

**United States Bankruptcy Court
District of New Mexico**

Document Verification

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

MICHAEL SANDOVAL and
LUCIA TOLEDO,
Debtors.

No. 7-02-17349 S

SANDIA AREA FEDERAL CREDIT UNION,
Plaintiff,
v.

Adv. No. 03-1187 S

LUCIA TOLEDO, et al.,
Defendants.

MEMORANDUM OPINION ON JURISDICTION

This matter is before the Court on (1) Perdeana Toledo's Motion to Dismiss for lack of jurisdiction of her person (doc 6) and (2) Lucia Toledo's Motion to Dismiss Crossclaim by Reliable, Inc. (doc 10). Plaintiff is represented by its attorney Aldridge, Grammer, Jeffrey & Hammar, P.A. (Kevin D. Hammar). Defendants Lucia Toledo and Perdeana Toledo are represented by their attorney P. Diane Webb. Defendant Reliable, Inc. is represented by its attorney Pica, Olson, Seibel & Vaughn, LLP (Michael J. Seibel).

BACKGROUND

In September, 1998, Lucia Toledo and Perdeana Toledo purchased a 1998 Mitsubishi Eclipse from Reliable, Inc. In connection with the purchase, Lucia Toledo and Perdeana Toledo signed a credit application which, among other things, stated that Lucia Toledo was a supervisor employed at Union Pacific

and earning \$6,100 (presumably per month). Plaintiff discovered (apparently later) that Lucia Toledo was not employed at the time of the credit application.¹

Reliable, Inc. had an agreement with Plaintiff to transfer its sales contracts to Plaintiff that contained, among other things, a warranty that the buyer's application or credit statement was accurate, and providing certain remedies to Plaintiff in the event of default. Lucia Toledo and Perdeana Toledo fell behind on their car payments and Plaintiff accelerated the account, repossessed the vehicle, sold it, and is still owed \$13,844.66 as a deficiency plus attorneys fees and costs, plus interest at 10 3/4% from February 18, 2002. Lucia Toledo filed a chapter 7 bankruptcy on October 16, 2002.

The chapter 7 trustee filed a no distribution report and abandonment of assets on December 9, 2002. There is therefore no bankruptcy estate being administered at this time. The

¹ Lucia Toledo alleges a variety of facts in response to the claims, such as that she is unable to read and write English and therefore did not read the application when it was submitted to her for review and signing, that the sales agent apparently attributed her husband's employment as a Union Pacific supervisor to her, and that the sales agent combined the incomes of her daughter Perdeanna and her husband (Mike Sandoval) and attributed the total to her. Of course, none of these allegations are relevant for purposes of deciding these two jurisdictional motions.

discharge (of all dischargeable debts except, possibly the one subject to this proceeding) entered and the case closed on May 6, 2003. Perdeana Toledo has not filed a bankruptcy.

Plaintiff's complaint has three counts. The first count, against Lucia Toledo only, is to determine dischargeability of a debt based on an allegedly false financial statement under Bankruptcy Code § 523(a)(2). The second count, against Reliable, Inc. only, is for breach of warranty or contract and for specific performance. The third count, against Perdeana Toledo only, is for damages by virtue of the fact that she co-signed the application and the purchase contract with Lucia Toledo.² Reliable, Inc. filed an answer and crossclaim against Lucia Toledo seeking to have its claim declared nondischargeable.

Perdeana Toledo filed a motion to dismiss count 3 based on lack of jurisdiction of her person (doc 6). Lucia Toledo filed a motion to dismiss Plaintiff's claim against Reliable and Reliable's crossclaim against her, on jurisdictional and statute of limitations grounds (doc 10). Neither Plaintiff

² Whether the complaint states a cause of action against Perdeanna Toledo without an allegation that she deceived or attempted to deceive Plaintiff is also not relevant for purposes of this decision. See Eoff v. Forrest, 109 N.M. 695, 699, 789 P.2d 1262, 1266 (1990)(listing essential elements of fraud).

nor Reliable have responded to the motions, and none of the parties have submitted any authority for their positions.³

DISCUSSION

Bankruptcy courts have a duty to examine their own jurisdiction. Michigan Employment Sec. Comm'n v Wolverine Radio Co., Inc. (In re Wolverine Radio Co.), 930 F.2d 1132, 1137 (6th Cir. 1991); Bicoastal Corp. v. Semi-Tech Microelectronics (Far East) Ltd. (In re Bicoastal Corp.), 130 B.R. 597, 598 (Bankr. M.D. Fla. 1991). "Bankruptcy courts have only the jurisdiction and powers expressly or by necessary implication granted by Congress." Gardner v. United States (In re Gardner), 913 F.2d 1515, 1517 (10th Cir. 1990)(citing Johnson v. First Nat'l Bank of Montevideo, 719 F.2d 270, 273 (8th Cir. 1983), cert. denied, 465 U.S. 1012 (1984)).

Bankruptcy courts have jurisdiction over "core" proceedings, which are proceedings that have no existence outside of bankruptcy. Gardner, 913 F.2d at 1517-18.

³ None of the parties have raised the issue of whether a bankruptcy court has the jurisdiction to issue a money judgment in addition to determining that the alleged debt is nondischargeable, and this decision is not intended to make any such ruling. See Lang v. Lang (In re Lang), 293 B.R. 501, 517 (10th Cir. B.A.P. 2003)("[B]ankruptcy courts have the jurisdiction to award money damages in a § 523(a) proceeding.")

Bankruptcy courts also have jurisdiction over "related" proceedings, which are proceedings that could have been brought in a district or state court in the absence of a bankruptcy. Id. at 1518. See generally Midgard v. Personette (In re Midgard), 204 B.R. 764, 771 (10th Cir. B.A.P. 1997).

[T]he test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984)(emphasis omitted). Although the proceeding need not be against the debtor or his property, the proceeding is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action in any way, thereby impacting on the handling and administration of the bankruptcy estate. Id.

Gardner, 913 F.2d at 1518 (additional citations omitted).

"For subject matter jurisdiction to exist, therefore, there must be some nexus between the 'related' civil proceeding and the title 11 case." Pacor, Inc., 743 F.2d at 994. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not confer jurisdiction on the bankruptcy court. Id. A bankruptcy court lacks jurisdiction to resolve controversies between third-party creditors which do not involve the debtor or her property unless the court cannot complete its administrative duties without resolving the controversy. Gardner, 913 F.2d at 1518-19 (holding that there was no

jurisdiction to resolve a dispute between the I.R.S. and the debtor's ex-wife over non-estate property). "Judicial economy itself does not justify federal jurisdiction." Pacor, Inc., 743 F.2d at 994.

COUNT 1

Count 1, against the Debtor, is a core proceeding that arises under Title 11. 28 U.S.C. § 157(b)(2)(I). The Court has jurisdiction under 28 U.S.C. § 1334(b).

COUNT 2

Count 2, against Reliable Inc. is not "related to" the bankruptcy. The action against Reliable does not arise in or arise under Title 11. Count 2 could be brought in state court in the absence of a bankruptcy filing. The outcome of Count 2 will not affect the debtor's discharge, nor will it impact on the estate. Count 2 should be dismissed without prejudice for lack of jurisdiction. See, e.g., Evans & Assoc., CPAs, Inc. v. Macnichol (In re Macnichol), 240 B.R. 731, 732 (Bankr. S.D. Ohio 1999)(Bankruptcy Court lacks jurisdiction over nondebtor defendants in nondischargeability complaint that also seeks damages from nondebtors.); Heagle v. Haug (In re Haug), 19 B.R. 223, 224 (Bankr. D. Or. 1982)(same.)

COUNT 3

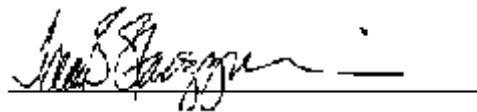
Count 3, against Perdeana Toledo, is also not "related to" the bankruptcy. The action against Perdeana Toledo does not arise in or arise under Title 11. Count 3 could be brought in state court in the absence of a bankruptcy filing. The outcome of Count 3 will not affect the debtor's discharge, nor will it impact on the estate. Count 3 should be dismissed without prejudice for lack of jurisdiction. See, e.g., Wilcox v. Houghton (In re Houghton), 164 B.R. 146, 147 (Bankr. W.D. Wash. 1994)(Bankruptcy Court lacks jurisdiction over debtors' agent in dischargeability action that names agent as codefendant because agent's presence was not necessary for a determination of the dischargeability of plaintiff's claims.)

RELIABLE'S CROSSCLAIM

Reliable's crossclaim is essentially a request that Debtor's debt be declared nondischargeable under section 523(a)(2). Debtor urges the Court to dismiss because (1) Reliable is not a creditor, (2) the Court lacks jurisdiction, (3) Reliable's duty to Plaintiff cannot be imputed to Debtor, and (4) Reliable's claim was filed after the statutory time period for filing section 523 actions. The Court finds that Reliable holds at least a contingent claim against the Debtor that would ripen if Plaintiff obtained a judgment in state court against Reliable based on Debtor's actions. Because the

crossclaim is essentially a nondischargeability action, the Court finds that it is a matter arising under title 11 over which the Court has jurisdiction. Whether any duty of Reliable to Plaintiff can be imputed to Debtor should be determined at trial. However, at this time there has been no such determination of liability, so the crossclaim is not ripe for determination and should be dismissed without prejudice. If Reliable is found to be liable, it should be given the opportunity to show that its claim against the Debtor fits within section 523(a)(3)(B), which allows a determination of dischargeability when a creditor lacks knowledge of a bankruptcy case. Dixon v. Dixon (In re Dixon), 280 B.R. 755, 758-59 (Bankr. M.D. Ga. 2002).

An order will enter consistent with this opinion.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on September 2, 2004, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

Kevin D Hammar
1212 Pennsylvania St NE
Albuquerque, NM 87110-7410

P Diane Webb
PO Box 1156
Albuquerque, NM 87103-1156

Michael J Seibel
PO Box 21160
Albuquerque, NM 87154-1160

James S. Busbee