

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY

DATE: JUNE 28, 2018

CALENDAR: 9:15 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [10-11282](#)-A-13 **IN RE: SUSAN/RUFI ALDAY**
[18-1024](#)

STATUS CONFERENCE RE: COMPLAINT
5-3-2018 [[1](#)]

ALDAY ET AL V. MATTSON-MARKELL
TRUDI MANFREDO/ATTY. FOR PL.
REISSUED TO 7/19/18

No Ruling

2. [10-11282](#)-A-13 **IN RE: SUSAN/RUFI ALDAY**
[18-1024](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-25-2018 [[9](#)]

ALDAY ET AL V. MATTSON-MARKELL
PETER BUNTING/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss (Subject Matter Jurisdiction)

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Defendant Patricia Mattson-Markell ("Mattson-Markell") moves to dismiss the present complaint against her for lack of subject matter jurisdiction. Plaintiff Susan Lynn Alday ("Alday") opposes.

FACTS

The facts are simple. Mattson-Markell is a family law attorney. Alday was formerly her client. As a part of Mattson-Markell's representation of Alday, Alday signed a fee agreement that granted Mattson-Markell a lien against her real property to secure unpaid legal fees.

Alday later filed a chapter 13 bankruptcy. She scheduled Mattson-Markell as an unsecured creditor owed \$95,000. Mattson-Markell did not file a proof of claim. Alday proposed, confirmed, and performed her plan. She received a discharge and the case closed.

Later, she re-opened her chapter 13 bankruptcy for the purpose of attacking Mattson-Markell's lien. The basis for her attack is the alleged failure to comply with applicable state law the governs perfection of liens by family law attorneys against client property.

LAW

Rule 12(b)(1)

A defendant may challenge jurisdiction by motion under Rule 12(b)(1). Fed. R. Civ. P. 12(b)(1), incorporated by Fed. R. Bankr. P. 7012(b).

The plaintiff bears the burden of proof. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 US 375, 376-378 (1994); *In re Wilshire Courtyard*, 729 F3d 1279, 1284 (9th Cir. 2013). Attacks may be facial (on the complaint) or factual (speaking motions). This motion is of the former variety.

"A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction may be made on the basis that the complaint (together with documents attached to the complaint and any judicially noticed facts) fails to establish grounds for federal subject matter jurisdiction as required by Rule 8(a)(1)—i.e., lack of federal jurisdiction appears from the "face of the complaint." [*Warren v. Fox Family Worldwide, Inc.* (9th Cir. 2003) 328 F3d 1136, 1139; *Center for Biological Diversity, Inc. v. BP Am. Production Co.* (5th Cir. 2013) 704 F3d 413, 423-424; *Li v. Chertoff* (SD CA 2007) 482 F.Supp.2d 1172, 1175." O'Connell and Stevenson, *Federal Civil Procedure Before Trial* § 9:80 (Rutter Group 2018).

Bankruptcy Jurisdiction

Bankruptcy Jurisdiction Generally

"At the outset of a chapter 11 case, the bankruptcy court's subject matter jurisdiction extends not only to the case but also to civil proceedings arising under title 11 or arising in or related to the case. The court also has broad subject matter jurisdiction over all property of the debtor as of the commencement of the case and all property of the estate." *In re Oakhurst Lodge, Inc.*, 582 B.R. 784, 790 (Bankr. E.D. Cal. 2018) (citations omitted).

More specifically, bankruptcy jurisdiction established by § 1334, which provides in relevant part:

(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.

. . . .

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S.C. § 1334.

"Arising under" Jurisdiction

Proceedings "arising under" title 11 "involve a cause of action created or determined by a statutory provision of title 11." *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009). Stated differently, such proceedings are "based on a right or cause of action created by title 11." *Aheong v. Mellon Mortg. Co. (In re Aheong)*, 276 B.R. 233, 243 (B.A.P. 9th Cir. 2002).

"Arising in" Jurisdiction

"A civil proceeding 'arises in' a Title 11 case when it is not created or determined by the bankruptcy code, but where it would have no existence outside of a bankruptcy case." *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009) (citation omitted).

For example, "[a] state law contract claim could exist independent of a bankruptcy case, but 'an action against a bankruptcy trustee for the trustee's administration of the bankruptcy estate could not.'" *Id.*

"Related to" Jurisdiction

Generally, a bankruptcy court's "related to" jurisdiction is broad, "including nearly every matter directly or indirectly related to the bankruptcy." *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005) (citation omitted) (internal quotation marks omitted).

The test for determining "related to" jurisdiction is "whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Fietz v. Great W. Sav. (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis omitted) (citation omitted) (internal quotation marks omitted). "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." *Id.*

However, "[o]nce the administration of the bankruptcy case has ended, the relation to the case becomes so attenuated that § 1334(b) 'related to' jurisdiction presumptively expires unless the court

specifically retains jurisdiction." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 907 (B.A.P. 9th Cir. 1999).

The Ninth Circuit has adopted a modified test for post-confirmation, "related to" jurisdiction in chapter 11 cases:

The close nexus test determines the scope of bankruptcy court's post-confirmation related to jurisdiction. As adopted from the Third Circuit, the test encompasses matters affecting the interpretation, implementation, consummation, execution, or administration of the confirmed plan. The close nexus test recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility.

In re Wilshire Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013) (citations omitted) (internal quotation marks omitted).

"[A] close nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to support jurisdiction when the matter affect[s] the interpretation, implementation, consummation, execution, or administration of the confirmed plan." *Id.* at 1289 (alteration in original) (internal quotation marks omitted). The close nexus test extends post-confirmation, related-to jurisdiction to include "matters . . . that likely would have affected the implementation and execution of the plan if the matter had arisen contemporaneously." *Id.* at 1292.

Adjudicatory Authority to Render Final Judgments and Orders

"The bankruptcy courts are 'units' of the district courts that exercise the district court's jurisdiction under terms specified by Congress. 28 U.S.C. § 157." *In re Menk*, 241 B.R. 896, 904 (B.A.P. 9th Cir. 1999).

"Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. **That allocation does not implicate questions of subject matter jurisdiction.**" *Stern v. Marshall*, 564 U.S. 462, 480 (2011) (emphasis added) (citation omitted) (citing 28 U.S.C. § 157(b)(1), (c)(1)-(2)).

More specifically, § 157 provides as follows:

(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.

(b)(1) Bankruptcy judges 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, referred under subsection (a) of this section, and may enter

appropriate orders and judgments, subject to review under section 158 of this title.

. . . .

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered 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.

28 U.S.C. § 157(a),(b)(1),(c)(1) (emphasis added).

The Supreme Court has, moreover, held that some of the statutory delegations of authority to the bankruptcy court are not constitutional. *Stern v. Marshall*, 564 U.S. 462 (2011) (holding that bankruptcy court lacked constitutional authority to enter final judgment on a state law counterclaim against a creditor who had filed a proof of claim).

DISCUSSION

Alday contends that this court has jurisdiction because this is a proceeding to determine the validity of a lien. 28 U.S.C. § 157(b)(2)(K). Opp'n ¶ 7, June 13, 2018, ECF # 14.

This contention to support subject matter jurisdiction is misplaced. Whether a matter is core or noncore under § 157 is not determinative of subject matter jurisdiction. "Section 157 allocates the authority to enter final judgment between the bankruptcy court and the district court. That allocation does not implicate questions of subject matter jurisdiction." *Stern v. Marshall*, 564 U.S. 462, 480 (2011) (citation omitted) (citing 28 U.S.C. § 157(b)(1), (c)(1)-(2)).

In *In Washington Coast I, LLC*, 485 B.R. 393 (B.A.P. 9th Cir. 2012), the Ninth Circuit Bankruptcy Appellate Panel held that a bankruptcy court was not constitutionally prohibited from entering a final judgment in an adversary proceeding that determined the priority of two competing creditors rights to sale proceeds in a chapter 11 reorganization. There, the court did so finding that deciding the lien-priority dispute was part and parcel of the claims resolution process and necessary to adjudicate rights under 11 U.S.C. § 506 (addressing allowed secured claims).

While instructive, *Washington Coast* is distinguishable and without application to this dispute. In *Washington Coast*, the primary issue was the constitutionality of the entry of the bankruptcy court's final judgment resolving a lien-priority dispute that was necessary to implement a plan of reorganization. Finding the decision integral

to the reorganization, including resolution of competing claims for the funds and the need to configure a plan consistent with the party's rights, the court found that *Stern* was not violated.

But unlike *Washington Coast*, this motion raises a question of *subject matter jurisdiction*. It does not implicate the court's constitutional authority to render a final judgment or order. Even so, resolution of the validity of the lien in this case is not necessary to propose or confirm or implement a plan. That has already occurred without impediment of the unresolved lien question.

Section 1334 Jurisdiction

Considered under the rubric of subject matter jurisdiction, 28 U.S.C. § 1334(b), the lien was not created, and is not determined by title 11 and, therefore, it does not "arise under" title 11. Further, the lien is a creature of state law, and has existence outside bankruptcy. It is not a matter that has no existence apart from bankruptcy. So it does not "arise in" this bankruptcy proceeding.

By process of elimination, the only basis for jurisdiction, if at all, would be "related to" jurisdiction.

In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), teaches that "related to" jurisdiction exists in the first instance under § 1334.

After Northern Pipeline, federal jurisdiction over matters allegedly related to a bankruptcy case is best analyzed in two steps. First, we determine whether federal jurisdiction existed in the district court. If it did, then we next decide whether the bankruptcy court exercised only those powers constitutionally available to it, as described in Northern Pipeline. If the district court has no jurisdiction over a particular proceeding, then neither does the bankruptcy court. See 28 U.S.C. § 157 (Supp. IV 1986). Thus, we first consider whether the district court had jurisdiction over Gordon's cross-claim under Congress's grant of jurisdiction over proceedings related to a bankruptcy case.

Various circuits have developed slightly different definitions of what constitutes a "related" case under section 1471(b) and its identical successor, section 1334(b). The Third Circuit articulated what has become the dominant formulation:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the 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.

Id. at 457 (citations omitted).

Wilshire Courtyard narrowed that articulation in the post-confirmation context in chapter 11. In such a case, related-to jurisdiction requires that the matter have a "close nexus" to the "interpretation, implementation, consummation, execution, or administration of the confirmed plan."

In this case, the plan was a chapter 13 plan. The plan was confirmed and fully performed. The discharge was entered, and the case was closed. This lien-validity dispute relates in no way to the implementation, consummation, execution, or administration of the fully-performed chapter 13 plan. And it has no effect on the estate that has been fully administered.

For these reasons the motion will be granted.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Patricia Mattson-Markell's motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that the adversary proceeding is dismissed.