

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

In re

Case No. 01-31472

RAGIP SINAN MUNGAN
a/k/a R.S. MUNGAN
a/k/a SINAN MUNGAN
a/k/a R. SINAN MUNGAN

Debtor

Case No. 01-31712

MARY CATHRYN JEDLICKA
a/k/a MARY C. JEDLICKA
a/k/a CATHY JEDLICKA

Debtor

KENNETH HUNLEY and wife,
PEGGY HUNLEY

Plaintiffs

v.

Adv. Proc. No. 01-3169

RAGIP SINAN MUNGAN, aka R.S.
MUNGAN aka SINAN MUNGAN,
aka R. SINAN MUNGAN, MORTGAGE
MASTERS, INC., MORTGAGE MASTERS
FINANCIAL SERVICES CORPORATION,
G. WAYNE WALLS, Trustee, FIRST TENNESSEE
BANK NATIONAL ASSOCIATION, MARY CATHRYN
JEDLICKA, aka MARY C. JEDLICKA aka CATHY
JEDLICKA, WILLIAM T. HENDON, Trustee,
ROBERT LONG and wife, MELISSA LONG, FIDELITY
NATIONAL INSURANCE COMPANY OF NEW YORK,
STATE OF TENNESSEE by and through both DEPARTMENT
OF LABOR AND WORKFORCE DEVELOPMENT, and
through the DEPARTMENT OF REVENUE, THE UNITED
STATES OF AMERICA by and through the INTERNAL
REVENUE SERVICE, IMC MORTGAGE COMPANY,

JOE M. KIRSCH, Trustee, TENNESSEE WATER SERVICE,
INC., NEW CENTURY MORTGAGE CORPORATION,
FIRSTAR BANK, MILWAUKEE N.A., AS TRUSTEE UNDER
SALOMON BROTHER MORTGAGE SECURITIES VII
MORTGAGE PASS-THROUGH CERTIFICATES SERIES
1999-NCS, MICHAEL HUNLEY, and wife, ROBIN HUNLEY,
STEVEN J. LUSK, Trustee

Defendants

MEMORANDUM

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

On October 19, 2001, the Plaintiffs, Kenneth and Peggy Hunley (the Plaintiffs), filed the Complaint initiating this adversary proceeding, seeking to set aside certain deeds transferring the Plaintiffs' real property that the Plaintiffs claim were fraudulently obtained by the Debtor, Ragip Sinan Mungan (Mungan), d/b/a Mortgage Masters, Inc. (Mortgage Masters, Inc.). Copies of the Complaint, together with a summons, were subsequently served upon all Defendants as required by the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure.

The Plaintiffs contend that this a core proceeding pursuant to 28 U.S.C.A. § 157(b)(2)(K) (West 1993), and that the bankruptcy court has jurisdiction pursuant to 28 U.S.C.A. § 1334 (West 1993 & Supp. 2002). Each of the Defendants that filed an answer admitted this averment, and the Pretrial Order entered on October 7, 2002, recites that "[t]his is considered to be a core proceeding pursuant to 28 U.S.C. Section 157(b)(2), but the parties consent and agree that the Bankruptcy Judge shall hear, determine and enter appropriate orders and judgments as to any non-core issues related to the bankruptcy case."

For reasons hereinafter discussed, the court has determined that this adversary proceeding is not a core proceeding, nor is it a proceeding with non-core issues related to either of the bankruptcy cases of the Debtors Mungan and Mary Cathryn Jedlicka (Jedlicka). The bankruptcy court therefore has no subject matter jurisdiction, and the Plaintiffs' action must be dismissed.

I

The Plaintiffs' Complaint alleges that prior to December 1997, they owned two parcels of real property, one located at 4220 Van Dyke Drive, Knoxville, Tennessee (the Van Dyke Property), and the other located at 610 Jade Road, Knoxville, Tennessee (the Jade Road Property) (also collectively referred to as the Properties). They were contacted by Mungan, who offered to refinance the Plaintiffs' existing mortgages on the Properties. At that time, there were two valid federal tax liens recorded and encumbering the Properties. On December 11, 1997, the Plaintiffs obtained a mortgage loan on each of the Properties, both financed through IMC Mortgage Company (IMC) and brokered by Mungan and Mortgage Masters, Inc. for the purpose of paying off the existing tax liens. After the refinancing, the Plaintiffs contend that Jedlicka represented to them that she held approximately \$14,000.00 in escrow to pay off the tax liens. The Plaintiffs began making payments to IMC on these mortgages.

On February 10, 1998, a third federal tax lien was recorded against the Plaintiffs' Properties. At that time, they were told by Mungan that he had retained \$14,567.18 in escrow on their behalf and that he would resolve their tax liability issues. The Plaintiffs continued to make mortgage payments to IMC, but these payments were late.

The Plaintiffs allege that Mungan advised them that, in order to cure their tax liability, they would have to divest themselves of their real property interests by conveying their ownership of the Van Dyke and Jade Road Properties to other parties. The Plaintiffs, following Mungan's advice, executed a Warranty Deed conveying the Van Dyke Property to their son and

daughter-in-law, Michael and Robin Hunley (the Hunleys), on February 12, 1999.¹ At that time, Mungan obtained a new mortgage on the Van Dyke Property from New Century Mortgage Corporation (New Century) and retained approximately \$10,200.00, presumably to be held in escrow for the purpose of paying the tax liens. To date, the Plaintiffs continue to reside on the Van Dyke Property.

The Plaintiffs also assert that Mungan convinced them to renovate the Jade Road Property and transfer it to Robert and Melissa Long (the Longs). Again acting upon Mungan's advice, in August 1999, the Plaintiffs turned over the keys to the Jade Road Property to the Longs, with the intention of transferring the property to them; however, at that time, the Plaintiffs did not receive any funds from the Longs for the purchase of the property nor did they execute a deed conveying the Jade Road Property to the Longs. The Plaintiffs allege that Mungan assured them that the Properties would be conveyed back to them after the IRS liens were resolved. To date, the Longs are in possession of and reside at the Jade Road Property.

The Plaintiffs allege that Mungan subsequently advised them to stop making payments on their mortgages to IMC. Then, with the Plaintiffs' assistance, Mungan purchased the Plaintiffs' mortgage on the Jade Road Property from IMC at a discount. Likewise, Mungan purchased the mortgage on the Van Dyke Property from New Century.

Thereafter, the Plaintiffs allege that Mungan convinced the Plaintiffs and the Hunleys to execute Deeds in Lieu of Foreclosure (the Deeds in Lieu) as to the Properties for IRS purposes

¹ This Warranty Deed was recorded with the Knox County Register of Deeds on June 3, 1999.

only.” Mungan represented to the Plaintiffs that upon evidence of “foreclosure,” the IRS liens would be relinquished, and the Hunleys could re-convey the Van Dyke Property back to the Plaintiffs. However, despite Mungan’s alleged representations that he would not record the Deeds in Lieu, they were, in fact, recorded with the Knox County Register of Deeds on September 14, 1999.² Accordingly, the Van Dyke Property was transferred from the Hunleys to Mortgage Masters, Inc., and the Jade Road Property was transferred from the Plaintiffs to Mortgage Masters, Inc.

The Plaintiffs claim that the Deeds in Lieu were fraudulently obtained and should be set aside, as they were blank when signed and later altered into the Deeds in Lieu that Mungan recorded with the Knox County Register of Deeds. Additionally, the Plaintiffs assert that the Longs are in possession of the Jade Road Property, despite the lack of a deed of conveyance to them or their obligation to pay any mortgage payments thereon. As a result, on December 8, 2000, the Plaintiffs recorded a Lien Lis Pendens regarding the Van Dyke and Jade Road Properties with the Knox County Register of Deeds and commenced an action in the Knox County Chancery Court to rescind the Deeds in Lieu.

On March 23, 2001, Mungan filed the underlying bankruptcy case, initially under Chapter 13. The case was converted to Chapter 11 on May 21, 2001, and was finally converted to Chapter 7 on August 28, 2001. Jedlicka filed the voluntary petition commencing her Chapter 7

² After the Deeds in Lieu were recorded, additional mortgages to First Tennessee Bank were incurred on both the Van Dyke and Jade Road Properties.

bankruptcy case on April 4, 2001. The Plaintiffs filed the Complaint initiating this adversary proceeding in both Chapter 7 bankruptcy cases on October 19, 2001.

The Defendant, G. Wayne Walls (Walls), was appointed as trustee for Mungan's Chapter 11 bankruptcy case on July 20, 2001. Walls was retained and continued to act as Chapter 7 trustee for the Mungan bankruptcy estate after the case was converted on August 28, 2001. On December 10, 2002, Walls filed the Trustee's Report of Abandonment of Certain Property, in which he, in his capacity as Chapter 7 trustee, abandoned any interest of the bankruptcy estate in the Van Dyke and/or Jade Road Properties.

The Defendant, William T. Hendon (Hendon), was appointed as Chapter 7 trustee for the Jedlicka bankruptcy estate. On August 5, 2002, the court entered an Agreed Order, whereby the Plaintiffs and Hendon, in his capacity as Chapter 7 trustee for the Jedlicka bankruptcy estate, agreed that neither he nor the Jedlicka bankruptcy estate had any interests in or claims relating to either the Van Dyke or the Jade Road Properties. Similarly, on August 5, 2002, the court entered an Agreed Order in which Jedlicka also disclaimed any interest whatsoever in the Van Dyke and/or Jade Road Properties.

Mortgage Masters, Inc., record owner of the Van Dyke and Jade Road Properties, is not a debtor under title 11.

II

"The federal courts are courts of limited jurisdiction." *Robinson v. Mich. Consol. Gas Co., Inc.*, 918 F.2d 579, 582 (6th Cir. 1990). Jurisdiction over bankruptcy matters is exclusive to the federal courts pursuant to 28 U.S.C.A. § 1334 (West 1993), which provides, in pertinent part:

(a) Except as provided in subsection (b) of this section, the district court 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. Likewise, jurisdiction over bankruptcy matters is conferred upon bankruptcy judges 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,

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

28 U.S.C.A. § 157(a), (b) (West 1993). Accordingly, this court has been granted “exclusive jurisdiction over both property of the estate and property of the debtor[s].” *In re Lafoon*, 278 B.R. 767, 771 (Bankr. E.D. Tenn. 2002). The federal courts “have a continuing obligation to examine their subject matter jurisdiction throughout the pendency of every matter before them.” *Robinson*, 918 F.2d at 582; *Dally v. Bank One, Chicago, N.A. (In re Dally)*, 202 B.R. 724, 726-27 (Bankr. N.D. Ill. 1996) (“A bankruptcy judge always has the authority and responsibility to determine

whether jurisdiction lies over issues presented.”). The judge may raise subject matter jurisdiction *sua sponte* at any time during the proceedings. *Dally*, 202 B.R. at 727.

Cases “under title 11” refer to actions “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” actions includes matters “that arise only in bankruptcy cases.” *Dally*, 202 B.R. at 727. With regards to “related to” actions, the Sixth Circuit, along with most other circuits, has adopted the following definition:

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 summary, “bankruptcy courts do not have jurisdiction over disputes between non-debtor parties where the dispute does not involve property of the estate, does not affect administration of the estate, or will not affect recovery of creditors under a confirmed plan.” *Dally*, 202 B.R. at 727.

Because federal courts have a continuing obligation to assure that they retain jurisdiction throughout the pendency of all matters before them, it is incumbent upon this court to determine whether the abandonment of any interest in or claim to these Properties by the Chapter 7 trustees

in both of the Debtors' cases takes this action outside of the jurisdiction of the bankruptcy court, as conferred by § 1334 and § 157.

III

When the trustee abandons property of the estate, and it reverts back to the debtor, the bankruptcy court retains jurisdiction. *Lafoon*, 278 B.R. at 771; *First Ga. Bank v. FNB So. (In re Moody)*, 277 B.R. 858, 861 (Bankr. S.D. Ga. 2001). However, "once a debtor (or trustee in a Chapter 7 proceeding) has abandoned any claim to property, there is rarely any basis for bankruptcy court jurisdiction." *Dally*, 202 B.R. at 727; *see also Moody*, 277 B.R. at 861 (once the Chapter 7 trustee had abandoned, and the debtor no longer had any remaining interest in the subject property, the adversary proceeding no longer impacted either the debtor or the bankruptcy estate).

A bankruptcy court may still exercise "related to" jurisdiction over non-estate property "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*, 743 F.2d at 994). So, if the court's decision as to ownership of the Van Dyke and/or Jade Road Properties, as between the Plaintiffs and Mortgage Masters, Inc., could have any effect on either the Mungan bankruptcy estate or the Jedlicka bankruptcy estate, this court will retain "related to" jurisdiction. Otherwise, there is no basis for federal court jurisdiction, and the matter must be decided in the state court.

In this case, the outcome will not, in any way, effect the bankruptcy estates of either Mungan or Jedlicka. The relief that the Plaintiffs seek is rescission of the Deeds in Lieu transferring the Van Dyke and Jade Road Properties to Mortgage Masters, Inc., for the purpose of conveying these Properties back to the Plaintiffs. Action by this court either in favor of or against the Plaintiffs and/or Mortgage Masters, Inc., will not alter either bankruptcy estate. Mortgage Masters, Inc. will either retain the legal title in the Properties or it will be re-conveyed back to the Plaintiffs. A decision either way will not affect any creditors of the Mungan or Jedlicka bankruptcy estates, nor will either of the Debtors themselves be affected in any way by a court ruling on this matter. Accordingly, the Plaintiffs' Complaint is not "related to" either the Mungan or Jedlicka bankruptcy cases, and as such, this court does not retain subject matter jurisdiction over the Plaintiffs' action.

The Plaintiffs' Complaint is based entirely upon the state law claims of fraud and misrepresentation, which do not "arise under" or "arise in" the bankruptcy case of either of these Debtors, but instead falls within the purview of the Tennessee state courts. It also matters not that the Plaintiffs alleged in their Complaint that it was a core proceeding pursuant to § 157(b)(2)(K) and that all Defendants agreed. "Jurisdiction is proper in only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial federal question.'" *Dally*, 202 B.R. at 729 (quoting *Commercial Nat'l Bank v. Demos*, 18 F.3d 485, 488 (7th Cir. 1994)). Additionally, subject matter jurisdiction cannot be waived. *United States v. Adesida*, 129 F.3d 846, 850 (6th Cir. 1997) ("Lack of subject matter jurisdiction may be raised at any time in the course of a proceeding

and is never waived. Matters of jurisdiction may be raised at any time, because if a court lacks subject matter jurisdiction, it does not have power to hear the case.”) (citing U.S. CONST. art. III, § 2).

IV

In summary, the federal courts do not have subject matter jurisdiction over this civil action because the Chapter 7 trustees of both the Mungan and Jedlicka estates have abandoned all interest in or claims to the Van Dyke and Jade Road Properties, the Properties are not property of either bankruptcy estate, and the outcome of this action will not have any impact whatsoever on either bankruptcy estate. Accordingly, this adversary proceeding must be dismissed. The Tennessee state court is the proper forum for the Plaintiffs’ rescission action against Mortgage Masters, Inc. as the owner of record of the Van Dyke and Jade Road Properties.

An order consistent with this Memorandum will be entered.

FILED: December 20, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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STEVEN J. LUSK, Trustee

Defendants

ORDER

For the reasons stated in the Memorandum filed this date, the court directs that the Plaintiffs' Complaint filed October 19, 2001, is DISMISSED for lack of subject matter jurisdiction.

SO ORDERED.

ENTER: December 20, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE