

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RODNEY STEPHEN MEANS,) CASE NO. 08-23574 JPK
) Chapter 7
Debtor.)

ORDER DETERMINING LACK OF JURISDICTION WITH RESPECT
TO A CASE REFERRED BY THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF INDIANA TO THE
UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA

This Chapter 7 case was initiated by a voluntary petition filed by the debtor Rodney Stephen Means (“Means”) on October 26, 2008. On December 9, 2009, the debtor filed his “Debtor’s Motion to Re-Open Case” (“Motion”). The debtor’s motion concluded with the following prayer for relief:

WHEREFORE, the Debtor Rodney Stephen Means, requests that this case be re-opened to reinstitute the Automatic Stay, and to allow the trustee to file and prosecute an action against Ameriquest and its assignee Deutsche Bank.¹

This motion was denied by order entered on January 26, 2010, because the case had never been closed. However, this motion in part referenced case number 2:06-CV-409-TS in the United States District Court for the Northern District of Indiana, a case arising from removal of a state court action to federal court. This action in part concerns the debtor’s attempt to obtain a judicial determination that an obligation to Ameriquest Mortgage Company should be rescinded, on the grounds of violation by Ameriquest of the federal Truth in Lending Act and Indiana’s Consumer Credit Code. The action also seeks damages for alleged violations of both of those sets of laws. In paragraph 21 of Schedule B filed on October 26, 2008, the debtor listed as a

¹ By order entered on February 11, 2009, the court had granted a motion for stay relief and abandonment filed by Deutsche Bank National Trust Company, as Trustee, with respect to the property involved in the District Court action. This order effected abandonment of that property from the debtor’s Chapter 7 bankruptcy estate

contingent or unliquidated claim the following:

Possible Truth in Lending Civil Action against Mortgage Lender
for reformation of Mortgage
Debtor is not seeking a personal award.

In the Statement of Financial Affairs, also filed on October 26, 2008, in response to paragraph 4 of that document, the debtor stated:

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDINGS	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Ameriquest v. Rodney Means, 2:06-CU-609-TS (sic)	Unfair Lending Practices/Complaint to reform mortgage	Norther (sic) District of IN at Hammond	Pending

The foregoing case is that which was referred to in the debtor's above-quoted Schedule B and Statement of Financial Affairs disclosures. To the extent of recovery of damages, the action is property of the debtor's Chapter 7 bankruptcy estate pursuant to 11 U.S.C. §541(a).

The court conducted a hearing on April 6, 2010 with respect to the Chapter 7 Trustee's pursuit of this action on behalf of the debtor's bankruptcy estate. At that hearing, the court was presented with an Opinion and Order entered by the Honorable Theresa L. Springmann, Judge of the United States District Court, Fort Wayne Division, in case number 2:06-CV-409-TS, dated November 24, 2009. The court entered an order with respect to the April 6, 2010 hearing on April 16, 2010, which states the following:

Docket Entry: Hearing held on 4/6/10 RE:(related document(s) 38 Motion to Reopen Case filed by Rodney Stephen Means.
APPEARANCES: Atty. Jackson on behalf of Debtor, Atty. Ledsky on behalf of AmeriQuest Mortgage Co. and Atty. DuBois on behalf of Trustee. The court addresses its concerns regarding its jurisdiction pursuant to Judge Springman's order. A Status Conference concerning the status of negotiations between Ameriquest Mortgage Company and the bankruptcy estate will be held on June 25, 2010 at 10:00 A.M. If the parties consider mediation to be potentially efficacious the court may assist in the process. (pg)

The court was not aware of Judge Springmann's order until the hearing held on April 6, 2010: the United States District Court did not apprise or advise this court of the order in any way.

That order appears to determine that matters in relation to the debtor's claims in case number 2:06-CV-409-TS are before the United States Bankruptcy Court for the Northern District of Indiana, in part as stated by the following excerpt from that order:

As to the Plaintiff's Second Motion to Restore Case, district courts have original jurisdiction over all bankruptcy proceedings arising out of Title 11 of the United States Code, see 28 U.S.C. § 1334, but a district court may "provide that any or all cases under title 11 [of the United States Code] and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district," 28 U.S.C. § 157(a). Local Rule 200.1 of the United States District Court for the Northern District of Indiana addresses bankruptcy cases and proceedings. In Local Rule 200.1(a)(1), this District Court has exercised its authority to automatically refer bankruptcy matters to the bankruptcy judges, and this automatic referral includes "all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11." Local Rule 200.1 also identifies matters to be determined by bankruptcy judges, matters to be determined or tried by district judges, and procedures that apply to motions to withdraw cases and proceedings to the district court. Local Rule 200.1(a)(1) includes a policy statement that it "is the intention of this court that the bankruptcy judges be given the broadest possible authority to administer cases properly within their jurisdiction, and this rule shall be interpreted to achieve this end."

A district judge "may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d); *In re Dorner*, 343 F.3d 910, 914 (7th Cir. 2003) (stating that "[d]istrict judges may refer matters to bankruptcy judges but also may withdraw them and render decisions themselves"). As one district court has observed, district courts have "broad discretion to determine whether to withdraw a reference based on cause, but at the same time, permissive withdrawal is the exception, rather than the rule, as bankruptcy jurisdiction is 'designed to provide a single forum for dealing with all claims to the bankrupt's assets.'" *In re K & R Express Sys., Inc.*, 382 B.R. 443, 446 (N.D. Ill. 2007) (citing *In re Sevko, Inc.*, 143 B.R. 114, 115 (N.D. Ill. 1992), and quoting *Xonics v. First Wis. Fin. Corp.*, 813 F.2d 127, 131 (7th Cir. 1987)). The moving party bears the burden of persuading a district court to withdraw the reference. *Salin Bank & Trust Co. v. Seybold*, No. 1:08-CV-70, 2009 WL 377983, at *3 (N.D. Ind. Feb. 12, 2009). (footnote omitted)

The remainder of the District Court's decision is an analysis of the reasons for the Court's

determination to not withdraw the reference under 28 U.S.C §157(d), based upon the apparent premise that the case had already been automatically referred to this court. Stripped to its most cogent statements, the District Court decision is premised upon automatic referral of its case to this court by operation of a combination of 28 U.S.C §1334(a) and (b); 28 U.S.C. 157(a); and L.R.200.1(a).² The decision appears to proceed on the premise that case number 2:06-CV-409-TS has been referred to the United States Bankruptcy Court for the Northern District of Indiana by operation of L.R. 200.1(a)(1) of the Rules of the United States District Court for the Northern District of Indiana. The order also apparently assumes that the United States Bankruptcy Court has jurisdiction to proceed with the relief requested by the action.

This order addresses the foregoing premise and assumption.

The jurisdiction of United States Bankruptcy Courts is derivative of the jurisdiction of United States District Courts with respect to bankruptcy cases and matters arising in and in relation to bankruptcy cases. 28 U.S.C. § 1334(a) and (b) state the following:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

The mechanism for providing a federal bankruptcy court's exercise of jurisdiction with respect to bankruptcy matters within the jurisdiction of the United States District Court is provided by 28

² Interestingly, the District Court did not address whether the plaintiff's action " requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce", which would require withdrawal of reference if so determined, under 28 U.S.C. §157(d). It is difficult for this court to perceive a law which requires mandatory withdrawal of reference more than does the federal Truth in Lending Act, but that is this court's view. The District Court didn't address this issue. So be it.

U.S.C. § 157(a), which states:

(a) Each district court may provide that 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 shall be referred to the bankruptcy judges for the district.

The mechanism utilized by the United States District Court for the Northern District of Indiana to provide jurisdiction over bankruptcy cases and matters to the United States Bankruptcy Court for the Northern District of Indiana is L.R. 200.1(a), which states:

(a) Matters Determined by the Bankruptcy Judges.

(1) Subject to paragraph (a)(3)(B), all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges. It is the intention of this court that the bankruptcy judges be given the broadest possible authority to administer cases properly within their jurisdiction, and this rule shall be interpreted to achieve this end.

(2) Pursuant to 28 U.S.C. § 157(b)(1), the bankruptcy judges shall hear and determine all cases under Title 11 and all core proceedings (including those delineated in 28 U.S.C. § 157(b)(2)) arising under Title 11, or arising in a case under Title 11, and shall enter appropriate orders and judgments, subject to review under 28 U.S.C. § 158.

(3) The bankruptcy judges shall hear all non-core proceedings related to a case under Title 11.

(A) By Consent: With the consent of the parties, a bankruptcy judge shall conduct hearings and enter appropriate orders or judgments in the proceeding, subject only to review under 28 U.S.C. § 158.

(B) Absent Consent: Absent consent of the parties, a bankruptcy judge shall conduct hearings and file proposed findings of fact and conclusions of law and a proposed order or judgment with the bankruptcy clerk. The bankruptcy judge may also file recommendations concerning whether the review of the proceedings should be expedited, and whether or not the basic bankruptcy case should be stayed pending district court termination of the non-core proceedings. The bankruptcy clerk shall serve copies of these documents upon the parties. Within 14 days of service, any party to the proceedings may file

objections with the bankruptcy clerk. Any final order or judgment shall be issued by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected. (Review of interlocutory orders shall be had following the procedure specified in paragraph (d) of this rule.)

(C) Signifying Consent: At time of pre-trial, or earlier, upon motion of a party in interest, the parties shall:

(i) Stipulate in writing that the proceeding is a core proceeding:

(ii) Stipulate in writing that the proceeding is a non-core proceeding, but that the bankruptcy judge can determine the matter and enter a final order subject to review pursuant to 28 U.S.C. § 158;

(iii) Stipulate that the proceeding is a non-core proceeding, the bankruptcy judge finds the matter is a non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter; or

(iv) State that there is no agreement between the parties as to whether the proceeding is a core or non-core proceeding and at least one party refuses to have the bankruptcy judge determine the matter if it is determined to be a non-core proceeding;

Attached as an Appendix to this rule is an example of a stipulated order which may be used at the pretrial conference.

The order dated November 24, 2009, in case number 2:06-CV-409-TS appears to be based on the premise that any case pending in the United States District Court at the time of the initiation of a bankruptcy case by a debtor, which pending case may fall within the purview of the delegation of jurisdiction provided by Rule 200.1(a), is automatically referred to the United States Bankruptcy Court. If that is the case, the United States District Court's order is mistaken. 28 U.S.C. § 1334(a) and (b) provide the United States District Court's jurisdiction to act with respect to cases under Title 11, and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11. 28 U.S.C. § 157(a) provides the authority for

United States District Courts to delegate their jurisdiction over those bankruptcy courts matters to United States Bankruptcy Courts. Both of these statutes are general jurisdictional provisions, providing the foundation for the jurisdiction of United States District Courts and United States Bankruptcy Courts over cases under Title 11, and civil proceedings arising under Title 11 or arising in or related to cases under Title 11. These statutes in no manner provide a mechanism for transfer of a case pending in the United States District Court at the time of the filing of a bankruptcy case to the United States Bankruptcy Court. Case number 2:06-CV-409-TS is not a “case under title 11”; it is not a proceeding “arising under title 11”; it is not a proceeding “arising in a case under title 11”; it is not a “core proceeding” as defined by 11 U.S.C. § 157(b)(2).³ At

³ The foregoing categories of cases are very well delineated in *Harlan v. Rosenberg & Associates, L.L.C., et al.*, 402 B.R. 703, 709-10 (Bankr. W.D. Va. 2009), as follows:

A bankruptcy court may “hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). Absent the consent of all parties a bankruptcy court may hear, but not issue final orders in, noncore proceedings that are otherwise “related to” the bankruptcy case. § 157(c). A “core proceeding” as described in 28 U.S.C. § 157(b)(2) must “arise under” the Bankruptcy Code or “arise in” a debtor’s bankruptcy case and generally involves bankruptcy administrative matters, avoidance actions, or matters concerning property of the estate. *See 1 Collier on Bankruptcy* ¶ 3.02[2] (15th ed. rev.2008); *see also Poplar Run*, 192 B.R. at 856 (“To determine whether the proceeding at hands falls within our ‘core’ jurisdiction, we must address whether the proceeding ‘arises under’ title 11, or whether it otherwise ‘arises in’ a case under title 11.”). Therefore, this Court may “hear and determine” only those cases and core proceedings “arising under” the Bankruptcy Code or “arising in” a case under the Code. § 157(b)(1). This Court may only “hear a proceeding that is not a core proceeding but that is otherwise *related to* a case under title 11 [and] shall submit proposed findings of fact and conclusions of law to the district court ... [who shall enter] any final order or judgment.” § 157(c)(1) (emphasis added).

Proceedings “arising under” the Bankruptcy Code are “ ‘only those cases in which a well-pleaded complaint establishes either that federal [bankruptcy] law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal [bankruptcy] law.’ ” *Poplar Run*, 192 B.R. at 855 (alteration in original) (*quoting Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S.Ct. 2841, 2856, 77 L.Ed.2d 420 (1983)). The bankruptcy court “appl[ies] the same test used for deciding whether a civil action presents a federal question under 28 U.S.C. § 1331.” *Id.*

A controversy “arising in” a case under Title 11 is one “not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy.” *Valley Historic Ltd. P’ship v. Bank of N.Y.*, 486 F.3d 831, 835 (4th Cir.2007) (*quoting Grausz v. Englander*, 321 F.3d 467, 471 (4th Cir.2003) (*quoting Bergstrom v. Dalkon Shield Claimants Trust (In re A.H. Robins Co.)*, 86 F.3d 364, 372 (4th Cir.1996))) (internal quotation marks omitted). A claim or proceeding “arises in” a bankruptcy case only when “it would have no practical existence *but for* the bankruptcy.” *Id.* (*quoting Grausz*, 321 F.3d at 471 (*quoting Bergstrom*, 86 F.3d at 372))

best it is a case “related to a case under title 11”. The mechanism for transfer of such a case pending in the United States District Court at the time of filing of a bankruptcy case to the United States Bankruptcy Court is stated in 28 U.S.C. § 157(c)(2), as follows:

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title. (Emphasis supplied).

There is no “automatic referral” at play. Case number 2:06-CV-409-TS was pending in the United States District Court at the time of filing of case number 08-23574, and in order to transfer that case to the United States Bankruptcy Court for the Northern District of Indiana, the procedures of 28 U.S.C. § 157(c)(2) were applicable. Those procedures were not followed: There is no mention in the order whatsoever of a transfer pursuant to 28 U.S.C. §157(c)(2); there is nothing in the record of case number 2:06-CV-409-TS which establishes the consent of the parties to transfer of the case. As a result, this court has no jurisdiction over case number 2:06-CV-409-TS; *see, In re The Academy, Inc.*, 288 B.R. 286, 289 [headnotes 7 and 8] (Bankr. N.D.Fla. 2002); *In re Watson-Mahaney, Inc.*, 70 B.R. 578 (Bankr. N.D.Ill. 1987); *In re Carriage House Condominiums, LP*, 415 B.R. 133 (Bankr. E.D.Pa. 2009).

There is also an issue as to a jury trial request, which was made by the plaintiff in case number 2:06-CV-409-TS. In this context, 28 U.S.C. § 157(e) states the following:

(internal quotation marks omitted). This remains true even if the claim “arises *during* the pendency” of the bankruptcy case. *Id.* at 836. A claim that would exist independently of the bankruptcy proceeding is not encompassed by a bankruptcy court’s “arising in” jurisdiction. *Id.*

A proceeding is “related to” a bankruptcy case if such proceeding may in any way effect the administration of the bankruptcy estate. *See id.* The Fourth Circuit agrees with the Third Circuit’s holding in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984), that “a civil proceeding is related to bankruptcy ... [if] the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Valley Historic*, 486 F.3d at 836 (*quoting Owens-Ill., Inc. v. Rapid Am. Corp. (In re Celotex Corp.)*, 124 F.3d 619, 625 (4th Cir.1997) (*quoting Pacor*, 743 F.2d at 994)).

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

This statute clearly provides that a United States Bankruptcy Court may only conduct a jury trial “if specifically designated to exercise such jurisdiction by the district court and with the express consent of the parties”. While L.R. 200.1(c)(1) provides that this court may conduct jury trials “as permitted by applicable law”, there again is nothing in the record of case number 2:06-CV-409-TS which establishes the express consent of the parties to this court’s conducting of a jury trial in case number 2:06-CV-409-TS. Absent that consent, this court has no jurisdiction to conduct a trial in case number 2:06-CV-409-TS.

There is a final, and more significant, issue with respect to this court’s jurisdiction over the matters addressed in case number 2:06-CV-409-TS: the court has no jurisdiction over a portion of the relief requested by the Second Amended Complaint. The requested relief is stated on pages 15-17 of the complaint. Sub-paragraphs “e” through and including “n” seek recovery of monetary relief, and because the plaintiff’s claims arose prior to the filing of case number 08-23574, those claims constitute property of the estate and may be addressed within the scope of the court’s “related to” jurisdiction.

The problem lies in sub-paragraphs “a” through and including “d”, which state as follows:

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in the Plaintiff’s favor and grant the following relief:

- a. Declare the Amerquest Defendants’ and Deutsche Bank’s security interest in Plaintiff’s home void;
- b. Rescind Plaintiff’s loan;
- c. Order the Amerquest Defendants and Deutsche Bank to take all action necessary to terminate any security interest in the Plaintiff’s home, including but not limited to: the mortgage related to the loan transaction;
- d. Order the Amerquest Defendants and Deutsche Bank to return to Plaintiff any money or property given by Plaintiff to anyone, including Plaintiff, in connection with this

transaction.

The issue of whether or not a matter presented to a United States Bankruptcy Court falls within the "related to" jurisdiction of that court has been narrowly proscribed by the United States Court of Appeals for the Seventh Circuit. In fact, the Seventh Circuit seems to be the most limited of the views expressed by Courts of Appeal with respect to this issue.

As stated in *In re FedPak Systems*, 80 F.3d 207, 213 (7th Cir. 1996):

As the U.S. Supreme Court explained recently, "[t]he 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, ----, 115 S.Ct. 1493, 1498, 131 L.Ed.2d 403 (1995).

We begin with the bankruptcy jurisdiction of the district courts, which extends to "all civil proceedings arising under title 11, or arising in *or related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis added). Bankruptcy judges "constitute a unit of the district court," 28 U.S.C. § 151, and the district court may refer to them "any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 157(a). The jurisdiction of the bankruptcy courts is thus "derivative" because it flows from the statutory grant of jurisdiction to the district courts. *In re K & L, Ltd.*, 741 F.2d 1023, 1028 (7th Cir.1984). To summarize, this jurisdiction includes the power to adjudicate proceedings "arising in," "arising under," or "related to" a case under title 11. *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 161 (7th Cir.1994).

The purpose of bankruptcy court jurisdiction is to provide a single forum for resolving all claims to the debtor's assets and extends no farther than that; *In re Doctors Hospital of Hyde Park, Inc.*, 308 B.R. 311, 317 (Bankr. N.D.Ill. 2004).

The law of the Seventh Circuit is that "related to" jurisdiction exists over a matter when the matter affects the amount of property for distribution to creditors from the debtor's estate, or the allocation of property among creditors; *In re FedPak Systems*, at 213. As stated in *In re FedPak Systems*, at 214:

This circuit has articulated a more limited and, we believe, more helpful definition of the bankruptcy court's "related to" jurisdiction. Our precedents hold that "[a] case is related" to a bankruptcy

when the dispute 'affects the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors.' " *In re Memorial Estates, Inc.*, 950 F.2d 1364, 1368 (7th Cir.), *cert. denied*, 504 U.S. 986, 112 S.Ct. 2969, 119 L.Ed.2d 589 (1992) (quoting *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir.1987)). As we explained recently:

The ['related to'] language should not be read . . . broadly. [It] 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.

Zerand-Bernal, 23 F.3d at 161 (emphasis added, citation omitted).

We have interpreted "related to" jurisdiction narrowly "out of respect for Article III" (see discussion *supra*) as well as to prevent the expansion of federal jurisdiction over disputes that are best resolved by the state courts. *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir.1989); *see also In re Kubly*, 818 F.2d 643, 645 (7th Cir.1987) (the "limited jurisdiction" of the bankruptcy court "may not be enlarged by the judiciary because the judge believes it wise to resolve the dispute."). Additionally, we believe that common sense cautions against an open-ended interpretation of the "related to" statutory language "in a universe where everything is related to everything else." Gerald T. Dunne, *The Bottomless Pit of Bankruptcy Jurisdiction*, 112 *Banking L.J.* 957 (Nov.-Dec.1995).

Schedule A, as filed by the debtor at the inception of this Chapter 7 case, designates the value of the real estate with respect to which the mortgage sought to be voided is held, as \$120,000.00. Schedule D designates the secured claim of the creditor holding the mortgage as being in the amount of \$164,000.00. Pursuant to a Motion for Relief From Automatic Stay and Abandonment filed by Deutsche Bank National Trust Company, as Trustee, on March 13, 2009, the property was abandoned from the bankruptcy estate by order entered on April 3, 2009. By notice entered as record entry #23 on February 18, 2009, creditors in the Chapter 7 case were notified of the Trustee's recovery of assets, and a deadline for filing proofs of claim was set as May 21, 2009. No entity asserting a secured claim in the subject real property has filed a claim in the Chapter 7 case. Finally, the debtor received his Chapter 7 discharge on April 20, 2009.

The effect of abandonment of property from a bankruptcy estate was stated in *Morlan v. Universal Guaranty Life Insurance Company, et al.*, 298 F.3d 609, 617 (7th Cir. 2002) [rehearing and rehearing en banc denied; cert. denied at 123 S.Ct. 968], as follows:

And actually, despite the attention we've been paying to getting the sequence right, the sequence doesn't matter; for when property of the bankrupt is abandoned, the title "reverts to the bankrupt, nunc pro tunc, so that he is treated as having owned it continuously." *Wallace v. Lawrence Warehouse Co.*, 338 F.2d 392, 394 n. 1 (9th Cir.1964); see also *Sessions v. Romadka*, 145 U.S. 29, 51-52, 12 S.Ct. 799, 36 L.Ed. 609 (1892); *Catalano v. Commissioner, supra*, 279 F.3d at 685; *In re Dewsnup*, 908 F.2d 588, 590 (10th Cir.1990) (per curiam).

As stated in *In re St. Lawrence Corporation*, 239 B.R. 720, 727-728 (Bankr. D.N.J. 1999):

When property is abandoned, it reverts to any party with a possessory interest in it. 5 Collier on Bankruptcy ¶ 554.02[3] (Lawrence P. King ed., 15th ed. rev. 1996).

The effect of abandonment of property was stated to be the following in *Wallace, Trustee v. Enriquez*, 22 B.R. 934, 935-936 (Bankr. D.Neb. 1982), as follows:

The effect of abandonment by a trustee, whether accomplished by affirmative act under 11 U.S.C. s 554(a) or (b) or by failure of administration under sub-paragraph (c), is to divest the trustee of control over the property because once abandoned, property is no longer a part of the bankruptcy estate. 4 Collier on Bankruptcy s 554.02 (15th Ed.) 554-7, 554-8. Drake & Mullins, Bankruptcy Practice s 5.16 (1980). In consequence of this removal from the estate, "... abandonment, once accomplished, is irrevocable, regardless of any subsequent discovery that the property had greater value than previously believed." Collier, supra, at 554-8. The only statutory provision under which property once belonging to the estate can be recovered after a trustee's general abandonment, for example, involves property not previously scheduled. This recovery is permitted under 11 U.S.C. s 554(d). In all other cases where property is scheduled, that is to say, when value has not been concealed from the trustee, any abandonment approved by the court becomes irrevocable.

Pursuant to the foregoing authorities, at this juncture of Means' Chapter 7 case, the real estate at issue with respect to the non-monetary requests for relief in the Second Amended Complaint

is no longer property of Means' Chapter 7 bankruptcy estate; that property has reverted in Means; and the property is not subject to administration for the benefit of creditors in the Chapter 7 case. The requested relief for rescission therefore has no effect on the amount of property for distribution to creditors from the Chapter 7 bankruptcy estate, and it has no effect on the allocation of property among creditors. Quite simply, if that relief is granted to Means, he will own the property free of a mortgage, and this portion of the action pursued by the Second Amended Complaint is of personal benefit to Means only, and has no impact on administration of the Chapter 7 bankruptcy estate.

As noted, no entity having an alleged mortgage or other security interest in the subject real estate has filed a proof of claim in this case. Thus, if Means' transaction which gave rise to the indebtedness secured by the mortgage sought to be voided is rescinded and no debt then ever effectively existed, that determination would not affect distribution among creditors from the Chapter 7 estate because Deutsche Bank National Trust Company was not entitled to any distribution from the Chapter 7 estate anyway. The underlying *in personam* liability of Means to Deutsche Bank, whatever that might ultimately be determined to have been, has been discharged, and there is thus no impact of any claim for rescission in the district court litigation upon even the present relationship of Means and Deutsche Bank with respect to Means' continuing personal liability for any debt owed to that creditor.

The portion of the district court litigation which requests other than monetary relief in which the Chapter 7 bankruptcy estate has an interest is not within this court's "related to" jurisdiction. While a jurisdictional issue of this nature may not pose a problem to a United States District Court due to the provisions of 28 U.S.C. § 1367(a),⁴ and while there is a

⁴ 28 U.S.C. § 1367(a) states:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental

difference of opinion among courts which have reviewed the issue as to whether or not a United States Bankruptcy Court may exercise supplemental jurisdiction under the foregoing statute (see, *In re Transcolor Corporation*, 2007 WL 2916408 [Bankr. D.Md. 2007]) – because of the narrowly circumscribed jurisdiction of United States Bankruptcy Courts under decisions of the United States Court of Appeals for the Seventh Circuit, the court determines that the supplemental jurisdiction of 28 U.S.C. § 1367(a) is not accorded to United States Bankruptcy Courts in the Seventh Circuit. The following statement in *Harlan v. Rosenberg & Associates, LLC, et al.*, 402 B.R. 703, 713 (Bankr. W.D.Va. 2009) accurately states the law in this context:

Further, this Court cannot exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear the Debtors' unrelated FDCPA claim. *Gates*, 2004 WL 3237345, at *3; see *Walker v. The Cadle Co., (Matter of Walker)*, 51 F.3d 562, 570 (5th Cir.1995) (holding that a bankruptcy court does not have supplemental jurisdiction to hear non-core, unrelated claims). Pursuant to § 1367(a), district courts may exercise “supplemental jurisdiction” over state law claims if the “relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional ‘case.’” *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966). However, “the jurisdictional grant in 28 U.S.C. § 1334(b) and 28 U.S.C. § 157, by implication, negates a bankruptcy court's exercise of jurisdiction of a supplemental non-federal claim in instances where that claim has no impact on the bankruptcy estate.” *Enron Corp. v. Citigroup, Inc. (In re Enron Corp.)*, 353 B.R. 51, 61 (Bankr.S.D.N.Y.2006). The United States Bankruptcy Court for the Southern District of New York concluded in *Enron* that “there is no statutory basis for bankruptcy courts to exercise supplemental jurisdiction under 28 U.S.C. § 1367.” *Id.* at 62. Therefore, this Court cannot exercise supplemental jurisdiction over the Debtors' otherwise unrelated FDCPA claims on the sole grounds that it shares a common factual background the Debtors' claim under section 524 of the Bankruptcy Code. (footnotes omitted).

jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The monetary and non-monetary claims for relief in the Second Amended Complaint must be viewed as an entirety with respect to this court's subject matter jurisdiction. There has been no severance of claims pursuant to Fed.R.Civ.P. 42(b), and thus this court's lack of jurisdiction over a portion of the claims asserted by the plaintiff results in a lack of jurisdiction over the entire case.

Finally, because the court does not have "related to" jurisdiction with respect to case number 2:06-CV-409-TS, the court has no jurisdiction under 15 U.S.C. § 1640(e) with respect to the plaintiff's request for non-monetary relief under the Truth in Lending Act. That section states: "Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction . . ."(emphasis supplied). The United States Bankruptcy Court for the Northern District of Indiana is not a "court of competent jurisdiction" with respect to the non-monetary Truth in Lending Act claims.

For the reasons stated above, to the extent that the order dated November 24, 2009 determines that case number 2:06-CV-409-TS is now before the United States Bankruptcy Court for the Northern District of Indiana, or in some manner seeks to transfer that case to the United States Bankruptcy Court for the Northern District of Indiana, the United States Bankruptcy Court for the Northern District of Indiana determines that it has no jurisdiction over case number 2:06-CV-409-TS.

IT IS ORDERED that the United States Bankruptcy Court for the Northern District of Indiana has no jurisdiction over case number 2:06-CV-409-TS, and that said case remains in the United States District Court for the Northern District of Indiana.

Dated at Hammond, Indiana on August 4, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee, Attorney for Ameriquet Mortgage Company