

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 03-40519)	
)	
ANNARE L. LOUBSER)	
)	
Debtor)	
)	
)	
ANNARE L. LOUBSER)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 06-4015
)	
ALEXANDER R. PALA)	
R. DENNIS HOOVER)	
)	
Defendant)	

DECISION AND ORDER DENYING DEFENDANTS' MOTION TO DISMISS

At Fort Wayne, Indiana on July 31, 2006.

The plaintiff in this adversary proceeding is proceeding pro se. On March 14, 2006, she filed a complaint against the defendants broadly complaining about three different things. The defendants are alleged to have violated the automatic stay of 11 U.S.C. § 362(a) as a result of other litigation. Claims are also made for “deformation [sic] of character” through the destruction of her credit because she has not been held harmless from mortgages as ordered in a divorce decree. As a result, she seeks actual and punitive damages in excess of \$35,000.00, and relief from a judgment entered against her in the sum of \$10,191.35.

Defendants have filed a motion to dismiss or abstain from hearing the state law claims that have been asserted in this complaint, which it characterizes as the defamation of character claim and the claim based upon defendants’ alleged failure to hold plaintiff harmless from certain mortgages

as required by a state court order. The defendants argue that this court lacks jurisdiction over these claims and that, if it has jurisdiction, the court should abstain from hearing them because they can be a timely adjudicated in the state courts. In response, the plaintiff argues that this court has jurisdiction as a result of 11 U.S.C. § 523(a)(15) concerning the dischargeability of domestic relations obligations which do not represent alimony, maintenance or support. It is the issues raised by this motion and the plaintiff's response thereto which are presently before the court.

Before it addresses the question of abstention, the court must first determine whether it has subject matter jurisdiction over the plaintiff's claims against the defendants for the defamation of her character and the failure to comply with the hold harmless provisions of the state court order. If it does not have jurisdiction over those claims, they should be dismissed. The court can only abstain from hearing a claim if it first would properly have jurisdiction over it.

In passing upon these issues, it is important to note two things. First, the debtor's bankruptcy case is pending under chapter 13 of the United States Bankruptcy Code and she is currently operating under a confirmed plan which was to run for a term of five years. See, Order dated Nov. 10, 2003. Secondly, the debtor is proceeding pro se. The importance of the first consideration is that property of the bankruptcy estate includes not only whatever interests the debtor may have had in property as of the date of the petition, but also interests in property she may have obtained since that date, see, 11 U.S.C. §§ 541, 1306(a), and she is entitled to remain in possession of all property of the estate. 11 U.S.C. § 1306(b). As a pro se litigant she is entitled to have her filings construed more liberally than papers which are drafted by attorneys, Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992), although this does not change the substantive law governing the rights of the parties, merely the court's expectations concerning a pro se litigant's ability to comply with the court's procedural

requirements. In light of these considerations defendants' motion fails.

The defendants are correct when they characterize the plaintiff's claims against them for both defamation of character and the failure to comply with a state court decree as being state law claims. Yet, that is not enough to deprive this court of jurisdiction over them. Those claims constitute property of the bankruptcy estate.¹ 11 U.S.C. § 1306(a). Since we are dealing with property of the bankruptcy estate, this court cannot conclude that the resolution of those claims would not have an impact upon either the size of the bankruptcy estate or its distribution to creditors. That is the test for the scope of the court's related to jurisdiction, see, 28 U.S.C. § 1334(b); In re Xonics, Inc., 813 F.2d 127, 131 (7th Cir. 1987). In reaching this conclusion the court recognizes that the debtor has advanced an argument that has absolutely no merit: that these two claims are somehow related to the issue of dischargeability under § 523(a)(15). Section 523(a)(15) has nothing to do with this case because it applies only in connection with discharges issued under chapter 7 not chapter 13. See, 11 U.S.C. § 1328(a)(2).² Even if it did, § 523(a)(15) relates only to the debtor's obligations under domestic relations decrees, not those of the non-debtor former spouse. Thus, § 523(a)(15) has absolutely no impact upon the defendants' continued obligations to the plaintiff. Finally, the concept and the scope of the court's related to jurisdiction focuses upon the litigation's impact upon the bankruptcy estate and creditors – not upon the debtor, Xonics, 813 F.2d at 131 – and it does not operate to extend the scope of dischargeability litigation beyond the narrow issue of whether or not the obligations in question have been discharged. See, In re Harrell, 754 F.2d 902, 907 (11th Cir.

¹Neither party has made any argument concerning the effect confirmation had with regard to the vesting of property of the estate, see, 11 U.S.C. § 1327, or its jurisdictional consequences. Therefore the court does not consider it at this time.

²This case is governed by the laws that existed prior to October 17, 2005.

1985); In re Newton, 230 B.R. 234, 235 (Bankr. D. Conn. 1999); In re Chateaugay Corp., 193 B.R. 669 (Bankr. S.D. N.Y. 1996); Matter of Johnson, 156 B.R. 338, 339 (Bankr. M.D. Fla. 1993). Nonetheless, because the claims in question appear to be property of the bankruptcy estate their resolution does seem to be related to this case.

Since the court has subject matter jurisdiction over the state law claims against the defendants, it must decide whether it will abstain from exercising that jurisdiction. Defendants' motion argues that this court is required to do so and that abstention is mandatory under 28 U.S.C. § 1334(c)(2). Aside from timeliness,³ there are three requirements for mandatory abstention: 1) the claim in question must be founded upon state law, thereby being only related to a case under Title 11, 2) there can be no basis for federal jurisdiction other than the related to jurisdiction of the bankruptcy court, and, finally 3) "the action is commenced, and can be timely adjudicated, in a state court forum" 11 U.S.C. § 1334(c)(2). Here, there is no question that the first two requirements of mandatory abstention have been fulfilled. The plaintiff's defamation and failure to hold harmless claims are based upon state law, related to her underlying bankruptcy case, and there is no basis for federal jurisdiction other than that relationship. Nonetheless, there has been no showing that they either have been commenced or can be timely adjudicated in state court. Indeed, although the defendants rather skeletal brief acknowledges that particular requirement, it has totally failed to address how it might have been fulfilled in this situation. Since it was the movants' burden to persuade the court that it was required to abstain, In re S.N.A. Nut Co., 206 B.R. 495, 501 (Bankr. N.D. Ill. 1997); In re Carlson, 202 B.R. 946, 949 (Bankr. N.D. Ill. 1996); Brizzolara v. Fisher Pen

³This action was filed on March 14, 2006, defendants answered on April 14, a scheduling conference was held, and the court approved the parties' litigation schedule on May 15, 2006. Defendants did not raise the issue of abstention until July 6, 2006.

Co., 158 B.R. 761, 769 (Bankr. N.D. Ill.1993), its motion cannot be granted.

Defendants' motion to dismiss or abstain is therefore DENIED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court