

ENTERED ON

MAR 29 2005

DOCKET

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
EDWARD BRANTLEY	)	CASE NO. 04-95172-MHM
	)	
Debtor	)	
<hr/>		
DECISION ONE MORTGAGE	)	
COMPANY, LLC and	)	
OLD REPUBLIC NATIONAL TITLE	)	
INSURANCE COMPANY	)	
	)	<b>ADVERSARY PROCEEDING</b>
Plaintiff	)	<b>NO. 04-9176</b>
	)	
v.	)	
	)	
EDWARD J. BRANTLEY and	)	
EDWARD J. BRANTLEY, P.C.	)	
	)	
Defendant	)	

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS  
AND REMAND AND MODIFYING THE AUTOMATIC STAY**

This adversary proceeding is before the court on the motion of Defendants Edward J. Brantley and Edward J. Brantley, P.C. (Defendants) to dismiss and remand. Decision One Mortgage Company, LLC and Old Republic National Title Insurance Company (Plaintiffs) commenced this adversary proceeding by filing a complaint for determination of non-dischargeability of a debt allegedly owed to Plaintiffs by Defendants. Defendant Edward J. Brantley is a debtor under Chapter 7 of the Bankruptcy Code. Plaintiffs allege that Defendants owe them a debt of \$216,862.55 and that this debt is non-dischargeable under 11 U.S.C. § 523(a)(4) because the debt arises from "fraud or defalcation while acting in a fiduciary capacity" or from embezzlement. Defendants argue that Plaintiffs' complaint should be dismissed for lack

of subject matter jurisdiction or, in the alternative, because Plaintiffs' claims are barred by the doctrine of collateral estoppel. For the reasons set forth below, Defendants' motion is denied.

### **Facts**

Prior to the commencement of Debtor's Chapter 7 case, Defendants served as attorney for Plaintiffs in connection with a proposed loan of \$240,000.00 to be made by Plaintiffs to Nicole Harris. Plaintiffs allege that, in anticipation of closing on the loan to Harris, Plaintiff Decision One Mortgage Company, LLC ("Decision One") forwarded \$238,902.14 to Defendants to be held in trust by Defendants for the purpose of closing on the loan to Nicole Harris. Plaintiff Old Republic National Title Insurance Company ("Old Republic") agreed to compensate Decision One for any loss in connection with the closing. Plaintiffs allege that the loan never closed and that Defendants failed to remit the funds advanced to Defendants by Decision One.

Plaintiffs filed a civil action against Defendants in the Superior Court of Cobb County, Georgia seeking return of the funds and injunctive relief.<sup>1</sup> Plaintiffs allege that their state court case against Defendants has been substantially developed, that discovery has been completed, and that the case is ready for trial. Before trial, however, Debtor filed a Chapter 13 petition. On April 19, 2004, Debtor's case was dismissed with prejudice and Debtor was ruled ineligible to file another Chapter 13 petition for 180 days. Debtor subsequently filed a Chapter 7 petition, from which this adversary proceeding arises.

Plaintiffs filed this adversary proceeding against Defendants for a determination of non-dischargeability of their claims against Debtor. Plaintiffs allege that their action against Debtor is non-dischargeable under 11 U.S.C. § 523(a)(4) because the claims arise from Debtor's "fraud or defalcation while acting in a fiduciary capacity" or, in the alternative, that their action against

---

<sup>1</sup> *Decision One Mortgage Co., LLC v. Brantley*, Civil Action File No. 02-1-6532-28.

Debtor is non-dischargeable under 11 U.S.C. § 523(a)(4) because Debtor is guilty of embezzlement.

Defendants responded to Plaintiffs' complaint by filing a motion to dismiss and remand. Defendants argue that because Plaintiffs' state court action against Defendants is pending but is stayed by a state court declaratory judgment action, the bankruptcy court lacks subject matter jurisdiction over this proceeding. Defendants also allege that this adversary proceeding is barred by the doctrine of collateral estoppel.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Subject Matter Jurisdiction**

Defendants' argument that the bankruptcy court lacks subject matter jurisdiction is erroneous. Subject matter jurisdiction for bankruptcy courts is described in 28 U.S.C. § 157. Section 157(b)(1) states that "[B]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11." Section 157(b)(2) provides a non-exhaustive list of proceedings that are core proceedings. Determinations of the dischargeability of debts are listed as core proceedings under 11 U.S.C. § 157(b)(2)(I). Therefore, this proceeding is a core proceeding and, because this adversary proceeding is a core proceeding, subject matter jurisdiction is proper. The existence of a pending state court action involving the claims that are the subject of this dischargeability proceeding brought by Plaintiffs does not deprive this court of subject matter jurisdiction. Although the underlying facts of both proceedings may be the same, the relief sought is different: in state court, Plaintiffs seek determination of liability: liquidation of their claim. In the bankruptcy court, Plaintiffs seek a determination that liability on the claim the claim is non-dischargeable, a determination over which the bankruptcy court has exclusive jurisdiction.

### **Collateral Estoppel**

Defendants' reliance on the doctrine of collateral estoppel is equally misplaced. In discussing the intersection of the doctrine of collateral estoppel and actions to determine the dischargeability of a debt, the U.S. Court of Appeals for the Eleventh Circuit stated that "[w]hile collateral estoppel may bar a bankruptcy court from relitigating factual issues previously decided in state court. . . the ultimate issue of dischargeability is a legal question to be addressed by the bankruptcy court in the exercise of its exclusive jurisdiction to determine dischargeability." *St. Laurent v. Ambrose*, 991 F. 2d 672 (11<sup>th</sup> Cir. 1993). Therefore, Defendants' argument fails on two grounds: (1) the issue of whether Defendants are liable to Plaintiffs for Defendants' alleged fraud, defalcation, or embezzlement has not been decided in state court, and (2) the doctrine of collateral estoppel would not bar the bankruptcy court from determining whether any debt arising from such a judgment is dischargeable.

### **Abstention**

Defendants may have incorrectly identified the relief sought. The facts and argument seem to more closely apply to abstention. Section 1334(c)(1) describes discretionary abstention, stating that "[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." In the case of *Twyman v. Wedlo, Inc.*, 204 B.R. 1006 (Bankr. N.D. Ala. 1996), the court enumerated a number of factors to be considered under § 1334(c)(1). Among those factors is "the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court." *Id.* at 1017. Because Plaintiffs' state law claims are not readily severable from the core bankruptcy matter of deciding this adversary proceeding to determine dischargeability of Plaintiffs' claim, abstention is improper.

### **Defendants' Motion to Remand**

Defendants seek to have this proceeding remanded to the Superior Court of Cobb County, Georgia, the court in which Plaintiffs initially filed suit against Defendants. The bankruptcy court lacks power to remand a proceeding to state court unless the state court case has been removed to the bankruptcy court. Defendants appear to be asking that the bankruptcy court grant Plaintiffs relief from the automatic stay to liquidate their claims against Defendants in state court.

Plaintiffs allege that, prior to the imposition of the automatic stay, the state court action had been substantially developed, discovery had been completed, and the case was ready for trial. Prior to the commencement of Debtor's Chapter 7 bankruptcy case, Plaintiffs' state court proceeding was stayed by the Superior Court of Cobb County pending the outcome of a declaratory judgment action filed by Defendants' malpractice insurance carrier, OHIC. In that action, OHIC seeks a declaration that Defendants's acts that are the subject of Plaintiffs' claims are not covered by the OHIC insurance policy. *OHIC v. Decision One Mortgage Co., LLC*, Civil Action No. 02-1-10222-28. In the interests of judicial economy, it would be more efficient that the issue of Defendants' liability to Plaintiffs is determined by the Superior Court of Cobb County. Thus, it may be appropriate to modify the automatic stay to allow the parties to proceed to final judgment in state court and to temporarily stay this adversary proceeding on debt dischargeability, pending the liquidation of Plaintiffs' claim in state court.

### **CONCLUSION**

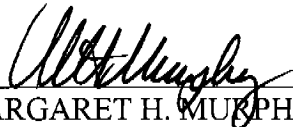
Plaintiffs' adversary proceeding to determine dischargeability of Plaintiffs' claim is a core proceeding under 28 U.S.C. § 157. Subject matter jurisdiction over this proceeding in the bankruptcy court is proper. The doctrine of collateral estoppel does not bar Plaintiffs from asserting their claim in bankruptcy court. Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss and remand this adversary proceeding is denied. It is further

ORDERED that a hearing to determine whether relief from stay in order to conclude litigation in the two state court proceedings is proper shall be held in Courtroom 1204 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia at 2:00 P M. on the 27 day of April, 2005, and Plaintiffs, Defendants, and OHIC shall appear to represent their respective interests.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 28<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE