

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-35844

CLIFFORD WAYNE OWENS
DONNA JEAN OWENS

Debtors

CLIFFORD WAYNE OWENS and
DONNA JEAN OWENS

Plaintiffs

v.

Adv. Proc. No. 04-3031

CITIZENS AUTO FINANCE, INC.

Defendant

**MEMORANDUM ON
MOTION FOR SUMMARY JUDGMENT**

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This adversary proceeding is before the court upon the Complaint filed by the Plaintiffs/Debtors (Debtors) seeking damages for an alleged violation of the automatic stay by the Defendant, Citizens Auto Finance, Inc. On May 13, 2004, the Defendant filed a Motion for Summary Judgment. The Debtors filed their Response to Defendant's Motion for Summary Judgment on May 28, 2004. The issues raised by the Motion for Summary Judgment are whether the Plaintiffs' claims, in fact, are cognizable as violations of the automatic stay and, if not, whether the bankruptcy court has jurisdiction to hear this adversary proceeding.

I

The Debtors filed the voluntary petition commencing their Chapter 7 bankruptcy case on October 23, 2003. The Defendant was a secured creditor of the Debtors, holding a security interest in a 2002 Dodge Ram truck (Vehicle). On November 17, 2003, the Defendant filed a Motion for Relief from Automatic Stay seeking an order terminating the automatic stay to allow it to repossess the Vehicle, which was granted by an Order entered on December 9, 2003. Thereafter, the Defendant engaged Recovery Specialists of Tennessee, Inc., which repossessed the Vehicle on January 7, 2004. While the Vehicle was being repossessed, the Debtors aver that the Defendant's agent damaged a smokehouse and an antique plow belonging to the Debtors.

The Trustee, pursuant to the Trustee's Report of No Distribution and Report of Abandoned Property filed on January 20, 2004, abandoned all property of the estate as

burdensome or of inconsequential value to the bankruptcy estate. See 11 U.S.C.A. § 554(a) (West 1993). The Debtors received a discharge in their underlying Chapter 7 bankruptcy case on March 3, 2004.

The Debtors filed the Complaint initiating this adversary proceeding on February 24, 2004, contending that the Defendant violated the automatic stay provisions of 11 U.S.C.A. § 362(a) (West 1993 & Supp. 2004), when its repossession agent damaged the smokehouse and antique plow while repossessing the Vehicle. The Defendant has refused to reimburse the Debtors for the value of the damaged property, and they seek damages under 11 U.S.C.A. § 362(h) (West 1993) for reimbursement of the value of their damaged property, attorney's fees, and punitive damages.

II

Rule 56 of the Federal Rules of Civil Procedure allows for the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c) (applicable to adversary proceedings under Federal Rule of Bankruptcy Procedure 7056). When deciding a motion for summary judgment, the court does not weigh the evidence to determine the truth of the matter, but instead, simply determines whether any genuine issues for trial exist. *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2510 (1986).

The moving party bears the initial burden of proving that there are no genuine issues of material fact, thus entitling it to judgment as a matter of law. *Owens Corning v. Nat'l Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001). The burden then shifts to the nonmoving party to produce specific facts showing genuine issues for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing FED. R. CIV. P. 56(e)). The nonmoving party must cite specific evidence and may not merely rely upon allegations contained in the pleadings. *Harris v. Gen. Motors Corp.*, 201 F.3d 800, 802 (6th Cir. 2000). The facts and all resulting inferences are viewed in a light most favorable to the nonmoving party, *Matsushita*, 106 S. Ct. at 1356, leaving the court to decide whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 106 S. Ct. at 2512. “[O]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson*, 106 S. Ct. at 2510.

III

The Defendant argues that because it obtained relief from the automatic stay, the bankruptcy court does not have subject matter jurisdiction over this lawsuit. “The federal courts are courts of limited jurisdiction, and have a continuing obligation to examine their subject matter jurisdiction throughout the pendency of every matter before them.” *Robinson v. Mich. Consol. Gas Co., Inc.*, 918 F.2d 579, 582 (6th Cir. 1990). Moreover, subject matter jurisdiction may not be waived. *Matuscak v. United States Bankr. Ct. Clerk (In re Rini)*, 782

F.2d 603, 608 (6th Cir. 1986) (“It is well established that parties cannot somehow waive jurisdictional objections, nor can they consent to the jurisdiction of a court when that court lacks jurisdiction over the subject matter of their dispute.”). “Unlike other issues not involving the merits of a case, subject-matter jurisdiction may be raised at any time, by any party or even sua sponte by the court itself.” *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6th Cir. 1992).

Generally, federal courts have subject matter jurisdiction over only two types of civil proceedings, those involving federal questions and those involving a diversity of citizenship. See 28 U.S.C.A. §§ 1331 (West 1993) and 1332 (West 1993 & Supp. 2004). Bankruptcy falls under the purview of title 11 of the United States Code, thereby falling within the scope of § 1331's federal question jurisdiction. Additionally, Congress has granted exclusive jurisdiction over bankruptcy matters to the federal courts as follows:

(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) 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.

28 U.S.C.A. § 1334 (West 1993). Section 1334 is supplemented by 28 U.S.C.A. § 157 (West 1993 & Supp. 2004), which allows bankruptcy courts to hear “core proceedings” arising under title 11 or arising in a case under title 11. See 28 U.S.C.A. § 157(a) and (b).

The Defendant, however, erroneously argues that because a matter is not “core,” the bankruptcy court does not have the ability to hear it. The court may hear non-core

proceedings that are nevertheless “related to” bankruptcy proceedings pursuant to § 157(c), which states:

(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.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all 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 [governing appeals] of this title.

28 U.S.C.A. § 157(c). In order for the bankruptcy court to have jurisdiction, this adversary proceeding must either arise under title 11, arise in a case under title 11, or be related to a case under title 11. See 28 U.S.C.A. § 1334(b).

Generally, a core proceeding “invokes a substantive right created by federal bankruptcy law or one which could not exist outside of the bankruptcy.” *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6th Cir. 1992). Cases “under title 11” refer to the actual bankruptcy cases “commenced in a federal district court or bankruptcy court with the filing of a petition [initiating the bankruptcy].” *Robinson*, 918 F.2d at 583. “Arising in” and “arising under” actions includes matters “that arise only in bankruptcy cases” and would include adversary proceedings and contested matters concerning issues contained in or provided for by the Bankruptcy Code. *Dally v. Bank One, Chicago, N.A.* (*In*

re Dally), 202 B.R. 724, 727 (Bankr. N.D. Ill. 1996). The Sixth Circuit has adopted the following definition for “related to” matters:

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.

Robinson, 918 F.2d at 583 (quoting *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir. 1984)).

In order for a court to exercise “related to” jurisdiction, “[t]here must be some nexus between the action and the debtor’s bankruptcy case[,]” *Beneficial Nat’l Bank USA v. Best Receptions Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998), or “the outcome . . . alter[s] the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and . . . impacts . . . the handling and administration of the bankrupt estate.” *Robinson*, 918 F.2d at 583 (quoting *Pacor*, 743 F.2d at 994). However, “[i]f a non-core proceeding is not related to a case under title 11, then the bankruptcy court lacks subject matter jurisdiction over the proceeding.” *Best Reception Sys., Inc.*, 220 B.R. at 944.

IV

Here, if this adversary proceeding is determined to involve a violation of the automatic stay, it is a core proceeding, arising in or under the Bankruptcy Code. See 28 U.S.C.A. § 157(b)(2). Otherwise, unless the case is “related to” the Debtors’ bankruptcy case, it is improperly before the bankruptcy court. The commencement of a debtor’s bankruptcy case triggers the protection of the automatic stay provisions set forth in § 362(a), which states, in part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301 . . . operates as a stay, applicable to all entities, of—

. . . .

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to . . . enforce any lien against property of the estate; [and]

(5) any act to . . . enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title[.]

11 U.S.C.A. § 362(a). The automatic stay provides debtors with “‘a breathing spell’ from collection efforts and [] shield[s] individual creditors from the effects of a ‘race to the courthouse,’ thereby promoting the equal treatment of creditors.” *In re Printup*, 264 B.R. 169, 173 (Bankr. E.D. Tenn. 2001). Actions taken in violation of the automatic stay are “invalid and voidable and shall be voided absent limited equitable circumstances.” *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993). “A violation is willful if ‘the creditor

deliberately carried out the prohibited act with knowledge of the debtor's bankruptcy case.”

Printup, 264 B.R. at 173.

A specific intent to violate the stay is not required, or even an awareness by the creditor that [its] conduct violates the stay. It is sufficient that the creditor knows of the bankruptcy and engages in deliberate conduct that, it so happens, is a violation of the stay. Moreover, where there is actual notice of the bankruptcy it must be presumed that the violation was deliberate or intentional.

Satisfying these requirements itself creates strict liability. There is nothing more to prove except damages.

Printup, 264 B.R. at 173; see also *In re Dunning*, 269 B.R. 357, 362 (Bankr. N.D. Ohio 2001)

(a willful violation of the automatic stay does not require a specific intent to violate the stay).

Requests for relief from the automatic stay are governed by 11 U.S.C.A. § 362(d), which provides, in material part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization[.]

11 U.S.C.A. § 362(d) (West 1993 & Supp. 2004).

Here, the automatic stay was terminated on December 9, 2003, to allow the Defendant to repossess the Vehicle. The Defendant had every right therefore to proceed in its repossession of the Vehicle. Any damages incurred by the Debtors during that repossession flow from the Defendant's actions for which it was granted relief from the automatic stay. As such, any incidental damage to the Debtors' smokehouse and antique plow that occurred while the Defendant's repossession agent was taking possession of the Vehicle could not violate the automatic stay since it was no longer in effect for the purposes of repossessing the Vehicle.¹

The court agrees that this action is not a core proceeding, as it is not one of the enumerated core proceedings set forth in § 157(b) (2), nor is it supported by any section of the Bankruptcy Code. Moreover, the court finds that this action is not "related to" the bankruptcy case. At the commencement of a bankruptcy case, an estate is created, which includes, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a) (1) (West 1993). Under § 157(b) (2), the bankruptcy court has "exclusive jurisdiction over both property of the estate and property of the debtor." 11 U.S.C.A. § 157(b) (2); *In re Lafoon*, 278 B.R. 767, 771 (Bankr. E.D. Tenn. 2002). Nevertheless, the Trustee filed the Report of No Distribution and Report of Abandoned Property on January 20, 2004. The Report states that the Trustee did not receive

¹ In their Response to Defendant's Motion for Summary Judgment, the Plaintiffs disingenuously argue that the acts of the Defendant's agent resulting in damage to the smokehouse and antique plow amounted to an exercise of "control over property of the estate" and thus violated the automatic stay of 11 U.S.C.A. § 362(a) (3). The court disagrees. What occurred may have given rise to a claim for damages for negligence but not a claim for damages for a willful violation of the automatic stay under 11 U.S.C.A. § 362(h).

any property for distribution to creditors, that he did not believe that there was any property for distribution to creditors, and that he was abandoning all property of the estate as burdensome or of inconsequential value to the estate.

The majority of courts agree that “[t]he effect of abandonment by a trustee is to divest the bankruptcy estate of control over the abandoned property and to revest title in the debtor. In doing so, the property becomes part of the debtor's non-bankruptcy estate, just as if no bankruptcy had occurred.” *First Ga. Bank v. FNB So. (In re Moody)*, 277 B.R. 858, 861 (Bankr. S.D. Ga. 2001). Accordingly, “[w]here an asset has been abandoned by the Trustee, that asset is no longer a part of the bankruptcy estate . . . the property reverts back to its pre-bankruptcy status, and that asset is properly removed from the jurisdiction of the bankruptcy court.” *Newkirk v. Wasden (In re Bray)*, 288 B.R. 305, 307 (Bankr. S.D. Ga. 2001) (internal citations omitted); *see also Mass. Cas. Ins. Co. v. Green (In re Green)*, 241 B.R. 550, 560-61 (Bankr. N.D. Ill. 1999) (“When property leaves the bankruptcy estate, whether by sale or otherwise, the bankruptcy court's jurisdiction over that property lapses. A bankruptcy court has no jurisdiction over property that is no longer part of the bankruptcy estate. When a trustee abandons property to the debtor, there is no remaining basis for bankruptcy court jurisdiction.”); *Keller v. CIT Group/Consumer Fin., Inc. (In re Keller)*, 229 B.R. 900, 902 (Bankr. S.D. Ohio 1998) (“[T]he effect of the abandonment is clear. Whether property be abandoned under § 554(a) or (c), it is removed from the estate, thereby divesting the trustee of control, and divesting the bankruptcy court of jurisdiction over matters concerning the abandoned property.”); *Dally*, 202 B.R. at 727 (“[O]nce a debtor (or trustee in a Chapter 7

proceeding) has abandoned any claim to property, there is rarely any basis for bankruptcy court jurisdiction.”).

The Debtors argue that the smokehouse and antique plow were property of the estate on January 7, 2004, when the damage occurred. Assuming the accuracy of this argument, the resulting claim for damages belonged to the Trustee, who, as of the commencement of the bankruptcy case, became the bankruptcy estate’s representative, succeeded to all of the Debtors’ interests in property of the estate, became the party to sue or be sued concerning all property of the estate, and inherited the responsibility to use estate property in the best interests of creditors, including the collection of, reduction to money of, and accountability for the estate property. *See* 11 U.S.C.A. § 323 (West 1993); 11 U.S.C.A. § 704(1), (2) (West 1993); *Bauer v. Commerce Union Bank*, 859 F.2d 438, 440-41 (6th Cir. 1988) (property of the estate includes “causes of action”). Chapter 7 debtors do not have standing to prosecute claims that are property of the estate, including those that the estate “acquired after the commencement of the case.” 11 U.S.C.A. § 541(a)(7) (West 1993); *Bailey v. Household Fin. Corp. III (In re Bailey)*, 306 B.R. 391, 392 (Bankr. D.C. 2004). However, the Trustee abandoned all property of the estate on January 20, 2004, thus allowing the claim, and any cause of action arising therefrom, to revert back to the Debtors. *See Bray*, 288 B.R. at 307.

In this case, there is no remaining basis for “related to” jurisdiction. The outcome of the Debtors’ lawsuit against the Defendant will not affect, in any way, the administration of the bankruptcy case. The Trustee has abandoned all property of the estate, and thus, the Debtors are once again in possession and control of their pre-petition property, and as they

have received their discharge, the Debtors are no longer liable for any pre-petition debts. See 11 U.S.C.A. § 727(b) (West 1993).

V

In summary, the relief sought by the Debtors is reimbursement for property that was damaged by the Defendant during the valid repossession of the Vehicle. The Trustee has abandoned all property of the estate, including the cause of action for damage to the smokehouse and antique plow, and it has reverted back to the Debtors. A decision in favor of either party will not alter the bankruptcy case, will not affect any other creditors of the Debtors, nor will it result to any distribution to any other creditors. Additionally, the outcome does not alter the Debtors' rights or liabilities. Their rights to recover for damage to personal property occurring during the Defendant's repossession of the Vehicle may be properly exercised in the state court. As such, the Debtors' cause of action against the Defendant is not "related to" the Debtors' bankruptcy case, and thus, the bankruptcy court does not retain subject matter jurisdiction over this adversary proceeding. The Complaint shall be dismissed.

An order consistent with this Memorandum will be entered.

FILED: June 16, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Motion for Summary Judgment filed this date, the court directs that the Defendant's Motion for Summary Judgment filed May 13, 2004, is GRANTED. The Plaintiffs' Complaint filed February 24, 2004, is accordingly DISMISSED.

SO ORDERED.

ENTER: June 16, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE