**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF RHODE ISLAND**

---

In re: Keven A. McKenna, Debtor — BK No. 17-10314, Chapter 11

---

Keven A. McKenna,
Plaintiff
v.

A.P. No. 17-01016

Ronald Blanchard,
Defendant

---

**ORDER DISMISSING COMPLAINT**

Debtor Keven A. McKenna brought this adversary proceeding against Ronald Blanchard seeking a declaration that Mr. Blanchard does not have a valid claim against him, asserting that the applicable state law statute of limitations had expired at the time a state court ordered him to pay Mr. Blanchard monetary sanctions. Mr. McKenna is also seeking damages ("Affirmative Claim") for what he contends is Mr. Blanchard's assertion of frivolous claims in violation of state law. *See* Complaint (Doc. #1).

On December 1, 2017, Mr. McKenna's chapter 11 bankruptcy case was dismissed under 11 U.S.C. § 1112(b) on the motion of the United States Trustee, as well as the Court's order to show cause why the case should not be dismissed for failure to comply with a court order. *See* BK No. 17-10314 (Doc. ## 131, 132). Thereafter, the Court issued an order to show cause (Doc. #22) why this adversary proceeding should not be dismissed for lack of jurisdiction.[1] *See Sheridan v. Michels* (*In re Sheridan*), 362 F.3d 96, 100 (1st Cir. 2004) (court is "duty-bound to inquire, *sua sponte*" whether it has subject matter jurisdiction). Mr. McKenna filed responses to the Court's order to show cause on January 3, 2018 (Doc. #24) and January 9, 2018 (Doc. #25),

[1] Since the issuance of the show cause order, Mr. Blanchard filed an amended motion for sanctions (Doc. #27) against Mr. McKenna which must be addressed before the adversary proceeding can be dismissed.

arguing that the Court continues to have jurisdiction over this proceeding despite the dismissal of his underlying bankruptcy case, and should proceed to decide the merits. Mr. Blanchard filed a response on January 22, 2018 (Doc. #26), arguing the proceeding should be dismissed. The Court concludes that Mr. McKenna has not shown cause, and it no longer has subject matter jurisdiction to adjudicate his Complaint.

Mr. McKenna, as the party asserting jurisdiction, has the "burden of demonstrating the existence of federal jurisdiction." *Acosta-Ramírez v. Banco Popular de Puerto Rico*, 712 F.3d 14, 20 (1st Cir. 2013). The issue of subject matter jurisdiction should be resolved before addressing the merits of an action. *See Morales Feliciano v. Rullan*, 303 F.3d 1, 6 (1st Cir. 2002) ("[T]he preferred – and often the obligatory – practice is that a court . . . should resolve that question before weighing the merits of a pending action.").

In considering whether there is subject matter jurisdiction when there is no longer a pending bankruptcy case, the Court accepts as true all factual allegations set forth in the Complaint. *See Aversa v. United States*, 99 F.3d 1200, 1209-10 (1st Cir. 1996) (stating that in determining whether it has subject matter jurisdiction a court "must construe the complaint liberally, treating all well-pleaded facts as true and indulging all reasonable inferences in favor of the plaintiff"). "The jurisdiction of the 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).

The Supreme Court summarized the three distinct types of matters falling within the bankruptcy courts' jurisdiction:

> [T]he district courts of the United States have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Congress has divided bankruptcy proceedings into three categories: those that "aris[e] under title 11"; those that "aris[e] in" a Title 11 case; and those that are "related to a case under title 11."

> § 157(a). District courts may refer any or all such proceedings to the bankruptcy judges of their district, *ibid.*, . . . .

*Stern v. Marshall*, 564 U.S. 462, 473 (2011).

The United States District Court for the District of Rhode Island has referred all cases arising under title 11 to this Court. *See* DRI LR Gen. 109(a). The Court must determine what type of jurisdiction, if any, it has before adjudicating the merits of a controversy. *See* 28 U.S.C. § 157(b)(3) ("The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11."). Accordingly, the Court first turns its focus to whether this matter is a core proceeding or, alternatively, a non-core proceeding that nevertheless qualifies as a "related to" proceeding.

"Core proceedings involve rights created by the Bankruptcy [Code]; they depend on the Bankruptcy [Code] for their existence." *In re G.S.F. Corp.*, 938 F.2d 1467, 1475 (1st Cir. 1991) (citing 28 U.S.C. § 157(b)(2)). While Mr. McKenna initially might have been able to show that this proceeding was core under 28 U.S.C. § 157(b)(2)(B), (C), or (O) because he sought the disallowance of Mr. Blanchard's claim and recovery of his Affirmative Claim, it is evident that following the dismissal of the underlying bankruptcy case, he can longer establish jurisdiction on these grounds. The allowance or disallowance of Mr. Blanchard's claim is applicable only when there is a pending bankruptcy case. Thus, this aspect of the Complaint is moot. The remaining controversy, the Affirmative Claim, arises under state law and no longer involves rights created by the Bankruptcy Code or that depend on the Code for their existence; indeed, at this juncture, there is no bankruptcy purpose to adjudication of the Complaint. Any potential impact or monetary recovery against Mr. Blanchard would benefit solely Mr. McKenna, not any existing bankruptcy estate or his other creditors. It is clear then that the determination of the

enforceability of Mr. Blanchard's claim and the Affirmative Claim are now well outside the purview of 28 U.S.C. § 157(b)(2).

The next step in the analysis is to determine whether the dispute is a matter "related to" a case under title 11. 28 U.S.C. § 157(a). While the First Circuit has described this jurisdictional underpinning as extensive, it is not without limitation:

> The statutory grant of "related to" jurisdiction is quite broad. Congress deliberately allowed the cession of wide-ranging jurisdiction to the bankruptcy courts to enable them to deal efficiently and effectively with the entire universe of matters connected with bankruptcy estates. Thus, bankruptcy courts ordinarily may exercise related to jurisdiction as long as the outcome of the litigation potentially could have some effect on the bankruptcy estate, such as altering debtor's rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankruptcy estate.

*Bos. Reg'l Med. Ctr., Inc. v. Reynolds* (*In re Bos. Reg'l Med. Ctr., Inc*), 410 F.3d 100, 105 (1st Cir. 2005) (internal quotations and citations omitted).

Again, when Mr. McKenna commenced this adversary proceeding, the outcome might have affected his bankruptcy estate and this Court may have had "related to" jurisdiction of the matter. *See Gardner v. United States* (*In re Gardner*), 913 F.2d 1515, 1518 (10th Cir. 1990) ("A bankruptcy court has jurisdiction over disputes regarding alleged property of the bankruptcy estate at the outset of the case."). However, such jurisdiction is temporal; while the bankruptcy court may have exclusive jurisdiction over property as of the commencement of a debtor's case, the bankruptcy court's jurisdiction over such property ends when it is no longer property of the estate. *See id.*; *see also Travers v. Bank of America, N.A. (In re Travers)*, 507 B.R. 62, 71-72 (Bankr. D.R.I. 2014); *United States v. Fleet Nat'l Bank (In re Calore Express Co., Inc.)*, 288 B.R. 167, 169-70 (D. Mass. 2002) ("[T]here are two dimensions on which to assess 'related to' jurisdiction: substantive and temporal. A matter may be unrelated to a bankruptcy estate because

it substantively has no impact on that estate, or it may be unrelated because the estate does not exist anymore. Either way . . . a bankruptcy court . . . has no subject-matter jurisdiction over that dispute.").

Even absent subject matter jurisdiction, however, under certain circumstances a bankruptcy court may exercise discretion to retain a proceeding and decide its merits. This Court previously has followed the Bankruptcy Court for the District of Massachusetts 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. Indeed, section 349 of the Bankruptcy Code authorizes bankruptcy courts to alter the normal effects of the dismissal of a bankruptcy case if cause is shown. Accordingly, we hold that the dismissal of an underlying bankruptcy case does not automatically strip a federal court of jurisdiction over an adversary proceeding which was related to the bankruptcy case at the time of its commencement. The decision whether to retain jurisdiction should be left to the sound discretion of the bankruptcy court or the district court, depending on where the adversary proceeding is pending.

*Hamilton v. Appolon (In re Hamilton),* Adversary No. 07-1060, 2009 WL 2171097, at *6 (Bankr. D. Mass. July 15, 2009) (*quoting Porges v. Gruntal & Co.* (*In re Porges*), 44 F.3d 159, 162 (2d Cir. 1995)) (internal citations omitted); *see also In re Travers*, 507 B.R. at 74. A court "must consider four factors in determining whether to continue to exercise jurisdiction: judicial economy, convenience to the parties, fairness and comity." *In re Travers,* 507 B.R. at 73 (*quoting In re Porges,* 44 F.3d at 162-63).

Regarding judicial economy, the Seventh Circuit aptly described the status of a state law-based adversary proceeding once the underlying bankruptcy case has been dismissed:

> [W]hen the bankruptcy proceeding is dismissed, the adversary claim (when based solely on state law) is like the cartoon character who remains momentarily suspended over a void, spinning his legs furiously, when the ground has been (quite literally) cut out from under him. So tenuous is the federal link that the court ought to have the power to relinquish jurisdiction over the adversary claim if no possible federal interest, including the interest in reducing the cost of the bankruptcy process, would be served by retention.

*Chapman v. Currie Motors, Inc.*, 65 F.3d 78, 81-82 (7th Cir. 1995).

The controversy here, based entirely on non-bankruptcy, state law, presents no such possible federal interest. As noted, this dispute is of no interest to anyone except the two adversaries, and it no longer implicates the objectives of the Bankruptcy Code to justify its continuation before this Court. Furthermore, this proceeding is in its early stages, with no discovery having been conducted. Thus, it would not be a waste of judicial resources if Mr. McKenna were required to assert his challenge to Mr. Blanchard's claim (to the extent it is viable) in a different judicial forum.[2] The same holds true for his Affirmative Claim. Both parties are located in Rhode Island, so dismissal of the Complaint would not inconvenience them because the state law claims (again to the extent viable) can be heard in state court. As for the comity factor, the Court should consider whether the claims arising in this litigation would be more appropriately adjudicated by the state court to provide the litigants with "a surer-footed reading of applicable law." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). That is most decidedly the case here where the issues raised in the adversary proceeding were and, upon dismissal of Mr. McKenna's bankruptcy case, continue to be litigated in the state court.[3]

[2] While Mr. Blanchard argues that Mr. McKenna should be precluded from asserting his claims on the grounds of *res judicata*, that is not an issue for this Court to decide when it lacks subject matter jurisdiction.

[3] The Court understands from articles that recently appeared in the *Providence Journal* that enforcement of the sanctions awarded to Mr. Blanchard is the subject of on-going proceedings before the Rhode Island Superior Court.

Lastly, the final factor to consider, fairness to Mr. McKenna if the Complaint is dismissed, also weighs against him. Such dismissal will in no way prejudice Mr. McKenna by limiting him to a non-bankruptcy forum before which to litigate his state law claims. It will not deprive him of any right he *might* have to pursue his challenge to Mr. Blanchard's claim or his Affirmative Claim.

To state it succinctly, this Court ceased to have jurisdiction over Mr. McKenna's Complaint upon the dismissal of his bankruptcy case, after which the bankruptcy estate ceased to exist. Nor would discretionary retention of jurisdiction be appropriate based on the particular facts present.

The Complaint is hereby DISMISSED.[4]

Date: February 6, 2018

By the Court,

Diane Finkle

Diane Finkle
United States Bankruptcy Judge

[4] In all probability, the adversary proceeding itself will be dismissed after the disposition of Mr. Blanchard's amended motion for sanctions.