

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: H. DAVID BOOKER

CASE NO. 06-12783-DWH

FLOYD HELMICK, BONNIE HELMICK and
STEVE McCLOUD

PLAINTIFFS

VERSUS

ADV. PROC. NO. 07-1024-DWH

H. DAVID BOOKER

DEFENDANT

OPINION

This matter came before the court as a result of a motion for summary judgment filed in the above captioned adversary proceeding by Floyd Helmick, Bonnie Helmick, and Steve McCloud, (“Plaintiffs”); a response thereto was filed by the debtor/defendant, H. David Booker, (“Booker”); and the court, having considered same, hereby finds as follows, to-wit:

I.

Prior to the underlying bankruptcy case being dismissed, this court had jurisdiction of the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. The primary allegations in the plaintiffs’ complaint constituted a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (I), and (O).

II.

Booker was a member of a Mississippi Limited Liability Company known as Booker-DeDeaux-Moffett, LLC, (“BDM”). On May 17, 2004, Booker, on behalf of BDM, executed a promissory note in favor of the plaintiffs, Floyd Helmick and Bonnie Helmick, in the principal amount of \$60,000.00. Booker, also on behalf of BDM, executed a promissory note in favor of

the plaintiff, Steve McCloud, in the amount of \$15,000.00. The plaintiffs assert that Booker indicated to them that the money loaned to BDM would be used to develop real estate in Lafayette County, Mississippi, known as “Oxford Creek Development.” In addition, he represented to the plaintiffs that, even though the notes were unsecured, they would be completely satisfied from sales of lots in “Oxford Creek Development.” BDM defaulted on the loans without making any payments to the plaintiffs.

According to the complaint, in December, 2005, Booker arranged for BDM to sell “Oxford Creek Development” and its associated assets to Oxford Creek Holdings, Inc., and applied none of the sales proceeds to the plaintiffs’ outstanding promissory notes. This transaction purportedly stripped an insolvent BDM of all of its assets. The plaintiffs further assert that Booker perpetrated other serious irregularities in handling the proceeds generated from this sale, specifically that he received \$15,000.00 cash, as well as, that he diverted \$180,000.00 of the proceeds to BDM member, Michael Moffett, by having the purchaser execute a promissory note to Moffett in this amount. Moffett allegedly received a substantial amount of money as a result of payments made on this note.

Following the loan defaults, the plaintiffs sued BDM in the Circuit Court of Lafayette County, Mississippi, where they obtained a default judgment on March 3, 2006, in the combined principal amount of \$149,925.00. Thereafter, the plaintiffs garnished Moffett’s \$180,000.00 promissory note, but have been unsuccessful in collecting any of the note proceeds.

On October 16, 2006, the plaintiffs filed suit against Booker and Moffett, individually, in the Circuit Court of Lafayette County, Mississippi, Civil Action No. L06-401. The cause of

action against Booker was stayed as a result of his filing bankruptcy pursuant to Chapter 13 of the Bankruptcy Code on October 30, 2006.

The plaintiffs then filed the above captioned adversary proceeding on February 7, 2007, alleging that debts owed to them by Booker were non-dischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(4) and §523(a)(6). Although not listed as a separate “Count” in the complaint, the plaintiffs also alleged that, “Mr. Booker is liable to the plaintiffs for breach of his fiduciary duties to the company’s creditors, for fraudulent conveyance of those funds, for violation of Miss. Code Ann. §79-29-605 and for other reasons set forth in the state court complaint.”

The factual allegations in the adversary complaint are essentially identical to those set forth in the complaint filed against Booker and Moffett in the Circuit Court of Lafayette County, Mississippi. The primary thrust of the bankruptcy complaint, however, is necessarily focused on the non-dischargeability of the obligations that might ultimately be owed to the plaintiffs. Otherwise, the obligations would simply be discharged in bankruptcy.

On March 12, 2008, because Booker had failed to remit certain sums to the Chapter 13 trustee pursuant to an earlier Agreed Order, his bankruptcy case was dismissed. In the Final Order of Dismissal, there was language inserted that this court would retain jurisdiction of this adversary proceeding. The dismissal of the bankruptcy case, however, negates the reason for filing the non-dischargeability complaint since Booker will no longer receive a discharge of any of his debts. The only matters that possibly remain viable are purely state law causes of action which are identical to those set forth in the complaint previously filed in the Circuit Court of Lafayette County, Mississippi. Since the dismissal of the bankruptcy case lifts the automatic

stay by operation of law, there is no impediment to prevent the state law cause of action from going forward. Jurisdiction is clearly more appropriate in the state court now since there is no pending bankruptcy case and no bankruptcy estate to administer.

Because the dismissal of the bankruptcy case eliminated the necessity for the non-dischargeability counts set forth in the plaintiffs' complaint, this court's jurisdiction to continue the litigation of this adversary proceeding is extremely thin. The court has read and thoughtfully considered Circuit Judge Joel Dubina's opinion in *Morris v. Fidelity and Deposit Company of Maryland*, 950 F.2d 1531, 1534 (11th Cir. 1992), and finds that the factual underpinnings of that decision are distinguishable from the facts in the proceeding before this court. Judge Dubina determined that the dismissal of the underlying bankruptcy case did not automatically strip the bankruptcy court of jurisdiction over an adversary proceeding which was related to the bankruptcy case at the time of its commencement. In *Morris*, the debtor contractor had filed an adversary proceeding against the defendant housing authority to recover an unpaid contract retainage which apparently was the debtor's principal asset and a possible source of funding of his Chapter 11 plan of reorganization. The court concluded that a decision of whether to retain jurisdiction over an adversary proceeding, after the underlying bankruptcy case was dismissed, should be left to the sound discretion of the bankruptcy court. In the proceeding before this court, discretion clearly dictates that the litigation should be concluded in state court.

III.

This court does not feel that it is necessary or prudent to render a decision on the plaintiffs' motion for summary judgment. Rather, this entire matter should be reactivated in the Circuit Court of Lafayette County, Mississippi, where it can be litigated without the concern of

jurisdictional infirmity. Since there are no bankruptcy impediments to preclude the state court litigation from going forward, this court exercises its discretion to voluntarily abstain pursuant to 28 U.S.C. §1334(c)(1), which provides as follows:

Except with respect to a case under Chapter 15 of Title 11, nothing in this section prevents a district court [bankruptcy court] in the interest of justice, or in the interest of comity with state courts or respect for state law, from abstaining from hearing a particular proceeding arising under Title 11 or arising in or related to a case under Title 11.

A separate order will be entered contemporaneously with the entry of this opinion.

This the 23rd day of June, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE