

IT IS ORDERED as set forth below:



Date: December 18, 2013

**W. Homer Drake**  
**U.S. Bankruptcy Court Judge**

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
VICTORIA BROWN,	:	BANKRUPTCY CASE
	:	NO. 13-12256-WHD
Debtor.	:	
_____	:	
	:	
VICTORIA BROWN,	:	ADVERSARY PROCEEDING
	:	NO. 13-1055
Plaintiff,	:	
	:	
v.	:	
	:	
STEEL CAPITAL, LLC,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Judgment on the Pleadings<sup>1</sup> requesting the

<sup>1</sup> The Court notes in passing that the *pro se* Plaintiff filed a Motion to Strike Defendant's motion under Federal Rule of Evidence 602. This motion is irrelevant, as it is clear that the attorney for the Defendant filed a pleading and is not testifying as a witness

dismissal of the complaint of Victoria Brown (hereinafter the "Plaintiff"), filed by Steel Capital, LLC<sup>2</sup> (hereinafter the "Defendant"). The primary claims in this proceeding are arguably non-core proceedings, and Defendant has not consented to the entry of a final order on these matters by this Court. Consequently, with regard to any non-core claims, the Court submits its proposed findings of fact and proposed conclusions of law to the District Court, as required by 28 U.S.C § 157(c)(1). With regard to any core claims, the Court finds that these claims should be dismissed.

#### **PROCEDURAL HISTORY AND PROPOSED FINDINGS OF FACT**

On June 6, 2005, Plaintiff granted to First Franklin, a Division of National City Bank of Indiana, (hereinafter "First Franklin") a mortgage on property known as 506 Kaye Lani Ave., Monroe, MI 48161 (hereinafter the "Property").<sup>3</sup> In connection with the mortgage,

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in this proceeding. Thus, the Court declines to give her motion any credence in this opinion.

<sup>2</sup> There is an inconsequential dispute on the appropriate title for the Defendant. Plaintiff asserts that the Defendant is "Steel Capital Steel, LLC." Defendant clarifies that it is only "Steel Capital, LLC." At this time, the Court sees no reason to resolve the discrepancy, and for purposes of this Order, the Court will address the Defendant as Steel Capital, LLC.

<sup>3</sup> Ordinarily, as this matter is pending on a motion for judgment on the pleadings, seeking dismissal of the Plaintiff's complaint, the Court would accept, for purposes of this motion only, the facts as stated in the complaint; however, because the Plaintiff's complaint displays a plethora of legal conclusions, but a dearth of facts, the Court finds it necessary to supplement the record by accepting certain uncontroverted facts, as set forth by the Defendant, and by judicially noticing real-estate documents related to the Property, which have been filed in the Plaintiff's main bankruptcy case.

Plaintiff borrowed \$111,100 from First Franklin to purchase the Property and executed an adjustable rate note (hereinafter the "Note") in favor of First Franklin. Plaintiff's first payment was due August 1, 2005 in an initial amount of \$748.50, which consisted of amounts for principal and interest.

At some point, Steel Capital, LLC allegedly became the holder of the Note and mortgage. More importantly, the Debtor defaulted under the Note's terms,<sup>4</sup> and on December 29, 2011, Steel Capital, LLC foreclosed on the real property pre-petition. Upon foreclosure, the Property was sold back to the Defendant for the sum of \$40,000, as evidenced by a foreclosure deed recorded in the Monroe County real-estate records on January 6, 2012. The relevant redemption period expired on June 29, 2012, and the title completely vested in the Defendant at that time. See MICH. COMP. LAWS ANN. 600.3240 (West 2011); see e.g. Harmonie Club Enter. v. TCF Na. Bank, 2007 WL 1553597, \*7 (Mich. App. 2007).

The Plaintiff filed a voluntary petition under Chapter 7 of the Bankruptcy Code on September 6, 2013, effectively staying eviction proceedings pending against her. On September 13, 2013, the Defendant filed a motion for relief from the automatic stay in the Plaintiff's main bankruptcy case, seeking relief from the stay to pursue state remedies, *inter alia*, dispossession. A hearing was held on September 27, 2013. Based on the existence of the pre-petition foreclosure and the Chapter 7 Trustee's indication of no interest in the

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<sup>4</sup> According to the Defendant's September 13, 2013 Motion for Relief from Stay, the Plaintiff allegedly missed a total of 46 mortgage payments under the terms of the Note.

Property, the Court held that the Property was not property of the estate and lifted the automatic stay with respect to the Property. An Order to that effect was entered on October 7, 2013.<sup>5</sup>

Plaintiff filed the instant complaint on October 4, 2013 pursuant to Rule 7001(2).<sup>6</sup> The foundational legal theory underpinning the Plaintiff's complaint is that the Defendant was not a secured creditor with respect to the Property because the security interest in the Property was never properly transferred to the Defendant. Accordingly, the complaint requests the following relief: (1) declaratory relief seeking to have the Plaintiff named the rightful holder of title to the Property; (2) specific performance compelling the Defendant to transfer legal title and possession of the Property to the Plaintiff; (3) other injunctive relief forever enjoining Defendant from asserting a claim of title to the property;<sup>7</sup> (4) costs associated with litigating this action; and (5) alternatively, monetary damages.<sup>8</sup>

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<sup>5</sup> Plaintiff filed a notice of appeal with the District Court on October 11, 2013, requesting that the District Court review and overturn the Court's Order granting the relief from stay under essentially the same legal theories set forth in this adversary proceeding.

<sup>6</sup> Section 7001(2) provides that a proceeding to determine the validity, priority, or extent of a lien or other interest in property is an adversary proceeding governed by Part VII of the Federal Rules of Bankruptcy Procedure.

<sup>7</sup> To the extent that counts (1)-(3) can be construed as a proceeding to determine the validity, extent, or priority of a lien, these counts are a core proceeding, see 28 U.S.C. § 157(b)(2)(K), and the Court may dismiss them without submitting the matter to the District Court. However, as the counts can be construed as a wrongful foreclosure claim, and out of an abundance of caution, the Court submits its recommendation that this matter be dismissed for lack of subject matter jurisdiction.

<sup>8</sup> The Court concludes that counts (4) and (5) are non-core proceedings.

Defendant filed an answer to the instant complaint on November 4, 2013. In Defendant's answer, Defendant asserted affirmative defenses, including but not limited to: (1) failure to state a claim upon which relief may be granted; (2) lack of subject matter jurisdiction; (3) the non-core nature of the claims; (4) estoppel, laches, waiver, ratification, and/or acquiescence; (5) statute of limitations; (6) res judicata; and (7) collateral and judicial estoppel. The Defendant subsequently filed, on November 4, 2013, the instant motion for judgment on the pleadings, seeking to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim.

#### **PROPOSED CONCLUSIONS OF LAW**

The Court is required to examine its subject matter jurisdiction at the earliest opportunity, "even if doing so raises the issue *sua sponte*." In re Walker, 515 F.3d 1204, 1210 (11th Cir. 2008). The Court may consider "materials outside of the pleadings to resolve any jurisdictional disputes, but cannot rely on conclusory or hearsay evidence." In re General Media, Inc., 335 B.R. 66, 72 (Bankr. S.D.N.Y. 2005). The Plaintiff has the burden of proving the Court's subject matter jurisdiction by a preponderance of the evidence. See id. (citing Lockett v. Bure, 290 F.3d 493, 497 (2d Cir. 2002)).

Pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a), 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 'related to cases under title 11.'" In re Happy

Hocker Pawn Shop, Inc., 212 Fed. Appx. 811, 816 (11th Cir. 2006). "Arising under" and "arising in," when linked with a "core proceeding," authorize the Court to exercise its full judicial power. See 28 U.S.C. § 157(b)(1); In re EL, 2013 WL 2338742, \*2 (Bankr. N.D.Ga. 2013) (Diehl, B.J.). A proceeding "arising under" title 11 involves a substantive right created by the Bankruptcy Code. In re Toledo, 170 F.3d 1340, 1344-45 (11th Cir. 1999). A proceeding "arising in" a case under title 11 is typically limited to "administrative matters" or "matters that could arise only in bankruptcy." Id. None of the counts pled by the Plaintiff are matters that arise under the Bankruptcy Code or arise in cases under the Bankruptcy Code. They are not causes of action substantively created by the Bankruptcy Code, and they exist outside of the bankruptcy context.

Accordingly, this Court lacks jurisdiction over the Plaintiff's claims if they are not "related to" the Plaintiff's bankruptcy case.

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is 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. An action is related to bankruptcy 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.

In re Lemco Gypsum, Inc., 910 F.2d 784, 788 (11th Cir. 1990) (quoting Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984)). "'Related 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.” In re Harlan, 402 B.R. 703, 711 (Bankr. W.D. Va. 2009) (quoting Gates v. Didonato (In re Gates), 2004 WL 3237345, \*2 (Bankr. E.D. Va. 2004)). Having considered the facts as stated in the complaint, the relief sought in the complaint, and the facts concerning the Plaintiff's bankruptcy case, of which this Court takes judicial notice, the Court is persuaded that the counts contained in the Plaintiff's complaint are not "related to" the bankruptcy case.

"For subject matter jurisdiction to exist with respect to 'related to' proceedings, some nexus must exist between the title 11 case and the related civil proceeding so that the proceeding 'could *conceivably* have an effect on the estate being administered in bankruptcy.” In re Faloye, 459 B.R. 865, 868 (Bankr. N.D.Ga. 2011) (Bihary, B.J.) (emphasis added). With regard to the Plaintiff's requested relief, the claims boil down to a determination of whether the Defendant wrongfully foreclosed on the Property and whether the purchase at foreclosure by the Defendant was or should be invalidated. However, here, there is no nexus between the adversary proceeding and the administration of the estate. The Plaintiff's bankruptcy case is a liquidation case, rather than a reorganization case. The Chapter 7 Trustee indicated on the record that he believes there is no interest in the Property for him to pursue on the estate's behalf and has filed a report that appears to abandon the Property.<sup>9</sup> As such, the Trustee clearly has no interest in the Property. Once property is

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<sup>9</sup> On November 25, 2013, the Chapter 7 Trustee filed his Report of No Distribution. In the report, the Trustee abandons \$107,025 worth of property, which matches the values that the Plaintiff designated to the entirety of her property, both real and personal.

abandoned, it is no longer property of the estate. See 5 Collier on Bankruptcy ¶ 554.02[3] (Alan R. Resnick & Henry J. Sommers eds., 16th ed.) ("[A]bandonment constitutes a divestiture of all of the estate's interest in the property. Property abandoned under section 554 reverts to the debtor, and the debtor's rights to the property are treated as if no bankruptcy petition was filed."). The injunctive and declaratory relief requested by Plaintiff can in no way impact property of the estate, the estate's liabilities, the Plaintiff's personal liability (which is subject to discharge), or whether any funds will be paid to creditors. Accordingly, because the Property at issue here is not part of the bankruptcy estate, resolution of the Plaintiff's claims can have no conceivable effect on the administration of the bankruptcy estate. See e.g. In re Faloye, 459 B.R. 865, 868 (Bankr. N.D.Ga. 2011) (Bihary, B.J.).

Likewise, the derivative claims for costs and damages should also have no effect upon the administration of the estate.<sup>10</sup> Therefore, the Court finds that the Plaintiff has failed to carry her burden that this Court has subject matter jurisdiction. This dispute between the Plaintiff and Defendant is more appropriately resolved in the state courts.

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<sup>10</sup> The Court feels obliged to mention that the Plaintiff likely lacks standing to pursue a count for damages. According to the Court's understanding of the facts, any claim for damages would necessarily have arisen from actions taken prepetition. Any claims that develop prepetition become property of the bankruptcy estate, unless abandoned by the trustee or exempted by the debtor. See 11 U.S.C. § 541(a); Griffin v. Bayview Loan Serv., 2011 WL 1789973, \*5 (Bankr. N.D.Ga. 2011) (Drake, B.J.). However, as the Plaintiff failed to schedule said claims as property of the estate, the Trustee has not and could not abandon such property. See e.g. Griffin, 2011 WL at \*5. Therefore, any claim for damages remains property of the bankruptcy estate, causing the Chapter 7 Trustee to be the real party in interest and the only party with current standing to pursue such claims. See e.g. id.; see also 11 U.S.C. § 323 (reciting that the trustee is the representative of the estate with the capacity to sue and be sued.).



Accordingly, to the extent that the matter before it consists of core claims, the Court concludes that it lacks subject matter jurisdiction to adjudicate them and, therefore, will dismiss the complaint. To the extent that this matter is constructed of non-core claims, within the meaning of 28 U.S.C. § 157(b), this Court submits its proposed findings of fact and conclusions of law to the District Court and recommends that these claims be dismissed for lack of subject matter jurisdiction.<sup>11</sup>

### CONCLUSION

The Court has considered the record in this case, as appropriate in connection with the determination of jurisdictional issues and the Defendant's Motion for Judgment on the Pleadings, seeking dismissal of the adversary proceeding. Based thereon, the Court submits the above-stated proposed findings of fact and conclusions of law for the District Court's consideration and *de novo* review in accordance with 28 U.S.C. § 157(c)(1) and Federal Rule of Bankruptcy Procedure 9033. It is the recommendation of this Court that Defendant's motion be granted and the claims identified above as non-core claims be dismissed for lack of subject matter jurisdiction. Pursuant to Rule 9033, the Clerk of this Court is DIRECTED to serve a copy of this Order on all parties by mail and note the date of the mailing on the docket.

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<sup>11</sup> Believing this matter resolvable on the basis of subject matter jurisdiction, the Court makes no findings or conclusions as to the sufficiency of Plaintiff's pleadings in accordance with Rule 12(b)(6), incorporated into bankruptcy proceedings through Bankruptcy Rule 7012. See FED. R. CIV. P. 12(b)(6); FED. R. BANKR. P. 7012.

IT IS ORDERED that to the extent that Plaintiff's complaint is a request to determine the validity, extent, or priority of a lien, which the Court has identified as a core proceeding, it is hereby **DISMISSED** for lack of subject matter jurisdiction.

**END OF DOCUMENT**