



IT IS ORDERED as set forth below:

Date: May 16, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
HIGH-TOP HOLDINGS, INC.,	:	16-10022-WHD
_____	:	
	:	
HIGH-TOP HOLDINGS, INC.,	:	ADVERSARY PROCEEDING
Plaintiff,	:	NO. 16-1007-WHD
	:	
v.	:	
	:	
RREF II BB ACQUISITIONS, LLC,	:	
RREF II BB-GA, LLC, and 16 WEST	:	
HOLDINGS, LLC,	:	
Defendants.	:	
_____	:	
	:	
HIGH-TOP HOLDINGS, INC.,	:	ADVERSARY PROCEEDING
Plaintiff,	:	NO. 16-1008-WHD
	:	
v.	:	
	:	
RREF II BB ACQUISITIONS, LLC,	:	
MAGY-J, INC., FOURSOME, LLC,	:	
and ROBERT C. PERRY, JR.,	:	
Defendants.	:	

“High-Top”). High-Top has filed a response to the Motion in all but one of the proceedings.

Discussion

A. Consolidation Generally

Federal Rule of Civil Procedure 42, which applies to adversary proceedings in Bankruptcy through Federal Rule of Bankruptcy Procedure 7042, empowers a court to consolidate cases that contain “common questions of law or fact.” FED. R. CIV. P. 42(a); *see also* FED. R. BANKR. P. 7042 (“Rule 42 F.R.Civ.P. applies in adversary proceedings.”). The rule is permissive, and a decision whether cases ought to be consolidated rests in the discretion of the trial court. *See Young v. City of Augusta*, 59 F.3d 1160, 1168 (11th Cir. 1995). The rule has been described as “a codification of a trial court’s inherent managerial power.” *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985). When exercising this power, a court should consider

[W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Id. (alteration in original) (quoting *Arnold v. E. Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)). Consolidation has been deemed appropriate where “the actions

are likely to involve the same witnesses and arise from the same series of events or facts.” *Am. Family Home Ins. Co. v. Hillery*, 2009 WL 2711901, at *2 (S.D. Ala. July 20, 2009) (quoting *Hanson v. District of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009)); *see also Hendrix*, 776 F.2d at 1497 (approving a joint trial where it prevented “wasteful relitigation, avoided duplication of judicial effort, and did not materially prejudice [the other party’s] rights”). While identity of parties may make consolidation more likely, it is not a prerequisite, and “[c]ases may be consolidated even where certain defendants are named in only one of the complaints.” *Am. Family Home Ins. Co.*, 2009 WL 2711901, at *2 (alteration in original) (quoting *Jacobs v. Castillo*, 612 F. Supp. 2d 369, 373 (S.D.N.Y. 2009)). The Eleventh Circuit has encouraged trial courts “to make good use of Rule 42(a)...in order to expedite the trial and eliminate unnecessary repetition and confusion.” *Id.* (alteration in original) (quoting *Dupont v. Southern P. Co.*, 366 F.2d 193, 195 (5th Cir. 1966)). With these guiding principles in mind, the Court turns to the substance of the proceedings Acquisitions and BB-GA want consolidated.

B. The Adversary Proceedings

High-Top filed the first proceeding, 16-1007-WHD, on March 29, 2016. High-Top initiated the other four—16-1008-WHD, 16-1010-WHD, 16-1011-WHD, and 16-1012-WHD, on April 2, 2016. Because the necessary condition for

consolidation is a common of question of law or fact in the proceedings, it is useful to examine briefly the complaints in each of the proceedings at issue here.

1. AP 16-1007-WHD

The complaint in 16-1007-WHD names Acquisitions, BB-GA, and 16 West Holdings, LLC (hereinafter “16 West”) as defendants. According to the complaint, Acquisitions held two deeds to secure debt on real property known as 1710 Newnan Road, Griffin, Georgia (hereinafter the “Newnan Road Property”). High-Top, desiring to purchase the Newnan Road Property, reached an agreement with Acquisitions whereby High-Top would turn over the proceeds of its purchase loan from the bank to Acquisitions in exchange for a release of any liens held by Acquisitions. High-Top acquired the loan and forwarded the proceeds to Acquisitions, but Acquisitions did not release its liens.¹

Instead, Acquisitions filed suit against a third party in the Superior Court of Lamar County, Georgia, seeking to enforce a note secured by one of the deeds to secure debt. Though High-Top was not directly involved in the suit, it is identified as a party to a settlement agreement and subsequent consent judgment (hereinafter the “Lamar Judgment”) awarding Acquisitions a \$607,360.23 judgment. Acquisitions later assigned its interest in one of the deeds to secure debt to BB-GA, which attempted a foreclosure on the Newnan Road Property.

¹ The complaint acknowledges that Acquisitions did eventually release one of the two deeds to secure debt.

High-Top alleges that three parties claim an interest in the Newnan Road Property. Acquisitions claims an interest by virtue of a judgment lien's springing from the Lamar Judgment. High-Top holds legal title, and 16 West (an LLC operated by Michael Jackson, High-Top's Chief Financial Officer) holds equitable title because it has been paying the debt owed to the bank. Because High-Top contests the validity of the Lamar Judgment, the six-count complaint first "seeks a determination of the validity, extent, or priority of liens and other interests" in the Newnan Road Property. The complaint then seeks monetary damages against Acquisitions and BB-GA under breach of contract, unjust enrichment, and fraud in the inducement causes of action for their conduct concerning the deeds to secure debt.

2. AP 16-1008-WHD

The one-count complaint in 16-1008-WHD again names Acquisitions as a defendant, but this time names Magy-J, Inc., Foursome, LLC, and Robert C. Perry, Jr. as co-defendants. The property involved in this proceeding is known as 4183 Old Atlanta Road, Griffin, Georgia (hereinafter "4183 Old Atlanta Road"). High-Top alleges that Acquisitions claims to have an interest in 4183 Old Atlanta Road pursuant to the Lamar Judgment. It goes on to allege that it holds legal title, Magy-J, Inc. (a corporation for which Michael Jackson is the registered agent) held equitable title by virtue of its payment of the debt obligation on the property, and

Foursome, LLC (an LLC for which Michael Jackson is the registered agent) acquired Magy-J, Inc.'s interest by virtue of a quitclaim deed. Similar to the relief requested in 16-1007-WHD, High-Top contests the validity of the Lamar Judgment and requests a determination of the validity, extent, or priority of the defendants' interests in 4183 Old Atlanta Road.

3. AP 16-1010-WHD

The one-count complaint in 16-1010-WHD is nearly exactly the same as the complaint in 16-1008-WHD, save for a different property and a different co-defendant. The complaint names Acquisitions and Carmel, LLC as defendants. The subject property in this proceeding is known as 4180 Old Atlanta Road, Griffin, Georgia (hereinafter "4180 Old Atlanta Road"). The complaint once again alleges that Acquisitions claims to have an interest pursuant to the Lamar Judgment, that High-Top holds legal title, and that Carmel, LLC (a company for which Michael Jackson serves as registered agent) holds equitable title because it has been paying the debt obligation on the property. The complaint contests the validity of the Lamar Judgment and requests a determination of the validity, extent, or priority of the defendants' interests in 4180 Old Atlanta Road.

4. AP 16-1011-WHD

The complaint in 16-1011-WHD names Acquisitions, Debbie Trust, and Susie Trust as defendants. This complaint seeks a determination concerning the interests in property located in Spalding County, Georgia. Again, High-Top alleges that Acquisitions claims to have an interest pursuant to the Lamar Judgment, that High-Top holds legal title, and that the two trusts (for both of which Michael Jackson serves as trustee) hold equitable title because they have been paying the debt service on the property. The complaint contests the validity of the Lamar Judgment and requests a determination of the validity, extent, or priority of the defendants' interests in the property.

5. AP 16-1012-WHD

The complaint in 16-1012-WHD names Acquisitions and Clara Co. as defendants. The property at issue is known as 15 Oak Street, Griffin Georgia (hereinafter "15 Oak Street"). Again, High-Top alleges that Acquisitions holds an interest pursuant to the Lamar Judgment, that High-Top holds legal title, and that Clara Co. (for which Michael Jackson serves as registered agent) holds equitable title to the property because it has been paying the debt obligation on the property. The complaint contests the validity of the Lamar Judgment and requests a determination of the validity, extent, or priority of the defendants' interests in 15 Oak Street.

C. Consolidation

As is fairly evident on the face of the complaints, all of these proceedings, though addressing different properties and different defendants, revolve around two primary questions: (1) Did High-Top enter into the Lamar Judgment—in other words, is the Lamar Judgment valid against High-Top; and (2) What is the extent of Acquisitions’s lien arising from that judgment?

Despite these common questions, High-Top opposes consolidation. High-Top asserts that questions regarding the equitable interests held by the various co-defendants will vary from proceeding to proceeding, meaning the evidence will be different with regard to each co-defendant and each property. High-Top also points out that 16-1007-WHD presents claims for monetary relief in addition to the common question of the extent of the parties’ interests in the subject property. Finally, High-Top maintains that a decision regarding consolidation at this stage is premature, as the various co-defendants have not yet filed answers or otherwise made appearances in the proceedings.²

The Court agrees with High-Top that consolidation of these cases is not appropriate at this time. While the central issue of the validity of Acquisitions’s lien on High-Top’s property is certainly the most dispositive dispute in all of the

² The Court notes that a Joint Stipulation between High-Top and the various co-defendants was entered on the docket on May 2, 2016, allowing the co-defendants until June 1, 2016, to file responsive pleadings. *E.g.*, AP 16-1007-WHD, Doc. 6.

proceedings, the Court is not convinced that consolidation of the cases for all purposes will necessarily promote efficiency. The diversity of defendants and properties, though certainly interrelated, each raise potentially distinct issues of fact concerning the reach of Acquisitions's lien and the co-defendants' equitable interests that could require individual attention. To deal with these issues in one proceeding would not make them any less of a demand on judicial resources.

Additionally, the claims for monetary relief asserted in 16-1007-WHD militate against consolidation of that case with the other proceedings. The claims for monetary relief (breach of contract, unjust enrichment, and fraud in the inducement) arise under state law, meaning that they likely constitute "related to," non-core proceedings over which this Court may only exercise limited jurisdiction. *See* 28 U.S.C. §§ 157(c), 1334. This means that even if the proceedings were consolidated, the Court would still have to treat these claims separately. *See In re Dak Mfg. Corp.*, 73 B.R. 917, 922 (Bankr. D.N.J. 1987) (ordering consolidation of "related to" matter but noting that the court would have to send proposed findings of fact and conclusions of law to the district court). Thus, consolidation of 16-1007-WHD with the other proceedings would not result in any increased efficiency in adjudicating those questions.

As a final note, the Court also believes that any risk of inconsistent results on the common question regarding the validity of the Lamar Judgment, which does

not appear to suffer from the same diversity of potential factual support, can be mitigated by joining the proceedings for hearing or trial on that question alone. *See* FED. R. CIV. P. 42(a)(1) (allowing a court to “join for hearing or trial any or all matters at issue in the actions”). This would allow that issue to be resolved in one decision without requiring the Court to address the other distinct issues presented by each proceeding. Indeed, should Acquisitions and BB-GA, or any other party, wish to join any of the issues raised in these proceedings for hearing or trial, nothing in this order should be taken as preventing them from filing a motion seeking that relief. All the Court decides here is that consolidation for all purposes is not appropriate at this time.

Conclusion

For the reasons set forth above, the Motion is **DENIED**. The Clerk is **DIRECTED** to serve this Order on all parties.