

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
Eastern Division**

**FILED**  
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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**In Re:**

**In Proceedings Under Chapter 7**

**RAYMOND PORRELLO,**

**Case No.: 07-10053**

**Debtor.**

**JUDGE RANDOLPH BAXTER**

**MEMORANDUM OF OPINION AND ORDER**

Raymond Angelo Porrello, Jr. (the Debtor) objects to the allowance of a claim filed against his Chapter 7 bankruptcy estate by Union National Mortgage Company (Union). Upon a duly noticed hearing, the following constitutes the Court's factual findings and conclusions of law:

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The Debtor is the former sole owner of R.P. Developments, a real estate development company. He filed his voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Therein, Union filed its adversary proceeding, objecting to the Debtor's receipt of a general discharge pursuant to §727(a) of the Bankruptcy Code. On December 11, 2008, this court issued its Memorandum of Opinion and Order which denied the Debtor a general discharge pursuant to §727. Subsequently, the Debtor filed the subject objection to Union's proof of claim. Union's proof of claim was filed in the amount of \$64,000. No appeal was taken following the issuance of the discharge denial order under §727.

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The dispositive issue is whether there exists a basis for a claim objection once a Court denies a debtor a general discharge.

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Herein, the Debtor denies the validity of Union's claim, alleging that Union's claim is derivative from the pre-petition sale of a single family residence which loan originated from Debtor's former company to a third party (Gregory Cochran) and was guaranteed by the U.S. Department of Housing and Urban Development (H.U.D.). The remainder of the Debtor's contentions are restatements of what the Debtor argued unsuccessfully in the above-mentioned §727 proceeding. Briefly stated, the Debtor contends that Union was responsible for its own losses it sustained on the subject loan.

In its response in opposition to the Debtor's claim objection, Union requested an evidentiary hearing on the matter. It further observed that the general discharge denial order made no specific determination of debt dischargeability and that the Court did not determine any amount owed by the Debtor to Union. Union further asserts that the Court has already determined that Union has a claim against the Debtor. In such argument, Union contends that the above-referenced judgment entry impliedly determined that Union possessed standing as a creditor of the Debtor, although the judgment entry did not specifically address the Debtor's liability to Union.

#### Effect of general discharge

Upon a complaint filed by Union, this Court issued its order on December 11, 2008 denying a general discharge to the Debtor. Such order was a final appealable order. No appeal was prosecuted therefrom.

The Debtor, having been denied a general discharge in bankruptcy, now seeks a determination of the validity of Union's proof of claim. In significant part, this issue was

pending in state court proceedings at the time of the Debtor's bankruptcy petition filing. By reason of the injunctive provisions of §362(a) of the Bankruptcy Code [11 U.S.C. §362(a)], said proceeding was stayed.

In most cases, only the Chapter 7 trustee may file objections to proofs of claim. *United States v. Jones*, 260 B.R. 415, 418 (E.D.Mich. 2000). Generally, a chapter 7 debtor lacks standing to object to a proof of claim. *Kapp v. Naturelle, Inc.*, 611 F.2d 703 (8<sup>th</sup> Cir. 1979). There are, however, two exceptions to that general rule. *In re O'Donnell*, 326 B.R. 901 (6<sup>th</sup> Cir. B.A.P. 2005). A debtor may file an objection to a proof of claim if: 1) there are sufficient assets to pay all administrative expenses and creditors in full; or 2) the claim involved may not be discharged. *Id.*; *In re Willard*, 240 B.R. 664 (Bankr.D.Conn. 1999). If the debt is not discharged, the debtor becomes a party in interest as he or she would have a direct pecuniary interest in the outcome of the action. *Id.* Herein, the Debtor is a party in interest because he was denied a general discharge and thusly, is not released from personal liability for any pre-petition obligation. *See In re Midkiff*, 342 F.3d 1194, 1199 (10<sup>th</sup> Cir. 2003). This is true regardless of whether or not the debt was described as non-dischargeable by statute. *Id.*

Section 28 U.S.C. §1334 addresses bankruptcy court's jurisdiction over bankruptcy related matters. As a general proposition, state and federal courts have concurrent subject matter jurisdiction over civil proceedings that arise under, arise in, or are related to a bankruptcy case. 28 U.S.C. §1334(b). *In re LaCasse*, 238 B.R. 351 (Bankr.W.D.Mich. 1999); *In re Cassidy*, 213 B.R. 673 (Bankr.W.D.Ky. 1997). Bankruptcy courts also have the authority to abstain from hearing matters that may be heard in state court. The decision to voluntarily abstain is within "the sound discretion of the bankruptcy judge and can be raised *sua sponte*["] *In re Underwood*,

299 B.R. 471, 476 (Bankr.S.D.Ohio 2003). Title 28 U.S.C. §1334(c)(1) provides:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

Courts consider the following factors in deciding whether to abstain under § 1334(c)(1):

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties. *In re LTV Steel Co., Inc.*, 357 B.R. 118, 120 (Bankr.N.D. Ohio 2006); *Mann v. Waste Management of Ohio, Inc.*, 253 B.R. 211 (Bankr.N.D. Ohio 2000).

Herein, there are several factors applicable for this Court's consideration regarding permissive abstention. Firstly, the effect of the Debtor not receiving a general discharge in bankruptcy leaves him personally liable for all of his pre-petition debts. *See Midkiff*, 342 F.3d at 1194 (10<sup>th</sup> Cir. 2003). Therefore, the determination of whether the Debtor obtained funds from Union through fraudulent means has no effect on the efficient administration of the Debtor's

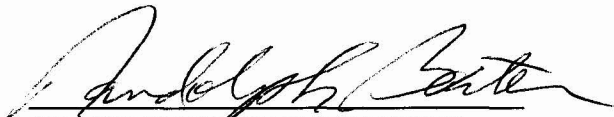
estate.

Secondly, the lack of other pending bankruptcy matters in conjunction with the presence of a related fraud claim proceeding pending in state court makes the severing of the state law fraud claim from the Debtor's objection to claim more feasible. Notwithstanding that claims objections are usually adjudicated as core matters, this Debtor's estate has been fully administered by the case trustee. See Trustee Interim Report, Docket Entry 91. As such, abstention at this point would not interfere with the efficient adjudication or administration of the case. Further the relief sought herein is truly a matter rooted in state law. Thusly, the predominance of the state law fraud claim supports remanding this issue to state court.

Although other factors such as the difficulty or unsettled nature of the applicable law, the presence of other jurisdictional basis, if any, other than 28 U.S.C. § 1334, the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, the burden of [the bankruptcy court's] docket, the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, the existence of a right to a jury trial, and the presence in the proceeding of nondebtor parties were not applicable to the case at bar, there is enough evidence present to warrant permissive abstention. In considering the relevant factors, this Court exercises its privilege of permissive abstention as allowed under 28 U.S.C. §1334(c)(1) and hereby remands, pursuant to 28 U.S.C. § 1452, the Debtor's Objection to Claim to the appropriate state court for its consideration and determination.

**IT IS SO ORDERED.**

Dated, this 4<sup>th</sup> day of  
December, 2009

  
**JUDGE RANDOLPH BAXTER**  
**UNITED STATES BANKRUPTCY**  
**COURT**