

IT IS ORDERED as set forth below:

Date: June 16, 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. 13-75554-WLH
)	
GREGORY B. BRYANT,)	CHPATER 13
)	
Debtor.)	JUDGE WENDY L. HAGENAU
_____)	
)	
GREGORY B. BRYANT,)	
)	
Plaintiff,)	
)	
v.)	ADV. PROC. NO. 14-5049
)	
PETER G. ARCHIBALD, BARBARA F.)	
ARCHIBALD, HYO EUN PARK,)	
KYONG K. PARK, and TREASURE)	
VILLAGE d/b/a Treasure Village,)	
)	
Defendants.)	
_____)	

**ORDER ON MOTION OF DEFEDANTS' PARK AND TREASURE VILLAGE
TO DISMISS PLAINTIFF'S COMPLAINT**

Debtor filed the complaint in this adversary proceeding on February 20, 2014, seeking a declaratory judgment that (i) a certain lease agreement was incorporated into a consent order of

the Superior Court of DeKalb County; (ii) a certain stock purchase agreement had been satisfied such that the Debtor is the owner of 100% of the shares of Rooster's; (iii) a judgment entered by the State Court of Georgia is void; and (iv) Debtor's eviction from certain premises was wrongful. As discussed below, the Court grants the Motion to Dismiss for lack of subject matter jurisdiction as to the Debtor's request to declare the State Court judgment void and the eviction wrongful and abstains from determining the remaining state law causes of action in this case. This ruling applies to all Defendants.

FACTS

Debtor filed a Chapter 13 bankruptcy case on November 25, 2013, and then filed this adversary proceeding on February 20, 2014. The adversary proceeding arises out of the Debtor's dealings with the Defendants. The Debtor alleges that Defendants Archibald were the prior owners/proprietors of an entity known as Rooster's, which operated an adult nightclub in DeKalb County, Georgia. Defendant Treasure Village, Inc., allegedly owned by Defendants Park, was the landlord for the premises of Rooster's. In 2003, the Archibalds filed a Chapter 13 bankruptcy case in the Southern District of Georgia. Their conduct in that Chapter 13 case led to a two-count federal indictment for concealment of assets and making a false oath. Mr. Archibald was convicted and sentenced.

In 2007, the Archibalds, along with operators of other adult nightclubs, entered into a settlement and release agreement with DeKalb County which permitted the named adult clubs to be granted certain non-conforming status as set out more fully in the consent order. In brief, it permitted the named adult clubs to continue operating the adult clubs and serve liquor, while such establishments were otherwise prohibited in DeKalb County. Also in 2007, Peter Archibald gave his power of attorney to his wife, Barbara Archibald.

The Debtor alleges that, on April 21, 2009, he obtained ownership of shares of Rooster's through a stock purchase agreement signed by Barbara Archibald on her own behalf and, pursuant to the power of attorney, for Peter Archibald. The Debtor alleges he began operating the adult club. On June 28, 2010, the IRS issued a notice and levy of unpaid taxes both for Rooster's and for Mr. Archibald. The Debtor was directed, pursuant to the letter, to make no further payments to or on behalf of Mr. Archibald, including any lease payments. When the Debtor failed to make the payments to the landlord, the landlord declared the lease in default and initiated a dispossessory proceeding against the Debtor. The state court ultimately issued a judgment in the amount of \$169,843.94 and a writ of *fi fa* was recorded on November 26, 2012. On October 9, 2012, Treasure Village obtained a judgment for possession of the premises. The Debtor's appeal was denied.

CONCLUSIONS OF LAW

Rooker-Feldman Doctrine

In the Complaint, the Debtor asks the Court to declare the judgment entered by the state court void and to find that the eviction of the Debtor from the premises was wrongful, entitling the Debtor to damages and injunctive relief. These two claims of the Debtor are barred by the Rooker Feldman Doctrine which deprives the District Court, and therefore this Court, of jurisdiction to consider the claims.

The Rooker Feldman Doctrine arises from two Supreme Court decisions, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In Rooker, the plaintiffs, who had lost a state court suit, filed suit in the district court alleging the state court judgment was unconstitutional and asking that it be declared null and void. The Supreme Court held that federal district courts are only empowered to exercise original jurisdiction, not appellate jurisdiction of state court decisions. Therefore, the

district court had no subject matter jurisdiction to consider a request to declare the state court judgment void. Similarly, in the Feldman case, the Supreme Court held that a district court lacked jurisdiction to review a final judicial determination of the District of Columbia high court because such review could only be obtained by the Supreme Court. In short, the Rooker Feldman Doctrine applies to “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments.” Exxon Mobile Corp. v. Saudi Basic Ind. Corp., 544 U.S. 280, 281 (2005). The Eleventh Circuit has applied this rationale in Green v. Jefferson County Commissioner, 563 F.3d 1243, 1249 (11th Cir. 2009) in holding, “the Rooker Feldman Doctrine recognizes that federal district courts do not have jurisdiction to act as appellate courts and precludes them from reviewing final state court decisions.”

The bankruptcy court exercises only the jurisdiction referred to it by the district court. 28 U.S.C. § 157(a). The Rooker Feldman Doctrine deprives the district court of jurisdiction to consider the Debtor’s request to declare void a final state court judgment both as to the amount owed or Treasure Village’s right to possession of the premises. As such, the bankruptcy court also lacks jurisdiction and the request in Debtor’s Complaint to declare the judgment void and to declare the dispossessory wrongful are dismissed.

Subject Matter Jurisdiction of State Law Claims

Debtor also asks the Court to make a declaration regarding whether the lease agreement among the Defendants was incorporated into the DeKalb County consent order authorizing certain adult clubs to operate and serve liquor and to declare that the stock purchase agreement among the defendants has been satisfied and that Debtor is the owner of 100% of the shares of Rooster’s. Bankruptcy courts are courts of limited jurisdiction. Galindo-Del Valle v. Attorney Gen., 213 F.3d 594, 598 n.2 (11th Cir. 2000). Bankruptcy courts have subject matter jurisdiction

over “civil proceedings arising under title 11, or arising in or related to cases under title 11.” See 28 U.S.C. § 1334(a)(b); see also L.R. 83.7A N.D. Ga. “Arising under” jurisdiction involves “a substantive right created by the Bankruptcy Code,” Cont’l Nat. Bank of Miami v. Sanchez (In re Toledo), 170 F.3d 1340, 1345 (11th Cir. 1999) (cites omitted), while “arising in” jurisdiction pertains to claims that are “not based on any right expressly created by title 11, but nevertheless could have no existence outside of bankruptcy.” Grausz v. Englander, 321 F.3d. 467, 471 (4th Cir. 2003). Typically, the facts giving rise to a claim “arising in” a bankruptcy case occur during the course of the bankruptcy case. See Mercer v. Allen, 2014 W.L. 185252 (M.D. Ga. Jan. 15, 2014); In re Taylor, 2006 W.L. 6591616 (Bankr. N.D. Ga. May 4, 2006). Lastly, “related to” jurisdiction applies to matters where the outcome “could alter the debtor’s rights, liabilities, options, or freedom of action” and would “impact[] upon the handling and administration of the bankrupt estate.” Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.), 910 F.2d 784, 788 (11th Cir. 1990).

The declarations which Debtor seeks do not arise under the Bankruptcy Code, nor do they arise in the bankruptcy case since all the actions occurred pre-petition. Moreover, the Court concludes that the matters which the Debtor asserts are not related to his Chapter 13 bankruptcy case. Certainly the issues raised by the Debtor are important to the Debtor and are related to the Debtor. If the Debtor is successful, the stock of Roosters would be property of the estate, and he could not dispose of it without Court authority. But none of the determinations need to be made in order to move forward with the Debtor’s Chapter 13 plan which is based on his current income. The outcome may be different in a Chapter 11 context where the operation of a business may be the central issue. The Court concludes it does not have related-to jurisdiction to determine whether the Roosters lease is incorporated in the consent order with DeKalb County or whether the stock purchase agreement among the Defendants has been satisfied.

Abstention

Finally, even if the Court has related-to jurisdiction, the Court exercise its right to abstain from determining the action under 28 U.S.C. § 1334(c). That section provides, “nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State Court, or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” “The court may abstain upon request of a party or *sua sponte*.” Carver v. Carver, 954 F.2d 1573, 1579 (11th Cir. 1992). The purpose of abstention is to “ensure that the jurisdiction of the bankruptcy court is exercised only when appropriate to the expeditious disposition of bankruptcy cases.” Graham v. Yoder Machinery Sales (In re Weldon F. Stump & Co.), 373 B.R. 823, 828 (Bankr. N.D. Ohio 2007) (citation omitted). As noted earlier, none of these issues preclude the Debtor from prosecuting his Chapter 13 case. Abstention is also warranted because the outcome of the remaining issues, (1) will have little effect “on the efficient administration of the bankruptcy estate if the discretionary abstention is exercised,” (2) “state law issues predominate over bankruptcy issues,” (3) there is a high degree of “remoteness ... to the main bankruptcy case,” (4) the state law claims can be easily severed from the “core bankruptcy matters”, and (5) adjudication of the matter requires “the presence in the proceeding of non-debtor parties.” Ret. Sys. of Alabama v. J.P. Morgan Chase & Co., 285 B.R. 519, 530–31 (M.D. Ala. 2002) (citation omitted) (discussing the non-exclusive factors courts consider when determining whether discretionary abstention is appropriate). Accordingly, to the extent there is “related to” jurisdiction, abstention is warranted.

Applicable to All Defendants

Although only Defendants Park and Treasure Village filed the Motion to Dismiss, this Order is applicable to all Defendants. Federal courts have an independent duty to inquire into subject matter jurisdiction, Galindo-DelValle, 213 F.3d at 598 n.2, so it is appropriate for the

Court to consider its jurisdiction with respect to the non-moving defendants. Moreover, a decision to abstain may be made by a court *sua sponte*. Carver, 954 F.2d at 1579.

Conclusion

The Court lacks subject matter jurisdiction over the Debtor's Complaint and to the extent it has related to jurisdiction over a portion, the Court abstains. The case is therefore DISMISSED, without prejudice.

END OF ORDER

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