

OCT -9 2007

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
STEVEN LODEN DYE,)	CASE NO. 06-71024-MHM
)	
Debtor.)	
)	
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STEVEN LODEN DYE,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
)	NO. 07-9017
)	
v.)	
)	
BEP CREDITOR'S TRUST, by and)	
through GEORGE W. STEVENSON, as)	
TRUSTEE, and BEP SERVICES, L.P.,)	
)	
Defendants.)	

**ORDER GRANTING DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

Debtor filed this adversary proceeding against Defendants to determine the validity, priority and extent of Defendants' lien on property of the estate. Before the court are Defendants' motion for judgment on the pleadings and motion to stay discovery pending disposition of the motion for judgment on the pleadings.

Debtor, who is proceeding *pro se*, filed a response, the title of which suggested he was responding to both the motion for judgment on the pleadings and the motion to stay discovery, but the text of that response did not address the motion for judgment on the

pleadings. Having filed no opposition to the motion for judgment on the pleadings, the local rules, BLR 7007-1(c), allow the court to conclude the motion is unopposed.

Standing is a threshold jurisdictional issue that should be addressed by the parties or by the court *sua sponte*. *AT&T Mobility, LLC v. National Association for Stock Car Auto Racing, Inc.*, 494 F.3d 1356 (11th Cir. 2007); *Dillard v. Baldwin County Commissioners*, 225 F.3d 1271 (11th Cir. 2000). In the motion for judgment on the pleadings, Defendants raised the issue of Debtor's standing to prosecute this adversary proceeding. "To establish standing, a plaintiff must show: (1) injury in fact - invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical; (2) causal connection, i.e. the injury is fairly traceable to the defendant's conduct; (3) it is likely that the injury will be redressed by a favorable decision." *Arnold v. Martin*, 449 F. 3d 1338 (11th Cir. 2006). A debtor lacks standing to object to a claim, and thus to challenge the lien securing that claim, unless disallowance of the claim or invalidation of the lien will result in a surplus of assets to be returned to the debtor. *In re LaPointe*, 39 B.R. 80 (Bankr. W.D. Ky. 1984); *In re Umbles Drew-Hale Pharmacy, Inc.*, 80 B.R. 421 (Bankr. N.D. Ohio); *In re Walker*, 356 B.R. 834 (Bankr. S.D. Fla. 2006).

The undersigned may take judicial notice of the proceedings in Debtor's main bankruptcy case. In connection with Trustee's motion for approval of a settlement, which included *inter alia* compromise of Defendants' claim, Trustee showed that Debtor's assets for liquidation were insufficient to pay all creditors in full, even if Defendants' claim and/or

lien were invalidated. Because Debtor would stand to recover nothing if Defendants' lien were limited or eliminated, Debtor lacks standing to prosecute this adversary proceeding.

Accordingly, it is hereby

ORDERED that Defendants' motion for judgment on the pleadings is *granted*.

Defendants' motion to stay discovery is *denied as moot*. This adversary proceeding is *dismissed*.

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 13 Trustee.

IT IS SO ORDERED, this the 5th day of October, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE