



IT IS ORDERED as set forth below:

Date: November 6, 2012

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	Case No. 12-62316-MGD
	:	
PAUL M. SKILLINGS,	:	Chapter 7
	:	
Debtor.	:	Judge Diehl
	:	
PAUL M. SKILLINGS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adversary Proceeding
	:	
BANK OF AMERICA, N.A., BAC	:	No. 12-05380-MGD
HOME LOANS SERVICING LP, and	:	
FIRST EUCLID PROPERTIES, LLC,	:	
	:	
Defendants.	:	
	:	

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

This adversary proceeding is before the Court on the Motion to Dismiss Plaintiff’s Amended Complaint (“Motion”) filed by Defendant, Bank of America, N.A. (“Defendant”). (Docket No. 12). Defendant seeks dismissal of all claims for relief in Plaintiff’s Amended Complaint (“Amended

Complaint”). (Docket No. 10).¹ For the reasons stated below, the Motion is granted.

BACKGROUND

Paul M. Skillings (“Plaintiff”) filed a *pro se* petition under Chapter 7 of the Bankruptcy Code on May 14, 2012. This filing was Plaintiff’s third bankruptcy filing within a year. Plaintiff initiated this adversary proceeding alleging that his property, located at 7200 Blackjack Ct., Riverdale, GA, 30296 (“Property”), was taken from him by Defendant, by means of an illegal foreclosure, and seeking recovery of the property due to a “fraudulent transfer.” Plaintiff also alleged that Defendant had not proven that it was the holder of Plaintiff’s note. Plaintiff asserted that the copy of the promissory note provided to him by Defendant, evidencing the loan from Defendant to Plaintiff, included a forged signature, made by someone other than Plaintiff. Plaintiff stated that he was eligible for a loan modification but that Defendant turned him down, and that Defendant could have reduced the amount owing on Plaintiff’s mortgage to the amount for which it was sold to Defendant, Euclid Properties, LLC. The foreclosure of the property took place on October 4, 2011, approximately seven months before this bankruptcy case was filed.

Although Plaintiff’s claims for relief are generally not couched in legal terms but rather in conclusory statements supported by scant factual allegations, the Court believes that the claims Plaintiff has attempted to assert are as follows: (1) a claim for injunctive relief to prevent eviction

¹Prior to the filing of Amended Complaint, Defendant filed a Motion to Dismiss and Amended Motion to Dismiss (Docket Nos. 5-6). These Motions are deemed moot as they relate to the original Complaint. (Docket No. 1). On the same day that the Motion before the Court was docketed, Plaintiff filed a Response in Opposition to Dismiss Complaint. (Docket No. 13). The docket entry indicates that the Response relates to the Amended Motion to Dismiss the original Complaint. (Docket No. 6). Because of the timing of the response, and the indication on the docket, the Court will treat this Response as relating to the moot Motions. As such, the Response is also moot. In any event, nothing stated in the Response would change the analysis on the Motion before the Court.

from the Property; (2) a cease and desist order to stop further transfer of the Property; (3) avoidance of the foreclosure on the Property; (4) recovery of the Property; (5) a HAMP² violation relating to the loan secured by the Property; (6) and a RESPA³ violation relating to a request for information on the loan.

In its Motion, Defendant seeks dismissal of the Amended Complaint on several grounds. Because the Court finds that it lacks subject matter jurisdiction, it declines to address the various grounds for dismissal raised by Defendant.

DISCUSSION

A bankruptcy court's jurisdiction is limited. A bankruptcy court in a judicial district is a "unit of the district court." 28 U.S.C. § 151. In statutory terms, the bankruptcy court has no jurisdiction of its own. *Ghee v. Retailers Nat'l Bank (In re Ghee)*, 2007 Bankr. LEXIS 1021 (Bankr. N.D. Ga. Feb. 23, 2007). Rather, 28 U.S.C. § 1334 vests bankruptcy jurisdiction in the district courts. Section 157(a) of Title 28 then permits a district court to refer any or all bankruptcy cases and any or all proceedings arising under the Bankruptcy Code or arising in or related to a bankruptcy case to "the bankruptcy judges for the district." 28 U.S.C. § 157(a). The District Court by local rule has referred all cases and proceedings within the scope of § 157(a) to this District's bankruptcy judges. Local Rule 83.7, N.D. Ga.

Subsections (b) and (c) of 28 U.S.C. § 157 govern how a bankruptcy judge handles referred matters. Section 157(b) authorizes bankruptcy judges to hear and determine all cases under title 11,

² HAMP is the acronym for the Home Affordable Mortgage Program, authorized by the Emergency Economic Stabilization Act. 12 U.S.C. § 5201 et seq.

³ RESPA is the acronym for the Real Estate Settlement Procedures Act. 12 U.S.C. § 2601 et seq..

"core proceedings" arising under title 11, or arising in a case under title 11, and enter "appropriate orders and judgments." Under § 157(c), a bankruptcy judge may hear a "non-core proceeding" that "is otherwise related to a [bankruptcy] case," but any final order or judgment must be entered by the district court after it considers the bankruptcy judge's proposed findings of fact and conclusions of law de novo.

A claim "arises under" title 11 if it "invokes a substantive right created by the Bankruptcy Code" and it "arises in" a case under title 11 "if the claim would arise only in a bankruptcy case." *In re Faloye*, 459 B.R. 865 (Bankr. N.D. Ga. Aug. 29, 2011) (finding that the Court did not have subject matter jurisdiction where the claims related to property that was no longer property of the estate) (citing *Cont'l Nat'l Bank of Miami v. Sanchez (In re Toledo)*, 170 F.3d 1340, 1344-45 (11th Cir. 1999)). Plaintiff's claims do not arise under title 11 or arise in a case under title 11. Here, all of Plaintiff's claims relate to the Property, which is not property of the bankruptcy estate. Defendant foreclosed on the Property approximately seven months prior to the filing of this case, and the property was sold to Euclid Properties, LLC. Plaintiff's claims are based on state law and non-bankruptcy federal law, and the Property to which all of the claims relate is not property of the bankruptcy estate. Therefore, Plaintiff's claims do not arise under the Bankruptcy Code and do not depend on bankruptcy law for their existence.

Plaintiff's claims also do not "relate to" a case under title 11. The Eleventh Circuit has adopted the *Pacor* test to determine where "related to" jurisdiction exists. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 10 F.2d 784, 788 (11th Cir. 1990) (adopting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d. Cir. 1984)). Under *Pacor*, related to jurisdiction exists where there is some nexus between the title 11 case and the related proceeding so that the proceeding "could conceivably have

an effect on the estate being administered in bankruptcy.” *In re Faloye*, 459 B.R. at 868 (citing *In re Lemco Gypsum, Inc.*, 10 F.2d at 788). Here, the Property is no longer property of the bankruptcy estate and thus resolution of Plaintiff’s claims, which are all derived from Plaintiff’s alleged rights in the Property, could have no conceivable effect on the administration of the bankruptcy estate.

In its Motion, Defendant, relying on *In re Hospitality Ventures/La Vista*, suggests that this Court may choose to exercise supplemental jurisdiction over Plaintiff’s wrongful foreclosure claim. *Hospitality Ventures/La Vista v. Heatwood 11, LLC (In re Hospitality Ventures/La Vista)*, 358 B.R. 462 (Bankr. N.D. Ga. Jan. 4, 2007). In that case, the Court held that it had supplemental jurisdiction over a third-party claim, over which it otherwise would not have subject matter jurisdiction under 28 U.S.C. § 1334, where the claim was “so related to the primary claim for which jurisdiction existed that it was part of the same case or controversy.” *Id.* at 472. Here, the Court does not have subject matter jurisdiction over any of Plaintiff’s claims, so supplemental jurisdiction is inapplicable.

The Amended Complaint states that Plaintiff seeks “recovery of my property due to fraudulent transfer.” Bankruptcy courts have core jurisdiction to determine, avoid, or recover fraudulent conveyances. 28 U.S.C. § 157(b)(2)(H). A fraudulent transfer claim is inapplicable to the facts before the Court, and therefore, this Court does not have core jurisdiction on this basis, despite Plaintiff’s use of the term “fraudulent transfer.” The trustee may avoid any transfer where the debtor “received less than reasonably equivalent value in exchange for such transfer” 11 U.S.C. § 548(a)(1)(B)(i). The Supreme Court, in *BFP v. Resolution Trust Corp.*, held that a foreclosure conducted in conformity with state law was not a fraudulent transfer because the price received at the foreclosure was deemed to be the “reasonably equivalent value” of the property. *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994). In accordance with this holding, Defendant’s

foreclosure on the Property was not a fraudulent transfer.

CONCLUSION

In conclusion, the Amended Complaint should be dismissed as to all Defendants for lack of subject matter jurisdiction. Nothing in this Order prevents Plaintiff from pursuing his claims in the appropriate forum. Accordingly, it is

ORDERED that the Motion to Dismiss Plaintiff's Amended Complaint is **GRANTED** and the Amended Complaint is dismissed as to all Defendants.

The Clerk of Court shall serve a copy of this order on Plaintiff, Defendants, and Defendants' counsel.

END OF DOCUMENT