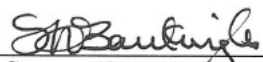




SO ORDERED.

SIGNED this 11th day of July, 2019

**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

KENNETH PAUL WEITZEL

Debtor

KENNETH PAUL WEITZEL

Plaintiff

v.

SHERRY MELANCON and
CARLYLE MELANCON

Defendants

Case No. 3:19-bk-31626-SHB
Chapter 13

Adv. Proc. No. 3:19-ap-3030-SHB

MEMORANDUM AND ORDER
DISMISSING ADVERSARY COMPLAINT

On June 7, 2019, Plaintiff Kenneth Paul Weitzel filed the Complaint for Fraud, Injunctive Relief and Stipulation to Quiet Title (“Complaint”) [Doc. 1] against Defendants, Sherry and Carlyle Melancon, averring that Defendants committed acts of fraud and deceit by creating an

invalid trustee's deed, which caused a cloud upon the title to Plaintiff's real property located at 367 Southshore Drive, Greenback, Tennessee ("Real Property"), and allowed Defendants to transfer title to their names. The Complaint seeks injunctive relief to enjoin all acts against Plaintiff's title and right to possess the Real Property. Plaintiff also seeks a declaratory judgment that the trustee's deed on the property is null and void and for the Court to cancel the recording of any deed that inhibits Plaintiff's interest in the property. Finally, Plaintiff asks to quiet title in his favor and for entry of a judgment awarding damages of at least \$600,000.00 plus attorney's fees.¹

Because the underlying Chapter 13 case was dismissed on June 19, 2019, the Court issued an Order on June 20, 2019 [Doc. 4], directing the Plaintiff to appear on July 11, 2019, and show cause why his Complaint should not be dismissed. Plaintiff failed to appear at the July 11, 2019 hearing.

"Generally, dismissal of an underlying bankruptcy case should result in the dismissal of all related adversary proceedings." *Peabody Landscape Constr. Inc. v. Schottenstein (In re Schottenstein)*, 371 B.R. 276, 280 (S.D. Ohio 2007). This is because the bankruptcy court's jurisdiction over the related proceedings is dependent on the proceedings' nexus to the underlying case. *Porges v. Gruntal & Co., Inc. (In re Porges)*, 44 F.3d 159, 162 (2d Cir. 1995). "Dismissal, however, is not required, and if good cause is shown, the court may exercise discretion to retain an adversary proceeding that is related to the dismissed bankruptcy case. *See In re Schottenstein*, 371 B.R. at 280.

After dismissal of the underlying case, the court considers four factors to determine whether the court has jurisdiction over an adversary proceeding based on "related to"

¹ Plaintiff filed the adversary proceeding pro se; thus, the request for attorney's fees is entirely without merit.

jurisdiction: economy, convenience, fairness, and comity. *Clarke v. Shofner (In re Clarke)*, No. 09-01153, 2011 WL 3511524, at *2 (Bankr. E.D. Tenn. Aug. 11, 2011) (citations omitted). The Complaint, which is based solely on state law rather than federal law, was filed on June 7, 2019, and Defendants have not filed a responsive pleading. Time and resources, thus, have not been spent in resolving this matter before the bankruptcy court so that the factors of economy, convenience, and fairness do not apply. “Comity ‘is a concept that means that “all else being equal, state issues ought to be decided by state courts.”” *Id.* (citations omitted). Here, the Complaint can and should be considered by a state court with proper jurisdiction.

For these reasons, and because Plaintiff failed to appear or otherwise respond to the Court’s June 20, 2019 Order, the Court directs that the Complaint [Doc. 1] is DISMISSED.

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