

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re)	
)	Case No. 98-43254-172
Arthur A. Blumeyer)	
)	Adv. No. 04-4336-172
Debtor.)	
)	
Arthur A. Blumeyer, III)	Chapter 7
)	
Plaintiff,)	
)	
vs.)	
)	
The University of Kansas)	
)	
Defendant.)	

ORDER

On December 3, 2004, the Court entered an order requiring the Plaintiff to show cause why this adversary proceeding should not be dismissed for lack of subject matter jurisdiction (Document 3). In response to that order the Plaintiff filed an Amended Complaint (Document 5) re-alleging the allegations in the original complaint, except that the allegation of jurisdictional was changed from “non-core” to “core”. The Plaintiff alleged the matter to be “core” because it was related to complying with orders of the bankruptcy court regarding the filing of a tax return for the 2000 tax year.

Subject matter jurisdiction is a threshold determination that may be raised at any time by any party or *sua sponte* by the Court. **Kontrick v. Ryan**, 540 U.S. 443, 456, 124 S. Ct. 906, 916, 157 L. Ed. 2d 867 (2004) citing **Mansfield, C. & L.M.R. Co. v. Swan**, 111 U.S. 379, 382, 4 S. Ct. 510, 28 L. Ed. 462 (1884), **28 U.S.C. § 157(b)**, **28 U.S.C. § 1334(b)**.

Upon consideration of the allegations in the original complaint and in the amended complaint, the Court finds and concludes that the Bankruptcy Court is without subject matter jurisdiction in this proceeding.

The Plaintiff is the Debtor in case number 98-43254 originally filed as a voluntary Chapter 11 case on March 3, 1998, and converted to Chapter 7 on June 2, 1998 (File Document No. 62). The Debtor's appeal of the conversion order (Notice of Appeal, File Document No. 72) was dismissed on September 28, 1998 (File Document No. 121). The Plaintiff filed four motions to dismiss his bankruptcy case (Motions 61, 84, 207, 377) which were ultimately either denied by the Court or withdrawn by the Plaintiff. The Plaintiff also filed two motions to reconvert the case to Chapter 11. Motion 137 was denied by the Court; Motion 184 was withdrawn by the Plaintiff. The Chapter 7 Trustee has continued to perform the administrative duties imposed upon him by the Bankruptcy Code.

In this complaint, the Plaintiff has alleged violations of federal law by The University of Kansas ("Defendant") in regards to federally funded financial aid for his daughter's college expenses. The Plaintiff has alleged that an application for financial aid was submitted in the Fall of 1999 and in the Fall of 2000, and was received for the academic years 2000-2001 and 2001-2002. He further alleged that in the Fall of 2001 the Defendant required the Plaintiff to submit tax returns in order to be considered for further aid for the 2002-2003 academic year. The Plaintiff alleged that when he and his wife submitted to the Defendant a copy of their tax return for 2000, which was the same as the 2000 tax return filed in the bankruptcy case and with the IRS, the Defendant continued to refuse to process the financial aid request causing harm to the Plaintiff. The Plaintiff alleged further that the Defendant committed fraud through the use of the mails, and requested a jury trial to determine the issues presented.

Bankruptcy courts are courts of limited jurisdiction. Bankruptcy courts may hear and determine cases under Title 11 of the United States Code, and all core proceedings arising under Title 11 or arising in a case under Title 11. **28 U.S.C. § 157(b), 28 U.S.C. § 1334(b)**. Bankruptcy judges may hear a proceeding that is not a core proceeding but that is otherwise related to a case

under Title 11 and submit proposed findings of fact and conclusions of law to the district court. **28 U.S.C. § 157(c)**. Thus, in the Bankruptcy Court, subject matter jurisdiction is present if the matter is a core proceeding, arises under Title 11 or arises in a case under Title 11, or is a non-core matter that is related to a case under Title 11.

The Plaintiff's descriptions of his cause of action in these Adversary Complaints do not suggest that the claims are property of the bankruptcy estate. Generally, property of a Chapter 7 bankruptcy estate consists of those property interests of a debtor that existed as of the commencement of the case. **11 U.S.C. § 541**. Property of the estate includes causes of action a debtor may hold at the commencement of the case. Here, the Plaintiff's claim of a cause of action did not accrue prior to the commencement of the case. The Plaintiff's interest in any such claim has not been described as being among the exceptions that bring post-petition property interests of the debtor into the bankruptcy estate. **See 11 U.S.C. § 541(a)**.

The cause of action alleged in the complaint is not a cause of action under the provisions of the bankruptcy code and does not arise under title 11. Nor does the claim of a cause of action exist "but for" the bankruptcy case, and it does not otherwise arise in a case under title 11. The Court finds and concludes that the alleged cause of action is not a core proceeding. **See In re Kold Kist Bands, Inc. (Sedlachek v. National Bank of Long Beach)**, 158 B.R. 175, 178-179 (C.D. Cal. 1993).


To be "related to" a bankruptcy case, the record must clearly demonstrate that the "outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy..." **Pacor Inc. V. Higgins**, 743 F. 2d 984, 994 (3d Cir. 1984). "[T]he mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [bankruptcy court jurisdiction]." **Id.** The common fact that the year 2000 tax return was submitted to the Defendant, and filed with the

Internal Revenue Service and also filed in the bankruptcy case is insufficient to bring the matter within the scope of “related to” jurisdiction. **See In re Bobroff (Bobroff v. Continental Bank, et al)**, 766 F. 2d 797 (3d Cir. 1985). Litigation of the allegations in this complaint in the Bankruptcy Court would have no impact upon the administration of the bankruptcy case, no impact upon property of the estate, and no impact upon distribution to creditors. The Court finds and concludes that there is no “related to” jurisdiction in the bankruptcy court over this cause of action. Therefore,

IT IS ORDERED that this matter is concluded; and that this adversary proceeding is dismissed for lack of subject matter jurisdiction; and that all other requests in this matter are denied.

DATED: February 17, 2005

St. Louis, Missouri



James J. Barta
Chief U. S. Bankruptcy Judge

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