UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 26, 2014 at 1:30 p.m.

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1. 13-34223-E-13 NAOMI LEBUS — **ORDER TO SHOW CAUSE**
14-20 49 RHS-1 — **7-11-14 [37]**
LEBUS V. S.B.S. TRUST NETWORK ET AL

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor (pro se), Chapter 13 Trustee, parties requesting special notice and Office of the U.S. Trustee on July 11, 2014. 46 days notice of the hearing was provided.

The court's decision is to sustain the Order to Show Cause and dismiss the Adversary Proceeding.

ADVERSARY PROCEEDING NO. 14-2049

Naomi LeBus, the Plaintiff-Debtor, commenced this Adversary Proceeding (in *pro se*) on February 6, 2014. The Defendants' motion to dismiss the Original Complaint was granted and a First Amended Complaint was filed on June 20, 2014. Dckt. 29. The Plaintiff-Debtor is now represented by counsel, and it is counsel who filed the First Amended Complaint.

The First Amended Complaint seeks to have the court determine that the alleged deed of trust encumbering the property is null and void, having been made so by the transfers and assignments of the note purported to be secured by the deed of trust. Plaintiff-Debtor also seeks to enjoin the attempted foreclosure under the deed of trust and for a judgment quieting title to the property, determining that the deed of trust is of no force and effect.

Plaintiff asserts that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334(b) because "it arises in a proceeding under Chapter 13, title 11 of the United States Code" in the Plaintiff-Debtor's bankruptcy case. This jurisdictional provision vests original, but not exclusive, jurisdiction in the district court of all "civil proceedings under title 11, or arising in or related to cases under title 11." It is asserted that this is a core proceeding as provided in 28 U.S.C. § 157(b)(2)(K), "determination of the validity, extent, or priority of liens."

While asserted as a "statutory core matter" defined by Congress, with the dismissal of the Plaintiff-Debtor's bankruptcy case it does not "arise in" any bankruptcy case. Presumably the "arises in" basis was that the determination of the lien is a necessary part of any Chapter 13 Plan and properly providing for the payment of the creditor's (whomever it is) claim (if it has a claim). However, such determination is not necessary when there is

no bankruptcy case pending and being actively prosecuted.

The Plaintiff-Debtor's bankruptcy case having been dismissed and the claims being asserted in the First Amended Complaint not arising under the Bankruptcy Code, concerning the administration of the bankruptcy case, or arising in the bankruptcy case, the further exercise of the broad grant of federal jurisdiction under 28 U.S.C. § 1334(b) is not in the interests of justice or comity with respect to the determination of the state law, non-bankruptcy law issues in the complaint.

The court ordered that Naomi LeBus, Plaintiff-Debtor in the above-captioned Adversary Proceeding, and First Bank, dba First Bank Mortgage, to show cause as to why the court should not abstain from hearing the issues in this Adversary Proceeding pursuant to 28 U.S.C. § 1334(c)(1).

FIRST BANK'S RESPONSE

Defendant First Bank dba First Bank Mortgage ("Defendant") responded stating that Plaintiff filed a "Notice of Lis Pendens and Notice of Action Pending," which fails to address any of the jurisdictional issues set forth in the Court's Order to Show Cause. Defendant requests that the court order dismissal of the adversary proceeding.

PLAINTIFF'S NOTICE

On August 8, 2014, Plaintiff filed a "Notice of Lis Pendens and Notice of Action Pending," an 84 page document. This document does not appear to be in response to the Order to Show Cause, nor does it address any of the issues set forth therein. The 84 page document consists of (1) two page Notice of Lis Pendens, (2) two page "Request for Proof of Claim" in the Adversary Proceeding, (3) fifty-three page "Request for Informal Discovery" in the Adversary Proceeding, (4) four page First Request for Admissions in the Adversary Proceeding, (5) eight First Set of Interrogatories in the Adversary Proceeding, (6) five page "Request for Informal Discovery" in the Adversary Proceeding, and (7) four page Request for Production of Documents in the Adversary Proceeding.

DISCUSSION

Federal court jurisdiction in bankruptcy cases is established pursuant to 28 U.S.C. § 1334(a), which provides that the United States District Court shall have original and exclusive jurisdiction over all cases under title 11 (the Bankruptcy Code). Congress further provided that the United States District Courts shall have original, but not exclusive, jurisdiction over all civil proceedings arising under title 11 or arising in or related to a case under title 11. 28 U.S.C. § 1334(b). This is a very broad grant of jurisdiction, often needed to address the various matters relating to a bankruptcy case in an expeditious manner to allow for the proper administration of the bankruptcy estate.

Congress then created the bankruptcy courts, which are part of the United States District Courts, 28 U.S.C. § 151, as a specialized court to allow for the sufficient prosecution of bankruptcy and bankruptcy related cases. Each United States District Court is empowered to transfer any and 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 to a bankruptcy judge in that district.

The United States District Court for the Eastern District of California has so referred all such matters to the bankruptcy judges. E.D. Cal. Gen. Orders 182, 223.

Bankruptcy judges are empowered to determine all cases under title 11 and enter final judgments and orders in all core proceedings arising under title 11 or arising in a case under title 11. 28 U.S.C. § 157(b)(1). Core proceedings are generally defined in 28 U.S.C. § 157(b)(2), and by their nature are matters for which Congress has created rights and remedies under the Bankruptcy Code. Bankruptcy jurisdiction extends to four types of title 11 matters: cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." *See Stoe v. Flaherty*, 436 F.3d 209, 216 (3rd Cir. 2006). A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000) (*quoting Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of a bankruptcy case.'" *Id.* A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate." *Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.)*, 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (*citing Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988)).

Matters other than a case under title 11, or arising under title 11 or in a case under title 11 are referred to as "related to matters." These matters arise under nonbankruptcy law and are only before the bankruptcy judge (rather than general trial courts such as the United States District Court and California Superior Court) because a bankruptcy case has been filed. A bankruptcy judge hearing and deciding a related-to matter raises Constitutional issues as to the exercise of the federal judicial power which resided in the judiciary under Article III of the United States Constitution. *See Stern v. Marshall*, 564 U.S. ___, 131 S. Ct. 2594 (2011), for a discussion of the exercise of federal court powers and the scope of an Article I judge's ability (such as a bankruptcy judge) to enter final judgments and orders on related to matters.

Congress has addressed the Constitutional issue of an Article I judge exercising federal-court power for related to matters in 28 U.S.C. § 157(c)(1) and (2). This provides that for related to matters the bankruptcy judge shall either (1) hear the matter and make proposed findings of fact and conclusion of law to the district court judge, who shall review them *de novo*, or (2) if the parties consent, the bankruptcy judge shall issue the final judgment and orders in the related to matter. *See Executive Benefits Insurance Agency v. Arkison*, ___ U.S. ___, 189 L.Ed. 2d 83, 2014 U.S. LEXIS 3993 (2014), affirming the *de novo* review procedure provided in 28 U.S.C. § 157(c)(1).

Congress has provided in 28 U.S.C. § 1334(c)(2) for the mandatory abstention by federal courts from exercising the broad grant of jurisdiction for matters "related to" bankruptcy cases. Five elements must be met for mandatory abstention to apply: "(a) the motion must have been made on a timely basis, (b) the claim must have been based on state law, (c) the claim cannot be either based on bankruptcy law or have arisen in a bankruptcy case, (d) the claim must have not been capable of being filed in a federal court absent bankruptcy jurisdiction, and (e) the claim must be capable of being timely

adjudicated in state court." *Bally Total Fitness Corp. v. Contra Costa Retail Center*, 384 B.R. 566, 570 (Bankr. N.D. Cal. 2008).

Recognizing that the scope of federal-court jurisdiction for bankruptcy cases as granted in 28 U.S.C. § 1334 is very broad, encompassing anything and everything which can even be merely related to the bankruptcy case, Congress also empowered federal judges to abstain from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11 in the interest of justice, or interest of comity or respect for State law. 28 U.S.C. § 1334(c)(1). This is commonly called discretionary abstention.

As discussed by the Eighth Circuit Court of Appeals, where the related to matter sounds in nonbankruptcy law and bears a limited connection to the debtor's bankruptcy case, abstention is particularly compelling. *In re Titan Energy, Inc.,* 837 F.2d 325, 331 (8th Cir. 1988); *see also In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990) (citing *Titan Energy* for the proposition that abstention is appropriate when the issues in the related to matter arise under state law and disposition in another court will not hinder the bankruptcy case). Citing to a Texas bankruptcy case, the Ninth Circuit identified a summary of factors which would be considered in determining whether abstention was appropriate:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
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> (2) the extent to which state law issues predominate over bankruptcy issues;
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> (3) the difficulty or unsettled nature of the applicable law;
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> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
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> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
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> (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
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> (7) the substance rather than form of an asserted "core" proceeding;
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> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
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> (9) the burden of [the bankruptcy court's] docket;
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> (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
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> (11) the existence of a right to a jury trial; and

> (12) the presence in the proceeding of nondebtor parties.

Id. at 1167.

There being no bankruptcy case pending and no bankruptcy purpose for the adjudication of the rights and interests of the parties, including the claim (if any) of the Defendant, it is not appropriate for the court to exercise federal jurisdiction pursuant to 28 U.S.C. § 1334. While broad in scope, 28 U.S.C. § 1334 is not a loophole through which the limitations of Article III, Section 2, of the United States Constitution (limited federal court jurisdiction) are eviscerated. Even to the extent that there is some thin reed for federal court jurisdiction, Congress provides in 28 U.S.C. § 1334(c)(1), for the bankruptcy judge or district court judge exercising federal court jurisdiction to abstain in the interests of justice or comity from exercising that jurisdiction pursuant to 28 U.S.C. § 1334. This is such a case. If non-bankruptcy federal jurisdiction exists, then an action should property be filed in the district court when no bankruptcy case is being prosecuted. On its face, the First Amended Complaint appears to sound substantially in non-federal claims, which generally are matters for the California Superior Court.

The court abstains pursuant to 28 U.S.C. § 1334(c)(1) from conducting any further hearings or determining any other matters in this Adversary Proceeding, and the Clerk of the Court shall close this file.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Order to Show Cause sustained and the court abstains pursuant to 28 U.S.C. § 1334(c)(1) from conducting any further hearings or determining any other matters in this Adversary Proceeding, and the Clerk of the Court shall close this file.