

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
DANIEL J. MILES,)	CASE NO. 09-92601 - MHM
)	
Debtor.)	
)	
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JAMES C. CIFELLI, Trustee,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 11-5707
RAME PROPERTIES, LLC;)	
RAME AT CHATTAHOOCHEE, LLC,)	
SHARON MUALEM,)	
MOSHE AVI MANOAH,)	
)	
Defendants.)	

ORDER DENYING MOTION TO DISMISS

This adversary proceeding is before the Court on Defendant's *Motion to Dismiss*. Plaintiff, the Chapter 7 Trustee ("Trustee"), filed a complaint seeking to avoid and recover allegedly fraudulent transfers from Debtor to Defendant Rame Properties, LLC ("Defendant") pursuant to 11 U.S.C. §§ 542 and 548. Defendant argues, relying on *Stern v. Marshall*, 131 S. Ct. 2594 (2011), that this court lacks the constitutional authority to decide the case because such an avoidance action is a proceeding adjudicable only by an Article III court. Thus, Defendant argues, the complaint against it must be dismissed. For the reasons set forth below, the Motion is denied.

I. STATEMENT OF FACTS

These proceedings stem from an involuntary Chapter 7 petition filed against Debtor December 9, 2009. Debtor moved to convert the case to Chapter 11, which relief was granted December 17, 2009. On Trustee's motion, the case was re-converted to Chapter 7 June 1, 2010.

Trustee's complaint in this adversary proceeding challenges three transfers of money, \$60,000, \$20,000, and \$60,000, from Debtor to Defendant in October of 2009, made as payments under a Lease for Residential Property (the "Lease") and an Amendment to Agreement (the "Amendment") for a residential property located at 8395 Jett Ferry Road, Atlanta, Georgia 30350, executed October 14, 2009. The Lease was for a term of 30 months commencing January 1, 2010 and ending June 30, 2012, and indicated monthly payments of \$4,000 due on the first day of each month during the Lease period. The Amendment to Agreement indicated that Rame at Chattahoochee, LLC received a payment of \$20,000 to be applied as an extension to the Lease for an additional five-month period, to November 30, 2012. Debtor's Schedules and Statement of Financial Affairs, filed January 29, 2010, indicates that Debtor transferred to Defendant payments of \$60,000, \$20,000, and \$60,000 in October of 2009. Pursuant to 11 U.S.C. 365(d)(1), the Trustee rejected the Lease effective 60 days after the order for relief in the Chapter 7 case. Accordingly, the Lease was deemed rejected effective July 31, 2010.

Trustee alleges that, through the Lease, Amendment, and transfers, Debtor sought to place \$140,000 beyond the reach of his creditors. Trustee therefore contends that the transfers are avoidable under 11 U.S.C. § 548, that Defendant should be equitably subordinated under 11 U.S.C. § 510(c), and that the payments should be characterized as a security deposit and turned over to Trustee pursuant to 11 U.S.C. § 542.

Defendant filed its *Motion to Dismiss* January 17, 2012. Defendant has not filed a proof of claim in Debtor's estate, and states that it will demand a jury trial on the issues raised by the Complaint.

II. CONCLUSIONS OF LAW

28 U.S.C. § 157 gives the bankruptcy court statutory authority to hear cases. Section 157(b) allows the bankruptcy court to hear and determine core proceedings arising under Title 11 of the United States Code, or arising in a case under Title 11; Section 157(c)(1) allows the bankruptcy court to submit proposed findings of fact and conclusions of law to the district court where a proceeding is not core but is "otherwise related" to a case arising under Title 11. Proceedings to avoid or recover fraudulent conveyances are core proceedings under § 157(b)(2)(H).

In *Stern*, the Supreme Court concluded that the bankruptcy court does not have the constitutional power to enter final judgment in a counterclaim for tortious interference with a gift filed in response to a defamation claim against the debtor's estate. 131 S. Ct. at 2611, 2614-16. While some authorities suggest *Stern* should be applied broadly to private

matters seeking to augment the bankruptcy estate, this court has joined others in interpreting the holding narrowly to limit only “the authority of the bankruptcy court to enter final judgment in state law counterclaims against a creditor, resolution of which is unnecessary to rule on the proof of claim at issue in the bankruptcy case.” *Cifelli v. Blue Star Residential, LLC*, __ B.R. __, 2012 WL 3643070 (Bankr. N.D. Ga.).


III. DISCUSSION

Defendant argues that *Stern* precludes the bankruptcy court from issuing a final judgment in the present action, and, where the Code authorizes the bankruptcy court to issue proposed findings of fact and conclusions of law only in non-core proceeding and a fraudulent conveyance action is a core proceeding, the Code precludes the bankruptcy court from submitting proposed findings of fact and conclusions of law in the present action. Thus, Defendant contends, the bankruptcy court lacks the authority to do anything but dismiss the action. Defendant’s argument is substantively identical to the argument in *Blue Star Residential*, 2012 WL 2643070, in which the argument was rejected: *Stern* should be narrowly interpreted to limit the power of bankruptcy courts only in counterclaims against a creditor, resolution of which is unnecessary to rule on the proof of claim at issue in the bankruptcy case; and, even if *Stern* did preclude the bankruptcy court from issuing a final judgment in a fraudulent conveyance action, the lack of explicit authorization in the Code is not enough to preclude the court from issuing proposed findings of fact and conclusions of law to the district court. Accordingly, it is hereby

ORDERED that the Motion to Dismiss is *denied*.

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

IT IS SO ORDERED, this the 19th day of September, 2012.



MARGARET M. MURPHY
UNITED STATES BANKRUPTCY JUDGE