

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 07-10774  
)  
ALEXANDER GREENSPAN and ) Chapter 7  
FRIDA GREENSPAN, )  
) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
) **MEMORANDUM OF OPINION**<sup>1</sup>

The court reopened this fully administered chapter 7 case to address the debtors' claim that a creditor violated their discharges by filing a state court lawsuit against them to collect a discharged debt. The debtors and the other defendants in the lawsuit then removed the state court case to this court.<sup>2</sup> The court has resolved all issues relating to the discharge violation, leaving only issues between non-debtors. Because the court has an independent obligation to consider its jurisdiction at all stages of a case, *see Jonas v. W.P. Hickman Sys., Inc.*, No. 08-0106, 2009 WL 2382969 at \*2 (Bankr. N.D. Ohio July 30, 2009), the court issued an order directing the parties to address whether the court has jurisdiction over the state court case at this point.<sup>3</sup> For the reasons stated below, the court concludes that it does not have jurisdiction over the remaining claims and the lawsuit is, therefore, remanded to state court.

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<sup>1</sup> This opinion is entered only to decide the issues presented in this case and is not intended for commercial publication.

<sup>2</sup> The lawsuit was removed by a notice of removal filed in the reopened chapter 7 case, but it does not have an adversary proceeding number. Docket 108.

<sup>3</sup> Docket 129.

## **I. AN OVERVIEW OF THE BANKRUPTCY CASE**

The chapter 7 trustee challenged as a fraudulent conveyance under Ohio Revised Code Chapter 1336 a transfer of \$120,000.00 made prepetition by the debtors to Igor and Ludmilla Lantsberg. The parties settled the matter, subject to court approval. The court granted the trustee's motion to compromise and authorized him to accept \$80,000.00 from the debtors in full satisfaction of the claims. The order included a full release of Igor and Ludmilla Lantsberg.<sup>4</sup>

The debtors received their discharges, the estate assets were distributed, and the case was closed on September 4, 2008. George Badovick, who was scheduled as an unsecured nonpriority creditor with a claim for legal fees, received a distribution of \$843.43. On October 16, 2009, the court granted the debtors' motion to reopen the case to bring a contempt action against Badovick for violating their discharge based on his filing a state court lawsuit in which he named them as defendants. On November 11, 2009, the four defendants named in the state lawsuit—the debtors, Igor Lantsberg, and FGAC Limited LLC—filed a notice removing the lawsuit to this court.<sup>5</sup>

## **II. THE STATE COURT LAWSUIT**

On August 7, 2009, Badovick filed an action captioned *George L. Badovick v. Alexander Greenspan, et al.*, case no. CV-09-700410 in the Cuyahoga County Court of Common Pleas. The complaint alleges that Badovick has an August 30, 2006 Chardon Municipal Court judgment against Alexander Greenspan in the amount of \$5,686.84, alludes to the debtors' bankruptcy case

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<sup>4</sup> Docket 73.

<sup>5</sup> Although there is some discrepancy in the various filings as to which of the defendants are prosecuting the notice of removal, the notice of removal states "Now come Defendants Alexander Greenspan, Frida Greenspan, FGAC Limited LLC, and Dr. Igor Lantsberg (the "Defendants") and serve a Notice of Removal of the litigation[.]" Docket 108.

and the fraudulent transfer issue, and asserts claims for fraudulent conveyance, civil conspiracy, and violation of Ohio Revised Code § 2923.32 (Civil RICO claim). The complaint asks for judgment against Lantsberg and FGAC Limited LLC for damages, treble damages, and attorney fees and costs.<sup>6</sup> Although the complaint does not request monetary relief against the debtors, this court previously held that the lawsuit was a “thinly veiled” attempt by Badovick to pressure the debtors into paying the discharged debt, and thus violated the § 524(a) discharge injunction.<sup>7</sup>

### **III. DISCUSSION**

#### **A. Removal**

The defendants removed the state court lawsuit to this court under 28 U.S.C. § 1452.

That statute provides that:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

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<sup>6</sup> Memorandum of opinion and order at 12, docket 126.

<sup>7</sup> *Id.* Badovick appealed that decision, but did not move to stay or suspend other proceedings in the case. *See* FED. R. BANKR. P. 8005.

The lawsuit is before this court under 28 U.S.C. § 157(a) and General Order No. 84 entered by the district court.<sup>8</sup>

### **B. Jurisdiction**

Under 28 U.S.C. § 1452, removal hinges on whether bankruptcy jurisdiction exists under 28 U.S.C. § 1334. The party removing the action has the burden of proving subject matter jurisdiction. *Parrett v. Bank One, N.A. (In re Nat'l Century Fin. Enters., Inc. Inv. Litig.)*, 323 F. Supp.2d 861, 867 (S.D. Ohio 2004) (citing *Jerome-Duncan, Inc. v. Auto-By-Tel, L.L.C.*, 176 F.3d 904, 907 (6th Cir. 1999)). In assessing jurisdiction, the removed lawsuit is not considered as a whole. Instead, the court must consider jurisdiction as to each cause of action or asserted right to recovery. *Beneficial Nat'l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 950-51 (Bankr. E.D. Tenn. 1998); *see also McCratic v. Bristol-Myers Squibb and Co.*, 183 B.R. 113, 115 (N.D. Tex. 1995).

Section 1334 grants district courts “original and exclusive jurisdiction of all cases under title 11” and “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(a), (b). These four references define the scope of bankruptcy jurisdiction. Because the removed lawsuit is not a bankruptcy case, the issue here is whether it arises under title 11, arises in, or is related to the debtors’ chapter 7 case. The removing party need only prove that the lawsuit is related to a case under

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<sup>8</sup> Bankruptcy rule 9027 establishes the procedure for removal. Under that rule, an action commenced after the bankruptcy case is filed may be removed within the shorter of 30 days after receipt (through service or otherwise) of the initial pleading setting forth the claim or 30 days after receipt of the summons if the initial pleading was filed with the court but not served with the summons. FED. R. BANKR. P. 9027(a)(3). The court will assume for these purposes that the defendants’ notice of removal was timely under the rule.

title 11 to come within the scope of this jurisdictional grant. *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 482 (6th Cir. 1992).

“The phrase ‘arising under title 11’ describes those proceedings that involve a cause of action created or determined by a statutory provision of title 11[.]” *Michigan Employment Sec. Comm. v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991) (citation omitted). “[A]rising in’ proceedings are those that, by their very nature, could arise only in bankruptcy cases.” *Id.* Section 157(b)(1) of title 28 provides that the bankruptcy court may hear and determine “all core proceedings arising under or arising in a case under title 11,” which are referred by the district court. 28 U.S.C. § 157(b)(1). Section 157(b)(2) then provides a non-exclusive list of core proceedings. 28 U.S.C. § 157(b)(2).

Related proceedings, on the other hand, are the outer limits of bankruptcy jurisdiction. “A proceeding is related to bankruptcy if ‘the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.’” *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (6th Cir. 1991) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). “Certainty, or even likelihood, is not a requirement.” *Id.* (citing *In re Wolverine Radio Co.*, 930 F.2d at 1143). “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.’” *Lindsey v. O’Brien, Tanski, Tanzer and Young Health Care Providers of Conn. (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Pacor, Inc.*, 743 F.2d at 994). In related proceedings, the bankruptcy judge generally submits proposed finding of fact and conclusions of law and the judgment is entered by the district court. 28 U.S.C. § 157(c)(1).

Alternatively, the parties to the proceeding may consent to the bankruptcy judge hearing the matter and entering a judgment. 28 U.S.C. § 157(c)(2).

“A proceeding ‘need not necessarily be against the debtor or against the debtor’s property’ to satisfy the requirements for ‘related to’ jurisdiction. However, ‘the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section [1334(b)].” *In re Dow Corning Corp.*, 86 F.3d at 489 (quoting *Pacor, Inc.*, 743 F.2d at 994). The jurisdiction of bankruptcy courts may extend more broadly in chapter 11 cases than in chapter 7 cases. *Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995).

Although Badovick named the debtors as defendants in the lawsuit, he may not proceed against them based on this court’s finding that he violated the discharge injunction by doing so. The remaining claims are: (1) Badovick’s claims against Lantsberg; and (2) Badovick’s claims against FGAC Limited. To avoid remand, the defendants are required to show that this court has jurisdiction and that (at a minimum) resolution of these claims will have some conceivable impact on the debtors’ bankruptcy proceedings. *In re Dow Corning Corp.*, 86 F.3d at 494.

The defendants argue that the court has jurisdiction under 28 U.S.C. § 157(b)(2)(H) and 11 U.S.C. 105(a). The provisions of § 157(b) deal with whether a matter is a core proceeding and the bankruptcy court’s power to enter a final order. Jurisdiction, as previously discussed, is granted under § 1334, and the claims made by Badovick against Lantsberg and FGAC Limited do not come within the scope of that grant. Badovick’s claims against these non-debtors for fraudulent conveyance, civil conspiracy, and for violation of Ohio Revised Code § 2923.32 are based on Ohio law, do not require interpreting any bankruptcy code provision, and are claims which often arise outside of bankruptcy. Consequently, the claims do not arise under title 11 or

in the chapter 7 case. Moreover, the claims are not related to the debtors' case as the case has been fully administered and the resolution of the claims will have no impact whatsoever on the chapter 7 estate. *See Archer v. Nissan Motor Acceptance Corp.*, 324 F. Supp.2d 805, 808-809 (S.D. Miss. 2004) (collecting cases and stating that "related to" jurisdiction is lacking in the absence of a bankruptcy estate). Although the case was reopened, the purpose of reopening was solely to deal with the issue of Badovick's violation of the discharge injunction, and that issue has been resolved.

The defendants argue that this court has jurisdiction to enforce the release which Lantsberg obtained under the compromise. They have also alleged that Badovick violated Ohio Civil Rule of Procedure 11 by filing the state court lawsuit in the face of the release.<sup>9</sup> They argue that jurisdiction for these claims can be found in Bankruptcy Code § 105(a). That statute provides in relevant part that the bankruptcy court may take any action or make any determination "necessary or appropriate to enforce or implement court orders[.]" 11 U.S.C. § 105(a). That section, however, is "not without its limits;" one such limit is § 1334. *In re Wolverine Radio Co.*, 930 F.2d at 1140 n. 13. And as discussed above, Badovick's claims against Lantsberg and FGAC Limited do not come within the scope of § 1334 jurisdiction.

A court does have jurisdiction with respect to proceedings brought to interpret and enforce its orders. *See Travelers Indem. Co. v. Bailey*, 129 S.Ct. 2195, 2205 (2009). That jurisdiction does not, however, extend to the lawsuit because the lawsuit is not a proceeding to enforce this court's order. While this court's order providing for a release may be invoked as a defense in the lawsuit, the state court is perfectly competent to interpret the order for that

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<sup>9</sup> *See* docket 109.

purpose. See *Kmart Creditor Trust v. Conaway (In re Kmart Corp.)*, 307 B.R. 586, 596 (Bankr. E.D. Mich. 2004) (noting that “state courts are qualified to interpret the language of bankruptcy plans and orders and routinely engage in such interpretation.”). Lantsberg is also free to raise his Rule 11 claim in state court.

Based on the above, the court concludes that bankruptcy jurisdiction does not exist with respect to the lawsuit.

### **C. Remand**

When a state court lawsuit has been removed to bankruptcy court and the bankruptcy court lacks jurisdiction, the case must be remanded to the state court. 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”). Therefore, based on the court’s conclusion that bankruptcy jurisdiction does not exist, the lawsuit is appropriately remanded to the state court. The Clerk of the United States Bankruptcy Court will be instructed to remand this lawsuit to the Cuyahoga County Court of Common Pleas.

### **IV. CONCLUSION**

For the reasons stated, the court will enter a separate order remanding the lawsuit to the state court.



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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
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ALEXANDER GREENSPAN and ) Chapter 7  
FRIDA GREENSPAN, )  
) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
) **ORDER OF REMAND**

For the reasons stated in the memorandum of opinion entered this same date, the removed proceeding titled as *George L. Badovick v. Alexander Greenspan, et al.*, case no. CV-09-700410, is remanded to the Cuyahoga County Court of Common Pleas.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Pat E. Morgenstern-Clarren". The signature is written in a cursive style with a horizontal line underneath it.

Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge