



IT IS ORDERED as set forth below:

Date: September 4, 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:
	:	
JEAN BRIERE SAINT-FELIX,	:	15-50596-MGD
	:	
Debtor.	:	CHAPTER 7
	:	
BAYVIEW LOAN SERVICING, LLC ,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY PROCEEDING NO:
	:	
JEAN BRIERE SAINT-FELIX,	:	15-5011
	:	
Defendant.	:	

ORDER

Before the Court is Debtor Jean Briere Saint-Felix's Motion to Set Aside Foreclosure (Doc. 7). For the reasons set forth below, the Court concludes that Debtor's Counterclaim (Doc. 3) should be dismissed, and that the remaining claim for dispossession in this removed case should be remanded to the Magistrate Court of Clayton County, Georgia.

I. Background

On December 11, 2014, Bayview Loan Servicing, LLC (“Bayview”) brought a Dispossession Action against Debtor in the Magistrate Court of Clayton County, Georgia, seeking eviction of Debtor following a foreclosure sale of his property (Doc. 1). Debtor, who is *pro se*, filed his voluntary Chapter 13 Petition on January 9, 2015 (Bankr. Doc. 1), later converted to Chapter 7 on February, 27, 2015 (Bankr. Doc. 15), and removed the Dispossession Action to the United States Bankruptcy Court of the Northern District of Georgia on the same day (Doc. 1). On January 26, 2015, Debtor brought a Counterclaim against Bayview (Doc. 3).¹ Bayview filed its Answer to the Counterclaim on February 24, 2015 (Doc. 5). On April 4, 2015, Debtor’s Chapter 7 case was discharged on findings of the Trustee that Debtor’s estate contained no assets and had been fully administered (Docs. 31, 35). On April 20, 2015, Debtor filed a Reply in this adversary proceeding, asserting further counterclaims alleging violations of his 5th Amendment Rights, the Truth in Lending Act, and the Real Estate Settlement Procedures Act (Doc. 6). On June 12, 2015, Debtor filed a Motion to Set Aside Foreclosure (Doc. 7). Bayview filed its Response in Opposition to Debtor’s Motion to Set Aside Foreclosure on June 26, 2015 (Doc. 8). Debtor filed his reply to Bayview’s Response on July 9, 2015 (Doc. 9).

II. Legal Standard

The District Court’s bankruptcy jurisdiction is limited to “all cases under title 11 . . . [and] all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). In the Northern District of Georgia, the District Court has referred all proceedings within its bankruptcy jurisdiction, including those proceedings only related to a case

¹ The pleadings in this case have been variously captioned and the parties have at different times referred to each other as both Plaintiff and Defendant. The Court has characterized the pleadings according to those allowed by Federal Rule of Bankruptcy Procedure 7007 on the assumption that Debtor, who initiated this action by removal, is the Defendant.

under title 11, to the Bankruptcy Court. 28 U.S.C. § 157(a); Local Rule 83.7, N.D. Ga. In the Eleventh Circuit, “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.” *In re Lemco Gypsum, Inc.*, 910 F.2d at 788 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). If the related bankruptcy case is closed and no estate remains to be administered, then ordinarily no “related to” jurisdiction can exist. *Wee Luv Childcare, Inc. v. U.S.*, 219 B.R. 607, 617 (Bankr. N.D. Ohio 1997).

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). Whether the case is dismissed or discharged “is not an important distinction” in regard to the bankruptcy court’s discretionary retention of jurisdiction. *In re Smith*, No. 04-81572, 2008 WL 7874258, at *3 (Bankr. N.D. Ga. Aug. 18, 2008).

III. Discussion

The instant proceeding does not qualify for “related to” subject matter jurisdiction because neither Bayview’s original claim nor Debtor’s counterclaim could have any conceivable effect on Debtor’s bankruptcy estate when Debtor effectively has no estate to administer or reorganize. Even assuming that the instant proceeding was related to Debtor’s Chapter 7 case, the Court concludes that under *Morris* it should not retain jurisdiction over the proceeding and

thus dismisses Debtor's counterclaim without prejudice for lack of subject matter jurisdiction. 950 F.2d at 1534.

The Court sees no reason to exercise this discretionary jurisdiction, particularly in light of the fact that Debtor's estate contains no assets to administer. The proceeding could not now "conceivably have an effect" on Debtor's discharged 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). Finally, rather than dismiss Bayview's underlying dispossessory action, the court will instead remand it to the Magistrate Court of Clayton County, Georgia. 28 U.S.C. § 1452.

IV. Conclusion

Having discharged Debtor's Chapter 7 case, the Court declines to exercise jurisdiction over the instant proceeding. Accordingly, it need not consider Debtor's Motion to Set Aside Foreclosure. Accordingly, it is

ORDERED that Debtor's counterclaims (Docs. 3, 6) are **DISMISSED** without prejudice for lack of subject matter jurisdiction, and the above-styled dispossessory proceeding is **REMANDED** to the Magistrate Court of Clayton County, Georgia for further proceedings.

It is **FURTHER ORDERED** that Debtor's Motion to Set Aside Foreclosure (Doc. 7) is **DENIED AS MOOT**.

The Clerk is directed to serve a copy of this Order on Jean B. St. Felix, Bayview Loan Servicing, LLC and Counsel for Bayview Loan Servicing, LLC, and to serve a certified copy of this Order on the Magistrate Court of Clayton County, Georgia.

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