UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CLINTON SANDERS and STEPHANIE SANDERS	:	
Debtors	:	Bankruptcy No. 01-13577
CLINTON SANDERS and STEPHANIE SANDERS h/w, INDIVIDUALLY, JOINTLY and ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED	:	
Plaintiffs	:	
v.	:	
WELLS FARGO HOME MORTGAGE, INC. and	:	
AMERICA'S SERVICING COMPANY Trading as ASC	:	
Defendants	:	Adversary No. 03-1009

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Memorandum

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Mr. and Mrs. Sanders, the named plaintiffs, filed the above-captioned adversary proceeding asserting, on behalf of themselves and a purported nationwide class, that the defendants have violated the provisions of 11 U.S.C. § 506(b) by imposing post-bankruptcy, pre-confirmation costs and fees upon them without obtaining prior court

approval. The plaintiffs seek injunctive and monetary relief, along with counsel fees. They base their cause of action on 11 U.S.C. §§ 105(a) and 506(b).[1]

In response to the complaint, the defendants have filed a motion to dismiss. Without referring to any procedural rule, they generally argue: that the "Bankruptcy Code Does Not Require Bankruptcy Court Approval Of A Charge To The Debtor's Lien Arising From The Bankruptcy-Related Fees And Costs Incurred By The Creditor," Movant's Memorandum at 6; and that "There Is No Private Right Of Action For An Alleged Violation Of Section 506 Of The Bankruptcy Code." Id. at 11.

While the defendants do not mention any procedural basis for their motion, they refer to decisions such as In re Henthorn, 299 B.R. 351 (E.D. Pa. 2003), Dawson v.

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[1]Interestingly, in paragraph 68 of their amended complaint, the plaintiffs assert that the provisions of section 506(b) are inapplicable to the defendants' secured claim. Thus, one may debate whether the relief sought by the plaintiffs in this proceeding is truly based upon section 506.

For example, in Rake v. Wade, 508 U.S. 464 (1993), and United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989), the dispute over the secured creditor's entitlement to post-bankruptcy interest under section 506(b) arose in the context of the creditor's objection to confirmation of the debtor's proposed reorganization plan under sections 1325 and 1129 respectively. In In re Center, 282 B.R. 561 (Bankr. D.N.H. 2002), and In re Harned, 166 B.R. 255 (Bankr. E.D. Pa. 1994), the applicability of section 506(b) arose under section 502 via an objection to a secured proof of claim. In In re Blair, 21 B.R. 316 (Bankr. S.D. Cal. 1982), the issue was raised in consideration of adequate protection under section 362(d).

Dovenmuehle Mortgage, Inc., 2002 WL 501499 (E.D. Pa. 2002), and Willis v. Chase Manhattan Mortgage Corp., 2001 WL 1079547 (E.D. Pa. 2001), all of which involved a claim similar to that raised by the plaintiffs and all of which sought dismissal for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6). Therefore, I shall assume that the defendants in this proceeding have based their motion to dismiss upon the plaintiffs' alleged failure to state a claim.

I.

Federal Rule of Bankruptcy Procedure 7012(b), applicable to adversary proceedings such as the one at bench, incorporates Fed. R. Civ. P. 12(b)-(h), including Fed. R. Civ. P. 12(b)(6). In general, a complaint should not be dismissed for failure to state a claim under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45 (1957). In making that determination, a court must accept as true all of the well-pleaded facts alleged in the complaint and any reasonable inferences therefrom. Scheuer v. Rhodes, 416 U.S. 232 (1974); Conley v. Gibson, 355 U.S. at 45. As explained by the Third Circuit Court of Appeals:

> A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir. 1986). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974).

In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1420 (3d Cir 1997).

However, federal courts, including bankruptcy courts, can only determine disputes over which they have subject matter jurisdiction. See, e.g., In re Guild and Gallery Plus, Inc., 72 F.3d 1171 (3d Cir. 1996); In re Hall's Motor Transit Co., 889 F.2d 520 (3d Cir. 1989). Indeed, federal courts are obligated to insure that they have subject matter jurisdiction over disputes and may raise the issue sua sponte. See, e.g., In re Yousif, 201 F.3d 774, 776 (6th Cir. 2000); Liberty Mutual Insurance Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995); In re Hall's Motor Transit Co., 889 F.2d at 522. Thus, before, I can resolve the defendants' dismissal motion, I must consider whether I have subject matter jurisdiction over this proceeding. See, e.g., Rhulen Agency, Inc. v. Alabama Insurance Guaranty Association, 896 F.2d 674, 678 (2d Cir. 1990); Peoples State Bank v. Garrett, 142 F.R.D. 438, 441 (N.D. Tex. 1991).

A component of subject matter jurisdiction is the notion of justiciability, which encompasses the requirement of ripeness. See, e.g., Tari v. Collier County, 56 F.3d 1533, 1535 (11th Cir. 1995). The "case or controversy" requirement emanating both from Article III of the United States Constitution as well as from prudential concerns—including such juridical notions such as ripeness, standing, and mootness—has helped define the limited role of federal courts in our democratic society. See, e.g., Allen v. Wright, 468 U.S. 737, 750-51 (1984); NE Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341-42 (3d Cir. 2001). Perhaps because of prudential concerns, courts have assumed that the same limits of judicial power placed upon Article III courts apply to bankruptcy courts, which are Article I courts. See, e.g., In re Weaver, 632 F.2d 461, 462 n.6 (5th Cir. 1980) (holding that the standing requirement applies in bankruptcy disputes); Fred Reuping

Leather Co. v. Fort Greene National Bank of Brooklyn, 102 F.2d 372 (3d Cir. 1939) (standing); In re Family Health Services, Inc., 130 B.R. 314 (B.A.P. 9th Cir. 1991) (recognizing that advisory opinions are prohibited); In re Verrazano Holding Corp., 86 B.R. 755 (Bankr. E.D.N.Y. 1988) (applying the "case or controversy" requirement); Matter of Transport Clearings-Midwest, Inc., 41 B.R. 528, 539 (Bankr. W.D. Mo. 1984) (same); In re Burckardt, 8 B.R. 327 (Bankr. D.P.R. 1980) (same).

In addition, since bankruptcy jurisdiction resides in the district court (an Article III court, see 28 U.S.C. § 1334), which then refers cases and proceedings to the Article I bankruptcy court, 28 U.S.C. § 157, any constitutional limits on court power to decide bankruptcy disputes applicable to district courts must also be transferred to bankruptcy courts, as the referral agent of the district court. In re Kilen, 129 B.R. 538 (Bankr. N.D. Ill. 1991).

As a result, bankruptcy courts must refrain from rendering any advisory opinions. E.g., Coffin v. Malvern Federal Savings Bank, 90 F.3d 851, 853-54 (3d Cir. 1996); In re Amdura Corp., 121 B.R. 862, 870 (Bankr. D. Colo. 1990) (finding that until former bankruptcy counsel files a fee application, any determination regarding counsel's right to payment from estate property is advisory and so impermissible). Similarly, bankruptcy disputes that become moot are no longer justiciable. See, e.g., In re Wiley, 237 B.R. 677, 686 (Bankr. N.D. Ill. 1999); In re Leslie Fay Companies, Inc., 216 B.R. 117, 135-36 (Bankr. S.D.N.Y. 1997). In addition, disputes that are not sufficiently ripe cannot be determined. See In re Johnson-Allen, 871 F.2d 421, 423 (3d Cir. 1989), aff'd on other grounds sub nom. Pennsylvania Department of Public Welfare v. Davenport, 495 U.S. 552 (1990); In re Epic Associates V, 62 B.R. 918, 930 (Bankr. E.D. Va. 1986).

The need for a controversy to be ripe in order to be justiciable has been explained in these terms:

> The basic rationale underlying the doctrine of ripeness "is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . ." Abbott Lab. v. Gardner, 387 U.S. 136, 148 . . . (1967). Ripeness is thus "peculiarly a question of timing." Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580 . . . (1985) . . . . The doctrine turns on whether there are nebulous future events so contingent in nature that there is no certainty they will ever occur. In inquiring whether a particular matter is ripe for examination we look, first, to the fitness of the issue for review and, second, to the hardship to the parties of withholding consideration . . . and resolve this two step inquiry pragmatically.

In re Drexel Burnham Lambert Group Inc., 995 F.2d 1138, 1146 (2d Cir. 1993) (citations omitted); accord 15 Moore's Federal Practice § 101.70 (3d ed. 1999).

Because the issue of ripeness is connected with the power of a federal court to resolve a dispute, it may also be raised sua sponte. See Acierno v. Mitchell, 6 F.3d 970, 974 (3d Cir. 1993); 15 Moore's Federal Practice, supra, § 101.73[2].

II.

In their amended complaint, the named plaintiffs in this proceeding, Mr. and Mrs. Sanders, allege that defendant Wells Fargo Home Mortgage, Inc. ("Wells Fargo") was the former servicer of a mortgage on their residence, and that this mortgage obligation is currently serviced by defendant America's Serving Company ("ASC"). Amended Complaint ¶

17. ASC is purportedly a subsidiary of Wells Fargo. Id. ¶ 19. The named plaintiffs filed a chapter 13 bankruptcy petition on March 14, 2001. Id. ¶ 30.[2]

Wells Fargo filed a secured proof of claim dated April 6, 2001, a copy of which was attached to the amended complaint as Exhibit C. Id. ¶ 31. This proof of claim stated that Mr. and Mrs. Sanders were seven payments delinquent in their mortgage obligations as of March 14, 2001. On that date, they were in arrears by a total of $8,888.82 inclusive of late charges and escrow shortage; the total payoff amount due on their mortgage was stated in the claim to be $123,998.25. Id.

After their bankruptcy filing, Mr. and Mrs. Sanders fell behind in post-bankruptcy mortgage payments. Wells Fargo then filed a motion to terminate the bankruptcy stay, which motion was settled. Id. ¶¶ 34-35.

The docket entries in the underlying chapter 13 case (attached to the amended complaint as Exhibit B, id. ¶ 35) reflect that after Wells Fargo's lift stay motion was settled, the plaintiffs filed an amended chapter 13 plan, which plan was confirmed on January 8, 2002. Id. ¶ 41; see Ex. B, docket entry #34. This plan was to conclude in 60 months. See Ex. B, docket entry #34. The plaintiffs allege that they are current in all payments due under their confirmed plan. Amended Complaint ¶ 42.

On January 14, 2003, the plaintiffs were informed that ASC was now servicing their mortgage. Id. ¶ 43. Thereafter, the plaintiffs requested a loan payoff statement from

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[2]Actually, the amended complaint erroneously avers that only Mr. Sanders sought chapter 13 relief. The docket entries in Bankruptcy No. 01-13577 reflect, however, that Mr. and Mrs. Sanders filed a joint bankruptcy petition under section 302 of the Bankruptcy Code on March 14, 2001.

ASC, which statement was sent on July 2003. Id. ¶ 45; Ex. G. The payoff statement advised them that the amount needed to repay their mortgage in full as of August 11, 2003 was $117,356.43. Included in this total was an item styled "Corporate Advance Charges" in the amount of $765.00. Id. ¶ 46. A communication sent to the plaintiffs' attorney, dated September 15, 2003, explained that the corporate advance charges were for attorney's fees and costs associated with the bankruptcy lift stay motion as well as "property preservation fees." Id.; Ex. H.

The focus of the plaintiffs' amended complaint is on these corporate advance charges. The plaintiffs maintain that, because these charges arose post-bankruptcy and so were not included in the secured creditor's proof of claim, in order for these charges to be valid, they must be authorized under 11 U.S.C. § 506(b); and to be permissible under section 506(b), the creditor must, inter alia, obtain prior bankruptcy court approval.

The amended complaint does not allege that either defendant demanded payment of these charges; nor do the named plaintiffs aver that they have paid them. Furthermore, the complaint does not assert that Mr. and Mrs. Sanders sought to refinance their mortgage or sell their residence and thus are presently under some immediate obligation to pay those charges.[3]

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[3]The amended complaint does not allege the terms of the named plaintiffs' confirmed plan. Thus, I do not know whether it authorizes them to sell or obtain post-confirmation financing. Given the length of time between plan confirmation and this adversary proceeding, it is unlikely that the terms of the confirmed plan expressly provided for the sale or refinancing of the realty. I note that section 1327(a) binds debtors as well as creditors to the provisions of a confirmed chapter 13 plan of reorganization.

III.

Both the plaintiffs and defendants in this proceeding have focused—in the context of the instant motion to dismiss—upon whether a private right of action exists under section 506(b) and, if so, whether this subsection requires that a secured creditor obtain prior court approval before assessing a chapter 13 debtor with post-bankruptcy, pre-confirmation attorney's fees. Neither party has addressed the preliminary requirement of subject matter jurisdiction, particularly ripeness.

In Coffin v. Malvern Federal Savings Bank, 90 F.3d 851 (3d Cir. 1996), the Third Circuit Court of Appeals held that, in the context of a secured creditor's motion to terminate the automatic stay, any determination by the bankruptcy court concerning the enforceability of the secured creditor's lien after completion of the debtor's chapter 13 plan would be advisory and thus improper.

Furthermore, the effect of confirmation on a secured claim may depend upon whether a chapter 13 debtor tenders all payments required by the plan—thus obtaining a section 1328(a) discharge—and the manner in which that creditor's claim is provided for by the plan. See Matter of Chappell, 984 F.2d 775 (7th Cir. 1993); see also In re Bateman, 331 F.3d 821 (11th Cir. 2003).

Since the defendants in this proceeding have not demanded payments from the named plaintiffs, and since the named plaintiffs have not completed their chapter 13 plan, before I can determine whether the plaintiffs' amended complaint states a cause of action, both parties must address whether the present complaint is ripe for adjudication.

That is, are Mr. and Mrs. Sanders seeking a determination that they will not be liable, after completion of their chapter 13 plan, for fees and costs incurred by the defendants prior to confirmation but after the bankruptcy case commenced, unless the defendants obtain bankruptcy court approval for those costs and fees? If so, would such a determination be advisory? See generally Sponaugle v. First Union Mortgage Corp., 2001 WL 1251209 (E.D. Pa. 2001) (holding, inter alia, that when a secured creditor demanded fees from a debtor/plaintiff but made no attempt to collect those fees, there was no case or controversy), aff'd, 2002 WL 1723894 (3d Cir. 2002); In re Heiland, 2001 WL 32658 (Bankr. E.D. Pa. 2001) (holding that a chapter 13 debtor's challenge to post-petition fees was advisory and therefore not justiciable when no demand for payment of those fees had been made).

Presumably, after completion of their plan, the plaintiffs could obtain an adjudication of their obligation to the mortgagee from state court, either in the context of a defense to foreclosure, see generally In re Bateman, 331 F.3d at 821, or a demand under state law for satisfaction of their mortgage. 21 P.S. §§ 681, 682; see 51 I&N, Inc. v. Rosen, 24 Phila. Co. Rptr. 98 (Ct. Com. Pl. 1992); see also Academy Manor Trust v. Citizens Bank of Massachusetts, 1996 WL 131123 (E.D. Pa. 1996); Levin v. Weissman, 594 F. Supp. 322 (E.D. Pa. 1984), aff'd, 760 F.2d 258 (3d Cir. 1985) (Table).

Moreover, if this proceeding is ripe for adjudication, the parties should also address the related issue of subject matter jurisdiction as defined by 28 U.S.C. § 1334(b). In order for a bankruptcy court to have subject matter jurisdiction, an adversary proceeding must at least be "related to" a pending bankruptcy case. See, e.g., Halper v. Halper, 164 F.3d 830 (3d Cir. 1999). "[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, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted).[4]

The named plaintiffs in this proceeding have a confirmed chapter 13 plan. They are allegedly current in all payments due under their plan. There is no allegation that

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[4]It is important to make clear that the concept of a related proceeding overlaps but is wider in scope than that of a core proceeding; these two jurisdictional categories are not completely separate and distinct. Rather, all core proceedings must be related to a bankruptcy case and so may be considered a subset of the broader category. See In re Central Ice Cream Co., 82 B.R. 933, 936 (N.D. Ill. 1987) ("[A] proceeding that is not a related proceeding a fortiori cannot be a core proceeding.").

Indeed, the Third Circuit Court of Appeals recognized this point in In re Marcus Hook Development Park, Inc., 943 F.2d 261, 264 (3d Cir. 1991), when it explained that, for purposes of determining subject matter jurisdiction, the classification issue of core versus related is immaterial. Agreeing with other circuit courts, the court held that when determining whether a bankruptcy court has the power to determine a dispute, a court need only decide whether the proceeding "is a least 'related to' the bankruptcy." Id. If the definition of a related proceeding did not include all core proceedings, then the circuit court would have required two separate jurisdictional analyses.

As a result, the assertion by the plaintiffs of a claim under section 506—or under any other provision of the Bankruptcy Code—would not constitute a core proceeding unless the outcome of the claim could conceivably affect the administration of the bankruptcy case.

the defendants have taken any steps contrary to the terms of the confirmed plan, or have acted in any manner which would prevent them from successfully concluding their plan. Thus, it is not intuitive that the outcome of this proceeding could have any effect upon the administration of Mr. and Mrs. Sanders' chapter 13 case. See generally In re Shuman, 277 B.R. 638 (Bankr. E.D. Pa. 2001). Although the outcome of this proceeding may affect the debtors' liability to their mortgagee after their bankruptcy case is closed, that may not be enough to render this dispute within the scope of this court's jurisdiction.[5]

Finally, if the named plaintiffs have no justiciable claim—either because it is advisory or because their claim is outside the scope of this court's jurisdiction—the parties shall address whether leave should be granted to have another named plaintiff be substituted for Mr. and Mrs. Sanders.[6] See In re Porter, 295 B.R. 529, 543 (Bankr. E.D. Pa. 2003) (holding that no substitution is permitted, as any unnamed member of the debtor class could commence a similar proceeding in his or her own case).

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[5]In essence, the Eleventh Circuit in Bateman may have concluded that if the validity of a secured creditor's allowed secured claim (which would presumably include the additions permitted by section 506(b)) is not adjudicated prior to confirmation of the chapter 13 plan, it may not be justiciable in a bankruptcy court post-confirmation. In re Bateman, 331 F.3d at 821. Nevertheless, such a conclusion would not be binding upon me. The parties may, however, consider whether this analysis is persuasive, especially when the chapter 13 debtors have proposed a plan under section 1322(b)(5) and therefore will not receive a discharge of that secured obligation under section 1328(a).

[6]In addressing this issue, the parties should also evaluate the significance, if any, of Loc. Bankr. R. 7023-1(c).

An appropriate order shall be entered.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
CLINTON SANDERS and STEPHANIE SANDERS	:	
DebtorsMarch 19, 2004	:	Bankruptcy No. 01-13577
CLINTON SANDERS and STEPHANIE SANDERS h/w, INDIVIDUALLY, JOINTLY and ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED	:	
Plaintiffs	:	
v.	:	
WELLS FARGO HOME MORTGAGE, INC. and	:	
AMERICA'S SERVICING COMPANY Trading as ASC	:	
Defendants	:	Adversary No. 03-1009

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ORDER

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AND NOW, this 22nd day of March 2004, it is hereby ordered that the parties shall submit supplemental briefs addressing the ripeness, jurisdictional and substitute named class member issues identified in the accompanying memorandum.

All supplemental briefs shall be filed and served on or before April 16, 2004. There will be no additional oral argument unless this court directs by further notice.

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BRUCE FOX
United States Bankruptcy Judge

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