

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re : **Chapter 13**

Linda Merritt, :

Debtor. : **Case No. 11-18134 (JKF)**

Linda Merritt, :

Plaintiff, :

v. :

MidAtlantic Farm Credit, ACA., et al, :

Defendants. : **Adversary No. 13-0532**

**ORDER GRANTING MOTION TO DISMISS AND
DENYING MOTION TO AMEND**

AND NOW, this 25th of March, 2015, upon consideration of the motion to dismiss (“Motion to Dismiss”) of defendant, Cheshire Land Preservation Fund (“Cheshire”), and the motion of the debtor, Linda Merritt (“Debtor”), for leave to file an amended complaint (“Motion to Amend”) and for the reasons set forth in the Court’s Opinion of this date, it is hereby **ORDERED** and **DECREED** that:¹

¹ Debtor contends that the Court may not enter a final judgment in this proceeding under Stern v. Marshall, ___ U.S. ___, 131 S.Ct. 2594 (2011). This issue is far from settled. Compare Tyler v. Bruce Banks (In re Tyler), 493 B.R. 905, 908-920 (Bankr. N.D. Ga. 2013) (holding that bankruptcy court had jurisdiction to issue a final order in adversary proceeding where debtor-plaintiff sought to avoid transaction as a fraudulent transfer under § 548), Carr v. Britton (In re International Auction and Appraisal Services LLC), 493 B.R. 460, 463-65 (Bankr. M.D. Pa 2013) (concluding that the bankruptcy court lacked constitutional authority to enter final order or judgment on

(continued...)

1. The Motion to Dismiss is **GRANTED**;
2. Count I of the Complaint is **DISMISSED** with prejudice;
3. The Motion to Amend is **DENIED**; and
4. This adversary proceeding shall be closed.



HONORABLE JEAN K. FITZSIMON
United States Bankruptcy Judge

Copies to:

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¹(...continued)

fraudulent transfer claim). Since Cheshire did not file a proof of claim in Debtor's bankruptcy case, Debtor's argument may have merit; however, the Supreme Court has not decided this precise issue. See *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165, 2172 (2014) (not resolving the issue of whether fraudulent conveyance claim against a non-creditor pursuant to § 548 constituted a *Stern* claim because the parties did not contest the Ninth Circuit's conclusion that the plaintiff's claim did). In any event, if this Court lacks the constitutional authority to issue a final order in this matter, then the instant Order and accompanying Opinion constitute the Court's proposed findings of fact and conclusions of law under 28 U.S.C. § 157(c)(1). See *id.* at 2174 (holding that fraudulent conveyance claim was within the scope of 28 U.S.C. § 157(c)(1)); *Feldman v. ABN AMRO Mortgage Group, Inc.*, 515 B.R. 443, 451 (E.D. Pa. 2014) (citing to 28 U.S.C. § 157(c)(1) and concluding, with regard to *Stern* claims, that the bankruptcy court has authority to "submit proposed findings of fact and conclusions of law" to the district court for review).

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