UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re:	:	**Case No. 02-5297-rjh-7**
RALPH F. HELT,	:	
	:	
	:	**Chapter 7**
Debtor.	:	
- -	:	
MARY F. HELT,	:	**Adv. No. 02-20199-rjh**
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
RALPH F. HELT,	:	
	:	
Defendant.	:	
- -	:	
RALPH F. HELT,	:	
	:	
Third Party Plaintiff,	:	
	:	
vs.	:	
	:	
FIRST BANK,	:	
	:	
Third Party Defendant.	:	

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ORDER - THIRD PARTY DEFENDANT'S MOTION TO DISMISS THIRD PARTY COMPLAINT

The motion to dismiss the third party complaint filed in the above-captioned matter came on for hearing on September 5, 2003. Julie Johnson-McLean represented the Defendant/Third Party Plaintiff Ralph F. Helt. Brad C. Epperly represented the Third Party Defendant First Bank. At the conclusion of the hearing, the court took the matter under advisement, and considers it fully submitted. Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FACTS

For the purposes of this motion to dismiss pursuant to Fed. R. Civ. P. 12(b) as incorporated by Fed. R. Bankr. P. 7012, the court finds the following facts:

1. On September 25, 2002, Defendant/Third Party Plaintiff Ralph F. Helt (hereinafter Debtor) filed a petition for relief under chapter 7 of the Bankruptcy Code.

2. On September 26, 2002, the clerk of the bankruptcy court served a "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadline" on parties in interest. Service was made by first class mail on First Bank, 1630 22nd Street, West Des Moines, IA 50266-1472. Said notice provided, "Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So."

2. Debtor filed his schedules, statements, and verifications on October 11, 2002. On Schedule F – Creditors Holding Unsecured Nonpriority Claims, he scheduled First Bank holding three claims for $177,561.25, $22,812.50, and $35,000.00. Said claims were based on Debtor's guaranties of debts incurred by Stereo Sound Studios, Inc. (hereinafter Stereo Sound), which was identified as a co-debtor of the claim.

3. On October 15, 2002, First Bank filed two proofs of claim for $3,7314.03 and $23,731.18, respectively, and indicated that each claim was secured by real estate, motor vehicle, and other.

4. On October 23, 2002, Debtor filed an amended Schedule F including a claim to Mary Helt in an unknown amount based on "property division indemnification obligations from dissolution of marriage."

5. From 1980 to 2002, Debtor was the sole shareholder, officer, and director of Stereo Sound, a corporation engaged in the electronics retail business in Des Moines, Iowa.

6. Stereo Sound entered into an agreement with Transamerica Commercial Finance Corporation (hereinafter Transamerica) to provide "floor plan" financing secured by the retail inventory. In the agreement, Transamerica required that Stereo Sound obtain a letter of credit from its operating lender in favor of Transamerica. First Bank agreed to supply such a letter of credit.

7. On April 21, 1999, Stereo Sound and Debtor executed a promissory note, loan no. 6000152215, in the amount of $75,000.00 to First Bank. Debtor signed the note in his capacity as president of Stereo Sound and individually. The purpose of the note was to evidence Stereo Sound and Debtor's obligation to First Bank should Transamerica draw on the letter of credit. The promissory note was limited in duration to one year, maturing on April 21, 2000. Debtor also signed a personal guaranty whereby he agreed to pay each and every debt, liability, and obligation of every type and description which Stereo Sound had or would have in the future to First Bank. Mary Helt did not sign the promissory note or the guaranty.

8. Also on April 21, 1999, and in connection with the note, Debtor and Mary Helt executed and delivered to First Bank an open-end mortgage with a future advance clause (hereinafter the Mortgage) on the property located at 1159 Cummins Parkway, Des Moines, Iowa (hereinafter the Parkway Property). The Mortgage stated that it secured credit in the amount of $75,000.00, and any future debt instrument referencing the mortgage that Debtor and Mary Helt would give to First Bank.

9. The parties intended that the mortgage only secure obligations under the Transamerica letter of credit of April 21, 1999. However, the Mortgage does contain boilerplate language to secure any extensions, modifications, or renewals of the letter of credit.

10. Keith E. Folkerts (hereinafter Folkerts), Senior Vice President of First Bank directed the preparation of the Mortgage and April 21, 1999, promissory note.

11. At the time of the execution of the promissory note and the Mortgage, Folkerts and another officer of First Bank knew that Debtor and Mary Helt were engaged in dissolution of marriage proceedings.

12. First Bank did not advance any funds pursuant to the April 21, 1999, Transamerica letter of credit.

13. On April 18, 2000, the Iowa District Court for Polk County entered a Decree of Dissolution of Marriage in Debtor and Mary Helt's divorce proceeding, case no. CD 60824. The decree incorporated a stipulated settlement dated April 17, 2000. Relevant to the motion to dismiss, the decree provided that Mary Helt be awarded all right, title, and interest in the Parkway Property, free and clear of any liens or encumbrances of Debtor. All existing and future obligation against the residence accrued or accruing from the date of the decree are the sole responsibility of Mary Helt. Debtor was required to execute and deliver a quitclaim deed to Mary Helt. As part of the decree, Debtor acknowledged that the Parkway Property was collateral for the letter of credit issued by First Bank for the benefit of Transamerica, and he represented that the property would be released upon expiration of the letter of credit on April 20, 2000. He also

represented that the obligation to Transamerica was the only obligation of his business interests that was presently secured by the Parkway Property.

14. Also under the terms of the decree, Debtor was to cause Mary Helt to be released from any and all obligations or guarantees made by Mary Helt to First Bank in connection with the indebtedness of Stereo Sound or other related entities by May 1, 2000.

15. On April 21, 2000, Transamerica reduced the amount of its required letter of credit to $35,000.00.

16. Also on April 21, 2000, Stereo Sound and Debtor executed a promissory note, loan no. 6000152216, in the amount of $35,000.00 to First Bank. The note's maturity date was April 21, 2001. Debtor signed the note in his capacity as president of Stereo Sound and individually. Mary Helt did not sign the promissory note. The note was to evidence any obligation of Stereo Sound and Debtor in the event that Transamerica would draw on the $35,000.00 letter of credit. As security, the note identified the Mortgage on the Parkway Property.

17. First Bank did not advance any funds pursuant to the April 21, 2000, promissory note.

18. On May 3, 2000, First Bank extended a commercial business line of credit in the amount of $75,000.00 to Stereo Sound. Debtor signed the agreement in his capacity as president. The document provided that the line of credit extended to November 15, 2000, and was secured in part by the Mortgage on the Parkway Property. Mary Helt did not sign the agreement.

19. On May 24, 2000, Debtor executed a quitclaim deed conveying the Parkway Property to May Helt. The deed was recorded on June 5, 2000.

20. On April 9, 2001, Stereo Sound executed a promissory note, loan no. 600152219, in the amount of $191,367.14 to First Bank. The purpose of the loan was "Business: Consolidation Loan." The note provided that it was secured in part by the mortgage dated April 4, 1999, on 1159 Cummins Parkway, Des Moines, Iowa. Debtor signed the note as president of Stereo Sound. Mary Helt did not sign the note.

21. Also on April 9, 2001, First Bank and Stereo Sound agreed to an extension of the commercial line of credit in the amount of $75,000.00, loan no. 600152217, dated May 3, 2000, and originally due on May 15, 2001. Debtor signed the agreement in his capacity as president of Stereo Sound. Mary Helt did not sign the agreement.

22. On the same day that he filed his personal bankruptcy petition, September 25, 2002, Debtor caused a chapter 7 bankruptcy petition to be filed for Stereo Sound d/b/a National Audio Video d/b/a Car Tunes Sales, Car Tunes Installation, Inc. case no. 02-5298. Debtor signed the bankruptcy petition in his capacity as president.

23. On December 23, 2002, Mary Helt commenced the instant adversary proceeding seeking a determination of the dischargeability of a debt based on Debtor's obligation to obtain a release of the Mortgage on the Parkway Property residence and other obligations contained in the dissolution decree.

24. On December 24, 2002, Debtor received a discharge.

25. On January 22, 2003, Debtor filed his answer to the adversary complaint.

26. On March 6, 2003, First Bank commenced foreclosure proceedings in the Iowa District Court for Polk County, case no. 4590, for $98,661.71 against Ralph Helt

and Mary Helt as "husband and wife" and "owners of the real estate." The suit also names EDCO Community Credit Union and Federal Home Loan Mortgage Corporation.

27. On June 2, 2003, Debtor filed a third party complaint against First Bank asking for a judgment declaring the Mortgage against the Parkway Property invalid.

28. On July 27, 2003, First Bank filed the instant motion to dismiss.

DISCUSSION

At the outset, the court notes that First Bank has not filed an answer to the third party complaint, choosing rather to file its motion to dismiss. Likewise, the court notes that there is no dispute as to the facts alleged in Debtor's third party complaint, at least for purposes of the motion to dismiss.

First Bank brings this motion to dismiss Debtor's third party complaint, presumably pursuant to Fed. R. Civ. P. 12(b) as incorporated by Fed. R. Bankr. P. 7012. It contends that the bankruptcy court lacks subject matter jurisdiction to hear the third party complaint and that Debtor lacks standing to bring the complaint. First Bank points out that Debtor transferred all of his interest in the Parkway Property to Mary Helt more than two years before filing for bankruptcy protection, and therefore, the Parkway Property was never property of his bankruptcy estate. Consequently, a determination of the validity of the Mortgage can have no effect on the administration of the bankruptcy estate. First Bank further argues that because Debtor no longer holds an interest in the Parkway Property, and his personal liability on its claim has been discharged, he is unaffected by the Mortgage and therefore lacks standing to challenge its validity.

Debtor does not dispute that the Parkway Property was never property of his bankruptcy estate. He asserts that he has standing to bring the third party complaint, and

the bankruptcy court has jurisdiction to hear the complaint, because the determination of the validity of the Mortgage will have a very real effect on his discharge. Mary Helt commenced her adversary proceeding based in large part on Debtor's obligation, pursuant to their dissolution of marriage decree, to transfer the Parkway Property to her free and clear of the Mortgage. According to Debtor, the validity of the Mortgage must be resolved at the outset in order for the court to make a determination of dischargeability, for if the Mortgage is invalid, then a portion of Mary Helt's claim is moot. If the Mortgage is valid, the court must determine the amount of Mary Helt's claim based thereon, before it can engage in a meaningful dischargeability analysis. Therefore, it is reasonable and only fair to interplead First Bank into this adversary as its rights under the Mortgage are at issue.

Jurisdiction is a threshold matter in any federal proceeding. Godfrey v. Pulitzer Publishing, Co., 161 F.3d 1137, 1141 (8th Cir. 1998); Metromedia Fiber Network, Inc. v. Various State and Local Taxing Authorities (In re Metromedia Fiber Network, Inc.), 299 B.R. 251, 256 (Bankr. S.D.N.Y. 2003). Bankruptcy courts derive their jurisdiction from 28 U.S.C. §§ 1334 & 157. Section 1334(a) provides the district courts with original and exclusive jurisdiction of all bankruptcy cases. Section 1334(b) provides that "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." Section 157 provides that the district courts may refer any or all bankruptcy cases, bankruptcy proceedings, and proceedings that are related to bankruptcy cases to the bankruptcy court. "Thus, aside from the bankruptcy case itself, a bankruptcy court has 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." Safeco Insurance Comany of America v. Farmland Industries, Inc (In re Farmland Industries, Inc., 296 B.R. 793, 802 (B.A.P. 8th Cir. 2003).

Section 157 further proscribes the bankruptcy court's authority to adjudicate controversies. The section divides civil proceedings in a bankruptcy case into two categories. The bankruptcy court may hear and decide core proceedings; however, non-core proceedings must be decided by the district court after it has reviewed the bankruptcy court's recommendations. Id.

" 'In general, a core proceeding is a legal dispute between parties in interest to a bankruptcy case, one of whom is almost always the debtor.' " Abramowitz v. Palmer, 999 F.2d 1274, 1277 (8th Cir. 1993) quoting Marine Iron & Shipbuilding Co. v. City of Duluth (In re Marine Iron & Shipbuilding Co.), 104 B.R. 976, 980 (D. Minn. 1989). They are proceedings arising only in bankruptcy cases, or proceedings involving rights created by the Bankruptcy Code. Specialty Mills, Inc. v Citizens State Bank, 51 F.3d 770, 773 (8th Cir. 1995). " 'Non-core related proceedings are those which do not invoke a substantive right created by federal bankruptcy law and could exist outside a bankruptcy, although they may be related to the bankruptcy.' " Id. at 773-74.

Debtor argues that the third party complaint is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), (I), (K), & (O). Section 157 provides in relevant part:

> (2) Core proceedings include, but are not limited to-
> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
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> * * *

(I) determinations as to the discharge of particular debts;

* * *

(K) determinations of the validity, extent, or priority of liens;

* * *

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

In this proceeding, it is undisputed that Debtor transferred his interest in Parkway Property to Mary Helt prior to filing for bankruptcy protection. Consequently, the property was never part of his bankruptcy estate, and the bankruptcy court has never had jurisdiction over the property. Section 157(B)(2)(K) "encompasses only proceedings to determine the validity, extent, or priority of liens on the estate's or the debtor's property." Continental National Bank of Miami v. Sanchez (In re Toledo), 170 F.3d 1340, 1347 (11th Cir. 1999). Therefore, Debtor's third party complaint is not a core matter under this paragraph.

Likewise the matter is not core under paragraphs (B) or (I) of section 157. Debtor received a discharge on December 24, 2002, and on June 13, 2003, the chapter 7 trustee entered his "no asset" report. The final decree was entered on July 21, 2003, and the case closed on the same day. First Bank readily concedes that Debtor's personal obligation on its claim was discharged, and its claim was not secured by property of the bankruptcy estate. Since First Bank does not seek to satisfy its claim from Debtor or his property, the dischargeability of its debt is not in issue. Further, since Debtor's case had no assets for distribution, the allowance or disallowance of First Bank's claim is not at issue.

Finally, the court determines that this matter is not core under § 157(b)(2)(O). The Eight Circuit has joined those courts that caution against a broad interpretation of

this "catchall" provision. Craig v. McCarty Ranch Trust (In re Cassidy Land and Cattle Co., Inc.), 836 F.2d 1130, 1132 (8th Cir. 1988) citing Wood v. Wood (In re Wood), 825 F.2d 90, 95 (5th Cir. 1987). A narrow interpretation is appropriate, otherwise the entire range of proceedings brought in bankruptcy would be deemed core, and thereby eviscerate the bankruptcy scheme instituted by Congress in response to the Supreme Court's decision in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). In re Wood, 825 F.2d at 95.

A narrow reading of § 157(b)(2)(O) does not extend its reach to this matter. Debtor's third party complaint does not touch his relationship with First Bank. It addresses the potential debtor-creditor relationship between Mary Helt and First Bank. When Mary Helt signed the mortgage in April 1999, she committed her share of the Parkway property for the payment of Stereo Sound's debt to First Bank. In essence, she became a co-debtor to First Bank to the extent that her interest in the property was liable for the debt. The third party complaint seeks to determine to what extent that liability existed and currently remains, and accordingly, is not a core matter.

Debtor also argues that the court has related jurisdiction and may, therefore, still hear the matter. He contends that the necessary nexus exists between his bankruptcy case and the third party complaint to bring it under the purview of the court. According to Debtor, any debt that First Bank seeks to enforce through foreclosure on the Parkway Property originated from his business Stereo Sound and was not an obligation of Mary Helt. Both he and his company have commenced chapter 7 cases, and his personal obligation to pay the debt has been discharged. However, should the Mortgage be

enforceable, he may well be obligated to pay a portion of the discharged debt, albeit to Mary Helt.

First Bank counters that the bankruptcy court can determine that any obligation that Debtor owes to Mary Helt is discharged. The validity of the Mortgage need not be resolved prior to that determination. In short, the court could determine that the Debtor's obligation to transfer his interest in the Parkway Property free of any obligation or encumbrance of Stereo Sound was not intended to be alimony, maintenance, or support; and the court could determine that Debtor did not have the ability to pay the claim or the benefit that he received outweighed the detriment to Mary Helt of discharging the debt.

While the court finds that first Bank understates the value of having the validity of the Mortgage resolved prior to the determination of the dischargeability of Mary Helt's claim, the court agrees that it lacks "related to" jurisdiction over the matter. The Eighth Circuit follows the "conceivable effects" test as set forth by the Third Circuit in Pacor v Higgins, 743 F.2d 984 (3d Cir. 1984).[1] Dogpatch Properties, Inc. v. Dogpatch, U.S.A. Inc. (In re Dogpatch U.S.A., Inc.), 810 F.2d 782, 786 (8th Cir. 1987).

> [T]he test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy* * * *. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action * * * and which in any way impacts upon the handling and administration of the bankrupt estate.

Id. quoting Pacor, 743 at 994 (emphasis included).

[1] The United States Supreme Court overruled Pacor on its holding that the prohibition against review of a remand order as set forth in 28 U.S.C. § 1447(d) does not apply in a bankruptcy case. See Things Remembered, Inc. v. Petrarca, 516 U.S. 124 (1995). However, the Supreme Court did not disturb the authority of Pacor as to the conceivable effects test. Griffin Resorts, Inc. v. Price Waterhouse & Co. (In re Resorts International, Inc., 372 F.3d 154, 164 n. 6 (3d Cir. 2004).

In this case, the determination of the validity of the Mortgage could conceivably have an effect on Debtor's liability. As he alleges, if the Mortgage is invalid, the part of Mary Helt's complaint seeking to hold him responsible for First Bank's claim pursuant to the Mortgage is moot. If valid, Debtor may be subject to liability for a nondischargeable debt based on the Mortgage.

However, the third party complaint fails to meet the second prong of the test. The outcome of the matter will have no effect on the administration or handling of the bankruptcy case. As stated above, Debtor had relinquished his interest in the Parkway Property prior to filing for bankruptcy protection, and the property was never property of the bankruptcy estate. Debtor's case had no assets for administration as the chapter 7 trustee abandoned a small boat and any potential claim against First Bank as having minimal value or being burdensome to the estate. The bankruptcy has been fully administered and closed. Accordingly, the court finds that it does not have 'related to' jurisdiction over debtor's third party complaint.

Even if the court found that it did have jurisdiction over the third party complaint as a none-core matter, the court would accede to First Bank's request and abstain from hearing the matter under 28 U.S.C. § 1334(c)(1) or (2). First Bank filed its foreclosure action prior to Debtor filing his third party complaint. Mary Helt filed her third party complaint against Debtor bringing him into the state court action. Therefore, all parties were present in the state court action, and the validity of the Mortgage was presented to the state court for determination. There is no question that the state court could timely decide what is essentially a matter of state law.

For all the foregoing reasons, the court finds that it lacks subject matter jurisdiction over the third party complaint. Accordingly, First Bank's motion to dismiss the third party complaint will be granted.

ORDER

IT IS THEREFORE ORDERED that Third Party Defendant First Bank's Motion to Dismiss the Defendant/Third Party Plaintiff's Complaint is GRANTED. Third Party Defendant shall have judgment dismissing the third party complaint.

Dated:

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RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT