

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
<b>HERBERT HELLHOFF,</b>	)	<b>CASE NO. 14-66900 - MHM</b>
	)	
Debtors.	)	
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HERBERT HELLHOFF,	)	
	)	
Plaintiff,	)	
v.	)	<b>ADVERSARY PROCEEDING</b>
	)	<b>NO. 14-5317</b>
CALIBER HOME LOANS	)	
SERVICING, INC. and THE BANK	)	
OF NEW YORK MELLON AS	)	
TRUSTEE FOR CIT MORTGAGE	)	
LOAN TRUST 2007,	)	
	)	
Defendants.	)	

**ORDER ON MOTION TO DISMISS**

Plaintiff initiated this adversary proceeding October 8, 2014, by filing a complaint seeking a temporary restraining order, preliminary injunction, and permanent injunction against Defendants with respect to the sale of real property located at 3073 Greenfield Drive, Marietta, Georgia (the "Property"). Defendant Caliber Home Loans filed a *Motion to Dismiss* November 4, 2014, alleging, *inter alia*, that this Court does not have jurisdiction over the subject matter of the complaint (Doc. No. 4) (the "Motion"). For the

the reasons set forth below, the Motion will be granted and this proceeding will be dismissed.

Bankruptcy courts, through the district courts, have jurisdiction only in proceedings which “aris[e] under title 11,” “aris[e] in ... cases under title 11,” or are “related to cases under title 11.” 28 U.S.C. § 1334(b); *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Under § 157(b), bankruptcy courts may hear and issue final judgments in “core proceedings” – those matters which arise under title 11 or arise in a case under title 11. Under § 157(c), bankruptcy judges may hear non-core matters arising *related to* a case under title 11, but may only propose findings of fact and conclusions of law to the district court. Core proceedings “invok[e] a substantive right created by the Bankruptcy Code” or “could arise only in bankruptcy,” such as matters associated with administration of the bankruptcy estate. *In re Toledo*, 170 F.3d 1340, 1344 (11<sup>th</sup> Cir. 1999). By contrast, contrast, non-core proceedings related to a case under title 11 are those proceedings which might affect the bankruptcy case or administration of the estate, but do not necessarily arise in the bankruptcy context.

Plaintiff’s complaint does not raise “core” causes of action. Plaintiff essentially asserts that Defendants do not have the authority to enforce the security interest encumbering the Property due to certain transfers of the note and security interest, and because Defendants are not the holders of the note; the claims invoke state law and contract interpretation, but do not in any way rely on title 11. Nor can Plaintiff’s claims be “non-core” matters which may affect the administration of the bankruptcy estate,

because no bankruptcy estate exists. Plaintiff filed a petition for relief under Chapter 13 of the Bankruptcy Code August 29, 2014, initiating Case No. 14-66900 – MHM (the “Main Case”). The Main Case was dismissed November 20, 2014, and Plaintiff was barred from filing cases under Title 11 for a period of 180 days. While some courts have found that fairness and judicial economy justify retention of jurisdiction over “related-to” proceedings after dismissal of the main case, no such considerations exist in this instance. Compare *In re Smith*, 866 F.2d 576 (3d Cir. 1989) (bankruptcy court may retain jurisdiction where proceedings had been before court for over four years) and *In re Porges*, 44 F.3d 159 (2d Cir. 1995) (jurisdiction retained when bankruptcy court had already held a trial, but had not yet issued findings of fact and conclusions of law or a judgment) with *In re Querner*, 7 F.3d 1199 (5<sup>th</sup> Cir. 1993) (reversing order of the bankruptcy court because the court should not have retained jurisdiction where bankruptcy judge had expended few judicial resources on the proceeding prior to closure of the case). Accordingly, it is hereby

**ORDERED** that this adversary proceeding is *dismissed*.

The Clerk is directed to serve this Order upon Plaintiff, Defendants, and counsel for Defendants.

IT IS SO ORDERED, this the 26<sup>th</sup> day of November, 2014.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE