

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 05-11798
	)	
PHILLIP G. SMITH,	)	Chapter 13
Debtor.	)	
	)	Judge Arthur I. Harris
GEPPETTO'S PIZZA & RIBS	)	
FRANCHISE SYSTEMS, INC.,	)	Adversary Proceeding
Plaintiff,	)	No. 05-1183
	)	
v.	)	
	)	
PHILLIP G. SMITH,	)	
Defendant.	)	

ORDER DISMISSING ADVERSARY PROCEEDING

On October 31, 2005, the underlying Chapter 13 case to this adversary proceeding was dismissed for lack of prosecution. While the dismissal of the underlying Chapter 13 case does not necessary render moot all claims in this adversary proceeding, the Court believes that this adversary proceeding falls within “the general rule that related proceedings ordinarily should be dismissed following the termination of the underlying bankruptcy case.” *In re Porges*, 44 F.3d 159, 162 (2d Cir. 1995). As the Second Circuit noted in *Porges*:

We join several other circuits in adopting the general rule that related proceedings ordinarily should be dismissed following the termination of the underlying bankruptcy case. This general rule favors dismissal because a bankruptcy court’s jurisdiction over such related proceedings depends on the proceedings’ nexus to the underlying bankruptcy case. . . . Notwithstanding this general rule, however, nothing in the Bankruptcy Code requires a

bankruptcy court to dismiss related proceedings automatically following the termination of the underlying case.

44 F.3d at 162; *accord In re Javens*, 107 F.3d 359, 364 n.2 (6th Cir. 1997) (“Since dismissal of an underlying bankruptcy case does not automatically strip a federal court of residual jurisdiction to dispose of matters after the underlying bankruptcy case has been dismissed, exercise of such jurisdiction is left to the sound discretion of the trial court.”) (quoting *In re Lawson*, 156 B.R. 43, 45 (B.A.P. 9th Cir. 1993)).

The Court finds that the circumstances of this adversary proceeding do not warrant variation from the general rule that an adversary proceeding should be dismissed based upon the termination of the underlying bankruptcy case. Should any party believe that unusual circumstances warrant the Court’s exercising its discretion to retain jurisdiction over this adversary proceeding, notwithstanding dismissal of the underlying bankruptcy case, such party may move to alter or amend the judgment pursuant to Bankruptcy Rule 9023 and Fed. R. Civ. P. 59(e).

IT IS SO ORDERED.

/s/ Arthur I. Harris      01/03/2006  
Arthur I. Harris  
United States Bankruptcy Judge