collier on Bankruptcy*, ¶ 3.01[4][c], at 3-20.1 (15th ed.2004).¹

¹ This jurisdictional provision states as follows:

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, 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 (emphasis added).

28 U.S.C. § 1334(b).

The first jurisdictional category refers to proceedings “**arising under** title 11,” noting those causes of action “created by title 11.” Collier, ¶3.01[4][c][i], at 3-21. Clearly, the causes of action set forth in Plaintiff’s amended complaint arose prior to the bankruptcy filing herein and could have been pursued in state court under Georgia law. These are not actions or claims pursuant to any provision of the Bankruptcy Code and were not created upon or by the filing of the Chapter 7 bankruptcy petition and, therefore, there is no “arising under” jurisdiction.

At the other end of the jurisdictional spectrum, with respect to the third category, civil proceedings that bear little connection with the bankruptcy case or its administration under title 11 may fall within the court’s “*related to*” jurisdiction, if the “outcome...could conceivably have an effect on the estate being administered in bankruptcy.” *Franklin Life Ins. Co. v. Rousselle (In re Rousselle)*, 259 B.R. 409, 412 (Bankr. M.D.Fla. 2001), citing *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990), quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984); *see also* 28 U.S.C. § 1334(b); Collier, ¶3.01[4][c][ii], at 3-23. Under the facts as confronted herein and as recited in Plaintiff’s own brief, by notice filed on January 14, 2005, the Chapter 7 Trustee in this case filed a report of no assets for distribution to creditors. Further, on February 28, 2005, by virtue of written notice of proposed abandonment to which no objection was filed, the Trustee abandoned any and all interest of the estate in the causes of action asserted by Plaintiff-Debtor against the above-named Defendants herein.²

Because the causes of action in question, subsequent to abandonment, now belong to Plaintiff, any recovery or relief thereon will have no conceivable effect upon the above-named estate. Thus, for purposes of “related to” jurisdiction, a sufficient nexus cannot be established

² The schedules also do not reflect any setoffs or other potential litigation claims.

between the estate and Plaintiff's claims concerning the state of her title to the subject property under Georgia law and/or the question of whether Co-Defendants English or Sacks may have been at fault in creating the underlying title problem. Compare *Lemco Gypsum*, 910 F.2d at 789. These causes of action, therefore, do not rise to a "related" proceeding and there is no "related to" jurisdiction.

Finally, with regard to the remaining jurisdictional category under Section 1334(b), this Court may hear and decide proceedings "**arising in a case** under title 11." Proceedings falling within this residual category are generally described as "administrative matters" that do not *arise under* title 11 by reason of the filing of bankruptcy, or *relate to* a case under title 11 as that specific legal term is defined above, and so they must "arise in" the case for the Court to entertain jurisdiction over them. Collier, ¶3.01[4][c][iv], at 3-31.³

Administrative matters include, among others, allowance of claims, dischargeability of debts, and orders for turn over of estate property. Further, under appropriate circumstances, such matters may even include a determination of the validity, extent, and priority of liens. Though Plaintiff prays for such determination herein, such designation mischaracterizes the actual relief sought. As previously stated, Plaintiff is seeking, with respect to Co-Defendant RCB, a judgment requiring the satisfaction or cancellation of its deed to secure debt by reason of Plaintiff's alleged full payment to RCB and, given that such cause of action did not originate

³ Generally, proceedings "arising under" or "arising in a case" come within the definition of "core proceedings" under 28 U.S.C. § 157(b)(2). Although the determination of the extent, validity, and priority of liens constitutes a core proceeding under this Section 157(b)(2)(K), no matter how the claims are designated in the complaint, the Court must undertake an analysis of the nature of the relief requested for purposes of determining subject matter jurisdiction. Here, as discussed above, determination of the lien in question will not result in any payment to a creditor by the estate and will not even affect the estate.

within the bankruptcy case, the Court concludes that same is not included within those proceedings generally described as administrative matters *arising in a case* under title 11.⁴

There being no basis for establishing jurisdiction under any of the grounds set forth in Section 1334(b), the Court concludes this matter should be dismissed. Accordingly, based on the above reasoning and conclusions, it is

ORDERED that the above-named adversary proceeding be, and hereby is, **dismissed** in its entirety without prejudice for want of subject matter jurisdiction in this Court.

The Clerk is directed to serve a copy of this Order upon Plaintiff's counsel, Debtor's counsel, counsel for each Co-Defendant, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia, this 18th day of May, 2005.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE

⁴ Moreover, the alleged malpractice claims here arose prior to bankruptcy, as distinguished from *Grausz v. Englander*, 321 F.3d 467 (4th Cir. 2003), and as discussed herein, have not only been abandoned by the Trustee, but did not arise in the case.