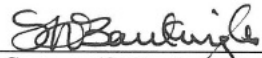




SO ORDERED.
SIGNED this 27th day of February, 2020

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

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

In re

JOSHUA KING

Debtor

SURETEC INSURANCE COMPANY

Plaintiff

v.

JOSHUA KING

Defendant/Counter-Plaintiff

v.

SURETEC INSURANCE COMPANY

Counter-Defendant

Case No. 3:17-bk-30638-SHB
Chapter 7

Adv. Proc. No. 3:17-ap-3022-SHB

MEMORANDUM AND ORDER

Plaintiff commenced this adversary proceeding by filing its Complaint to Determine Dischargeability of Debt (“Complaint”) filed on June 19, 2017 [Doc. 1], asking the Court to

award it a judgment of no less than \$4,771,778.45 and for a determination that the judgment awarded was nondischargeable. On July 30, 2017, Defendant filed his Answer and Counterclaim [Doc. 5], denying Plaintiff's allegations and asserting a counterclaim asking the Court to invalidate a deed of trust by finding unconscionable the indemnity agreement on which Plaintiff relied to execute the deed of trust on behalf of Defendant under a purported authority of a power-of-attorney provision contained within the indemnity agreement (the "Counterclaim"). The parties jointly filed the Stipulation of Dismissal of Plaintiff/Creditors Non-Dischargeability Claim Under 11 U.S.C. § 523(a)(2) on October 16, 2018 [Doc. 28], leaving only the Counterclaim pending before the Court.

At the status conference held January 23, 2020, the Court questioned whether it had subject matter jurisdiction to determine the counterclaim given that, in the underlying Chapter 7 case, the Trustee filed a Report of No Distribution and abandoned all property of the estate on July 18, 2017 [Doc. 53], after which Debtor received a discharge on February 13, 2019 [Doc. 78]. The parties requested a continuance of the status conference to research the issue, and a final status conference was held on February 20, 2020. For the following reasons, the Court finds that it does not have subject matter jurisdiction.

"The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Bankruptcy courts "have original and exclusive jurisdiction of all cases under title 11" and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11[, which are either core¹ or non-core as defined by 28 U.S.C. § 157(b)(2)]."

¹ Core proceedings involve rights established under federal law and arise under title 11 or in a case under title 11; i.e., "[c]laims that *arise under* title 11 involve causes of action created or determined by a statutory provision of title 11[, and c]laims that *arise in* title 11 'are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.'" *AY McDonald Indus., Inc. v. McDonald (In re*

28 U.S.C. § 1334(a), (b). “Regardless of whether the parties raise jurisdictional issues themselves – or even attempt to consent to federal jurisdiction – federal courts have an independent obligation to investigate and police the constitutional and statutory limits of their own jurisdiction[,] and counsel, as officers of the court, have an obligation to aid the courts with that duty.” *Johnston v. City of Middletown (In re Johnston)*, 484 B.R. 698, 705 (Bankr. S.D. Ohio 2012). “Subject matter jurisdiction is the court’s authority to entertain an action between the parties before it.” *Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 624 (9th Cir. 1989).

Section 157(c) also allows bankruptcy courts to determine non-core proceedings that are nevertheless “related to” the underlying bankruptcy case. Thus, the court may hear a proceeding if “the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Robinson v. Michigan Consol. Gas Co. Inc.*, 918 F.2d 579, 583 (6th Cir. 1990) (quoting *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir. 1984)). “Related to” jurisdiction requires “some nexus between the action and the debtor’s bankruptcy case,” *Perry v. EMC Mortg. Corp. (In re Perry)*, 388 B.R. 330, 337 (Bankr. E.D. Tenn. 2008) (citations omitted), or a showing that “the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and . . . impacts . . . the handling and administration of the bankruptcy case.” *Robinson*, 918 F.2d at 583 (quoting *Pacor*, 743 F.2d at 994). “A proceeding is not ‘related to’ a bankruptcy case merely because the debtor happens to be a debtor in bankruptcy at the time the proceeding is brought.” *Ostroff v. Am. Home Mortg. (In re Ostroff)*, 433 B.R. 442, 449-50 (Bankr. D.D.C. 2010) (holding that the court did not have jurisdiction to declare a lien invalid on a proceeding brought by chapter 7 debtors

McDonald), 590 B.R. 506, 509 (B.A.P. 8th Cir. 2018) (emphasis in original) (quoting *McDougall v. Ag. Country Farm Credit Servs. (In re McDougall)*, 587 B.R. 87, 90 (B.A.P. 8th Cir. 2018)).

concerning property that had been exempted).

The Counterclaim, which is all that remains here, concerns the validity of a deed of trust against his real property. [See Doc. 5.] The Counterclaim did not “arise under” the Bankruptcy Code, seeing as there is no statutory basis under title 11 for the adversary proceeding. The Counterclaim also does not “arise in” Defendant’s underlying bankruptcy case, and because the Chapter 7 Trustee abandoned all property of the estate and Defendant received a Chapter 7 discharge (including a discharge of any debt owed to Plaintiff under the facts on which the Counterclaim is premised), the Counterclaim is not “related to” the underlying Chapter 7 bankruptcy case. Indeed, the Chapter 7 case is ready to be closed once this adversary proceeding is resolved.

Accordingly, because the bankruptcy court does not have jurisdiction under 28 U.S.C. § 1334 to adjudicate the Counterclaim and subject matter jurisdiction cannot be waived, the Court directs that this adversary proceeding is DISMISSED.

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