

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
JANET L. CLARK, *
* CASE NUMBER 00-40503
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Debtor. *
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ANDREW W. SUHAR, TRUSTEE, *
*
Plaintiff, *
*
vs. * ADVERSARY NUMBER 00-4121
*
JANET L. CLARK, *et al.*, *
*
Defendants. *
*

M E M O R A N D U M O P I N I O N

This matter came before the Court on a cross-claim filed by Janet L. Clark ("Debtor") against Advanta National Bank ("Advanta") and Bankers Trust Company of California, NA ("Bankers," collectively "Movants"). Movants filed a Motion to Dismiss Cross-Claim ("Motion to Dismiss") on the grounds that the cross-claim is not a core proceeding pursuant to 11 U.S.C. § 157 and that there is no nexus between the cross-claim and the bankruptcy estate. Debtor has failed to respond to the Motion to Dismiss. The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. FACTS

On April 14, 1999, Janet L. Clark entered into a mortgage with Advanta. Advanta subsequently assigned the mortgage to Bankers.

On February 29, 2000, Debtor filed a petition under Chapter 7 of the Bankruptcy Code. Andrew W. Suhar ("Trustee") was assigned as Debtor's Chapter 7 trustee.

On September 25, 2000, Trustee filed an adversary proceeding against Debtor, Advanta, Bankers, City of East Liverpool and National City Bank. The adversary proceeding sought to determine the validity, priority and extent of all liens and encumbrances against real estate located at 1554 Globe Street, East Liverpool, Ohio 43920 and owned by the bankruptcy estate. Trustee specifically questioned the execution and validity of Movants' mortgage.

On November 6, 2000, Debtor filed a cross-claim against Movants alleging unconscionability, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, violation of the Truth in Lending Act and intentional infliction of emotional distress, all of which claims resulted from Debtor's dealings with Advanta while obtaining the mortgage.

On August 29, 2005, this Court entered an Agreed Order of Dismissal ("Agreed Order") approving a settlement between the Trustee and Advanta. The Agreed Order specifically states:

That Advanta shall immediately pay or cause to be paid \$2,500.00 ("Funds") to the Trustee in full settlement of this matter [the adversary proceeding]. In addition, any distribution from the estate for any other claim of Advanta is hereby waived. Upon payment of the Funds to Trustee the Trustee's claims in this Adversary Proceeding arising from the failure to properly execute the Mortgage are hereby dismissed with prejudice, but no other claims against Advanta by the Debtor are in any way affected by this Order.

(Agreed Order at 2.)

Movants assert that dismissal of the Trustee's claim prevents the cross-claim from becoming a core-proceeding pursuant to

28 U.S.C. § 157(b)(2) because the cross-claim no longer impacts the bankruptcy estate. As a consequence, Movants contend that the cross-claim is not properly before this Court. Debtor has failed to respond to these allegations.

II. DISCUSSION

Section 157 of Title 28 provides the procedures to allow a bankruptcy judge to hear cases under Title 11 and any or all core proceedings arising under Title 11 or arising from a related case under Title 11. Section 157(b)(2) of Title 28 further provides an illustrative list of core-proceedings arising under this Section. However, this Section does not provide the definition of a non-core proceeding and as a result the courts have defined this term.

The Court in *Parke Imperial Canton, Ltd. v. Developers Diversified Realty Corp. (In re Parke Imperial Canton, Ltd.)*, 177 B.R. 544 (Bankr. N.D. Ohio 1994) lays out the characteristics of a non-core proceeding and states in pertinent part:

Because the legislative history of Section 157 indicates that Congress intended to have "core proceeding" interpreted broadly, a proceeding will be determined to be core unless it appears that it contains the required characteristics of a non-core proceeding. A non-core proceeding is one filed in the bankruptcy court alleging a cause of action which:

- (1) is not specifically identified as a core proceeding under § 157(b)(2)(B) through (N),
- (2) existed prior to the filing of the bankruptcy case,
- (3) would continue to exist independent of the provisions of title 11, and,
- (4) the parties' rights, obligations, or both are not significantly affected as a result of the filing of the bankruptcy case.

In re Parke Imperial Canton, Ltd., 177 B.R. at 548 (citing *Commercial Heat Treating of Dayton, Inc. v. Atlas Industries, Inc. (In re Commercial Heat Treating of Dayton, Inc.)*, 80 B.R. 880, 888 (Bankr. S.D. Ohio 1987)).

In the instant case, the causes of action set forth in the cross-claim are not encompassed in the list of core proceedings in Section 157(b)(2). In addition, the claim asserted by Debtor existed prior to the bankruptcy filing, in that it arose at the date the mortgage went into effect on April 14, 1999 and the petition was not filed until February 29, 2000. Third, the Debtor's cause of action would continue to exist independent of the provisions of the Bankruptcy Code because the allegations arise under state and non-bankruptcy federal law. Finally, the Debtor's and Movants' rights and obligations are not affected as a result of the filing of the bankruptcy case. Therefore, causes of action set forth in the cross-claim do not constitute core proceedings.

A bankruptcy judge may hear and submit findings of fact and conclusions of law to the District Court on a non-core proceeding that is related to the bankruptcy case; however, without the parties' consent a bankruptcy court may not make a final decision on the matter. 28 U.S.C. § 157(c). A matter is related to a bankruptcy case if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Sanders Confectionery Products, Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 482 (6th Cir. 1992) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984)).

In the instant case, the cross-claim does not have any effect on the bankruptcy estate because the Trustee has settled and

dismissed his claim against Movants. Therefore, this Court does not have jurisdiction to hear this non-core proceeding.

III. CONCLUSION

The cross-claim does not constitute a core proceeding as dictated by 28 U.S.C. § 157(b)(2) and *In re Parke Imperial Canton, Ltd.* Furthermore, the bankruptcy estate does not have any interest in the outcome of the adjudication of this claim. As a result of the aforementioned, the cross-claim is a non-core proceeding over which this Court does not have jurisdiction. The cross-claim is hereby dismissed.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

