

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
MORTGAGE LENDERS NETWORK, USA, INC.,)	Case No. 07-10146 (PJW)
)	
Debtor.)	
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)	
MICHAEL MEYERS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Proc. No. 11-51991 (PJW)
)	
MITCHELL L. HEFFERNAN, et al.,)	
)	
Defendants,)	
Third Party Plaintiffs,)	
)	
v.)	
)	
STEVE PATTON, et al.,)	
)	
Third Party Defendants.)	

MEMORANDUM OPINION

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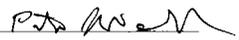
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Dated: September 28, 2011

WALSH, : 

This opinion is with respect to the matter of Meyers v. Heffernan, Case No. 1:10-cv00212-MPT¹, referred to me by Magistrate Judge Mary Pat Thyng's request that I make a determination as to whether the matter is core or non-core. For the reasons described below, I hold that the matter is non-core.

Background

On February 5, 2007, Mortgage Lenders Network USA, Inc. (herein "Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. The First Amended Plan of Liquidation of Mortgage Lenders Network USA, Inc. Under Chapter 11 of the Bankruptcy Code ("Plan") (Doc. # 2414) was confirmed by this Court on February 3, 2009. (Doc. # 2611.)

Michael Meyers, David Rundella, David Bosefski, Scott Kerico, Marc Ambrose, Lisa Macone, Johanna Curley, and Jeffrey DePalma (collectively "Plaintiffs") were employed by Debtor as commissioned mortgage loan officers until February 2007. On February 18, 2010, Plaintiffs filed this action in the United States District Court for the District of New Jersey against Debtor's former Chief Executive Officer Mitchell Heffernan and Executive Vice President James Pedrick (collectively "Defendants")

¹As will be noted below, this matter involves causes of action filed in the United States District Courts for the District of New Jersey and District of Delaware, as well as in this Court. References to court documents filed in the District Courts will include the case numbers; citations to documents filed in this Court will contain only the docket number.

for failure to pay Plaintiffs' accrued but unpaid wages. Meyers v. Heffernan, No. 3:10-cv-00862-MLC-TJB (D.N.J. Feb. 18, 2010). Plaintiffs are all New Jersey residents and were allegedly employed by Defendants and Debtor in New Jersey. As a result, Plaintiffs sued Defendants under the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 - 4.14 ("WPL"), for their unpaid wages, including commissions. The WPL provides that "[f]or the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation." N.J.S.A. 34:11-4.1(a). It is for this reason, according to Plaintiffs, that they brought suit directly against Defendants, rather than against Debtor. Plaintiffs did, however, file proofs of claims in Debtor's bankruptcy case for the unpaid wages and also participated in a class action case against Debtor under the Workers Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. §§ 2101 et seq. Plaintiffs agreed to the treatment of their claims in the confirmed Plan. The WARN Act claims were settled by a Final Order Approving Settlement Between Debtors, the Committee and the WARN Class Plaintiffs, entered August 6, 2009. (Doc. # 2892.)

On March 15, 2010, the New Jersey District Court issued an order transferring Plaintiffs' action to the United States District Court for the District of Delaware, with the assumption that the case would then be referred to this Court. Meyers v.

Heffernan, Civ. A. No. 10-862 (MLC), 2010 WL 1009976, at *1 (D.N.J. Mar. 15, 2010). In the accompanying slip opinion, the New Jersey Court stated that the transfer was appropriate because the Debtor had filed for bankruptcy in Delaware, Heffernan and Pedrick had filed appearances in the bankruptcy proceedings, and “[t]he issues in the action before this Court appear to be intertwined with the bankruptcy proceedings in Delaware.” Id. Plaintiffs filed a joint motion for reconsideration requesting that the New Jersey Court reconsider its transfer of the case to Delaware. (Case No. 3:10-cv-00862, Doc. # 5.) That motion was denied. (Case No. 3:10-cv-00862, Doc. # 12.) The case was then transferred to the District Court for the District of Delaware.

After the transfer, Defendants filed a motion to dismiss Plaintiffs’ complaint, which was denied in part and granted in part by the Magistrate Court. (Case No. 1:10-cv-00212-MPT, Docs. # 11 & 27.) Defendants then filed a third party complaint in the District of Delaware against Steven Patton and Paul Impagliazzo, former officers of Debtor (collectively “Third Party Defendants”), for indemnification in the event of a judgment against Defendants. (Case No. 1:10-cv-00212-MPT, Doc. # 34.) Defendants assert that the Third Party Defendants are the ones who managed and hired Plaintiffs, and thus they bear liability as Plaintiffs’ employers.

The Delaware District Court has issued an order referring the case to this Court for a determination of whether the matter is

a core or non-core proceeding under 28 U.S.C. § 157. (Case No. 1:10-cv-00212-MPT, Doc. # 62.) All three parties have submitted briefing on the determination.

Plaintiffs filed an Opening Brief Concerning Whether the Current Action Constitutes a "Core" Proceeding Within the Meaning of 28 U.S.C. § 157(b)(2). ("Opening Brief") (Doc. # 6.) In the Opening Brief, Plaintiffs assert that their claims for unpaid wages are non-core, because the claims do not fall into any of the categories of core proceedings listed in 28 U.S.C. § 157(b) and do not arise in a bankruptcy case or under the Bankruptcy Code since they are state law claims. (Opening Br. at 3-6.) Consequently, Plaintiffs believe that this action should not be determined in this Court.

Third Party Defendants submitted a Response Brief Regarding the Issue of Whether This Adversary Proceeding Constitutes a "Core Proceeding" ("Response") in which they agreed with Plaintiffs that the matter is non-core. (Doc. # 7, at 5.) Like Plaintiffs, Third Party Defendants maintain that this matter should not be determined by this Court.

In their Reply Brief on Whether the Current Action Constitutes a "Core" Proceeding Within the Meaning of 28 U.S.C. § 157(b)(2) ("Reply"), Defendants apparently concede that this matter is not core. (Doc. # 8, at 8.) However, they urge me to hold that this Court does have jurisdiction to hear the matter. Defendants

assert that this matter is "directly related to" Debtor's bankruptcy case. (Reply at 2.) As a result, Defendants allege that this Court has jurisdiction to hear the case until the pre-trial conference under § 157(c).²

In response to the Reply, Plaintiffs submitted an Answer Brief on Whether the Present Action Constitutes a "Core" Proceeding Within the Meaning of 28 U.S.C. § 157(b)(2) ("Answer"). (Doc. # 11.) Plaintiffs reiterate their argument that the proceeding is non-core, stressing that the outcome of the case "will have no impact on the reorganization or any financial impact" on Debtor's estate. (Answer, at 1-2.) As a result, they request that this matter be transferred back to the District Court.

Discussion

The issue I have been asked to determine here is whether this proceeding is core or non-core. Plaintiffs assert that their claims for unpaid wages are non-core because the claims do not fall into any of the categories of core proceedings listed in 28 U.S.C.

²Section 157(c) provides:

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

28 U.S.C. § 157(c)(1).

§ 157(b) and do not arise in a bankruptcy case or under the Bankruptcy Code. (Opening Br. at 3-6.) Plaintiffs note that the action "is a contract and statutory claim arising under wage and hour laws of New Jersey," and that state law claims have "consistently been determined to be non-core proceedings." (Opening Br. at 4.) They cite a number of cases from this Court and the Third Circuit in support of this statement. See In re Exide Techs., 544 F.3d 196 (3d Cir. 2008); In re Stone & Webster, Inc., 367 B.R. 523 (Bankr. D. Del. 2007); In re Integrated Health Servs., Inc., 291 B.R. 615 (Bankr. D. Del. 2003).

Third Party Defendants agree with Plaintiffs that the proceeding is non-core. With regard to Defendants' action against them for indemnification, Third Party Defendants cite Exide, 544 F.3d 196, and In re Ha-Lo Industries, Inc., 330 B.R. 663 (Bankr. N.D. Ill. 2005), for the proposition that indemnification is a "matter for which courts do not generally exercise 'core' jurisdiction." (Response at 5.)

The United States Code gives the bankruptcy judge the power to "determine . . . whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11." 28 U.S.C. § 157(b)(3). In this Circuit, a court must perform a two-part analysis in making this determination. Exide, 544 F.3d at 206. First, the court must look to the non-exclusive list of examples of core proceedings in §

157(b)(2). Id. Next, the judge must apply the Third Circuit's two-part test, "according to which a claim will be deemed core 'if (1) it invokes a substantive right provided by title 11 or (2) if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case.'" Id. (citations omitted.) Each claim in a proceeding must be analyzed separately, and each claim must satisfy the test in order for the action as a whole to be considered a core proceeding. Id.

Section 157(b)(2) of title 28 of the United States Code provides a non-exhaustive list of core proceedings:

Core proceedings include, but are not limited to--

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

28 U.S.C. § 157(b)(2). Both Plaintiffs' claims and Defendants' third party claims here arise under New Jersey state law and are asserted against non-debtors. Accordingly, they do not fall into any of the enumerated categories in § 157(b)(2).

Defendants draw my attention to subpart (O) above, which includes "'other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.'" (Reply, at 6) (quoting 28 U.S.C. § 157(b)(2)(O).) The disposition of Plaintiffs' claims in the current action will not have any effect on the liquidation of the estate or the debtor-creditor relationship between Debtor and Plaintiffs. According to the Disclosure Statement, the claims that Plaintiffs submitted in the bankruptcy proceeding would fall into Class 1 or 3 or both of Debtor's Plan. (Doc. # 2412, at 5.) Claims in Class 1 were entitled to receive a 100% recovery, and Class 3 claims were entitled to receive between 1% and 5% of their

claims. Id. Plaintiffs' WARN Act claims were resolved by a settlement, which was approved by this Court on August 6, 2009. Defendants themselves note that Plaintiffs "have received payment from the MLN Bankruptcy Case under its Plan of Liquidation" for the proofs of claims they filed in Debtor's bankruptcy case and have also received payments from a settlement of their WARN Act claims. (Reply, at 8-9.) In this action, Plaintiffs are seeking from the non-debtor Defendants the balance of the unpaid wages that they did not receive from Debtor under the Plan or pursuant to the WARN Act settlement. Thus, the outcome of Plaintiffs' claims will have no effect on Debtor's estate, as the estate has already made its payments to Plaintiffs. Likewise, Defendants are seeking indemnification from two non-debtors in the event of a judgment against Defendants. If Defendants are found liable to Plaintiffs and succeed on their claim for indemnification, Defendants' recovery will not come from Debtor's estate. As a result, the claims here do not fall into any of the § 157(b)(2) categories.

As to the Third Circuit's two-part test, I find that neither claim "invokes a substantive right provided by title 11 or . . . by its nature, could arise only in the context of a bankruptcy case." Exide, 544 F.3d at 206. This Court has previously noted that "[a] core proceeding 'must have as its foundation the creation, recognition, or adjudication of rights which would not exist independent of a bankruptcy environment

although of necessity there may be peripheral state law involvement.'" In re Stone & Webster, 367 B.R. 523, 526 (Bankr. D. Del. 2007) (quoting Travelers Cas. & Sur. Co. v. Skinner Engine Co. (In re Am. Capital Equipment, LLC), 325 B.R. 372, 375 (W.D. Pa. 2005)). See also In re Integrated Health Servs., Inc., 291 B.R. 615, 618 (Bankr. D. Del. 2003) (holding that actions against former officers and directors of the debtor entity for breach of fiduciary duty and waste of corporate assets were "quintessential state law causes of action" and thus not core proceedings). It is clear to me that none of the claims in this action meet the Third Circuit's criteria.

With regard to the first prong of the test, all of Plaintiffs' claims and Defendants' third party claims derive from state law. The substantive rights that Plaintiffs and Defendants are asserting arise under the WPL. Plaintiffs are claiming that Defendants, as officers of Debtor, are personally liable for Plaintiffs' unpaid wages under the WPL. Defendants, in turn, are claiming that Third Party Defendants, who were also officers of Debtor, were the ones who managed and contracted with Plaintiffs and thus they are the ones who should be liable under the WPL. Any right to receive payment from either Defendants or Third Party Defendants derives not from the Bankruptcy Code, but from New Jersey state law. Thus, these claims fail the first part of the Third Circuit's test.

As to the second part, these claims could clearly arise outside of bankruptcy. As the District of New Jersey Court noted in regards to this case, the WPL includes officers and managing agents in the definition of "employer." Meyers, 740 F. Supp.2d at 650 (citing N.J.S.A. 34:11-4.1(a)). New Jersey case law interpreting the WPL holds managing officers jointly and severally liable with the corporation where the corporation has failed to pay the judgment against it. Id. (citing Mulford v. Computer Leasing, Inc., 759 A.2d 887 (N.J. Super. Ct. Law Div. 1999)). It is possible for an action under the WPL against a corporation's officers to arise outside of the context of bankruptcy. The WPL holds officers and managers liable where the corporation has failed to pay wages, and there is no language in the statute to suggest that this liability is imposed only where the employer company has declared bankruptcy. Indeed, the Mulford case did not involve a corporation in bankruptcy. Accordingly, I hold that Plaintiffs' claims and Defendants' claims are not claims that could arise only the context of bankruptcy. Since all of the claims in this action have failed the Third Circuit's core proceeding analysis, I hold that this matter is not a core proceeding within the meaning of 28 U.S.C. § 157(b).

Although the only issue I have been asked to determine is whether this proceeding is core, Defendants urge me to rule on

whether this Court has "related to" jurisdiction over the matter.³ Defendants argue that even if the proceeding is non-core, it is "related to" a bankruptcy proceeding and thus this Court has jurisdiction to hear the action under 28 U.S.C. § 157(c). In support of this, Defendants cite the Third Circuit's opinion in Belcufine v. Aloe, 112 F.3d 633 (3d Cir. 1997), as holding that "'related to" jurisdiction is very broad, extending to any action the outcome of which "could conceivably have any effect on the estate being administered in bankruptcy.'" (Reply, at 7) (quoting Belcufine, 112 F.3d at 636 (quoting Pacor v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)).) Defendants urge that the matter is "closely 'related to'" Debtor's bankruptcy case in this Court, since

(a) all of the Plaintiffs have entered their appearances in the MLN Bankruptcy Case by filing proofs of claims for the unpaid commissions and/or wages they allege are owed to them by MLN; (b) any wages remaining unpaid by MLN after payment by the MLN's bankruptcy estate can only be determined by this Honorable Court; (c) all of the Plaintiffs have received payment from the MLN Bankruptcy Case under its Plan of Liquidation . . . ; and (d) all of the Plaintiffs entered their appearance and were claimants in the [WARN Act] litigation against MLN and received payments in a settlement thereunder from the MLN bankruptcy estate

(Reply, at 9) (citations omitted.)

The facts cited by Defendants here do not support their position, and are distinguishable from the Belcufine case. In that

³With regard to whether the matter is core, Defendants only note that § 157(b)(3) provides that whether or not an action is affected by state law is not dispositive of whether that action is core. (Reply, at 6.)

case, former employees brought a state law claim against the officers of the debtor entity for unpaid wages, and the officers in turn brought a claim for indemnification against the debtor. Belcufine, 112 F.3d at 635. The Third Circuit found that the Bankruptcy Court had "related to" jurisdiction over the employees' claims, because "the existence of this indemnification claim demonstrated that the employees' claims against the [officers] could conceivably have an effect on the bankruptcy estate and therefore satisfied the 'related to' test." Id. at 636. In the case before me, however, there is no indemnification claim against Debtor. Thus, the disposition of this action could not have any effect on Debtor's estate. As Defendants admit, Plaintiffs' claims against Debtor have already been resolved under the Plan and the WARN Act settlement. In other words, the treatment of Plaintiffs' claims vis a vis Debtor has already been determined, so the claims that Plaintiffs now assert against the non-debtor Defendants can have no further effect on the estate. As for Defendants' indemnification claims against Third Party Defendants, these claims likewise will have no effect on the estate, as any recovery would come from two non-debtors. Thus, the "related to" jurisdiction that the court found in Belcufine is not applicable here.

Conclusion

For the reasons stated above, I have determined that the present action is a non-core proceeding.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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)	
Third Party Defendants.)	

ORDER

For the reasons set forth in the Court's memorandum opinion of this date, the Court determines that the present action is a non-core proceeding.



Peter J. Walsh
United States Bankruptcy Judge

Dated: September 28, 2011