



IT IS ORDERED as set forth below:

Date: May 30, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

|| CASE NO. 06-65467

Sandra Jackson Sheppard,

CHAPTER 7

Debtor.

JUDGE MASSEY

||

ORDER DENYING SECOND MOTION TO REOPEN CASE

Debtor filed a motion to reopen this case, her second such motion, on November 29, 2007. It has just been brought to the Court's attention. Debtor represented herself in this Chapter 7 case in which she obtained a discharge. In the second motion to reopen, Debtor states that the purpose of reopening the case would be to "prosecute claims abandoned by the Trustee for fraudulent and related activities perpetrated against the Debtor by mortgage companies, mortgage brokers, lenders, and others, who individually and in concert with each other participated in fraudulent and related activities to unfairly and unlawfully steer and place Debtor into subprime mortgages"

The problem with the motion is that it alleges that the Trustee has abandoned the claims that Debtor now wishes to pursue. If that is true, this Court would lack jurisdiction over the adversary proceeding Debtor proposes to file.¹ Federal jurisdiction in bankruptcy cases is vested in the first instance in district courts in 28 U.S.C. § 1334, which provides in relevant part:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and 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.

11U.S.C. § 1334(a) and (b).

The alleged claims against lenders did not arise in a civil proceeding under title 11 or in a case under title 11. Thus, the only basis for jurisdiction of the lawsuit Debtor wishes to file against former lenders would be if that lawsuit were “related to” the bankruptcy case. Hence, the question is whether the claims Debtor wants to make against the former lenders are related to her bankruptcy case.

In *Matter of Lemco Gypsum, Inc.*, 910 F.2d 784 (11th Cir. 1990), the Eleventh Circuit Court of Appeals addressed the question of when a district court or bankruptcy court has “related to” jurisdiction. It stated:

The circuits have developed slightly different definitions of what constitutes a related case under § 1471(b) and its nearly identical successor, § 1334(b). However, it is well settled that the jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is limited initially by statute and eventually by Article III. For subject matter jurisdiction to exist there must be some nexus between the related civil proceeding and the Title 11 case. In exploring the bounds of this nexus we endeavor to seek a definition for

¹ The docket does not, however, reflect that the claims asserted were abandoned by the Trustee.

“related to” that best represents Congress' intent to “reduce substantially the time-consuming and expensive litigation regarding a bankruptcy court's jurisdiction over a particular proceeding”. . . . This court is also concerned that an overbroad construction of § 1334(b) may bring into federal court matters that should be left for state courts to decide.

Matter of Lemco Gypsum, Inc., 910 F.2d 784, 787 -788 (11th Cir. 1990) (footnotes omitted). The Court then adopted a test first developed by the Third Circuit”

In *Pacor, Inc. v. Higgins* [743 F.2d 984, 994 (3rd Cir.1984)] the Third Circuit enunciated a test for determining whether a civil proceeding is sufficiently related to bankruptcy to confer federal jurisdiction on the district court. “The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy. The proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” [Id.] We join the majority of the circuits that have adopted the Pacor formulation.

Matter of Lemco Gypsum, Inc. 910 F.2d at 788 (footnotes omitted).

If, as Debtor contends, the alleged claims against lenders were abandoned by the Trustee, those claims belong only to Debtor. Hence, the outcome of her proposed lawsuit could not have any “[conceivable] effect on the estate being administered in bankruptcy.” This is because none of the recovery Debtor hopes to obtain would belong to her bankruptcy estate – the claim and its proceeds would be her property to which creditors and the Trustee would have no rights. Once abandoned, property cannot be restored to a bankruptcy estate. For that reason, the proposed lawsuit would not be related to this bankruptcy case within the meaning of 28 U.S.C. § 1334(b), thereby depriving this Court of jurisdiction to hear it.

This would not leave Debtor without a judicial forum, because she may bring her lawsuit in state court.

Based on the allegations in the motion, therefore, the motion to reopen is DENIED because it would be pointless to reopen a case for the purpose of filing a lawsuit that the Court could not hear for lack of jurisdiction.

This ruling is without prejudice to Debtor's right to contact the Trustee concerning her understanding that the claims were abandoned. If the claims have not been abandoned, the Court will reopen the case on the motion of the Trustee or the Debtor for the purpose of abandoning them. Or, the Trustee may seek to reopen the case for the purpose of pursuing the alleged claims. Only the Trustee can pursue claims that are property of the estate. But if the Trustee abandons the claims so that they are no longer property of the Debtor's bankruptcy estate, the Court will again close the case so that Debtor can pursue the claims in state court. She may not pursue them here.

The Clerk is directed to serve Debtor, the former Chapter 7 Trustee and the U.S. Trustee with a copy of this Order.

END OF ORDER