NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 05-95695
	)	
SUSAN M. BRIGADIER and DAVID L. BRIGADIER,	)	Chapter 7
	)	
	)	Judge Pat E. Morgenstern-Clarren
Debtors.	)	
_____	)	
	)	
MATTHEW A. CRAIG,	)	Adversary Proceeding No. 06-1261
	)	
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OF OPINION AND ORDER TRANSFERRING ADVERSARY PROCEEDING TO DISTRICT COURT** (NOT FOR COMMERCIAL PUBLICATION)
	)	
SUSAN M. BRIGADIER and DAVID L. BRIGADIER,	)	
	)	
Defendants.	)	

This order is entered *sua sponte* by the court based on the obligation of all federal courts to satisfy themselves that jurisdiction exists.[1] *Singleton v. Fifth Third Bank of Western Ohio (In re Singleton)*, 230 B.R. 533, 536 (B.A.P. 6th Cir. 1999).

Before addressing the merits of any claim, a federal court must first determine if it has subject matter jurisdiction, whether or not a party has raised the issue. *Campanella v. Commerce Exch. Bank*, 137 F.3d 885, 890 (6th Cir. 1998). A court may not assume that jurisdiction exists for the purpose of deciding the dispute on the merits. *See Steel Co. v. Citizens for a Better Env't*,

[1] This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

523 U.S. 83, 94 (1998) (rejecting the "doctrine of hypothetical jurisdiction" "because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers"); *Thomas v. United States*, 166 F.3d 825, 831 (6th Cir. 1999).

In the present action, plaintiff-creditor, Matthew Craig (Craig), seeks an order declaring that the alleged debt owed by defendant-debtors, Susan and David Brigadier (the Brigadiers) is nondischargeable under 11 U.S.C. § 523(a)(6). Under § 523(a)(6), a bankruptcy court may declare a particular debt of a debtor nondischargeable if that debt resulted from the "willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). Craig alleges here that the "debt" owed to him by the Brigadiers qualifies as a "willful and malicious injury" because it arose from the torts of defamation, tortious interference with employment/contract, civil conspiracy to defame, and civil conspiracy to tortiously interfere with employment/contract.[2] In response, the Brigadiers filed a motion for summary judgment.[3] For the following reasons, the court finds that it does not have jurisdiction over this adversary proceeding and cannot, therefore, rule on the summary judgment motion.

JURISDICTION

Under 28 U.S.C. § 1334, "district courts have original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). District courts also "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Section 157(a) of title 28 permits district courts to refer cases and proceedings arising under title 11 or arising in or related to a case under title 11 to the

[2] Case No. 06-1261, Docket 1.

[3] Case No. 06-1261, Docket 17.

bankruptcy court, which the United States District Court for the Northern District of Ohio has done. *See* General Order No. 84. Accordingly, the court has jurisdiction over the Brigadiers' chapter 7 case[4] and proceedings arising under title 11.

The court's jurisdiction to hear this adversary proceeding, however, is limited by § 157(b)(5). Section 157(b)(5) states that, "[t]he district court shall order that personal injury tort . . . claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending." 28 U.S.C. § 157(b)(5). Congress adopted this limitation to address some of the constitutional concerns raised in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). *See* H.R. REP. NO. 98-882 (1984) (Conf. Rep.), *as reprinted in* 1984 U.S.C.C.A.N. 576. Thus, although questions of dischargeability are core proceedings under § 157(b)(2)(I) and (J) over which the court has jurisdiction, § 157(b)(5) precludes a bankruptcy court from trying personal injury tort claims even in the context of a dischargeability action. 28 U.S.C. § 157(b)(2)(I), (J), (b)(5).

In the case at hand, Craig must demonstrate the existence of a debt as an integral part of the dischargeability action. *See CMEA Title Agency Inc. v. Little (In re Little)*, 335 B.R. 376, 381 (Bankr. N.D. Ohio 2005) (noting that a dischargeability action under § 523(a)(6) requires the creditor to demonstrate two distinct claims: (1) that the debtor owes a debt to the creditor, and (2) that the debt is nondischargeable). This court frequently decides dischargeability issues when the underlying debt for personal injury has previously been liquidated by a court of competent jurisdiction. This case is different. Here, it is unclear whether the disputed debt between these

[4] Case No. 05-95695.

particular parties has been determined by the district court.[5] *See Craig v. Brigadier*, *et al.,* no. 1:04CV1741 (N.D. Ohio) (Order addressing summary judgment dated Mar. 30, 2006). Therefore, to the extent the matter involves a "personal injury tort," it would be inappropriate for this court to determine whether a claim exists.

There are different schools of thought regarding the definition of "personal injury tort" claims. Without engaging in an exhaustive analysis, the court notes that they range from a broad interpretation that includes any injury which is an invasion on personal rights to a narrow interpretation in which the term is essentially limited to physical injuries. *Compare Leathem v. Von Volkmar (In re Von Volkmar)*, 218 B.R. 890, 894 (Bankr. N.D. Ill. 1998) (declining jurisdiction under § 157(b)(5) over claims of malicious prosecution, intentional infliction of emotional distress, and false light defamation), *with Perino v. Cohen (In re Cohen)*, 107 B.R. 453, 455 (Bankr. S.D. N.Y. 1989) (holding that a state anti-discrimination claim was not a "personal injury tort" in the "traditional, plain meaning sense of the words"). Between the two interpretations, the court finds the broad view more appropriate particularly in light of the constitutional considerations that underlay the statute.

If Congress had intended to limit "personal injury tort" claims to whose involving physical injuries, it could have used the term "personal bodily injury." Since Congress did not differentiate between the two terms, the court finds no extraneous reason to limit "personal injury tort" claims to those involving physical injury. While some courts follow the narrow view because they believe Congress intended "personal injury tort" in the "traditional, plain meaning sense of the words," *see In re Atron Inc.*, 172 B.R. 541, 543–44 (Bankr. W.D. Mich. 1994), that

[5] There are several defendants in the district court case other than the Brigadiers.

view is not dispositive. The "traditional, plain-meaning sense" of the term "personal injury tort" could just as easily distinguish between harms to the person and harms to personal property. *See In re Von Volkmar*, 218 B.R. at 894. Additionally, the broader interpretation of the term "personal injury tort" is more consistent with the dictionary definition of "personal injury." The newest edition of *Black's Law Dictionary* defines "personal injury" in part as "2. Any invasion of a personal right, including mental suffering and false imprisonment." Black's Law Dictionary (8th ed. 2004) (listed under "injury"). This supports a broad interpretation of "personal injury tort" beyond those involving a direct bodily injury.

Under the broad view, Craig's tort claims qualify as "personal injury tort" claims under § 157(b)(5). Several courts applying the broad view have declined jurisdiction over defamation claims. *See, e.g.*, *Rizzo v. Passialis (In re Passialis)*, 292 B.R. 346, 348 (Bankr. N.D. Ill. 2003) (declining jurisdiction to hear the merits underlying a slander claim); *Roberts v. Goidel (In re Goidel)*, 150 B.R. 885, 888 (Bankr. S.D. N.Y. 1993) (declining jurisdiction in nondischarge-ability proceeding regarding defamation claims in light of the general jurisdictional proscription of § 157(b)(5)); *Smith v. N.Y. State Higher Educ. Servs. Corp. (In re Smith)*, 95 B.R. 286, 291 (Bankr. N.D. N.Y. 1988) (declining jurisdiction to hear a claim regarding the tortious defamation of credit). Craig's tortious interference with contract claims might have the indicia of economic injuries as opposed to personal injuries, but the facts underlying Craig's claims are so completely intertwined that this court could not reasonably hear evidence on one set of claims without trying the other. *See In re Von Volkmar*, 218 B.R. at 894, 896. In other words, the personal injury tort claims dominate the complaint. Consequently, § 157(b)(5) places this adversary proceeding outside the court's jurisdiction.

In the absence of jurisdiction to try the personal injury tort claims alleged by Craig, and in accordance with 28 U.S.C. § 157(b)(5),

IT IS, THEREFORE, ORDERED that adversary proceeding No. 06-1261 is transferred to the United States District Court for the Northern District of Ohio.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge