IT IS ORDERED as set forth below:

Date: June 19, 2014

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: CONTINENTAL CASE COMPANY, LLC, Debtor.	CASE NO. 13-67727-WLH CHAPTER 7
JEFFREY K. KERR, Chapter 7 Trustee, Plaintiff, v. H.E. BUTT GROCERY COMPANY, Defendant.	ADVERSARY PROCEEDING NO. 13-5455

ORDER ON DEFENDANT'S MOTION TO DISMISS

Plaintiff, Jeffrey Kerr ("Plaintiff"), in his capacity as Chapter 7 Trustee, filed a Complaint on Open Account and for Turnover ("Complaint") against Defendant, H.E. Butt Grocery Company ("Defendant") on December 30, 2013. In this adversary proceeding, Plaintiff seeks to recover $64,686.08, plus prejudgment interest and costs, for amounts owed for goods and

services provided by the Debtor to the Defendant prepetition. Defendant filed a Motion to Dismiss on February 28, 2014 pursuant to Fed. R. Civ. P. 12(b)(6), made applicable hereto by Fed. R. Bankr. P. 7012 (Docket No. 5). The matter is now fully briefed and before the Court for ruling.

The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a) and (c)(1). Upon consideration of the pleadings and for the reasons discussed more fully below, the Court finds that the bankruptcy court has "related to" jurisdiction in this matter and the matter is non-core. The parties are directed to submit briefs as to whether this Court should i) abstain, ii) dismiss the matter, or iii) hear the matter and submit proposed findings of fact and conclusions of law to the District Court.

I. Background

An involuntary petition was filed against the Debtor and an order for relief was entered as of September 6, 2013. The Plaintiff initiated this adversary proceeding demanding turnover of funds under 11 U.S.C. § 542(b) in connection with a prepetition account receivable. Defendant argues that Section 542(b) may not be used to collect prepetition accounts receivable and the characterization of this action as one for turnover involves "a disguised attempt to categorize this matter as a core proceeding" (Docket No. 5).[1] Plaintiff contends that accounts receivable are subject to turnover actions because they are "by their nature" matured debts that are property of the estate and therefore this action "fits squarely within the confines of Section 542(b)".

[1] Defendant also contends the Complaint fails to state a claim for relief for turnover because certain statutory elements of Section 542 are not pled. Although the Court agrees that this matter is not a core proceeding to turn over property of the estate, under the notice pleading standards of Fed. R. Civ. P. 8(a)(2), the complaint is sufficient to suggest the pleader may be "entitled to relief." Furthermore, the Plaintiff has pending a Motion for Leave to File an Amended Complaint that would add state law causes of action (Docket No. 7). The Court declines to rule on the Motion for Leave to File an Amended Complaint pending the ultimate disposition of this Motion, so dismissal for failure to state a claim is not warranted at this time. See, e.g., Bausch v. Stryker Corp., 630 F.3d 546, 562 (7th Cir. 2010) (noting that plaintiffs are generally given an opportunity to amend a complaint to cure defects).

II. Actions to Turn Over Estate Property

Generally speaking, an action for turnover related to a debt requires a showing that (a) the debt "is property of the estate" and (b) "is matured, payable on demand, or payable on order." 11 U.S.C. § 542(b). As to the first prong, property is defined broadly to encompass "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541; Howell v. Bank of Am., N.A. (In re Dorsey), 497 B.R. 374, 383 (Bankr. N.D. Ga. 2013). As to the second element, a debt that is "presently payable," i.e., "where payment is not subject to any condition precedent" is matured, payable on demand, or payable on order. Miller v. Jannetta (In re Irwin), 2014 WL 1456270 (Bankr. E.D. Pa. Apr. 15, 2014). As the cases cited by both parties indicate, there is a split of authority over when prepetition accounts receivable may be subject to turnover. See, e.g., DHP Holdings II Corp. v Home Depot, Inc. (In re DHP Holdings II Corp.), 435 B.R. 264, 271 (Bankr. D. Del. 2010) ("Many courts have wrestled with the question of whether an account receivable falls within the parameters of § 157(b)(2).... [N]o clear consensus exists." (citation omitted) (alteration in original)); United Methodist Youthville, Inc. v. Lutheran Soc. Servs. (In re United Methodist Youthville, Inc.), 289 B.R. 754, 757 & n.15 (Bankr. D. Kan. 2003) (noting the split of authority and collecting cases).

Courts in the Eleventh Circuit generally follow the majority rule that a debt must be undisputed to be subject to turnover. See, e.g., In re Fontainebleau Las Vegas Holdings, LLC, 417 B.R. 651, 666 (S.D. Fla. 2009) aff'd sub nom. Ave. CLO Fund Ltd. v. Bank of Am., NA, 709 F.3d 1072 (11th Cir. 2013) ("The turnover provision of [the] Bankruptcy Code applies only to tangible property and money due to debtor *without dispute* which are fully matured and payable on demand." (emphasis in original)). But courts are also divided as to the showing required to establish that a debt is undisputed. Compare Ven–Mar of Indian River, Inc. v.

Hancock (In re Ven-Mar Int'l, Inc.), 166 B.R. 191, 192 (Bankr. S.D. Fla. 1994) (complaint evidenced dispute) and In re DHP Holdings II Corp., 435 B.R. at 271 (finding that answer which alleged entitlement to setoff and recoupment was "sufficient to render the debt disputed" and therefore "outside the scope of section 542(b)"), with Satelco, Inc. v. N. Am. Publ'g, Inc. (In re Satelco, Inc.), 58 B.R. 781, 789 (Bankr. N.D. Tex. 1986) (holding that "absent a final judgment from a court of competent jurisdiction, a stipulation, or some other binding determination of liability" a prepetition account receivable is not undisputed and subject to turnover).

The determination that a debt is undisputed may be made from the face of the complaint if the complaint alleges sufficient facts from which the conclusion can be drawn, such as if a judgment has been obtained or the defendant has previously stipulated to the amount due or is judicially stopped from denying liability. But where, as here, the suit is one on open account, it is unclear whether the debt is undisputed until an answer is filed. It is unclear at the present whether the debt at issue is undisputed and therefore whether this qualifies as a turnover action under Section 542.

But even if the claim is undisputed, the Court is charged with determining its authority to enter a final order in a particular case. "Courts presented with claims styled as turnover actions face the complicated task of navigating the blurry divide between bona fide turnover actions, which are core matters under the plain meaning of the statute, from collection actions under state law, which are non-core under both Marathon and Stern." Burns v. Dennis (In re SE. Materials, Inc.), 467 B.R. 337, 354 (Bankr. M.D.N.C. 2012). The Court now turns to the question of its jurisdiction and authority to enter an order.

III. This Matter is Subject to the Court's "Related to" Jurisdiction and is "Non-Core"

Bankruptcy courts are courts of limited jurisdiction and federal courts have an independent duty to inquire into subject matter 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," 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). "Related to" jurisdiction is the "minimum." Ger. Am. Capital Corp. v. Oxley Dev. Co., LLC (In re Oxley Dev. Co., LLC), 493 B.R. 275, 283 (Bankr. N.D. Ga. 2013). Related to jurisdiction exists over proceedings 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 collection of the Debtor's accounts receivable is related to the Debtor's bankruptcy case because it collects property of the estate to be distributed to creditors. As such, it impacts the administration of the estate. However, this collection proceeding does not "arise in" the bankruptcy case because all actions complained of occurred prepetition and the cause of action is completely independent of the bankruptcy code. Although Plaintiff asserts the right to turnover under Section 542, that section does not provide a substantive right to the Trustee under the facts

of the case. The Trustee's substantive right to recovery is dictated by state law. The Court concludes therefore the cause of action does not arise under the bankruptcy code or in a bankruptcy case, but is related to the bankruptcy case.

The next question is whether the cause of action is "core". By statute a number of matters, including those to turn over property of the estate, are core. See 28 U.S.C. § 157. But as the recent Supreme Court decision in Stern v. Marshall reminds courts, the statutory delineation of core is insufficient to determine whether the Constitution permits a bankruptcy court to decide the matter. A matter is constitutionally core if "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." Stern v. Marshall, 131 S. Ct. 2594, 2618 (2011). Bankruptcy courts may enter final orders only in those matters that are "core." Where a matter is non-core, the bankruptcy court may hear the matter, but can only make proposed findings of fact and conclusions of law absent consent of the parties. Oxley Dev. Co., 493 B.R. at 284 & n.12.

The Court concludes that this matter is non-core. This is an action to recover amounts owed the Debtor on a prepetition accounts receivable which does not "stem[] from the bankruptcy itself". Since the Defendant has not filed a proof of claim, Debtor's claim for payment would not "necessarily be resolved in the claims allowance process." See Humboldt Express, Inc. v. Wise Co., Inc. (In re Apex Exp. Corp.), 190 F.3d 624, 631 & n.7 (4th Cir. 1999); see also Cibro Petroleum Prods., Inc. v. City of Albany (In re Winimo Realty Corp.), 270 B.R. 108, 120 (S.D.N.Y. 2001). Absent consent of the parties, this Court is confined to entering proposed findings of facts and conclusions of law.

IV. Conclusion

Plaintiff's Complaint is subject to the Court's "related to" jurisdiction, but is a non-core matter. The parties are directed to brief whether the Court should hear the matter and submit its proposed findings of fact and conclusions of law to the District Court, or whether abstention or dismissal better serve the interests of justice. Accordingly, it is hereby

ORDERED that dismissal under Fed. R. Civ. P. 12(b)(6) is not warranted at this stage in the proceeding. It is

ORDERED FURTHER the parties are directed to submit briefs to this Court within thirty (30) days of the date hereof as to whether the Court should abstain, dismiss, or hear the matter and submit proposed findings of fact and conclusions of law to the District Court.

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