

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 01-12499
Chapter 7

BETTYE W. CLARK
GEORGE A. CLARK

Debtors

OAKWOOD ACCEPTANCE CORPORATION,
LLC

Plaintiff

v

Adversary Proceeding
No. 02-1089

BETTYE W. CLARK
GEORGE A. CLARK

Defendants

MEMORANDUM AND ORDER

Oakwood Acceptance Corporation, LLC, (“Oakwood”) has commenced this adversary proceeding to determine the dischargeability of a debt alleged to be owed by Betty W. Clark and George A. Clark (“the Clarks”) and for a money judgment on the alleged debt. The Clarks, *pro se*, have filed an answer generally denying the allegations of the complaint and demanding a jury trial.

Oakwood has filed a motion to strike the jury demand. The Clarks have responded to the motion by asserting a right to trial by jury as provided by the U.S. Constitution, Seventh Amendment.

The Seventh Amendment preserves the right to a jury trial in “suits at common law.” U.S. Const. Amend. VII; *Smith v. Bandy (In re Bandy)*, 237 B.R. 661, 663-664 (Bankr. E.D. Tenn. 1999). Proceedings concerning the dischargeability of debts involve issues of an equitable nature and for which there was no entitlement to a jury trial in the English courts when the amendment was ratified in 1791. *See, e.g., Longo v. McLaren (In re McLaren)*, 3 F.3d 958 (6th Cir. 1993); *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496 (7th Cir. 1991); *Bandy*, 237 B.R. 661, 664.

Furthermore, when the Clarks filed their voluntary petition in this case, they submitted to the equitable jurisdiction of this court, thereby waiving whatever claim to a jury trial they may have had. *Longo*, 3 F.3d 958; *Boatman’s Bank of Columbia v. Johnson (In re Johnson)*, 110 B.R. 433 (Bankr. W.D. Mo. 1990).

The Clarks have also raised an issue as to whether this is a core proceeding as defined by statute. This is a core proceeding. “Core proceedings include ... determinations as to the dischargeability of particular debts....” 28 U.S.C. § 157(b)(2)(I).

The foregoing constitute findings of fact and conclusions of law as required by Rule 52 of the Fed. R. Civ. P., made applicable to this proceeding pursuant to Bankruptcy Rule 7052. Accordingly,

It is ORDERED that the motion to strike jury demand filed on behalf of Oakwood Acceptance Corporation, LLC, is hereby GRANTED.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE