

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
HEARTLAND MEMORIAL HOSPITAL, LLC,)	CASE NO. 07-20188 HCD
)	CHAPTER 11
)	
DEBTOR.)	
)	
)	
HEARTLAND MEMORIAL HOSPITAL, LLC,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 07-2044
)	
JEFFREY YESSENOW,)	
)	
DEFENDANT.)	
_____)	
)	
JEFFREY YESSENOW,)	
)	
THIRD-PARTY PLAINTIFF,)	
)	
vs.)	
)	
BURKE COSTANZA & CUPPY, LLP,)	
COLLINS & COLLINS, GEORGE W.)	
CARBERRY and MICHAEL R. COLLINS,)	
)	
THIRD-PARTY DEFENDANTS.)	

Appearances:

J. Michael Katz, Esq., counsel for third-party plaintiff, 9013 Indianapolis Boulevard, Highland, Indiana 46322;

Samuel T. Miller, Esq., counsel for third-party plaintiff, 9335 Calumet Avenue, Suite C, Munster, Indiana 46321;

James M. Matthews, Esq., counsel for third-party defendants Burke Costanza & Cuppy and George W. Carberry, Locke Reynolds LLP, 201 North Illinois Street, Suite 1000, P.O. Box 44961, Indianapolis, Indiana 46244-0961; and

Linda Kujaca, Esq., counsel for third-party defendants Collins & Collins and Michael R. Collins, SmithAmundsen LLC, 150 North Michigan Avenue, Suite 3300, Chicago, Illinois 60601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on April 24, 2008.

This adversary proceeding was initiated by the Complaint filed by the chapter 11 debtor Heartland Memorial Hospital, LLC (“debtor” or “hospital”), against Jeffrey Yessenow (“Yessenow” or “third-party plaintiff”) on May 1, 2007. On June 25, 2007, Yessenow filed a Third-Party Complaint against the lawyers who had handled the transactions at issue in this adversary proceeding. He named as third-party defendants George W. Carberry and his law firm, Burke Costanza & Cuppy, LLP (collectively, “Carberry”), and Michael R. Collins and his law firm, Collins & Collins (collectively, “Collins”) (jointly, “third-party defendants”). Presently before the court are two motions to dismiss the Third-Party Complaint, filed by those third-party defendants pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). For the reasons that follow, the court dismisses the Third-Party Complaint for lack of subject matter jurisdiction.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it under the Complaint filed on May 1, 2007, is a core proceeding within the meaning of § 157(b)(2)(A) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. However, the court’s jurisdiction over the Third-Party Complaint is challenged and is the issue being determined in this Memorandum. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

On May 1, 2007, the hospital filed a nine-count Complaint seeking judgment against Yessenow and demanding the disallowance of claims made by Yessenow against the debtor. The Complaint set forth the following facts.

Heartland Memorial Hospital, LLC, is an Indiana limited liability corporation formerly operating as Illiana Surgery and Medical Center, LLC, a surgery center and hospital in Munster, Indiana.¹ Third-party plaintiff Yessenow was the President, Treasurer, Secretary, sole shareholder, and sole member of the Board of Directors of the Woman's Wellness Center, P.C. ("WWC"), an Indiana Professional Medical Corporation. On June 16, 2003, the hospital entered into a Stock Purchase Agreement with Yessenow to purchase 100% of WWC's stock in exchange for \$1 million in cash, \$1 million in a promissory note, and \$1 million in development and consulting services. However, "[a]t the time it entered the Stock Purchase Agreement, [the hospital] did not know that the transfer of shares of WWC Stock to [the hospital] was void." R. 1, Complaint, at ¶ 19. "Because Debtor is not an entity qualified to hold the stock of a professional corporation, the shares of WWC Stock purportedly transferred by Yessenow to Debtor are void and without value." *Id.* at ¶ 20.

Heartland and Yessenow, represented by separate counsel in the transaction, each had received legal opinions from counsel that the Agreement did not violate any law. However, the hospital asserted, the Indiana Professional Corporations Act "restricts ownership of stock in a professional corporation" to four entities, none of which is a limited liability corporation.² *Id.* at ¶ 17. It concluded, therefore, that the hospital, an LLC, was not

¹ On January 31, 2007, petitioning creditors filed an involuntary chapter 7 petition against the hospital. On March 2, 2007, the court granted the hospital's request to convert the case to a chapter 11 case. The hospital is authorized to operate its business at a debtor-in-possession.

² The Indiana Professional Corporations Act states, in pertinent part:

(a) [A] professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(continued...)

qualified to own the stock of a professional corporation and thus that the shares issued to it were void. *See* Ind. Code § 23-1.5-3-1(a), (b).

Yessenow filed a Third-Party Complaint against two sets of defendants, the individual attorneys and law firms that represented him and those that represented the hospital in the Stock Purchase Agreement transaction.³ *See* R. 11. He alleged that, “in the event judgment is awarded against the Third-Party Plaintiff [Yessenow] in the adversary Complaint (#1) proceedings, the proximate cause thereof is the breach of the duties owed by the Third-Party Defendants . . . to the Third-Party Plaintiff, Jeffrey Yessenow, M.D.” *Id.* at ¶ 34. Yessenow sought indemnification from each and both counsel in the event the court should find that the sale transaction violated Indiana law. *See id.* at 11.

²(...continued)

(1) individuals who are authorized by Indiana laws or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;

(2) general partnerships in which all the partners are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;

(3) professional corporations authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; and

(4) the trustee of a qualified trust.

(b) . . . All shares issued in violation of:

(1) this section; or

(2) any rule adopted by a licensing authority as provided by this section;

are void.

Ind. Code 23-1.5-3-1(a), (b).

³ Yessenow also answered the debtor’s Complaint with denials of the essential paragraphs of the Complaint, including a denial of the allegation that the transfer of WWC shares to the hospital was void. *See* R. 10 at ¶ 20.

Carberry filed a Motion to Dismiss Third-Party Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. *See* R. 22, 23. He asserted that Yessenow's Third-Party Complaint raised a dispute solely between non-debtor parties, one which involved only state law based claims that arise neither under provisions of the Bankruptcy Code nor in a case under the Code. He further contended that the resolution of Yessenow's alleged claims would not affect the amount or administration of the debtor's estate. Relying on *In re HA-LO Industries, Inc.*, 330 B.R. 663 (Bankr. N.D. Ill. 2005), Carberry concluded that the claims were not matters that fell into the court's "core" or "related to" jurisdiction.

Yessenow agreed that this third-party claim was not a "core" proceeding, but claimed that "related to" jurisdiction existed because the debtor and Yessenow had the identical legal malpractice cause of action against the third-party defendants. *See* R. 44 at 2; 45 at 3. He pointed out, as well, that the collectability of the law firms' professional liability insurance companies may be greater than the collectability of Yessenow. In addition, he insisted, supplemental jurisdiction existed for three reasons: First, the outcome affected the bankruptcy estate, since the third-party defendants' professional liability insurance companies might be more collectable than he was. Second, there existed a nexus or logical relationship between the Complaint and the Third-Party Complaint. Third, judicial economy, convenience and fairness to the parties would be promoted by having the bankruptcy court hear the Third-Party Complaint.

Collins also filed a motion to dismiss. *See* R. 59. He joined the Carberry Motion to Dismiss and alternatively sought to dismiss the Third-Party Complaint under Federal Rule of Civil Procedure 12(b)(6). Collins pointed out that, under Indiana law, a plaintiff alleging legal malpractice must show that he retained the attorney in question. Because Yessenow did not allege that Collins was his attorney, and because he in fact had his own attorney representing his interests in the transaction, he could not so prove, contended Collins. Nor could Yessenow demonstrate that an attorney-client relationship was created by his detrimental reliance on the attorney's statements or conduct. According to Collins, Yessenow never indicated to Collins that he would rely on Collins' legal opinion when negotiating the stock purchase, and Collins' status as the hospital's counsel should

have negated any such presumption. Collins emphasized that his law firm’s opinions pertained only to its client, the hospital; the third-party defendant insisted that Collins had no legal duty to Yessenow. On those grounds, Collins sought dismissal with prejudice for failure to state a claim upon which relief may be granted.

Discussion

The question before the court is whether Yessenow’s Third-Party Complaint must be dismissed pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, which makes Federal Rule of Civil Procedure 12(b)-(h) applicable in adversary proceedings. The third-party defendants invoke Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

A. Dismissal under Federal Rule of Civil Procedure 12(b)(1)

Carberry has moved to dismiss Yessenow’s Third-Party Complaint under Rule 12(b)(1), contending that this court lacks “jurisdiction over the subject matter” of this case. “Subject-matter jurisdiction defines the court’s authority to hear a given type of case.” *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 2773, 81 L.Ed.2d 680 (1984). “[A] federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action.” *Cook v. Winfrey*, 141 F.3d 322, 325 (7th Cir. 1998). When considering a Rule 12(b)(1) jurisdictional challenge, the court first determines which type of challenge to jurisdiction the movant has raised: a “facial” challenge to the sufficiency of the allegation that subject matter jurisdiction exists or a “factual” challenge to the underlying facts on which the court’s jurisdiction is based.

In ruling on a “facial” attack, the court must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the movant. In ruling on a “factual” attack, however, a court “may properly look beyond the jurisdictional allegations of the complaint . . . to determine whether in fact subject matter jurisdiction exists.” If the respondent submits evidence that casts doubt on a court’s jurisdiction, the “presumption of correctness” usually accorded to jurisdictional allegations disappears. In the end, the movant . . . bear[s] the burden of establishing the existence of federal jurisdiction by competent proof.

In re Carl F. Semrau D.D.S., Ltd., 356 B.R. 677, 688 (Bankr. N.D. Ill. 2006) (quoting *Sapperstein v. Hager*, 188 F.3d 852, 855 (7th Cir. 1999)); see also *Kalamazoo Realty Venture Ltd. P’ship v. Blockbuster Entm’t Corp.*, 249 B.R. 879, 884 (N.D. Ill. 2000).

In this case, the third-party defendant brought a facial, not factual, challenge to the court’s jurisdiction. Carberry asserted that the court had neither “core” nor “related to” jurisdiction over the subject matter of the Third-Party Complaint. This court therefore takes the factual allegations of the Third-Party Complaint as true, draws all reasonable inferences in favor of the third-party plaintiff, and assesses whether the complaint sufficiently alleged a basis for subject matter jurisdiction. See *St. John’s United Church of Christ v. Chicago*, 502 F.3d 616, 625 (7th Cir. 2007).

“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, 115 S. Ct. 1493, 1498, 131 L.Ed.2d 403 (1995). The jurisdiction extends to “any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11.”⁴ 28 U.S.C. § 157(a). Bankruptcy courts have “core” jurisdiction over bankruptcy cases and over those proceedings arising under the Bankruptcy Code or arising in a bankruptcy case. 28 U.S.C. § 157(b) (1), (2); see *In re United States Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997) (“Core proceedings are actions by or against the debtor that arise under the Bankruptcy Code in the strong sense that the Code itself is the source of the claimant’s right or remedy, rather than just the procedural vehicle for the assertion of a right conferred by some other body of law, normally state law.”); *Diamond Mortgage Corp. v. Sugar*, 913 F.2d 1233, 1239 (7th Cir. 1990), cert. denied, 498 U.S. 1089 (1991) (“[A] proceeding is core under § 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.”). They have limited jurisdiction over “non-core” proceedings that are “related to” a case under the Bankruptcy Code. See *In re United States Brass Corp.*, 110 F.3d at 1269 (“The impact of a claim

⁴ District courts have original 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), and shall refer any of those proceedings to bankruptcy judges for the district pursuant to 28 U.S.C. § 157(a).

on the size of the debtor's estate is a criterion of whether a claim is related to the bankruptcy and is therefore a noncore proceeding."); *Diamond Mortgage Corp.*, 913 F.2d at 1239 (An "action is related to the underlying bankruptcy case [when] its resolution may have a direct and substantial impact on the asset pool available for distribution to the estates.").

The court finds that this third-party action alleges legal malpractice and seeks indemnification if Yessenow is found liable to the hospital on its claims against him. Rather than an action by or against the debtor, it is a dispute between non-debtor parties. It raises state law claims, not federal bankruptcy claims to be determined under title 11. For these reasons, the court determines that the action is not a "core" proceeding. See *HA2003 Liquidating Trust v. Carramore Ltd. (In re HA-LO Indus., Inc.)*, 330 B.R. 663, 668 (Bankr. N.D. Ill. 2005) ("Core' jurisdiction is not present in this dispute between two nonparties to the bankruptcy."). The parties have conceded that this Third-Party Complaint is not a "core" matter.

Nevertheless, Yessenow argues that this court has "related to" jurisdiction over the third-party proceeding. Without a statutory definition for guidance, the Supreme Court, in *Celotex Corp. v. Edwards*, turned to the language in 28 U.S.C. §§ 1334(b) and 157(a) and stated that "related to" proceedings "include (1) causes of action owned by the debtor which become property of the estate pursuant to 11 U.S.C. § 541, and (2) suits between third parties which have an effect on the bankruptcy estate." *Id.*, 514 U.S. at 307 n.5, 115 S. Ct. at 1498 n.5. The Court endorsed the Third Circuit's test for determining the existence of "related to" jurisdiction, presented in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984), and followed by the majority of circuits:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. . . . Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. 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 bankrupt estate.

Celotex, 514 U.S. at 308 n.6, 115 S. Ct. at 1499 n.6 (quoting *Pacor*, 743 F.2d at 994). The Court noted without comment that the Seventh Circuit's articulation of the test was only slightly different. It then concluded that,

“whatever test is used, these cases make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor.” *Id.*, 514 U.S. at 308, 115 S. Ct. at 1499.

The Seventh Circuit has described its conception of “related to” jurisdiction as more limited than the Third Circuit’s approach. See *In re FedPak Sys., Inc.*, 80 F.3d 207, 213 (7th Cir. 1995). It is noteworthy that, “even after *Celotex*, the Seventh Circuit adheres to its narrow view of ‘related to’ jurisdiction.” *Banc of America Investment Servs., Inc. v. Fraiberg (In re Conseco, Inc.)*, 305 B.R. 281, 284 (Bankr. N.D. Ill. 2004). Its cases uniformly state that “[a] case is ‘related’ to a bankruptcy when the dispute ‘affects the amount of property [available] for distribution [i.e., the debtor’s estate] or the allocation of property among creditors.’” *In re FedPak*, 80 F.3d at 213-14 (quoting *In re Memorial Estates, Inc.*, 950 F.2d 1364, 1368 (7th Cir.), *cert. denied*, 504 U.S. 986 (1992)) (quoting in turn *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987)). Judge Posner offered this rationale for the purposes of “related to” jurisdiction:

[T]he [related-to] language [of §§ 1334(b) and 157] should not be read . . . broadly. The reference to cases related to bankruptcy cases is primarily intended to encompass tort, contract, and other legal claims by and against the debtor, claims that, were it not for bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others but that section 1334(b) allows to be forced into bankruptcy court so that all claims by and against the debtor can be determined in the same forum. A secondary purpose is to force into the bankruptcy court suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate.

Zerand-Bernal Group, Inc. v. Cox, 23 F.3d 159, 161-62 (7th Cir. 1994) (citations omitted). This court considers the Third-Party Complaint in light of the Seventh Circuit’s articulation of “related to” jurisdiction.

Yessenow’s Complaint does not fit into the primary purpose described in *Zerand-Bernal*: Only non-debtor parties are involved in this third-party dispute, and therefore there is no claim “by and against the debtor.” The court finds that the secondary purpose does not apply to this action, either. The indemnification claim conceivably could affect the bankruptcy estate only if two events occur. First, the debtor hospital must be successful in its adversary proceeding against Yessenow, thereby establishing Yessenow’s liability to the hospital. Second, Yessenow must be successful in his third-party action against the third-party defendants, thereby placing on Carberry and Collins the responsibility for satisfying Yessenow’s liability to the hospital. However, the

amount of the property in the bankruptcy estate would be established in the initial adversary proceeding, not in the subsequent third-party litigation. The third-party action would merely substitute a new party, the third-party defendants, who would be required to pay Yessenow's liability; it would not affect the amount of property in the bankruptcy estate. *See In re HA-LO Indus.*, 330 B.R. at 668-69 (concluding that the "outcome of this litigation would only determine which party will ultimately be responsible" but that the "distribution of funds . . . would remain unaffected"); *Spaulding & Co. v. Buchanan (In re Spaulding & Co.)*, 131 B.R. 84, 89 (N.D. Ill. 1990) (explaining the reallocation of responsibility for liability).

The Seventh Circuit has not ruled directly concerning "related to" jurisdiction over third-party indemnification actions; however, "the majority of bankruptcy and district courts in the Northern District of Illinois have held that a potential indemnity claim against the debtor does not necessarily impact estate property, and therefore does not presumptively confer on the bankruptcy court 'related to' jurisdiction over an otherwise unrelated matter." *Kalamazoo Realty*, 249 B.R. at 885 (citing cases). This court agrees that, even if there is a remote possibility that the third-party action would affect the allocation of the debtor's estate, the "mere possibility . . . is not sufficient to bring that claim within the 'related to' jurisdiction of the court." *Doctors Hosp. of Hyde Park, Inc., v. Desnick (In re Doctors Hosp. of Hyde Park, Inc.)*, 308 B.R. 311, 317 (Bankr. N.D. Ill. 2004); *see also In re FedPak*, 80 F.3d at 214 (possibility of claim against estate insufficient to support jurisdiction); *In re Conseco*, 305 B.R. at 284 (determining that the possibility of an impact on the estate was too remote to support jurisdiction); *Official Creditors' Comm. v. International Ins. Co. (In re Pettibone Corp.)*, 135 B.R. 847, 850 (Bankr. N.D. Ill. 1992) (finding that subject matter jurisdiction was lacking because the cross-claim, if successful, would merely "change the ultimate source of any damages that must be paid" but not the ultimate amount of property available to creditors).

The court determines that the third-party dispute does not affect either the amount of property available in the debtor's estate or the allocation of property among creditors. For that reason, it finds, this bankruptcy court does not have "related to" jurisdiction over Yessenow's Third-Party Complaint.

The third-party plaintiff also asserts that this bankruptcy court has jurisdiction to hear the third-party claim under the principle of supplemental jurisdiction. However, the court finds that there is no statutory basis for a bankruptcy court's exercise of supplemental jurisdiction. The supplemental jurisdiction statute, 28 U.S.C. § 1367, confers the power to exercise supplemental jurisdiction on district courts, not on bankruptcy courts. Section 157 of Title 28 sets forth the types of cases that a district court may refer to a bankruptcy court; it does not authorize a district court to refer a case before it to a bankruptcy court on the basis of supplemental jurisdiction. A bankruptcy court is limited to the three types of jurisdiction granted to it under 28 U.S.C. § 157. Although the Seventh Circuit has only suggested and assumed, without holding, that supplemental jurisdiction is not applicable to bankruptcy cases, *see Chapman v. Currie Motors, Inc.*, 65 F.3d 78, 81 (7th Cir. 1995), the Fifth Circuit has expressly concluded that a "bankruptcy court could not exercise supplemental jurisdiction over [the] third-party claim." *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995); *see also Edge Petroleum Operating Co., Inc. v. GPR Holdings, LLC (In re TXNB Internal Case)*, 483 F.3d 292, 300 (5th Cir. 2007); *In re Bass*, 171 F.3d 1016, 1023-25 (5th Cir. 1999) (extending *Walker* to apply to all supplemental jurisdiction; holding that the bankruptcy court had no inherent jurisdiction). This court is persuaded by the Fifth Circuit's thoughtful and thorough analysis of the bankruptcy jurisdiction statutes and declines to follow the Ninth Circuit's position in *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 869 (9th Cir. 2007), that supplemental jurisdiction is included in a bankruptcy court's "related to" jurisdiction.

Yessenow urges the court to follow the reasoning in *Hospitality Ventures/La Vista v. Heartwood 11, L.L.C. (In re Hospitality Ventures/La Vista)*, 358 B.R. 462 (Bankr. N.D. Ga. 2007), and to conclude that supplemental jurisdiction exists. In that case, the court found that the third-party impleader claim would not come under the generous "related to" test of the Third Circuit's *Pacor* decision because the outcome of that action "clearly has nothing to do with the bankruptcy case and could have no impact on it as a legal matter." *Id.* at 470. However, it found the scope of supplemental jurisdiction to be very broad:

[S]ection 1367 simply substitutes the statutory basis of supplemental jurisdiction for the traditional doctrine of ancillary jurisdiction, with the same result. Thus, although a core-related supplemental claim does not have a “conceivable effect” on the bankruptcy case under the usual test set forth in *Pacor* . . . , it is nevertheless “related to” the bankruptcy case because of its nexus with a core matter within the bankruptcy jurisdiction that establishes the district court’s bankruptcy jurisdiction of it under § 1334(b), as extended by § 1367. Accordingly, § 157(a) authorizes this bankruptcy judge to hear [a] third-party claim that meets those criteria.

Id. at 481.

In this court’s view, *Hospitality* expanded the scope of supplemental jurisdiction far beyond the parameters of the jurisdiction statutes.⁵ A bankruptcy court’s jurisdiction arises under 28 U.S.C. §§ 1334 and 157; there is no provision under those statutes or under § 1367 that confers supplemental jurisdiction on a bankruptcy court. *See In re Johnston*, 2007 WL 1166017 at *9 (Bankr. N.D.W.Va. 2007) (criticizing “cases that . . . go to great lengths to write-in an express grant of § 1367 jurisdiction to the bankruptcy court when no textual language supports that conclusion,” citing *Hospitality Ventures*); *see also Marshall & Ilsley Trust Co. v. Lapidis (In re Transcolor Corp.)*, 2007 WL 2916408 at *18 (Bankr. D. Md. 2007) (declining to follow *Hospitality Ventures*). Moreover, this court, bound by the Seventh Circuit’s comparatively limited test for “related to” jurisdiction, will not follow *Hospitality Ventures*’s exercise of supplemental jurisdiction to bring into the bankruptcy court a third-party action that, according to that court, had no effect on the bankruptcy case.

This court follows the reasoning and conclusions of the bankruptcy courts in this circuit, which uniformly have found that bankruptcy courts cannot exercise supplemental jurisdiction. *See, e.g., In re HA-LO Indus., Inc.*, 330 B.R. at 672-73; *In re Doctors Hospital at Hyde Park, Inc.*, 308 B.R. at 318; *In re Conseco*, 305 B.R. at 285; *Simmons v. Ford Motor Credit Co. (In re Simmons)*, 224 B.R. 879, 886 (Bankr. N.D. Ill. 1998); *Fisher v. Federal Nat’l Mortgage Ass’n (In re Fisher)*, 151 B.R. 895, 899 (Bankr. N.D. Ill. 1993); *see also, e.g., Enron Corp. v. Citigroup, Inc. (In re Enron Corp.)*, 353 B.R. 51, 59 (Bankr. S.D.N.Y. 2006); *Securities Investor*

⁵ It is noteworthy that the Georgia bankruptcy court stated that a strong argument against subject matter jurisdiction or supplemental jurisdiction could have been made at the beginning of the case. However, it pointed out, the only remaining issue in the case was the value of the hotel in 1998, and the court would resolve it in the interest of judicial economy. *See id.* at 482.

Protection Corp. v. Murphy (In re Selheimer & Co.), 319 B.R. 384, 390 (Bankr. E.D. Pa. 2005). Accordingly, it determines that this bankruptcy court does not have supplemental jurisdiction over Yessenow's Third-Party Complaint.

Having determined that it does not have core, related to, or supplemental jurisdiction, it therefore concludes that there is no independent basis of jurisdiction for this bankruptcy court to hear the Third-Party Complaint.

B. Dismissal under Federal Rule of Civil Procedure 12(b)(6)

Collins sought dismissal pursuant to Rule 12(b)(6), objecting that the Third-Party Complaint failed to state a claim upon which relief can be granted. Because the court has determined that it is without subject matter jurisdiction, it lacks the authority to address this alternate method of dismissal. A challenge brought pursuant to Rule 12(b)(6), for failure to state a proper claim, becomes moot once this court lacks subject matter jurisdiction over the complaint. *See Moir v. Greater Cleveland Regional Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990) (citing *Bell v. Hood*, 327 U.S. 678, 682, 66 S. Ct. 773, 776, 90 L.Ed. 939 (1946)).

CONCLUSION

For the reasons stated above, the Motion to Dismiss Third-Party Complaint of third-party defendant Carberry is granted and the Motion to Dismiss Third-Party Complaint of third-party defendant Collins is granted in part and denied as moot in part. The Third-Party Complaint is dismissed for lack of subject matter jurisdiction.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT