



IT IS ORDERED as set forth below:

Date: April 10, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	BANKRUPTCY CASE NO:
	:	
RONNICE SNEED,	:	13-75932-MGD
	:	
Debtor.	:	CHAPTER 13
	:	
RONNICE SNEED,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY PROCEEDING NO:
	:	
RESURGENT CAPITAL SERVICES, LLC,	:	14-5412
	:	
Defendant.	:	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Before the Court are two motions: Debtor-Plaintiff Ronnice Sneed's Motion for Judgment on the Pleadings (Doc. 9) and Defendant Resurgent Capital Services, LLC's (Resurgent) Motion to Dismiss Adversary Proceeding or in the Alternative Motion to Stay Proceeding (Doc. 10, "Motion to Dismiss").

I. Background

Debtor filed her voluntary Chapter 13 Petition on December 1, 2013. (Bankr. Doc. 1). Resurgent filed Proof of Claim No. 9 on March 25, 2014, as the authorized agent for “LVNV Funding, LLC its successors and assigns as assignee of MCI Communications Services, Inc.” (Bankr. Claim No. 9). Debtor filed the instant proceeding on December 8, 2014, alleging that Resurgent’s Proof of Claim was time-barred and filed in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (Compl. ¶¶ 18, 20, Doc. 1). Resurgent filed its Answer on January 8, 2015. (Doc. 5).¹

On January 21, 2015, Debtor’s Chapter 13 case was dismissed on motion of the Trustee for failure to make plan payments. (Docs. 65, 68). Notwithstanding the dismissal, Debtor filed her Motion for Judgment on the Pleadings on February 9, 2015. (Doc. 9). On February 23, 2015, Resurgent filed its Response in Opposition to Debtor’s Motion for Judgment on the Pleadings. (Doc. 11).

Meanwhile, Resurgent filed its Motion to Dismiss on February 11. (Doc. 10). Debtor did not file a response to the Motion to Dismiss.

II. Legal Standard

The bankruptcy court’s jurisdiction is limited to “any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. § 157(a); 28 U.S.C. § 1334(b). In the Northern District of Georgia, the District Court has referred all proceedings within its bankruptcy jurisdiction to the bankruptcy court. 28 U.S.C. § 157(a); Local Rule 83.7, N.D. Ga. A proceeding “arising under” title 11 involves a substantive right created by the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1344-1345 (11th Cir. 1999).

¹ Resurgent’s Answer was filed a day late, but a Consent Order was entered allowing the late filing. (Doc. 7).

A proceeding “arising in” title 11 typically includes administrative matters that can only arise in a bankruptcy. *Id.* “Arising under” and “arising in” provide the Court with “core” jurisdiction. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 787 (11th Cir. 1990). Bankruptcy courts may hear non-core matters if the matter is “related to” the bankruptcy proceeding, but the courts are limited to submitting proposed findings of fact and conclusions of law to the districts courts in such cases. 28 U.S.C. § 157(c)(1). In the Eleventh Circuit, “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.” *In re Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

Under Eleventh Circuit law, “the dismissal of an underlying bankruptcy case does not automatically strip a federal court of jurisdiction over an adversary proceeding which was related to the bankruptcy case at the time of its commencement,” but rather, “[t]he decision whether to retain jurisdiction over the adversary proceeding should be left to the sound discretion of the bankruptcy court or the district court, depending upon where the adversary proceeding is pending.” *In re Morris*, 950 F.2d 1531, 1534 (11th Cir. 1992).

III. Discussion

Debtor did not respond to Resurgent’s Motion to Dismiss, which the Court deems unopposed. BLR 7007-1(c), NDGa. Even assuming that the instant proceeding was related to Debtor’s Chapter 13 case at filing, the Court concludes it should not retain jurisdiction over the proceeding and thus grants Defendant’s Motion to Dismiss.

Under Section 349 of the Bankruptcy Code, the Court can alter the effect of dismissal of the bankruptcy case on other orders and proceedings. 11 U.S.C. § 349. The factors which bear on whether to exercise this discretion as to pending adversary proceedings are “(1) judicial economy; (2) fairness and convenience to the litigants; and (3) the degree of difficulty of the related legal issues involved.” *Morris*, 950 F.2d at 1535 (citing *In re Smith*, 866 F.2d 576, 580 (3rd Cir. 1989)).

The Court sees no reason to exercise this discretionary jurisdiction, particularly in light of the fact that Debtor has not indicated opposition to the Motion to Dismiss. The parties have not engaged in discovery, no interlocutory orders have been entered other than the extension of Resurgent’s Answer deadline, and the case has not been set for trial. The proceeding, while arguably having fallen within the Court’s “related to” jurisdiction at filing, could not now “conceivably have an effect” on Debtor’s dismissed bankruptcy case, regardless of outcome. *Pacor*, 743 F.2d at 994. Even if the Court were to hear this case, it could not even finally decide the matter, as it is not a core proceeding under 28 U.S.C. 157(c). The Court thus finds the first two factors of the *Smith* test weigh heavily against retaining jurisdiction, and concludes dismissal is appropriate on those grounds.

IV. Conclusion

Having dismissed Debtor’s Chapter 13 case, the Court declines to exercise jurisdiction over the instant proceeding. Accordingly, it need not consider Debtor’s Motion for Judgment on the Pleadings or Resurgent’s alternative motion. Accordingly, it is

ORDERED that Defendant’s Motion to Dismiss (Doc. 10) is **GRANTED**, and the above-styled proceeding is **DISMISSED**.

It is **FURTHER ORDERED** that Plaintiff's Motion for Judgment on the Pleadings (Doc. 9) is **DENIED AS MOOT**.

The Clerk is directed to serve a copy of this Order on Plaintiff, Defendant, and their respective counsel.

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