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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
KENNETH HUGH ADAMS)	CASE NO. 01-74778-MHM
)	
Debtor)	
)	

)	
KENNETH H. ADAMS)	
)	ADVERSARY PROCEEDING
Plaintiff)	NO. 03-6067
)	
v.)	
)	
FIRST UNION NATIONAL BANK)	
)	ORDER
Defendant)	

Debtor seeks a declaratory judgment that Ann Adams, Debtor's ex-wife, has no liability to First Union on MasterCard account number 5490998463156993 ("MasterCard Account"). Defendant filed no answer. Debtor then filed a motion for a default judgment. This proceeding is now before the court on the court's *sua sponte* inquiry regarding the basis of its subject matter jurisdiction.

STATEMENT OF FACTS

Debtor and Ann Adams were married on or about April 29, 1976. They lived as husband and wife until September 20, 2001, when they executed a Settlement Agreement that was incorporated into a Final Judgment and Decree of Divorce in the Superior Court of Fulton County. The Settlement Agreement provides that Debtor assumed responsibility for the MasterCard Account.

BANKRUPTCY PROCEEDINGS

On November 28, 2001, Debtor filed a voluntary Chapter 7 bankruptcy petition. On February 27, 2002, Ann Adams initiated an adversary proceeding against Debtor, seeking a determination of dischargeability of Debtor's obligations under the Settlement Agreement, specifically seeking a determination that certain obligations are nondischargeable under 11 U.S.C. §§ 523(a)(5) and (15). On October 2, 2002, Debtor and Ann Adams reached an agreement regarding of most of the obligations. One obligation, however, remained unresolved: the MasterCard account.

If Ann Adams is also liable on the MasterCard Account, the dischargeability of that obligation must be resolved. If Ann Adams is not liable on the MasterCard Account, then no issue of dischargeability under § 523(a)(5) and (15) remains. Therefore, to resolve the obligation of Ann Adams on the MasterCard Account, Debtor filed this adversary proceeding. Debtor served First Union with a complaint and summons, but First Union filed no responsive pleading. Debtor requested a default judgment April 22, 2003.

This court has questioned Debtor's standing and the basis for the court's jurisdiction, in response to which the Debtor filed a memorandum of authorities. Debtor argues that the jurisdiction granted by 28 U.S.C. § 157 confers on the bankruptcy court the authority to exercise jurisdiction over core proceedings. Debtor further contends that this adversary proceeding falls within the scope of §157(b)(2)(I) and (O), because a determination of whether Ann Adams has liability on the MasterCard Account is relevant to the court's determination of the dischargeability of Debtor's obligation to Ann Adams under § 523(a)(15).

DISCUSSION

First Union has filed no responsive pleadings. Even First Union's consent to Debtor's claim of relief, however, cannot confer subject matter jurisdiction. Parties cannot waive defects of subject matter jurisdiction upon this court. As the Supreme Court noted in *Sosna v. Iowa*, 419 U.S. 393, 398 (1975), "While the parties may be permitted to waive nonjurisdictional defects, they may not by stipulation invoke the judicial power of the United States in litigation. . . ." *Id.* (citing *Richardson v. Ramirez*, 418 U.S. 24 (1974)).

The jurisdiction of bankruptcy courts to hear and decide proceedings is defined in 28 U.S.C. § 1334 and § 157. Section 1334(a) provides that "[e]xcept as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11." Section 1334(b) provides: "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 in or related to cases under title 11." While § 1334 establishes the district court's authority to hear bankruptcy cases, § 157 establishes the same authority for the bankruptcy courts. Section 157(a) provides that "[e]ach district court may provide that 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 shall be referred to the bankruptcy judge for the district." Section 157(b)(1) provides in part: "Bankruptcy judge may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments. . . ."

CORE PROCEEDING

Under § 157(b)(1) the bankruptcy court can enter an order in this adversary proceeding only if it is a core proceeding under § 157(b)(2). The bankruptcy court has the authority to determine if the proceeding is a core proceeding. Section 157(b)(3) states in relevant part: “The bankruptcy judge shall determine, on the judge’s own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11.” A non-exclusive list of core proceedings is provided in § 157(b)(2):

Core proceedings include, but are not limited to—

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not litigation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property to the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

Debtor asserts the bankruptcy court has jurisdiction over this proceeding because a determination regarding Ann Adams' liability on the MasterCard Account is relevant to Debtor's ability to discharge the debt under 11 U.S.C. § 523(a)(15). Debtor argues that § 157(b)(2)(I) and § 157(b)(2)(O) provide a basis for jurisdiction in this adversary proceeding.

Section 157(b)(2)(I) describes as core "determinations as to the dischargeability of particular debts." As the court in *In re Missouri Properties, Ltd.*, 211 B.R. 914, 921 (Bankr. W.D. Mo. 1996), noted, "There is no question that a proceeding to determine the dischargeability of a debt is a core proceeding. This case, however, is not a dischargeability proceeding." *Id.* at 921 (citations omitted). Similarly, although this adversary proceeding concerns a debt, it does not involve the discharge of the that debt. Instead, Debtor is asking the court to determine if a third party owes a debt to another third party. Debtor's discharge of debt is not at issue in this matter, and therefore it is not a core proceeding under § 157(b)(2)(I).

Section 157(b)(2)(O) confers jurisdiction over "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship. . . ." In this adversary proceeding, no assets of the estate are being liquidated. Nor is Debtor's relationship with First Union an issue in this proceeding. Instead, this proceeding relates to the relationship between First Union and Ann Adams, a non-debtor.

Debtor cites only one case as authority that the bankruptcy court has jurisdiction to decide the non-debtor's liability to a creditor of a debtor. In *Plaza at Latham Assocs. v. Citicorp North America, Inc.*, 150 B.R. 507 (N.D.N.Y. 1993), the Chapter 7 Trustee sought approval of a compromise and settlement involving the distribution of the proceeds of an insurance policy. The insurance proceeds had been paid on account of a fire on Debtor's business premises, and,

in connection with the Trustee's motion to approve a compromise and settlement with the insurance company, a dispute arose between the loss payee under the insurance policy and the lessor of Debtor's business premises, who, after the fire, had leased Debtor additional space to store inventory and equipment. The court concluded the insurance policy was an asset of the estate and thus the bankruptcy court had jurisdiction to determine distribution of the proceeds.

The *Plaza* court noted that:

Upon recognition that an insurance policy and any rights derived therefrom are a portion of the bankruptcy estate, appellant's contention that the bankruptcy court lacked subject matter jurisdiction over this adversary proceeding because the action did not involve the debtor or property of the debtor is unpersuasive.

Id. at 513. This adversary proceeding involves neither Debtor nor property of Debtor or the estate. Thus, the facts of this adversary proceeding render the rationale in *Plaza* unpersuasive and will not support a conclusion that this adversary proceeding is a core proceeding. Debtor argues *Plaza* concludes that 28 U.S.C. §§ 157(b)(2)(A) and (O) allows the conclusion that granting declaratory judgment is a core proceeding when such a judgment adjusts the debtor-creditor relationship. The *Plaza* court's decision, however, relied on the conclusion that the distribution of insurance proceeds from an insurance policy was material to the liquidation of the estate. Ann Adams' liability to First Union does not have the same effect on the estate of the Debtor. Ann Adams' liability, or lack thereof, does not diminish or augment the Debtor's estate. Therefore, this adversary proceeding is not a core proceeding under § 157 (b)(2)(O).

NON-CORE PROCEEDING

Bankruptcy courts have subject matter jurisdiction to hear cases that are non-core proceedings under § 157(c). Bankruptcy courts may hear a non-core matter if it arises under Title 11 or is related to a case under Title 11. Section 157(c)(1) states in relevant part:

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy's judge's proposed findings and conclusions. . .

The criteria for determining if a proceeding is related to a bankruptcy case are substantially broader than the criteria required to find a proceeding is a core proceeding. The test for related proceedings is set forth in *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784 (11th Cir. 1990).¹ In *In re Lemco Gypsum, Inc.*, the Eleventh Circuit established the threshold for related proceedings as “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 the debtor's property.” *Id.* at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

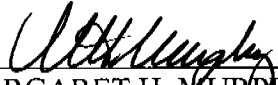
Despite the relatively broad criteria for related proceedings, this adversary proceeding does not reach the threshold, as the outcome of this adversary proceeding could have no effect on the estate being administered in Debtor's bankruptcy case. Debtor's bankruptcy case was filed, discharged, and closed as a “no-asset” case, *i.e.*, a case in which the debtor has no non-exempt assets which can be liquidated for the benefit of creditors . Thus, debtor's unsecured creditors received no distribution. The addition of one more unsecured claim would make no difference to the administration of the estate. If Ann Adams is an obligor on the MasterCard Account, Debtor's obligation under the parties' Settlement Agreement may be found to render

¹“*Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784 (11th Cir.1990), is the seminal case in this Circuit on the scope of the bankruptcy court's ‘related to’ jurisdiction.” *Continental Nat'l Bank v. Sanchez (In re Toledo)*, 170 F.3d 1340 (11th Cir. 1999).

the debt nondischargeable under § 523(a)(15). Nevertheless, a finding of nondischargeability would have no effect on the administration of the Debtor's estate (which is, in any event, already fully administered by the Chapter 7 Trustee and closed). As the court in *In re Lemco Gypsum* noted, "[o]verlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b)." *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990). Additionally "[t]he lack of effect on the estate is thus fatal to bankruptcy jurisdiction over the claim." *Community Bank of Homestead v. Boone (In re Boone)*, 52 F.3d at 958, 961 (11th Cir. 1995). Because the claim has no effect on Debtor's estate, this court dismisses the claim for want of jurisdiction. Accordingly, it is hereby

ORDERED that Adversary Proceeding No. 03-6067 is dismissed for want of jurisdiction.

IT IS SO ORDERED, this the 30th day of January, 2004.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE