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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

WILLIAM D. CAMPBELL,)	Case No. 94-14704
)	
Debtor.)	Chapter 13
_____)	
)	Judge Pat E. Morgenstern-Clarren
)	
WILLIAM D. CAMPBELL,)	Adversary Proceeding No. 03-1012
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	<u>REGARDING CERTAIN</u>
ROBERT B. WELTMAN, et al.)	<u>DEFENDANTS' MOTION TO</u>
)	<u>DISMISS AMENDED COMPLAINT</u>
Defendants.)	

Defendants Robert Weltman, Weltman, Weinberg & Reis Co., LPA, and The Cadle Co. move to dismiss the claims which plaintiff William Campbell has made against them in his amended complaint on the ground that the bankruptcy court lacks subject matter jurisdiction. (Docket 82, 102). Mr. Campbell opposes this request. (Docket 101). For the reasons stated below, the defendants' motion is granted.¹

DISCUSSION

I. Mr. Campbell's Chapter 13 case

Mr. Campbell filed his chapter 13 case on November 9, 1994. His plan was confirmed on May 23, 1995; he received a discharge on June 18, 1999; and the case was closed on June 30, 1999.

¹ The remaining defendants are Craig Syby and Tower City Title. A separate order will be issued regarding this court's jurisdiction over those defendants.

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The case was reopened in November 2000 at the request of the United States trustee for the sole purpose of considering a motion to review attorney compensation issues. That motion was resolved by order entered on February 22, 2001. The chapter 13 trustee filed an amended final report on November 26, 2001. Mr. Campbell's case was ready to be re-closed at that point.

Mr. Campbell filed this multi-defendant lawsuit in the district court on December 16, 2002. The district court noted that:

[t]he core of Mr. Campbell's complaint involves an \$11,272.01 debt which defendant Robert Weltman is allegedly seeking to recover from Mr. Campbell on behalf of Mr. Weltman's client, defendant Cadle Company (assignee of First Bank National Association). Mr. Campbell asserts that he does not owe this debt because . . . it was discharged after completion of the Chapter 13 Plan set forth in [his] Bankruptcy Case[.] He claims the defendants' actions violate 11 U.S.C. §§ 502 & 1322(a)(5).²

(Docket 24). The district court concluded that Mr. Campbell's claims that his discharge was being violated were matters arising under Title 11 and referred the lawsuit to this court.

After the referral, this court granted various motions to dismiss and gave Mr. Campbell leave to file an amended complaint. (Docket 63, 64, 65, 66, 67, 68, 69, 70). He received that leave in large part because he was not represented by counsel and the court, therefore, held him to a less stringent standard. Mr. Campbell filed his amended complaint *pro se*, but is now represented by counsel. Counsel has adopted the amended complaint as filed by Mr. Campbell and defended it in briefing.

² Section 502 addresses allowance of claims or interests while §1322 deals with the contents of a chapter 13 plan. Despite Mr. Campbell's citation, neither deals with discharge issues.

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II. The Amended Complaint

Mr. Campbell's amended complaint does not reference or incorporate the original complaint. (Docket 75). The amended complaint names attorney Robert Weltman, his law firm Weltman, Weinberg & Reis, Craig Syby, and Tower City Title as defendants. The Cadle Co., which was named as a defendant in the original complaint and is one of the movants here, is not named as a defendant in the amended complaint.

The factual assertions of the amended complaint are essentially these: (1) as President of Atro Graphic Corp., Mr. Campbell signed for a loan from First Bank National Association; (2) the loan was paid; (3) despite that payment, Robert Weltman and Weltman, Weinberg & Reis (representing Cadle as the assignee of First Bank) attempted to collect this debt; (4) Mr. Campbell filed his chapter 13 case in 1994 to save his home from being sold at foreclosure as a result of those collection efforts; (5) he made payments to First Bank a second time through his chapter 13 plan payments; (6) he received a bankruptcy discharge; and (7) in 2002, Robert Weltman and his firm damaged Mr. Campbell's good name when they told a potential lender that the First Bank debt had not been paid.

Mr. Campbell seeks \$5 million in compensatory damages and \$10 million in punitive damages against Robert Weltman and his firm for "damaging and derogatory documents" sent to the potential lender with "willful intent . . . to destroy [Mr. Campbell's] good name and reputation, knowing this loan to First Bank . . . was paid." The amended complaint also includes this statement: "Additionally, I request that this debt be discharged and forever released." The amended complaint does not make any specific allegations against Cadle nor does it contain a

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“short and plain statement of the grounds upon which the court’s jurisdiction depends.” FED. R. BANKR. P. 7008(a) incorporating FED. R. CIV. P. 8.

III. The Motion to Dismiss the Amended Complaint

The amended complaint supersedes the original complaint. *See Parks v. Fed. Express Corp.*, 1 Fed. Appx. 273, 277 (6th Cir. 2001) (unpublished opinion) (citing *Lockett v. Turner*, 18 F. Supp. 2d 835, 837 n. 2 (W.D. Tenn. 1998); *Dluhos v. The Floating and Abandoned Vessel Known As “New York”*, 162 F.3d 63, 68 (2d Cir. 1998). The defendants’ motion to dismiss, therefore, correctly addresses the amended complaint.

The defendants request dismissal for lack of subject matter jurisdiction. *See* FED. R. CIV. P. 12(b)(1) (applicable under FED. R. BANKR. P. 7012(b)). They argue that the amended complaint asserts a defamation claim which, because it is a state law cause of action unrelated to Mr. Campbell’s chapter 13 case, cannot be heard in the bankruptcy court as a court of limited jurisdiction. Their motion questions the facial sufficiency of the amended complaint for jurisdictional purposes. *See Ohio Nat’l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990) (noting that a facial attack on subject matter jurisdiction questions the sufficiency of the pleading while a factual attack requires a determination as to the factual basis for jurisdiction).

Mr. Campbell is required to establish jurisdiction. *Moir v. Greater Cleveland Reg’l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990) (citing *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986)). All of the well-pleaded factual allegations of the amended complaint are assumed to be true for these purposes. *See Michigan Southern RR Co. v. Branch & St. Joseph Counties Rail Users Assoc., Inc.*, 287 F.3d 568, 573 (6th Cir. 2002); *Bayview Plaza Assocs. Ltd. Partnership v. Town of Northeast, Maryland (In re Bayview Plaza Assocs. Ltd.*

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Partnership), 209 B.R. 840, 841 (Bankr. Del. 1997). In opposing the motion, Mr. Campbell argues that he has stated two claims against the defendants that are properly triable in the bankruptcy court: (1) a tort claim for damage to his good name and credit; and (2) a claim for violation of his bankruptcy discharge.

IV. Bankruptcy Jurisdiction

“The jurisdiction of . . . bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Section 1334 of Title 28 vests bankruptcy jurisdiction in the district courts and permits the district courts to refer this jurisdiction to the bankruptcy courts. 28 U.S.C. §§ 1334(a) and (b); 28 U.S.C. § 157(a). The United States District Court for the Northern District of Ohio has generally referred bankruptcy jurisdiction to the bankruptcy court in this district. *See* General Order 84.

The defendants argue that the claims at issue here fall outside of § 1334(b). That statute provides that district courts shall have “original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to a cases under title 11.” 28 U.S.C. § 1334(b). “Congressional intent [with respect to § 1334(b)] was ‘to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.’” *Lindsey v. O’Brien, Tanski, Tanzer and Young Health Care Providers of Connecticut (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995)).

To determine bankruptcy jurisdiction, “it is necessary only to determine whether a matter is at least ‘related to’ the bankruptcy.” *Michigan Employment Security Commission v. Wolverine Radio Co.*, 930 F.2d 1132, 1141 (6th Cir. 1991). “[T]he ‘usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that

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proceeding could conceivably have any effect on the estate being administered in bankruptcy’.” *Dow Corning Corp.*, 86 F.3d at 489 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). “An action is ‘related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate’.” *Id.* Conversely, actions fall outside the scope of bankruptcy jurisdiction when their outcome will have no effect on the bankruptcy case. “This is generally because their outcome will not effect the property to be administered in the bankruptcy case, the total assets to be distributed, or the total claims to be paid.” *Porter v. NationsCredit Consumer Discount Co. (In re Porter)*, 295 B.R. 529, 538 (Bankr. E.D. Pa. 2003).

The claims which Mr. Campbell has made against the defendants must be considered based on these jurisdictional principles.³ Mr. Campbell has asserted a state law defamation claim for damage allegedly caused by Mr. Weltman and his firm to Mr. Campbell’s name and credit. He asks for monetary damages as a remedy. The alleged defamatory acts took place in 2002, well after Mr. Campbell’s chapter 13 case had been fully administered and initially closed. As a result, this cause of action is not property of the bankruptcy estate. *See* 11 U.S.C. § 1306(a)(1) (providing that the chapter 13 estate does not include property which the debtor acquires after the case is closed). Based on this timing, any recovery on the defamation claim will go to Mr. Campbell, not to the creditors in his chapter 13 case. Consequently, this tort claim “is not related to the bankruptcy because the action cannot conceivably impact any property of the estate, or any

³ The court has reviewed the two cases cited by Mr. Campbell in support of jurisdiction, but neither sheds light on the relevant issues. *See Rosen-Novak Auto Co. v. Honz*, 783 F.2d 739 (8th Cir. 1986); *Nat’l Supply Acceptance Co. of Amer. v. Price (In re Colorado Energy Supply, Inc.)*, 728 F.2d 1283 (10th Cir. 1984).

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right, liability, option or freedom of action of [Mr. Campbell] *as the debtor* in the . . . proceeding, or the handling and administration of the bankruptcy estate.” *Stewart v. Henry (In re Stewart)*, 62 Fed. Appx. 610, 614 (6th Cir. 2003) (unpublished opinion) (emphasis in the original). This is so even though the court resolving the defamation claim may have to consider the nature and scope of Mr. Campbell’s bankruptcy discharge. *See Shuman v. Kashkashian (In re Shuman)*, 277 B.R. 638, 649 (Bankr. E.D. Pa. 2001) (noting that the issue of relatedness to a bankruptcy case is dependent “not simply upon the claims asserted in the litigation but also upon the nature of [the] bankruptcy case which is then pending.”).⁴

Mr. Campbell also opposes dismissal by arguing that he has stated a claim based on the defendants’ violation of his chapter 13 discharge. Such an action would typically be within this court’s jurisdiction because it is based on a specific provision of the bankruptcy code; i.e. 11 U.S.C. § 524(a). The fatal problem with this argument, however, is that the amended complaint does not state such a cause of action: it does not refer to the bankruptcy code discharge provisions, does not allege that any defendant violated those provisions, does not refer to Cadle as a defendant at all; and does not request relief based on a violation of the discharge injunction.⁵

⁴ Mr. Campbell also asserts via affidavit that his claims are related to his bankruptcy case because the defendants’ defamatory actions caused him to file the bankruptcy. (Affidavit attached to brief in opposition). The court cannot accept this statement as true because it is not in the amended complaint and, even if the court were to consider it, it simply is not accurate. Mr. Campbell filed his bankruptcy case in 1994 and the defamatory acts he complains of took place in 2002.

⁵ The court notes that it specifically instructed Mr. Campbell that his amended complaint should comply with bankruptcy rule 7008(a) which incorporates the requirement in federal civil rule 8(a) that a pleading shall state the “grounds on which the court’s jurisdiction depends.” *See for example, Insurance Co. of N. Ame. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat’l Gypsum Co.)*, 118 F.3d 1056, 1063 (5th Cir. 1997) (noting that “a proceeding to enforce or construe a bankruptcy court’s section 524(a) discharge injunction . . . necessarily arises under title 11 . . .”). Mr. Campbell did not do so.

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Now that Mr. Campbell is represented by counsel, his pleadings are reviewed under the usual standards. There simply are no “well-pleaded allegations” in the amended complaint that state bankruptcy court jurisdiction. Arguments in a brief cannot substitute for the required allegations.

The defendants also correctly note without opposition that even if Mr. Campbell’s amended complaint could be read in such a way as to overcome those deficiencies, the Sixth Circuit has held that there is no private right of action for violation of the § 524 discharge injunction. *See Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2001); 11 U.S.C. § 524. Instead, *Pertuso* suggests that the “traditional remedy for violation of an injunction lies in contempt proceedings, not in a lawsuit such as this one.” *Id.* at 421.

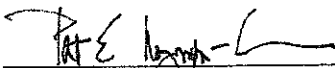
In sum, to the extent that the amended complaint states a cause of action for defamation, the complaint is dismissed without prejudice as to the moving defendants because this bankruptcy court does not have jurisdiction over such claims. With respect to the remaining parts of the amended complaint, there are no well-pleaded allegations that state a cause of action for violation of the discharge injunction. Those remaining allegations are dismissed without prejudice to Mr. Campbell’s right to pursue such a claim via contempt proceedings. The court will keep the bankruptcy case open for 20 days to permit Mr. Campbell to do so. If he does not timely pursue the issue, the bankruptcy case will be closed.

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CONCLUSION

For the reasons stated, the defendants' motion to dismiss is granted. A separate order will be entered reflecting this decision.

Date: 12 Sept 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on:

A. Clifford Thornton, Esq.
Harry Greenfield, Esq.
Craig Syby, Esq.

By: Joyce L. Gordon, Secretary

Date: 9/12/03

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Plaintiff,)	
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v.)	JUDGMENT
)	
ROBERT B. WELTMAN, et al.,)	
)	
Defendants.)	

For the reasons stated in the Memorandum of Opinion filed this same date, the motion to dismiss filed by defendants Robert Weltman, Weltman, Weinberg & Reis Co., LPA, and The Cadle Co. is granted without prejudice.

IT IS SO ORDERED.

Date: 12 Sept 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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