

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

Document Verification

Case Title: Carolyn Still Takhar v. Pedro A. Romero
Case Number: 03-01339
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

CAROLYN TAKHAR,
Debtor.

No. 11-02-12274 S

CAROLYN TAKHAR,
Plaintiff,

v.

Adv. No. 03-1339 S

PEDRO A. ROMERO,
Defendant.

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS ADVERSARY PROCEEDING**

This matter is before the Court on Plaintiff's Motion to Dismiss Adversary Proceeding (doc. 20), Defendant's Response thereto (doc. 21) and Plaintiff's Reply (doc. 23). Plaintiff is represented by her attorney Moore & Berkson, P.C. (George M. Moore and Arin E. Berkson). Defendant is self-represented. For the reasons set forth below, the Court finds that the motion is well taken and should be granted.

First, the Court has taken judicial notice of the main bankruptcy case, In re Carolyn Still Takhar, No. 11-02-12274 SS (Bankr. D. N.M.). The chapter 11 plan was confirmed by an Order filed on May 28, 2004 (doc. 177) and docketed on June 1, 2004. No appeal was taken from that Order, and it became final. Relevant portions of the Chapter 11 Plan are set out below:

Plan ¶	<u>Plan provision</u>
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1.1.12	<u>Effective date</u> : The first day of the first month next following the date upon which an Order confirming this Plan becomes final.
3.3 Class F	Class III F: The claims of Romero, secured by claims of lien against the Residence.
4.1	Holders of claims in Classes I, III F, III G, and VII are not impaired under this Plan.
6.3 Class F	Class F: The claims of Romero, secured by claims of lien against the Residence, shall remain unimpaired.
7.6	... Debtor further reserves the right to prosecute any cause of action arising under non-Bankruptcy law, existing as of the filing of the Petition, or accruing during the Proceeding, in any court of competent jurisdiction subject to any applicable statute of limitation.
8.1	The [Bankruptcy] Court shall retain jurisdiction after the Effective Date of this plan for all purposes provided for by the Code, by this Plan, and under applicable law...
11.2.2	All property of the bankruptcy estate ... shall vest in the reorganized Debtor, subject only to the liens and claims provided for in this Plan.

Plaintiff filed this adversary proceeding on September 19, 2003, seeking a determination of the validity, extent and priority of liens filed by Defendant against several real properties and improvements, which had become property of the estate. See 11 U.S.C. § 541(a). The properties include certain apartment projects located in Taos, New Mexico referred to as "Village Alegrias" and consists of Phases 1 through 4, and a residence in Taos County, New Mexico referred to as "165 Rimview Road." Plaintiff alleged that the claims

of lien for Phases 1 and 2 and 165 Rimview Road were transferred to Phases 3 and 4, by virtue of an Order entered in Defendant's own Chapter 11 bankruptcy (which was later dismissed.) The transfer of liens order was recorded with Taos County, New Mexico. Plaintiff also alleged that the claims of lien were never valid under New Mexico law because they lacked certain essential elements, were not timely filed, and were not supported by the existence of any debt to Defendant from Plaintiff. Plaintiff demanded a declaratory judgment that 1) Defendant had no valid lien against Phase 1 or 2 or 165 Rimview Road, 2) Defendant had no valid lien against Phase 3 or 4, and 3) Defendant had no secured claim in Debtor's chapter 11 case. Defendant did not file an answer, and the Clerk entered default on November 3, 2003 (doc. 6), and the Court entered default judgment on November 5, 2003 (doc. 7).

On December 16, 2003, Defendant filed a Motion to Reconsider Default Judgment (doc. 8), alleging that he had never been served with the Summons or Complaint and had no other knowledge of the case. After several hearings, and an affidavit (doc. 14) filed February 25, 2004, the Court set aside the default (doc. 16) on March 19, 2004. Defendant filed his answer (doc. 18) on April 6, 2004, denying the

material allegations of the complaint and seeking an Order that his liens on Phases 3 and 4 were valid and that he held a secured claim on Phases 3 and 4. The Court conducted a pretrial conference on April 13, 2004, set a discovery cutoff date of August 13, 2004, and set a final pretrial conference for August 17, 2004.

On July 15, 2004, Plaintiff filed her motion to dismiss. As grounds, Plaintiff claims that the Chapter 11 Plan was confirmed, Defendant's claim is not impaired under the Plan so he can pursue his claims in the state courts, that the matters are purely issues of state law, and that all witnesses are located in Taos County. Furthermore, Plaintiff claims that maintaining this case in bankruptcy court will delay entry of a final decree.

Defendant objects to dismissal because he claims that his claim is valid and should be heard by the Bankruptcy Court, which has jurisdiction over claims. He also argues that once Debtor filed for bankruptcy, all adversarial matters became issues of federal bankruptcy law. He also argues that this adversary cannot be "pushed down to a lower court".

Plaintiff replies that this adversary is not an issue of federal bankruptcy law, but rather is one purely of state law. She also argues that because the property revested upon

confirmation, the property is no longer estate property over which this Court has jurisdiction. Plaintiff also points out that she is not trying to "push" this case to another court, but simply seeks a voluntary dismissal without prejudice that would allow Defendant to seek his remedies, if any, under state law. Allowing dismissal will facilitate closure of the Chapter 11, which will save on quarterly US Trustee fees. As an alternate theory, Plaintiff argues that the Court should abstain from hearing this matter.

DISCUSSION

The Tenth Circuit case of Gardner v. United States (In re Gardner), 913 F.2d 1515 (10th Cir. 1990) dictates the outcome of this Motion to Dismiss. That Court noted that bankruptcy courts have only the jurisdiction and powers expressly or by necessary implication granted by Congress. Id. at 1517. Bankruptcy courts have jurisdiction over "core proceedings," which are proceedings that have no existence outside the bankruptcy. Id. at 1517-18. Actions that do not depend on bankruptcy laws for their existence and which can proceed in non-bankruptcy courts are not core proceedings. Id. at 1518. Bankruptcy courts also have jurisdiction over "related proceedings," which are proceedings that could have been brought in a district court or state court, provided that the

outcome could conceivably have an effect on the estate being administered in the bankruptcy. Id. The Tenth Circuit also ruled that, while the bankruptcy courts have jurisdiction over disputes regarding property of the estate at the outset of a bankruptcy case, when that property leaves the estate the court's jurisdiction lapses and the property's relationship to the bankruptcy proceeding comes to an end. Id. The Court did recognize a possible exception to this general rule, however, if the bankruptcy court cannot complete administrative duties without resolving the dispute. Id.

This adversary proceeding is not or at least no longer a "core proceeding." The claim of lien and its validity are purely matters of state law. The lien could be enforced by the state courts, and Debtor could have also challenged the lien in the state courts. Therefore, the Court only had jurisdiction over this adversary as a "related to" action, the outcome of which could have impacted on the estate.

In the Plaintiff's bankruptcy case, the Plan was confirmed and became effective. At that point, all estate property left the estate and revested in the "reorganized debtor." See Plan ¶ 11.2.2. See also 11 U.S.C. § 1141(b) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of the plan vests all of

the property of the estate in the debtor.") This means that the properties in question are no longer part of the "bankruptcy estate" because there is no estate left after an effective confirmation order. The Bankruptcy Court's jurisdiction therefore came to an end.

The exception noted by the Tenth Circuit, i.e., retention of jurisdiction over the property if the bankruptcy court cannot complete administration without deciding the dispute, does not apply in this case. The Plan does not impair Defendant's claims. See Plan ¶¶ 4.1 and 6.3. In other words, Plaintiff's Plan did not seek to change Defendant's rights in any way. Rather, it left Defendant's rights intact. So, the plan can be fully administered without addressing Defendant's rights or claims.

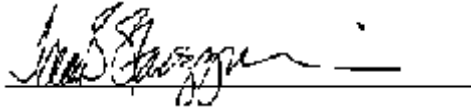
Finally, there is an additional reason to allow dismissal. Plan ¶ 7.6 allows the Debtor to litigate any non-bankruptcy matter in any court with jurisdiction. Under 11 U.S.C. § 1141(a), the provisions of a confirmed plan bind the debtor and creditors, whether or not the creditors' claims are impaired and whether or not the creditors have accepted the plan. Therefore, Defendant is bound by this provision of the Plan, which allows Plaintiff to pursue this matter in state court, or not at all.

Understandably, Defendant is frustrated with this development, particularly given that it was Debtor who initiated the litigation. However, neither Debtor nor Defendant moved this adversary proceeding along while the Court still had jurisdiction (except that Debtor obtained a default judgment which Defendant managed to get set aside). And, in any event, the Plan provisions, coupled with the clear law of the Tenth Circuit, compel this result.

ORDER

IT IS ORDERED that Plaintiff's Motion to Dismiss Adversary Proceeding (doc. 20) is GRANTED.

IT IS ORDERED that this adversary proceeding is dismissed without prejudice.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on November 4, 2004, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.

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