IT IS ORDERED as set forth below:

Date: June 3, 2014

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CASE NO. 12-73864-WLH
WALTER IDUS GEER, III,	)	CHAPTER 7
Debtor.	)	JUDGE WENDY L. HAGENAU
PHILIP MOYER,	)	
Plaintiff,	)	
v.	)	ADVERSARY NO. 13-5155
WALTER IDUS GEER, III,	)	
Defendant.	)	

ORDER ON SUBJECT MATTER JURISDICTION OVER COUNT II AND NOTICE OF BIFURCATION OF COUNTS I AND II

Philip Moyer, ("Plaintiff") filed this adversary proceeding against Walter Idus Geer, III, ("Defendant" or "Debtor") objecting to the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and (a)(2)(B), (a)(4)(A) and (a)(4)(D) (Count I) and seeking an award of damages

for amounts allegedly owed by Debtor to the Plaintiff under a guaranty (Count II). The Debtor contends this Court lacks subject matter jurisdiction to enter a money judgment in favor of the Plaintiff on Count II.

Upon consideration of the briefs on this issue and the pleadings, the Court concludes it does not have subject matter jurisdiction to enter a money judgment on Count II. Alternatively, if the Court has "related to" jurisdiction over Count II, severance of Counts I and II for trial is appropriate.

I. Background

Debtor and Plaintiff were co-obligors on a bank loan. When the loan went into default, Plaintiff "bought" the loan from the lender and filed suit against the Debtor. In a case styled Moyer v. Geer, Case No. 12-cv-02102-SCJ (N.D. Ga. 2012) ("District Court Action"), Plaintiff sought an award of $1,303,715.00, plus interest, for amounts owed under the loan documents. The Debtor did not file an answer in the District Court Action, and the Clerk of Court entered a default on September 19, 2012. Plaintiff moved for entry of a default judgment, but Debtor filed bankruptcy on September 25, 2012, before the District Court entered an order on the Plaintiff's motion for default judgment. The District Court Action is currently stayed by an order entered January 25, 2013.

Plaintiff argues *inter alia* that the Debtor should be denied a discharge because he fraudulently transferred real property and income to insiders or entities controlled by the Debtor, and the Debtor knowingly failed to disclose assets, business interests, and pre-petition transfers. Plaintiff argues that this Court has "related to" subject matter jurisdiction over Count II because the adjudication of the underlying debt is related to the administration of the case and such a determination is "critical" to the claims under Section 727(a)(2) (transferring or concealing property) and (a)(4)(D) (knowingly making false oaths or accounts). Plaintiff contends that

fixing the underlying claim is relevant to the Debtor's insolvency and may provide evidence of the Debtor's "rationale" for concealing property and making false oaths. Defendant argues this Court is without subject matter jurisdiction as to Count II because a finding on the underlying debt would not impact the administration of the bankruptcy case and is not necessary to a resolution of the discharge objection.

II. Subject Matter Jurisdiction

District courts, under 28 U.S.C. § 1334(a) have original and exclusive jurisdiction of all cases under Title 11. They also 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 district court may refer any of the matters over which the district court does not have exclusive jurisdiction to the bankruptcy court, and the District Court for the Northern District of Georgia has referred all such matters to the Bankruptcy Court. L.R. 83.7A N.D. Ga. While the Court agrees with the parties that the Court has jurisdiction over Count I because it arises under Title 11, the question is whether Count II is related to the bankruptcy case, since it does not arise under Title 11 or in a case under Title 11.

"Related to" jurisdiction "is the minimum for bankruptcy jurisdiction." Ger. Am. Capital Corp. v. Osley Dev. Co., LLC (In re Oxley Dev. Co., LLC), 493 B.R. 275, 283 (Bankr. N.D. Ga. 2013). Related to jurisdiction is broad, but not limitless. "For subject matter jurisdiction to exist there must be some nexus between the related civil proceeding and the title 11 case." Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.), 910 F.2d 784, 787 (11th Cir. 1990). The relevant test for related to jurisdiction is that set forth by the Third Circuit in Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984), adopted by the Eleventh Circuit in In re Lemco Gypsum, Inc.:

> 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 against 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.

Lemco, 910 F.2d at 788.

Plaintiff argues that liquidation of the state law claim is related to the administration of the case because a finding the Debtor was liable to Plaintiff would show the Debtor was insolvent at the operative time for determining a right to discharge. Insolvency, according to the Plaintiff, is integral to the Count I claims under Section 727(a)(2)(A) (transferring or concealing property) and 727(a)(4) (making false oaths or accounts).

Insolvency, though, is not an element of proof in any of Plaintiff's Count I claims under Section 727. Section 727(a)(2)(A) and (a)(2)(B) provide in pertinent part:

> The court shall grant the debtor a discharge, unless . . . the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the debtor, within one year before the date of the filing of the petition; or property of the estate, after the date of the filing of the petition.

11 U.S.C. § 727(a)(2)(A) and (a)(2)(B). Debtor has stipulated that he was insolvent at all times during the year prior to the petition, which is the relevant time period under Section 727(a)(2)(A). To the extent insolvency may serve as an indicia of subjective intent to defraud, fixing a claim is not necessary to determine insolvency. See Watts .v MTC Development, LLC, (In re Palisades at W. Paces Imaging Ctr., LLC), 501 B.R. 896, 910–11 (Bankr. N.D. Ga. 2013) (contingent claims are liabilities for purposes of determining solvency).

Moreover, the amount of Plaintiff's claim is not relevant in a Section 727 action.[1] In the context of Section 727, "a private creditor assumes something of the role of a trustee." Austin Farm Ctr., Inc. v. Harrison (In re Harrison), 71 B.R. 457, 459 (Bankr. D. Minn. 1987). The amount owed to an individual creditor will typically be of no consequence. See Lisa Ng & Charming Trading Co. v. Adler (In re Adler), 494 B.R. 43, 56 (Bankr. E.D. N.Y. 2013); Comerica Bank v. Bressler (In re Bressler), 321 B.R. 412, 420, n.23 (Bankr. E.D. Mich. 2005); see also Milam v. Wilson (In re Wilson), 33 B.R. 689, 691 (Bankr. M.D. Ga. 1983). This is different from an objection to dischargeability of a particular debt under 11 U.S.C. § 523. There, one element of the plaintiff's prima facie case is proving the existence of a debt, Pioneer Credit Co. v. Detamore (In re Detamore), 2005 WL 6486098, at *3 (Bankr. N.D. Ga. Sept. 27, 2005) because a court must make a determination of what specific debt is or is not dischargeable. Id. Thus, bankruptcy courts have determined they have subject matter jurisdiction to liquidate underlying claims when making a ruling on a Section 523 claim. See id.

Further, the two Counts "are not inextricably intertwined". See Cambio v. Mattera (In re Cambio), 353 B.R. 30, 34 (B.A.P. 1st Cir. 2004). There is no factual relationship between whether Debtor is liable on the loan and whether Debtor made false oaths on his bankruptcy schedules or transferred property. Finally, this Court has no other basis of jurisdiction to decide the state law claims presented in Count II because the only jurisdiction for this suit is diversity of the parties. 28 U.S.C. § 1332. Bankruptcy courts are "not granted jurisdiction to consider

[1] Plaintiff's reliance on Rayonier Wood Products, L.L.C., v. Scanware, Inc. (In re Scanware, Inc.), 411 B.R. 889, 891 (Bankr. S.D. Ga. 2009) aff'd sub nom. Rayonier Wood Products, L.L.C. v. ScanWare, Inc., 420 B.R. 915 (S.D. Ga. 2009) is misplaced. The Scanware case does stand for the proposition that "related to" subject matter jurisdiction may exist over a pre-petition state law claim. Id. at 894–95. However, the facts of Scanware differed significantly from the facts of the current case. Scanware involved a Chapter 11 case and the plaintiff/creditor was apparently the debtor's largest unsecured creditor. Id. at 893. Even in the context of the Chapter 11 case, the Scanware court ultimately decided to abstain and noted that the considerations for retention of the pre-petition claim by the bankruptcy court were "tenuous" and "few". Id. at 899.

matters as to which the authority of federal courts is grounded in diversity jurisdiction." Estate of Fisher v. JPMorgan Chase Bank, N.A. (In re Fort Worth Osteopathic Hosp., Inc.), 406 B.R. 741, 748 (Bankr. N.D. Tex. 2009). Absent some other basis for the bankruptcy court to exercise jurisdiction, a district court "has no power … to refer to the bankruptcy courts matters as to which jurisdiction exists by reason of diversity of citizenship." Id.

The Court concludes Count II is not "related to" the bankruptcy case and the bankruptcy court has no subject matter jurisdiction to hear it.

III. Severance as to Counts I and II

Even if the Bankruptcy Court had subject matter jurisdiction over Count II, trying Count II before this Court is not a good use of judicial time. If Plaintiff does not prevail on Count I, the Debtor will be fully discharged and the amount owed on Count II is irrelevant. If Plaintiff prevails on the objection to discharge, the District Court has already entered a default against Debtor and a motion for default judgment is pending. The Bankruptcy Court could do no more than enter proposed findings of fact and conclusions of law in this non-core matter, and the District Court would enter the final judgment in any event. 11 U.S.C. § 157(c)(1).

Trial courts have an "unquestionable authority to control their own dockets," including "broad discretion in deciding how best to manage the cases before them." Barber v. Am.'s Wholesale Lender, 289 F.R.D. 364, 366 (M.D. Fla. 2013) (citations omitted). This discretion "should be exercised 'so as to achieve the orderly and expeditious disposition of cases.'" Id. (citation omitted). Moreover, under Fed. R. Civ. P. 42(b), made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7042, a trial court is "empowered to isolate and try any issue in a case." O'Donnell v. Watson Bros. Transp. Co., 183 F. Supp. 577, 587 (N.D. Ill. 1960) (citation omitted). Although the exception and not the general rule, a decision to bifurcate is within the discretion of the trial court, and the court may do so on motion or *sua sponte*. Saxion

v. Titan-C-Mfg., Inc., 86 F.3d 553, 556 (6th Cir. 1996); see also Travelers Indem. Co. of Illinois v. Hardwicke, 339 F. Supp. 2d 1127, 1134 (D. Colo. 2004).

"Bifurcation is particularly appropriate when resolution of a single claim or issue could be dispositive of the entire case." Evantson Ins. Co. v. Robb Techs., LLC, 2006 WL 1891134 (D. Nev. July 10, 2006). Bifurcation of issues is permitted to promote "convenience, to avoid prejudice, or to expedite and economize." Fed. R. Civ. P. 42(b). "Only one of these criteria need be met to justify bifurcation." Saxion, 86 F.3d at 556. In this adversary, bifurcation is appropriate because "separation is in the interest of judicial economy, [and] will further the parties' convenience". Evantson Ins. Co, 2006 WL 1891134, at *3.

Should this Court find that the Debtor is entitled to a discharge both parties will be spared the expense of litigating the underlying liability on the guaranty, which would promote convenience and economy. See Wolkowitz v. Beverly (In re Beverly), 374 B.R. 221, 230 (B.A.P. 9th Cir. 2007) aff'd in part, dismissed in part, 551 F.3d 1092 (9th Cir. 2008) (noting the bankruptcy court bifurcated and stayed the 11 U.S.C. § 523 objections to dischargeability pending the resolution of the Section 727 claims). If Plaintiff prevails on the objection to discharge, the Court will lift the automatic stay to permit the District Court Action to proceed to conclusion.

IV. Conclusion

The Court concludes that subject matter jurisdiction is lacking as to Count II. In the event there is "related to" jurisdiction as to Count II, the Count I objection to discharge under Section 727, is bifurcated from the issue of liability on the guaranty and only Count I will proceed to trial in this Court

END OF ORDER

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