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

IN RE	:	CHAPTER 13
	:	
ALFREDA JOHNSON	:	
DEBTOR	:	BANKRUPTCY NO. 02-34686 SR
ALFREDA JOHNSON	:	
PLAINTIFF	:	
V.	:	
BANK OF NEW YORK TRUSTEE	:	
EQCC 2001-F1 TRUST AND	:	
EQUICREDIT CORPORATION OF	:	
AMERICA, INC.	:	
DEFENDANTS	:	ADV. NO. 02-1427
THIRD-PARTY PLAINTIFFS	:	
V.	:	
MARGO ROBINSON A/K/A	:	
ROBINSON FINANCIAL GROUP,	:	
D/B/A ROBINSON FINANCIAL GROUP,	:	
THIRD-PARTY DEFENDANTS	:	
	:	

OPINION

Introduction

The Defendants/Third Party Plaintiffs in this adversary proceeding, Bank of New York Trustee EQCC 2001-F1 Trust and Equicredit Corporation of American, Inc. (Third Party Plaintiffs or BNY/Equicredit) request entry of a default and default judgment against Margo Robinson, the Third-Party Defendant. Although no opposition has been made to that request, it will be denied and the third party action will be dismissed.

Procedural Background

The Defendants had filed a third-party complaint against Robinson for contribution and indemnity. *See* Third-Party Complaint. No answer was filed to the third-party claim so the Defendants/Third-Party Plaintiffs sought entry of a default judgment. A hearing on the request for the default and default judgment was held on

December 13. At that time, the Court expressed reservations as to whether it has subject matter jurisdiction over the third party claim. (T-2). The Court took the matter under advisement and allowed the parties until January 9, 2006, to submit briefs.

Analysis

Bankruptcy Rule 7012(b) incorporates Federal Rule of Civil Procedure 12(h) in adversary proceedings. That rule provides that “[w]henever it appears by suggestion of the parties *or otherwise* that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” F.R.C.P. 12(h)(3) (emphasis added). This jurisdictional restriction may not be overridden by any procedural rule such as "impleader." As a leading commentator on federal practice has noted:

> The impleader rule [14] is merely a procedural provision; it cannot affect the independent requirements of jurisdiction and venue . . . [T]he impleader claim, as every claim asserted in federal court, must be supported by federal subject matter jurisdiction....

3 *Moore's Federal Practice,* § 14.03[4] (Matthew Bender 3d).

The provisions of Rule 7014, which merely incorporate Rule 14, yield no different result. The Advisory Committee Note to Rule 7014 recognizes that this rule “does not purport to deal with questions of jurisdiction.” A leading commentator explains:

> Adversary proceedings in bankruptcy present their own peculiar jurisdictional difficulties for the analogous use of Rule 7014. The jurisdictional requirement of 28 U.S.C. § 1334 may prevent a bankruptcy court from hearing an otherwise appropriate third-party claim that is not at least "related to" a case under the Bankruptcy Code. As the 1983 Advisory Committee Note indicates, Rule 7014 "does not purport to deal with questions of jurisdiction." Consequently, a party to an adversary proceeding who seeks to implead a third party under Rule 7014 must be prepared to establish jurisdiction for the court to hear the third-party claim by

> showing that the claim is at least "related to" a case under the Bankruptcy Code, within the meaning of the jurisdictional statute.

10 *Collier on Bankruptcy*, ¶ 7014.02. *See Kivitz v. Merchants Express Money Order Company (In re R&A Associates, Inc.)*, Memorandum Opinion and Order, 00-0241 (Bankruptcy E.D.Pa.2000) (Fox, Chief J.), December 21, 2000. Accordingly, this Court must possess subject matter jurisdiction over the third-party claims if they are to be heard here. *Id*.

Bankruptcy adversary proceedings can be grouped into three categories for purposes of determining subject matter jurisdiction under 28 U.S.C. § 1334. First, there are "core" proceedings, which may be heard and resolved by the bankruptcy court *via* final judgment. *See* 28 U.S.C. § 157 (b)(1). Core proceedings represent those disputes so intertwined with the bankruptcy process that Congress has the power under Article I of the Constitution to direct a non-tenured judicial officer (i.e., bankruptcy judge)' to render a final determination of their merits. *See* 1 *Norton Bankruptcy Law and Practice 2d* § 4:75 (2005) ("The word 'core' was a shorthand word employed to signify issues and actions that traditionally formed part of the functions performed under federal bankruptcy law"). Core proceedings thus represent a subset of "related proceedings" in that they "arise under" or "arise in" the bankruptcy case.

A proceeding is classified as "core" under 28 U.S.C. § 157 "if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re Marcus Hook Development Park. Inc.,* 943 F.2d 261, 267 (3d Cir.1991) (quoting *Beard v. Braunstein,* 914 F.2d 434, 444 (3d Cir.1990) which, in turn, quoted *Matter of Wood,* 825 F.2d 90, 97 (5th Cir. 1987)).

The second category of proceedings are referred to as "non-core" or "related" proceedings. A bankruptcy court may hear such proceedings but may submit only proposed findings of fact and conclusions to the district court, *see* 28 U.S.C. § 157(c)(1), unless all parties agree that a final judgment may be entered in bankruptcy court. 28 U.S.C. § 157(c)(2); *see, e.g., Halper v. Halper*, 164 F.3d 830,836 n.6 (3d Cir. 1999). The Third Circuit Court of Appeals has defined a non-core proceeding in the following terms:

> Non-core proceedings include the broader universe of all proceedings that are not core proceedings but are nevertheless "related to" a bankruptcy case. *See* 28 U.S.C. § 157(c)(1). "[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor v. Higgins*, 743 F.2d 984,994 (3d Cir.1984) (emphasis omitted); *see In re Guild,* 72 F.3d at 1180-81. "[T]he proceeding need not necessarily be against the debtor or against the debtor's property." *In re Guild,* 72 F.3d at 1180-81. '" A key word in [this test] is conceivable. Certainty, or even likelihood, is not a requirement. Bankruptcy jurisdiction will exist so long as it is possible that a proceeding may impact on the debtor's rights, liabilities, options, or freedom of action or the handling and administration of the bankrupt estate. '" *Id.* at 1181 (quoting *In re Marcus Hook,* 943 F.2d at 264) (emphasis omitted).

Halper v. Halper, 164 F.3d at 837 (footnote omitted).

Finally, the third category of proceedings are those which fall outside the definition of "non-core" because their outcome would have no effect upon the bankruptcy case. The outcome of a dispute will not have any effect on the bankruptcy case typically because it will not affect the property to be administered in the bankruptcy case, the total assets to be distributed, nor the total claims to be paid. Over these

proceedings a bankruptcy court has no subject matter jurisdiction. *See, Pacor. Inc. v. Higgins,* 743 F.2d 984, 999 (3d Cir. 1984)("[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.")

The claims raised in the Third Party Complaint are for indemnity and contribution. To the extent the Third Party Plaintiffs are liable, they look to Robinson for reimbursement. Typically, litigation which is related to a bankruptcy case is litigation which will affect in some manner the property to be administered by the bankruptcy trustee or the amount or priority of claims to be repaid. *See, e.g., Matter of Xonics, Inc.,* 813 F.2d 127, 131 (7th Cir. 1987) (a proceeding is "related to" a bankruptcy case when "it affects the amount of property available for distribution or the allocation of property among creditors"). Thus, the lawsuit brought by the Debtor against the Third party Plaintiffs is clearly "related" to the underlying bankruptcy case. The outcome of that adversary proceeding will affect the assets which may be available for distribution to creditors.

But as another Court in this District has noted, third-party indemnity and contribution claims by defendants being sued by the chapter 7 trustee or debtor typically will be unrelated to the underlying chapter 7 bankruptcy case because the outcome of the indemnity action will have no effect upon the chapter 7 case:

> Third-party complaints which involve the debtor or bankruptcy trustee, either as a third-party plaintiff or third-party defendant, will often have an effect upon the administration of a bankruptcy case because the outcome could affect the size of the estate (if the trustee succeeds as a third-party plaintiff) or could affect the amount of claims asserted against the estate (if the trustee does not prevail as

a third-party defendant). Such a potential increase in estate property or potential increase in liabilities of the estate is sufficient to confer subject matter jurisdiction over a bankruptcy proceeding. *See Diamond Mortgage Corp: v. Sugar,* 913 F.2d 1233,1239 (7th Cir.1990), *cert. denied,* 498 U.S. 1089, 111 S.Ct. 968, 112 L.Ed.2d 1054 (1991); *Brock v. Morysville Body Works. Inc*., 829 F.2d 383, 385 (3d Cir.1987) ("enforcement of the Commission's citations against [the debtor] will undoubtedly alter its liabilities and have an impact on the administration of the debtor's estate").

Conversely, third-party claims which do not involve the debtor or the bankruptcy trustee as parties will usually not have any impact upon the administration of the underlying bankruptcy case, unless the subject of the dispute is estate property. *Matter of Zale Corp.,* 62 F.3d 746, 753 (5th Cir. 1995); *accord Matter of Walker,* 51 F.3d [562] at 569 [5th Cir. 1995]. Whether or not the third-party plaintiff obtains contribution or indemnity from the third-party defendants (and thereby is made whole) has no effect on the bankruptcy estate.

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This analysis is consistent with that reached by many other courts: that indemnity or contribution claims made by those who are sued by representatives of the bankruptcy estate against third parties generally fall outside the scope of bankruptcy court jurisdiction. E.g., *Matter of Walker; Matter of Schwamb*, 169 B.R. 601, 604 (E.D.La. 1994), *affirmed without op.,* 48 F.3d 530 (5th Cir.), *cert. denied sub nom. Delta Airlines. Inc. v. National Union Fire Ins. Co. of Pittsburgh,* 515 U.S. 1131, 115 S.Ct. 2555, 132 L.Ed.2d 809 (1995); *In re Spaulding & Co.,* 131 B.R. 84, 88 (N.D.Ill. 1990); *In re Remington Development Group. Inc.,* 180 B.R. 365 (Bankr. D.R.I. 1995); *In re Summit Airlines. Inc.; In re Pettibone Corp.,* 135 B.R. at 850 ("Bankruptcy Judges frequently lack 'related to' jurisdiction to hear third-party complaints which arise from Adversary proceedings"); *In re K&R Mining, Inc.* 135 B.R. 269 (Bankr. N.D. Ohio 1991) (holding that there was no bankruptcy subject matter jurisdiction over a cross-claim); *In re Blava In-Line. Inc.,* 133 B.R. 33 (Bankr. S.D.N.Y. 1991); *In re German,* 97 B.R. 373, 375 (Bankr. S.D.Ohio 1989); *In re Kaiser Steel Corp.,* 95 B.R. 782, 791 (Bankr. D.Colo.), *aff'd on other gnds,* 109 B.R.

> 968 (D.Colo. *198In re Maislin Industries. U.S.. Inc.,* 75 B.R. 170, 172 (Bankr. E.D.Mich. 1987); *In re John Peterson Motors. Inc.,* 56 B.R. 588,591 (Bankr.E.D.Minn.1986); *see also In re Fietz,* 852 F.2d at 458; *In re Houghton,* 164 B.R. 146 (Bankr. W. D . Wash. 1994). *Compare In re Leco Enterprises. Inc.,* 144 B.R. 244, 247, 250 (S.D.N.Y. 1992) (third party complaint was related because the bankruptcy estate would, by agreement, recover a percentage of all sums recovered by the third party plaintiff).

In re Foundation for New Era Philanthropy, 201 B.R. 382, 390-91 (Bankr. E.D.Pa. 1996).

Other courts have also concluded that third-party claims brought by those who were sued by the bankruptcy trustee will not fall within the subject matter jurisdiction of the court where the defendant would be the only one to recover on those third-party claims. *See In re Reinertsen*, 224 B.R. 137, 148 (Bankr.D.Mont.1998), *rev'd in part on other grds,* 241 B.R. 451 (9th Cir. BAP 1999); *In re Trans-End Technology, Inc.,* 1998 WL 404184 *4 (Bankr. N.D.Ohio); *see also Cunningham v. Pension-Benefit Guaranty Corp.,* 235 B.R. 609, 616 (N.D. Ohio 1999). This follows because it does not matter to the bankruptcy estate or to the debtor whether or not the third party plaintiff is successful in obtaining indemnification or contribution.

So it matters not, as BNY and Equicredit maintain, that the third party claims are somehow related to the Plaintiff. Letter Brief, 4. Privity alone is not enough. What matters is whether this Court has subject matter jurisdiction over that claim. Bankruptcy courts are courts of limited jurisdiction. *See In re Close*, 2003 WL 22697825 *1 (Bankr.E.D.Pa.) Their reach does not extend beyond those matters which would have some outcome affecting the bankruptcy estate. For that reason, the request for default and default judgment must be denied and the Third-Party action must be

dismissed as well.

The Request to Vacate
Approval of the Stipulation

BNY and Equicredit make an alternative request. If the third party claim is dismissed, then they ask–in the interests of judicial economy–that the Court vacate the Order of August 31, 2005. That Order approved a Stipulation allowing the Plaintiff to amend the Complaint. The Letter Brief explains that such stipulation was made on the "direct condition that the Equicredit Defendants reserve[d] the right to join Margo Robinson." Letter Brief, 5.

The Court takes no position on the merits of that assertion or the relief requested. If BNY and Equicredit seek to avoid the August 31, 2005 Order, then they must proceed in accordance with the applicable rules of procedure toward such end.

An appropriate Order follows.

By the Court:

STEPHEN RASLAVICH,
United States Bankruptcy Judge

Dated: January 26, 2006

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D/B/A ROBINSON FINANCIAL GROUP,	:	
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ORDER

AND NOW, upon consideration of Request of Defendants/Third-Party Plaintiffs, Bank of New York Trustee EQCC 2001-F1 Trust and Equicredit Corporation of American, Inc., after a hearing held on December 13, 2005, and for the reasons set forth in the attached Opinion, it is hereby

ORDERED that the request is Denied. Because the Court lacks subject matter jurisdiction over the third-party claims, the third-party action is hereby dismissed; and it is hereby

FURTHER ORDERED that the request of BNY and Equicredit for an Order

vacating the Order of August 31, 2005 is denied without prejudice.

By the Court:

STEPHEN RASLAVICH,
United States Bankruptcy Judge

Dated: January 26, 2006

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