



IT IS ORDERED as set forth below:

Date: February 11, 2016

A handwritten signature in black ink, appearing to read "Barbara Ellis-Monro".

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

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

IN RE:

RONALD EDWARD SCIORTINO,
Debtor.

RONALD EDWARD SCIORTINO,
Plaintiff,

v.
NEIL C. GORDON, CHAPTER 7 TRUSTEE;
CHARLOTTE NASH, CHAIRMAN OF THE
BOARD OF COMMISSIONERS;
JACE BROOKS, COMMISSIONER;
LYNETTE HOWARD, COMMISSIONER;
TOMMY HUNTER, COMMISSIONER;
JOHN HERD, COMMISSIONER;
RON SEIBENHENER, DIRECTOR
GWINNETT COUNTY DEPARTMENT OF
WATER RESOURCES;

CASE NO. 14-71765-BEM

CHAPTER 7

ADVERSARY PROCEEDING NO.
15-5356-BEM

ATTORNEY FORREST FIELDS;
ATTORNEY MURRAY J. WEED;
MARIA WOODS, CFO; GWINNETT
COUNTY DEPARTMENT OF WATER
RESOURCES; GWINNETT COUNTY; JOHN
DOE, JANE DOE, AKA YOU YOUR 1-
285,000; et. al.,

Defendants.

**ORDER DENYING REQUEST FOR EMERGENCY HEARING
AND REGARDING JURISDICTION**

Before the Court is the Amended Emergency Motion For Injunctive Relief, Motion For Contempt, Motion For Violation Of Automatic Stay, Motion For Creditors Misconduct (the “Amended Complaint”) filed by Ronald Sciortino (the “Plaintiff”). [Doc. No. 29]. Plaintiff is the debtor in case number 14-71765 (the “Bankruptcy Case”) pending in this Court. The Bankruptcy Case was filed on November 3, 2014 (the “Petition Date”) as a chapter 13 case and then converted to a case under chapter 7 on February 10, 2015 (the “Conversion Date”). The chapter 7 trustee assigned in the Bankruptcy Case, Neil C. Gordon, (the “Trustee”) filed a Notice Of Abandonment Of Property and a Report of No Distribution and a Notice Of Proposed Abandonment Or Disposition Of Property in which the Trustee provided notice of his abandonment of “[a]ny and all scheduled real and personal property of the Debtor that remains unliquidated” on April 28, 2015. [Main Case, Doc. No. 87]. Plaintiff objected to the abandonment and, after a hearing at which Plaintiff and counsel for the Trustee appeared, the Court authorized the abandonment. [Main Case, Doc. Nos. 98, 115]. Notwithstanding, the Bankruptcy Case remains pending and Plaintiff has not yet received a discharge.¹

¹ Plaintiff filed his Certification Of Completion Of Postpetition Instructional Course Concerning Personal Financial Management (the “Financial Management Certificate”) on May 14, 2015 in which he claimed an exemption to the requirement that a financial management course be taken due to incapacity or disability as defined in 11 U.S.C.

PROCEDURAL HISTORY

A. The Complaint

This proceeding was initiated on September 10, 2015 by the filing of a complaint titled Emergency Motion For Injunctive Relief, Motion For Contempt, Motion For Violation Of Automatic Stay and Creditor Misconduct (the “Complaint”). In the Complaint, Plaintiff names Charlotte Nash, Gwinnett County Department of Water Resources (“the Water Department”), Gwinnett County, Attorney Forrest Fields, Maria Woods, John Doe, Jane Doe, et. al. as Defendants (collectively the “Original Defendants”). In general, through the Complaint, Plaintiff sought relief because his access to municipal water service was terminated after conversion of the Bankruptcy Case due to his failure to pay certain amounts billed by the Water Department.² A summons was issued for each of the Original Defendants and Plaintiff filed a Certificate of Mailing for some of the Original Defendants but did not file a Certificate of Service of Summons and Complaint as to all Original Defendants.

Plaintiff attached a letter from the Water Department dated April 13, 2015 (the “April 13th letter”) to the Complaint as Exhibit K. The April 13th letter states that due to the bankruptcy status of account #20592879, which is associated with Plaintiff’s residence (the “Pre-Conversion Account”), the Pre-Conversion Account was closed as of the Petition Date and that the balance of \$3,018.77 would remain on the account until the bankruptcy case was discharged or dismissed. The April 13th letter states that a new account #20610308 (the “Post-Conversion Account”) had been opened which would require a deposit of \$225 and an activation fee of \$60.

§109(h). The Court advised Plaintiff, at the initial status hearing in this proceeding, of the very high standard established by 11 U.S.C. §109(h) and that a discharge could not be entered until a determination had been made on this issue. 11 U.S.C. § 727 (a)(11). Plaintiff has not requested a hearing on this issue, so the Court will schedule a hearing to consider whether Plaintiff is disabled within the meaning of 11 U.S.C. §109(h).

² In the Complaint, Plaintiff lists Count I as “The Automatic Stay Applies to the Defendants,” Count II as “The Collection of a Debt by Defendant Violates the Automatic Stay,” Count III as “Violation of the Stay was Willful,” and Count IV as “Plaintiff is Injured by Defendants Creditor Misconduct.”

In addition, Plaintiff attached, among other documents, a statement for the Pre-Conversion Account dated February 18, 2015 [Doc. No. 1, Ex. B] and statements for the Post-Conversion Account dated April 13, April 16, and August 18, 2015 [Doc. No. 1, Ex. L, M, P, T]. The statements for the Post-Conversion Account do not show any charges for service prior to February 10, 2015. [Doc. No. 1, Ex. L].

B. The Hearings

The Court held a status hearing on the Complaint on September 22, 2015. Murray Weed and Brooke Savage appeared on behalf of the Water Department. Plaintiff appeared *pro se*. At the hearing, Plaintiff was advised that the record did not reflect service on the Original Defendants and that Plaintiff needed to serve the Complaint. Plaintiff argued that his main concern was the return of municipal water service and that he is being punished and discriminated against for filing bankruptcy. Defendants argued that they had not been served with the Complaint and that after Plaintiff converted the Bankruptcy Case they terminated the Pre-Conversion Account, began the Post-Conversion Account and sought a \$225 deposit. After the Post-Conversion bill was not paid for several months they terminated Plaintiff's access to municipal water service.

The Court advised the parties that pursuant to 11 U.S.C. § 348(d) post-filing pre-conversion debts are treated as pre-petition debts, and that pursuant to § 366 a utility may charge a deposit for services provided to a Debtor. The Court noted further that it had jurisdiction over the alleged violation of the automatic stay but that it did not appear that the Court had jurisdiction over Plaintiff's requests for injunctive relief, contempt and creditor misconduct because it appeared that Plaintiff was seeking relief from actions related to post conversion

failures to pay. The Court provided Plaintiff an opportunity to provide additional documents or authority to establish jurisdiction.

At Plaintiff's request, the Court held a telephonic status hearing on October 1, 2015. Murray Weed and Brooke Savage again appeared and Plaintiff appeared *pro se*. At the hearing, Plaintiff reiterated that his access to municipal water service should not have been terminated and would not have been if Defendants had not violated the stay.

The Court again stated, without making a determination, that it seemed unlikely that the Court had jurisdiction to order the Water Department to provide Plaintiff with municipal water service. The Court also noted that it believed that the only claim for which the Court has jurisdiction is the alleged stay violation because the other claims did not arise in the Bankruptcy Case, were not administrative matters in the Bankruptcy Case and, did not appear to have a nexus with the bankruptcy estate. The Court noted further that it did not appear that service of process had been perfected on the Original Defendants.

C. The Amended Complaint

On December 16, 2015 Plaintiff filed the Amended Complaint.³ [Doc. No. 29]. Plaintiff names Lynette Howard (also referred to in the Amended Complaint as Lynette Haywood), Jace Brooks, Neil C. Gordon, Tommy Hunter, John Herd, Murray J. Weed, and Ron Seibenhener (collectively the "Additional Defendants" and with the Original Defendants, "Defendants") as well as the Original Defendants in the Amended Complaint. Plaintiff filed a

³ In the Amended Complaint, Plaintiff lists Count I as "The Automatic Stay Applies to the Defendants," Count II as "The Collection of a Debt by Defendant Violates the Automatic Stay," Count III as "Violation of the Stay was Willful," Count IV as "Defendant Denied Plaintiff Access to Relief Benefits Sought by Plaintiff," Count V as "Defendant Discriminated Against Plaintiff for Seeking Bankruptcy Protection," Count VI as "Plaintiff is Injured by Defendants Creditor Misconduct," Count VII as "Defendants Being Public Trustees are Guilty of Malfeasance/Misfeasance."

Certificate of Service certifying that service of the Summons and the Amended Complaint was made on Defendants on December 17, 2015. [Doc. Nos. 31, 39].

As was the case in the Complaint, in the Amended Complaint Plaintiff seeks an emergency injunction to stop Defendants from denying Plaintiff access to municipal water service. In support thereof, Plaintiff alleges that Defendants ‘cooked the books’ with regard to account #20565094 (the “Pre-filing Account”) for the billing period October 14, 2014 through November 3, 2014 and with regard to the Pre-Conversion Account for the billing period January 14, 2015 through February 9, 2015. [Doc. No. 29, ¶ 51, p. 17-18⁴]. Plaintiff alleges further that he has been denied access to municipal water service since August 12, 2015 as a collection tactic to coerce payment of fees that Plaintiff characterizes as “egregious and wrongfully applied” and as punishment for filing bankruptcy. *Id.*

In an affidavit which is incorporated into the Amended Complaint, Plaintiff details the history of his municipal water service accounts [Doc. No. 29, ¶ 50 ; Doc. No. 29, Ex. AA], and attached a statement for the Pre-filing Account [Doc. No. 29, Ex. A]. Plaintiff also attached statements for the Pre-Conversion Account dated December 15, 2014, February 18, 2015, March 17, 2015, April 10, 2015 [Doc. No. 29, Ex. B, C, G, M], the April 13th letter [Doc. No. 29, Ex. N], and statements for the Post-Conversion Account dated April 13, 2015, April 16, 2015, May 18, 2015, June 16, 2015, July 19, 2015, August 18, 2015, September 15, 2015 [Doc. No. 29, Ex. O, P, S, U, W, B-1, D-1]. Plaintiff states that “[b]ased on Defendants actions of deliberately charging Plaintiff’s account Defendant has willfully violated the automatic stay...” [Doc. No. 29, ¶ 51 p. 23] Finally, Plaintiff alleges that \$360.74 was collected on February 18, 2015 (post-conversion) and applied to the Pre-Conversion Account. [Doc. No. 29, ¶ 40]. Debtor

⁴ Paragraph 51 in Docket Number 29 extends from pages 17-31. The page numbers used herein are those reflected in the docket stamp on the Amended Complaint.

alleges that the Trustee was provided notice of his claims for wrongdoing against the Original Defendants, but the Trustee has taken no action with respect thereto. [Doc. No. 29, ¶¶ 41, 42].

In addition, Plaintiff alleges that he suffers from certain physical disabilities and post traumatic stress syndrome which he asserts has been caused by his dispute with Defendants, and others. [Doc. No. 29, ¶¶ 7, 45]. Plaintiff asserts that Defendants have discontinued water service and that Defendants have “violated anti-discrimination laws that are intended to provide for protection against discriminatory treatment by the action of denying Petitioner access to water for un-just causes and for amounts in dispute that are related to current as well as other bankruptcy cases filed.” [Doc. No. 29, ¶ 51 p. 25-26]. Plaintiff also asserts that Defendants have violated due process and are guilty of an abuse of process for charging excessive and usurious fees and asks the court find Defendants “guilty of contempt of court, in violation of the automatic stay, guilty of denying relief benefits” and to award punitive damages. [Doc. No. 29, ¶ 51 p. 21, 33]

In an apparent response to the Court’s statements regarding jurisdiction Plaintiff asserts that “[w]hen Equity has jurisdiction for one purpose, it will take jurisdiction for all purposes. Equity will take jurisdiction to avoid multiplicity of suits, therefore other claims for relief asserted herein shall be enjoined as the outcome on those claims shall have an effect upon RONALD EDWARD SCIORTINO BANKRUPTCY ESTATE. [Doc. No. 29, ¶ 33] (emphasis in the original). Plaintiff asserts further that that this Court has jurisdiction over the Complaint because “Defendant’s actions complained of in this case have a nexus to the relief sought due to a cascade of defaults in due process of pre-conversion interest by Defendant that have led to Petitioner seeking relief in Bankruptcy to prevent Defendant from further denial of regulation/flow of water, that has and is causing aggravated injury.” [Doc. No. 29, ¶ 34].

ANALYSIS

A. Jurisdiction

Bankruptcy courts are courts of limited jurisdiction and “must be alert to avoid overstepping their limited grants of jurisdiction.” *Matter of Midland Mech. Contractors, Inc.*, 196 B.R. 653, 655 (Bankr. N.D. Ga. 1996) (Drake, J.). Subject matter jurisdiction may be questioned at any stage of a proceeding, by either party or by the Court on its own initiative. *Id.* “No action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

Pursuant to 28 U.S.C. § 1334(b) “the 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.” This provision creates jurisdiction in three categories of proceedings: those that “arise under title 11,” those that “arise in cases under title 11,” and those “related to cases under title 11.” The jurisdiction of the bankruptcy court is derived from and dependent upon these three bases. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995).

Matters which “arise under” title 11 are matters which invoke a substantive right created by the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1345 (11th Cir. 1999). Matters that “arise in a case under” title 11 generally are administrative type matters or “matters that could arise only in bankruptcy.” *Id.* (citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir.1987)). Matters that are “related to” are matters where

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.

Id. (quoting *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir.1990)).

When “[t]he conduct giving rise to the claim occurred after the petition in bankruptcy, . . . the cause of action is not property of the estate.” *Community Bank v. Boone (In re Boone)*, 52 F.3d 958, 960 (11th Cir. 1995). “To fall within the court’s jurisdiction, the plaintiff’s claims must affect the estate, not just the debtor.” *Wood v. Wood (In re Wood)*, 825 F.2d 90, 94 (5th Cir. 1987). “‘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.’” *Griffin v. Bayview Loan Servicing, LLC (In re Griffin)*, Case No. 09-11246, 2011 Bankr. LEXIS 1658 *11, 2011 WL 1789973 *4 (Bankr. N.D. Ga. March 28, 2011) (Drake, J.) (citing *In re Harlan*, 402 B.R. 703, 711 (Bankr. W.D. Va. 2009) (quoting *Gates v. Didonato (In re Gates)*, 2004 Bankr. LEXIS 2303, 2004 WL 3237345 (Bankr. E.D. Va. 2004)).

Plaintiff asserts that this Court has jurisdiction because “[w]hen Equity has jurisdiction for one purpose, it will take jurisdiction for all purposes.” [Doc. No. 29, p. 13, ¶ 33]. Further, Plaintiff asserts that this Court has jurisdiction over the Amended Complaint because “Defendant’s actions complained of in this case have a nexus to the relief sought due to a cascade of defaults in due process of pre-conversion interest by Defendant that have led to Petitioner seeking relief in Bankruptcy to prevent Defendant from further denial of regulation/flow of water, that has and is causing aggravated injury.” *Id.* at ¶ 34.

The automatic stay arises upon the filing of a bankruptcy case. Because of this, claims for violation of the stay are matters that can only arise in bankruptcy and such claims are

within this Court's core jurisdiction. 11 U.S.C. § 362(a); 28 U.S.C. 157(b)(2). In addition, to the extent Plaintiff asserts claims against the Trustee for failure to pursue claims against the Water Department and/or other Defendants, because appointment of a trustee can only occur in bankruptcy and a trustee's duties emanate from the Bankruptcy Code Plaintiff's claims with respect to the Trustee are core matters. *Carter v. Rodgers*, 220 F3d 1249, 1254 (11th Cir. 2000).

In contrast, Plaintiff's claims for injunctive relief (seeking an order directing that the Water Department provide service to Plaintiff), contempt, and creditor misconduct are neither administrative type matters nor "matters that could arise only in bankruptcy" meaning that such claims do not "arise in a case under" Title 11. Plaintiff alleges: (i) termination of water service at various times, (ii) disagreement with billing statements issued by the Water Department, (iii) that denying access to water is a collection tactic intended to coerce payment and as punishment for filing bankruptcy, and (iv) that the fees, interest and charges billed by the Water Department are excessive and improper. Based on these allegations, Plaintiff claims entitlement to damages for "denial of relief benefits,"⁵ abuse of process, violation of anti-discrimination statutes and emotional and other physical injuries.⁶ [Doc. No. 29, pp. 5, 12, 17-18, 21, 25-26, 33, 46 ¶¶ 27, 49, 51]. Such claims do not concern administration of the Bankruptcy Case nor are they matters that could arise only in bankruptcy.⁷ Thus, these claims are not within the Court's core jurisdiction.

⁵ It is not clear what Plaintiff seeks to assert with regard to denial of "relief benefits." It is possible that Plaintiff seeks to assert a claim under §525 of the Bankruptcy Code. It is equally possible that Plaintiff means he has been denied relief under the Code because of the alleged stay violation. To the extent applicable, the Court would have jurisdiction over a claim asserted under §525 of the Bankruptcy Code.

⁶ Plaintiff refers to policy under the "ADAAA" which, given the context of the remainder of the paragraph the Court assumes that Plaintiff seeks to refer to the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, however, this is not clear since Plaintiff has not cited a single statute in the Amended Complaint.

⁷ In the an affidavit filed on November 30, 2015, Plaintiff asserts that the actions of Gwinnett County and the Water Department violate the ADA, the Social Security Act, the Fair Housing Act and denial of relief benefits. [Doc. No. 22, ¶ 3-5]. These claims are not of a type that could only arise in bankruptcy and further, they are not asserted in the Amended Complaint.

Notwithstanding, if Plaintiff's claims for injunctive relief, contempt and creditor misconduct are "related to" the Bankruptcy Case, then the claims would be non-core matters within the Court's jurisdiction. With respect to Plaintiff's claims related to termination of water service on and after August 12, 2015, the Court does not have "related to" jurisdiction because any award of damages, or for that matter, restoration of water service related to such time period would inure solely to the benefit of Plaintiff and would not affect the bankruptcy estate in any way. *Community Bank v. Boone (In re Boone)*, 52 F.3d at 960; *Wood*, 825 F.2d at 94. In the same way, to the extent Plaintiff's claims arose between the Conversion Date and August 12, 2015, they are post-petition claims and cannot affect the bankruptcy estate. *See* 11 U.S.C. §§ 727(b), 348(d).

Similarly, with respect to Plaintiff's claims related to time periods prior to the Conversion Date, the Court does not have jurisdiction because the Trustee abandoned all claims related to the Plaintiff's dispute with the Water Department so that, here too, the bankruptcy estate would not be affected in any way by the claims related to the time period before the Conversion Date. *See Barnhardt v Demarco (In re Demarco)*, 454 B.R. 343, 347 (Bankr. E.D. Pa. 2011) (noting that "[i]t is generally recognized that upon entry of a report of no distribution, a bankruptcy court is divested of its related-to jurisdiction") (citations omitted); *SAS-Moran Lake Holding Co., LLC, et. al. v. Roswell Holdings Mortgage, LLC, et. al. (In re Moran Lake Convalescent Center, LLC)*, No. 10-43405; AP No. 12-4015, 2012 Bankr. LEXIS 4552, *10, 2012 WL 4511339, *3 (Bankr. N.D. Ga. Aug. 28, 2012) (Diehl, J.) (noting that a common nexus of fact between non-bankruptcy claims between nondebtors and debtor and claims involving the bankruptcy estate is not sufficient to create related to jurisdiction) (citing *In re Lemco Gypsum, Inc.*, 910 F.2d at 789).

Plaintiff argues that this Court has jurisdiction based on general principles of equity; Plaintiff misapprehends the effect of equity on this Court's jurisdiction which is much more limited than Plaintiff contends. This is a chapter 7 case and as such this Court's jurisdiction is limited to claims that could inure to the benefit of the bankruptcy estate. Here, to the extent the claims Plaintiff seeks to pursue arose post-petition the estate cannot benefit and the Court is without jurisdiction. Further, to the extent Plaintiff's claims arose pre-petition, the Trustee has abandoned them, and the Court is without jurisdiction to consider the same.

B. Request for Expedited Hearing

Plaintiff sought, in the Amended Complaint, a hearing on his request for injunctive relief on an expedited basis. The Court's jurisdiction in this proceeding is limited to Plaintiff's claims that Defendants have violated the automatic stay and any claims against the Trustee. Pursuant to 11 U.S.C. § 362(k), damages may be awarded in an appropriate case. The Court also has the inherent authority to enforce the automatic stay and to issue orders that carry out the provisions and purposes of the Bankruptcy Code. 11 U.S.C. § 105. Thus, arguably, the Court has the authority to issue injunctive relief for a stay violation in an appropriate case. This is not such a case.

Here, Debtor seeks a mandatory injunction. *See KG ex rel Garrido v. Dudek*, 839 F. Supp. 2d 1254, 1260 (S.D. Fla. 2011) (stating when a preliminary injunction is sought to force another party to act, it becomes a mandatory or affirmative injunction and the burden on the moving party increases). The Court has held two expedited status conferences in this proceeding during which Plaintiff failed to demonstrate he can meet any of the elements necessary for injunctive relief and certainly not the heightened standard necessary for a mandatory injunction. *See Dantzler, Inc. v. Hubert Moore Lumber Co.*, 2013 U.S. Dist. LEXIS 78664, *4, 2013 WL

2452697, *1 (M.D. Ga. 2013 June 5, 2013) (noting that mandatory injunctions are generally not favored in the Eleventh Circuit and are to be sparingly issued only upon clearly apparent grounds). Therefore, the Court concludes that a further expedited hearing will not advance this proceeding and will deny the request. For the reasons stated herein, it is now, hereby

ORDERED that, the request for expedited hearing is DENIED. It is further,

ORDERED that, because the Court does not have subject matter jurisdiction over the Plaintiff's claims for injunctive relief, contempt, and creditor misconduct, other than those related to the alleged failure of the chapter 7 Trustee to discharge his duties or brought pursuant to 11 U.S.C. §§ 362 or 366, said claims are DISMISSED.

END OF ORDER

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