



IT IS ORDERED as set forth below:

Date: August 13, 2010

C. Ray Mullins

C. Ray Mullins
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

DEVLIN & ROBINSON, P.C.,

Debtor.

CASE NO. 08-73871-CRM

CHAPTER 7

RD LEGAL FUNDING PARTNERS, L.P.,

Plaintiff,

v.

MARK ROBINSON,

Defendant.

ADVERSARY PROCEEDING
NO. 09-06445

ORDER

THIS MATTER is before the Court on the Motion for Summary Judgment filed by the Defendant (Doc. No. 17) and the Cross Motion for Summary Judgment filed by the Plaintiff (Doc. No. 31).

Background

The Debtor represented plaintiffs (the “McLendon Plaintiffs”) in a mass toxic tort lawsuit entitled *Latrice McLendon, et al. v. Philip Services Corporation, et al.*, Case No. 1:06-CV-1770-CAP before Judge Charles A. Pannell, Jr. of the Northern District of Georgia (the “District Court”). On June 2, 2009, the McLendon Plaintiffs agreed to a settlement with the defendants and the Debtor was awarded \$465,679.75 for attorney fees and costs (the “attorney fees”). After the Plaintiff and the Defendant asserted conflicting interests in the attorney fees, the District Court referred the matter to this Court.

The Plaintiff is in the business of purchasing unpaid legal fees from settled cases at a discount in consideration of an assignment of such fees. The Plaintiff contends that it purchased the attorney fees on October 1, 2007; and therefore the estate has no interest therein. The Defendant claims that he entered into a fee-sharing agreement with the Debtor that entitles him to \$111,111.11 of the attorney fees. He states that the fee-sharing agreement was executed prior to the Plaintiff’s purchase of the attorney fees; and therefore he has a superior claim to the remaining \$111,111.11.

The Plaintiff initiated this adversary proceeding seeking a declaratory judgment that the Debtor and the Defendant had no interest in the attorney fees (the “Complaint”). The parties filed a proposed consent order stipulating to the disbursement of \$354,568.64 of the attorney fees to the Plaintiff, and the Court entered it October 5, 2009. On May 3, 2010, the Chapter 7 Trustee filed a notice abandoning any interest in the attorney fees.

Law and Analysis

The bankruptcy court has jurisdiction in “any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. 157(a). A proceeding “arising under” title 11 involves a substantive right created by the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1344-1345 (11th Cir. 1999). A proceeding

“arising in” title 11 typically includes administrative matters that can only arise in a bankruptcy. *Id.* The Complaint does not raise a substantive right created by the Bankruptcy Code nor does it involve administrative matters. Therefore, the Court only has jurisdiction if the proceeding is “related to” the bankruptcy case.

A proceeding is “related to” the bankruptcy case if the outcome can “conceivably” effect 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 bankruptcy estate.”

Matter of Lemco Gypsum, Inc., 910 F.2d 784, 788 (11th Cir. 1990); *see also, Comfort Care Transp. Prods. LLC v. Advantage Funding Commer. Capital Corp.*, 2009 Bankr. LEXIS 4241 (Bankr. N.D. Ga. Dec. 23, 2009) (Drake, J.); *Opteum Fin. Servs. v. RBC Centura Bank*, 2008 Bankr. LEXIS 4069 (Bankr. N.D. Ga., August 18, 2008) (Massey, J.).

The Plaintiff and the Defendant do not contend that the attorney fees are property of the estate. The outcome of the Complaint could, conceivably, effect the Debtor’s liabilities because the losing party could potentially assert an unsecured claim against the Debtor. However, such a claim will not impact the administration of the estate because the value of the secured and priority claims significantly exceed the value of the assets recovered by the Chapter 7 Trustee. To date, the Chapter 7 Trustee has less than \$2,000 for distribution to creditors and it appears highly unlikely that there will be a distribution to unsecured creditors. Therefore, the Court does not have jurisdiction to resolve the Complaint; instead, the District Court is the appropriate forum to determine the Plaintiff’s and the Defendant’s interests in the attorney fees.

IT IS ORDERED that Defendant’s Motion for Summary Judgment is **DENIED**;

IT IS FURTHER ORDERED that Plaintiff’s Cross Motion for Summary Judgment is **GRANTED** to the extent that it objects to the Court’s jurisdiction;

IT IS FURTHER ORDERED that the attorney fees held in the United States Bankruptcy Court’s registry shall be returned to the United States District Court.

The Clerk's Office is directed to serve a copy of this Order upon the Debtor, the Debtor's counsel, the Chapter 7 Trustee, the Plaintiff, the Plaintiff's counsel, the Defendant, the Defendant's counsel, and to the Honorable Charles A. Pannell, United States District Judge.

END OF DOCUMENT