

ADVERSARY COMPLAINTS IN BANKRUPTCY PROCEEDINGS

As an example, the Debtor/Defendant was granted a discharge in Bankruptcy, by the Bankruptcy Court, on April 1, 2010 from all debts, including the debt allegedly owed by the Defendant to the Plaintiff. At or about the same time the Discharge was granted, the Plaintiff, Creditor filed an Adversarial Complaint against the Debtor. An adversarial action is a lawsuit against the Debtor within the Bankruptcy proceeding. Once a Debtor files for Bankruptcy, an automatic stay goes into effect that prevents all creditors from pursuing collection of debts owed by the Debtor. A Creditor can seek relief from the automatic stay in the Bankruptcy Court but all State and Federal Courts lose jurisdiction over the Debtor.

The Bankruptcy Court must have jurisdiction over the subject matter to make a legally, enforceable ruling.

The Bankruptcy Court lost jurisdiction when the Court Ordered the Discharge of Debtor and closed the Bankruptcy case. Jurisdiction to hear matters under “related to” jurisdiction is generally held to terminate upon the end of the underlying bankruptcy case. Wesco Prods. Co. v. Alloy Auto. Co., 880 F.2d 981. The usual practice in the bankruptcy courts is to dismiss all related proceedings along with the bankruptcy case, Wesco at 983. “The dismissal or closing of a bankruptcy case should result in the dismissal of related proceedings.” In re Querner, 7 F.3d 1199 at 1202

If the action is for state law claims of common law fraud. Clearly, the cause of action does not concern matters “arising in” or “arising under” Title 11 since they are unrelated to the Bankruptcy Code. In re Kemoy T. A. Liburd-Chow, Bankruptcy # 10 B 2653, Kemoy T. A. Liburd-Chow v. Nationstar Mortgage, LLC, et al., Adversary # 10 A 224, opinion issued by Judge Jack B. Schmetterer on August 2, 2010, to be published.

Res Judicata prevents the Plaintiff from bringing this action since the law governing this case is well settled.

This action can only be filed with leave of Court. The Plaintiff must be granted a Court Order giving her relief from the automatic stay imposed by the Bankruptcy laws to file an adversarial complaint.

The trustee is the only entity with standing and authority to bring this action before the discharge of the debtor since any recovery would belong to debtor’s estate, Cable v. Ivy Tech State College, 200 F.3d 467, “the trustee has sole authority to dispose of property, including managing litigation related to the estate.” at 472.

When the trustee files a no-asset report allowing the discharge of the debtor, the trustee inferentially abandoned its right and the Plaintiff obtained her right to file the adversarial action, if otherwise this remedy was available to her.

The Plaintiff would only have a right to bring an adversarial action if there is “related to” jurisdiction.

The jurisdiction of a bankruptcy judge comprises, and is limited to matters “arising in,” “arising under,” or “related to” a case under Title 11, the Bankruptcy Code. 28 U. S. C. sec.1334(b), 157 (a); Internal Operating Procedure 15 (a); Celotex Corp. v. Edwards, 514 U.S. 300 at 307.

“Arising in” jurisdiction exists when the proceeding at issue does not arise under a particular statutory provision of the Code but would have no existence but for the bankruptcy. Banc of Am. Inv. Servs. V. Frailing, 305 B.R. 281 at 285.

That is not the case where the Plaintiff already has an action pending in State Court that could move forward were it not for the automatic stay.

A case “arises under” Title 11 when the action is based on a right or remedy explicitly provided in it. Conseco, Inc. v. Schwartz(In re Conseco, Inc.), 330 B.R. 673 at 681.(cited in Liburd-Chow v. Nationstar, referenced above.

That is not the situation in the situation where a cause of action is based on State of Illinois common law, not any Bankruptcy Code provision.

Judge Jack B. Schmetterer, in liburd Chow v. Nationstar Mortgage, L.L.C., et al, 10 A 224, opinion issued August 2, 2010 for publication, wrote “In this Circuit, “related to” jurisdiction arises in two circumstances. The first circumstance is **tort, contract, and other legal claims by and against the debtor, claims that, were it not for bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others but that section 1334(b) allows to be forced into bankruptcy court so that all claims by and against the debtor can be determined in the same forum.**, In re Import & Mini Car Parts, 1996 U.S. App. LEXIS 25992, 5-6 (7th Cir. Sept. 27, 1996)(citing Zerand-Bernal Group v. Cox, 23 F.3d 159 (7th Cir. 1994).

The second circumstance is “(s)uits which may affect the amount of property in the bankrupt estate.” Id. (citing Zerand at 162). In any event “bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.

Jurisdiction to hear matters “related to” jurisdiction is generally held to terminate upon the end of the underlying bankruptcy case. Wesco Prods. Co. v. Alloy Auto Co, 880 F.2d 981, 983(7th Circ. 1989) see above.

The Liburd Chow v. Nationstar case cited above, from this Circuit, was also a claim based on State common law fraud. The Court dismissed the action for lack of jurisdiction among other reasons

An adversarial proceeding must demonstrate jurisdiction before the Bankruptcy Court by “arise under”, “arise in”, or “relate to” jurisdiction to move forward.