



IT IS ORDERED as set forth below:

Date: August 22, 2012

C. Ray Mullins

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U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

CHRISTOPHER MAXWELL,

Debtor.

CASE NO. 10-79479-CRM

CHAPTER 7

CHRISTOPHER MAXWELL,

Plaintiff,

v.

HSBC MORTGAGE CORPORATION
(USA) AND JOHN DOE DEFENDANT,

Defendant.

ADVERSARY CASE

NO. 12-5284

ORDER

THIS MATTER is before the Court on Defendant's Motion to Dismiss (the "Motion").

Debtor filed for relief under chapter 7 of the Bankruptcy Code on July 3, 2010. On March 6, 2012, Debtor filed a Motion to Compel Abandonment of Property pursuant to Rule 6007(b).¹ On April 12, 2012, the Court held a hearing on the motion to compel abandonment of property. No party responded to the motion or otherwise opposed the motion. Accordingly, the Court entered an order granting Debtor's motion to compel abandonment of property on April 13, 2012.

On May 25, 2012, Plaintiff filed a Complaint against HSBC Mortgage Corporation to determine the validity, priority or extent of lien or other interest in real property located at 774 Piedmont Avenue NE, Unit Number 6, Atlanta, Georgia 30308. On November 27, 2001, Plaintiff had executed a promissory note in the amount of \$311,200 in favor of Unity Mortgage Corporation. Unity Mortgage Corporation then assigned the security deed to HSBC. In the Complaint, Plaintiff claims that the assignment was invalid and seeks a declaration as to the validity of HSBC's interest in the property.

On June 25, 2012, Defendant filed the Motion. Defendant states that the Complaint should be dismissed for lack of subject matter jurisdiction. More specifically, Defendant states that the relief sought is not a core proceeding and does not relate to Plaintiff's pending bankruptcy case. On July 12, 2012, Plaintiff filed a Response to the Motion and, on July 26, 2012, Defendant filed a reply in further support of its Motion.

Having read and considered the submissions, the Court finds that dismissal is appropriate. The Court will grant the Motion for the reasons stated below.

¹Debtor sought to abandon property including: his residence; damages and potential claims related wrongful foreclosure, discrimination claims, and fraudulent loan claims; an anticipated declaratory judgment action regarding property interests and claims arising from and/or related to the Debtor's property interests including his residence; and other damages and claims. (Bankr. Doc. No. 68.)

I. Motion to Dismiss Standard

Federal Rule of Civil Procedure 12(b), made applicable by Federal Rule of Bankruptcy Procedure 7012(b), governs motions to dismiss. Under Rule 12(b)(1), a defendant may move to dismiss a complaint for lack of subject-matter jurisdiction. When ruling on a motion to dismiss for lack of subject matter jurisdiction, “[a] court must accept the material factual allegations in the complaint as true, but need not draw inferences favorable to the plaintiff.” *Penthouse Media Grp. v. Guccione (In re Gen. Media, Inc.)*, 335 B.R. 66, 71-72 (Bankr. S.D.N.Y. 2005). The Court may consider “materials outside of the pleadings to resolve any jurisdictional disputes, but cannot rely on conclusory or hearsay evidence.” *Id.* at 72. The plaintiff has the burden of proving the Court’s subject matter jurisdiction by a preponderance of the evidence. *Id.*

II. Jurisdiction

Bankruptcy court jurisdiction is codified in 28 U.S.C. § 1334(b) and 28 U.S.C. § 157. Pursuant to 28 U.S.C. § 1334, “district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). The bankruptcy court’s jurisdiction is derivative of and dependent upon these bases. *Cont’l Nat’l Bank of Miami v. Sanchez (In re Toledo)*, 170 F.3d 1340, 1344 (11th Cir. 1999) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)). Thus, pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(b), this Court may exercise jurisdiction in three categories of civil proceedings: those that arise under title 11, those that arise in cases under title 11, and those that relate to cases under title 11. *Toledo*, 170 F.3d at 1344. The first category of cases, “arising under” proceedings, are matters invoking a substantive right created by the Bankruptcy Code. *Id.* at 1345. Such matters are considered core proceedings. *Id.* at 1348 (citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987)). The second category, “arising in a case under title 11”, is thought to involve administrative-type matters or matters that could arise only in bankruptcy, such as filing a proof of claim or an objection to the discharge of a particular debt. *See id.*; *see also* 28 U.S.C. § 157(b)(2).

These matters also constitute core proceedings. Alternatively, “[i]f the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding.” *Toledo*, 170 F.3d at 1348 (citing *Wood*, 825 F.2d at 97). A bankruptcy court may still have jurisdiction over a non-core matter if it is otherwise related to the bankruptcy proceeding. 28 U.S.C. § 157(c)(1).

Here, Plaintiff’s claims do not arise under the Bankruptcy Code or in a case under title 11. Plaintiff seeks declaratory relief to determine the validity or extent of Defendant’s lien or interest in property. This is not a cause of action created by the Bankruptcy Code and does not arise only in bankruptcy proceedings. Indeed, actions to determine the validity or extent of liens can and do exist outside the bankruptcy context. This is demonstrated by the fact that Plaintiff extensively cites Georgia law on conveyances in the Complaint. Accordingly, this matter does not fall within either of the first two categories under § 1334 and the Court lacks jurisdiction over Plaintiff’s claims if they are not “related to” his bankruptcy case.²

Matters relate to a case under title 11 “where resolution of the same could have a material effect on the administration of the case or claims against the bankruptcy estate, but such a claim could exist outside of bankruptcy.” *See Customized Distrib., LLC v. Coastal Bank & Trust (In re Lee’s Famous Recipes, Inc.)*, Adv. No. 11-5482, 2011 Bankr. LEXIS 5250, at *3 (Bankr. N.D. Ga. Dec. 12, 2011) (citing *Schroeder v. New Century Holdings, Inc. (In re New Century Holdings, Inc.)*,

²Though this proceeding does not invoke a substantive right created by bankruptcy law and could exist outside of bankruptcy, Plaintiff nevertheless claims that this case represents a core proceeding because, pursuant to 28 U.S.C. § 157(b)(2)(K), a core proceeding may be brought to determine the “validity, extent, or priority of liens.” However, this provision only encompasses proceedings to determine the validity, extent, or priority of liens on the estate’s or the debtor’s property. *Toledo*, 170 F.3d at 1348. Cases have held that, to fall within the court’s jurisdiction, a plaintiff’s claims must affect the estate, not just the debtor. *See e.g., Wood*, 825 F.2d at 94. Indeed, “[t]o the extent that the literal wording of some of the types of proceedings [listed in § 157(b)] might conceivably seem to apply, it should be remembered that engrafted upon all of them is the overarching requirement that property of the estate under § 541 be involved.” *Toldeo*, 170 F.3d at 1348. Here, the property in question has been abandoned and is no longer part of the estate. Any resolution regarding the validity, priority, and extent of liens on the abandoned property will only affect the debtor; it will have no effect on the bankruptcy estate. It is thus evident that this action is not a core proceeding under 28 U.S.C. § 157(b).

387 B.R. 95, 104 (Bankr. D. Del. 2008)). In *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984), the Third Circuit Court of Appeals announced a test for determining if “related to” jurisdiction exists. The court explained that a civil proceeding is related to a bankruptcy case if “the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.” *Id.* at 994. The Eleventh Circuit has adopted the *Pacor* test with little or no variation. *Celotex*, 514 U.S. at 308; *see e.g., Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990); *see also Toledo*, 170 F.3d at 1345 (calling *Lemco Gypsum* “the seminal case in this Circuit on the scope of the bankruptcy court’s ‘related to’ jurisdiction.”).³ Under this test, a proceeding does not necessarily need to “be against the debtor or the debtor’s property.” *Pacor*, 743 F.2d at 994. It is enough “if the outcome could alter the debtor’s rights, liabilities, options or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” *Id.*

However, “related to” jurisdiction is not boundless. “Bankruptcy jurisdiction is designed to provide a single forum for dealing with all claims to the bankrupt’s assets, but it cannot be extended beyond its purpose.” *Lemco Gypsum*, 910 F.2d at 789. As explained by one court, “[r]elated to” jurisdiction is not so broad as to encompass litigation of claims arising under state law or non-bankruptcy Federal law that will not have an effect on the bankruptcy estate, simply because one of the litigants filed a petition in bankruptcy.” *Harlan v. Rosenberg & Assocs., LLC (In re Harlan)*, 402 B.R. 703, 711 (Bankr. W.D. Va. 2009) (citations omitted). A case that has common issues of fact with a bankruptcy case does not automatically establish related to jurisdiction; the resolution must also affect the bankruptcy estate. *See HOC, Inc. v. McAllister (In re McAllister)*, 216 B.R. 957, 966 (Bankr. N.D. Ala. 1998) (“Overlap between the bankrupt’s affairs and another dispute is insufficient unless its resolution also affects the bankrupt’s estate.”). Thus, “bankruptcy courts have no

³ Plaintiff contends that “*Pacor*’s definition of a related-to case should [. . .] be considered suspect[.]” (Pl.’s Resp. to Def.’s Mot. Dismiss. 11.) The Court finds no reason to question the applicability of *Pacor* or the Eleventh Circuit opinions interpreting and applying it.

jurisdiction over proceedings that have no effect on the estate of the debtor.” *Celotex*, 514 U.S. at 308.

III. Analysis

This adversary proceeding does not relate to Debtor’s bankruptcy case because the property at issue has been abandoned and is no longer part of the bankruptcy estate. Additionally, any issues relating to the extent and priority of the lien(s) at issue can be resolved in another forum.

Section 554 of the Bankruptcy Code provides that a trustee or a party in interest may request the court to order abandonment of particular property. 11 U.S.C. § 554. When property is abandoned, it ceases to be property of the estate and reverts back to the debtor as if no bankruptcy petition had been filed. *See Dewsnup v. Timm (In re Dewsnup)*, 908 F.2d 588, 590 (10th Cir. 1990) (citing *Brown v. O’Keefe*, 300 U.S. 598, 602 (1937)), *aff’d* 502 U.S. 410 (1992). Further, once property leaves the estate, a bankruptcy court loses jurisdiction to determine disputes concerning that property, unless the result of the dispute could have some effect on the bankruptcy case. *See* 4 COLLIER ON BANKRUPTCY ¶ 554.02[3] (15th ed. rev. 2003); *see also In re Fedpak Sys., Inc.*, 80 F.3d 207, 214 (7th Cir. 1996) (“[A] bankruptcy court has jurisdiction over property owned by or in the actual or constructive possession of the debtor . . . [but] jurisdiction lapses when property leaves the estate”); *Reed v. Phila. Housing Auth. (In re Reed)*, 94 B.R. 48, 52 (E.D. Pa. 1988) (“Upon abandonment, the jurisdiction of this court over the property ends.”). Therefore, abandonment of property will usually end the court’s jurisdiction to determine disputes concerning that property. 4 COLLIER ON BANKRUPTCY ¶ 554.02 (citing *Elscint, Inc. v. First Wis. Fin. Corp. (In re Xonics, Inc.)*, 813 F.2d 127, 131 (7th Cir. 1987)).

In *Xonics*, 813 F.2d 127, the Seventh Circuit Court of Appeals found that once property of the estate is abandoned, and the abandonment is final, there is no reason for the bankruptcy court’s jurisdiction to linger. *Id.* at 132. The district court explained that bankruptcy courts are courts of

limited jurisdiction. “That the property at issue may at one time have been a part of the debtor’s estate does not give the bankruptcy court, a court of extremely limited jurisdiction, the power to resolve disputes concerning the property after the debtor has disclaimed any interest in the property.” *Id.* at 129; *see also Greenberg v. Greenberg (In re Greenberg)*, Adv. No. 02-4095, 2005 Bankr. LEXIS 3499, at *10-11 (Bankr. S.D. Ga. Apr. 4, 2005) (finding that where recovery would not inure to the benefit of the estate, the bankruptcy court did not retain jurisdiction over the debtor’s claims). The Seventh Circuit observed that if jurisdiction did not lapse when property left the estate, “anyone who could trace his title to a bankrupt could invoke federal jurisdiction to settle disputes affecting that property.” *Xonics*, 813 F.2d at 131. The court noted that if a party wants a bankruptcy court to resolve an issue, the party should object to the proposed abandonment. *Id.* at 132.

Additionally, issues relating to the abandoned property can be resolved in another forum. As explained by the court in *Xonics*, once property is abandoned, state courts may resolve competing claims to the abandoned property. *Xonics*, 813 F.2d at 132 (explaining that “[s]ometimes the practical effect of abandonment is to fold up the bankruptcy case, to remit claimants to the ‘abandoned’ assets to whatever remedies they have at state law.”). For example, in *Newkirk v. Wasden (In re Bray)*, 288 B.R. 305 (Bankr. S.D. Ga. 2001), the chapter 7 trustee abandoned certain artistic property in part because there was a underlying dispute over who owned the materials. A rap music artist then filed a complaint against the trustee and the debtors asserting ownership rights in the materials. *Id.* at 306. The bankruptcy court found that because the dispute centered around the ownership of the materials that were already abandoned, and thus removed from the bankruptcy estate, resolution would not affect the administration of the bankruptcy case. *Id.* at 308. The court further noted that the plaintiff could pursue a determination of his property interests in another court that had jurisdiction. *Id.*

This adversary proceeding does not relate to Debtor’s bankruptcy case because the property at issue has been abandoned. Plaintiff claims that the assignments were invalid and seeks a

declaration as to the validity of HSBC's interest in the property. Yet, it was the Debtor who filed the motion to compel abandonment of property. Because the dispute regards property that has been abandoned, and thus removed from the bankruptcy estate, resolution would not affect the administration of the bankruptcy case. There is simply no nexus between this adversary proceeding and the Debtor's related bankruptcy case. Additionally, any issues relating to the extent and priority of the lien(s) at issue can be resolved in another forum. As in *Bray*, the Debtor can pursue a determination of his property interests in a court with jurisdiction. For these reasons, the Court finds that this adversary proceeding does not relate to Debtor's bankruptcy case.

IV. Conclusion

The Court finds that this adversary proceeding does not relate to Debtor's bankruptcy case and, accordingly, dismissal is appropriate.

IT IS ORDERED that the Motion be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that above-styled adversary proceeding is **DISMISSED**.

The Clerk's Office is directed to serve a copy of this Order upon the Plaintiff, Plaintiff's counsel, Defendant, Defendant's counsel, and the Chapter 7 Trustee.

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