

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE KAREN B. OWENS



824 N. MARKET STREET
WILMINGTON, DELAWARE
(302) 533-3183

December 6, 2021

Mr. Allen Pulsifer
P.O. Box 356
Annapolis Jct., MD 20701

Daniel K. Astin, Esq.
Ciardi Ciardi & Astin
1204 N. King Street
Wilmington, DE 19801

Albert A. Ciardi III, Esq.
Walter W. Gouldsbury III, Esq.
Ciardi Ciardi & Astin
1905 Spruce Street
Philadelphia, PA 19103

In re: Creda Software, Inc. – Case No. 20-10919 (KBO)
Pulsifer v. George L. Miller, Chapter 7 Trustee
Adv. Proc. No. 21-51160 (KBO)

Dear Mr. Pulsifer and Counsel:

This letter is the Court's ruling on *George L. Miller, Chapter 7 Trustee's Motion to Dismiss First Amended Complaint* [Adv. D.I. 11] (the "Motion"). Mr. Pulsifer commenced the above-referenced adversary proceeding on September 10, 2021 by filing his *Complaint for Declaratory Relief Pursuant to 28 U.S. Code 2201 and Fed. R. Bankr. P. Rule 7001(9)* [Adv. D.I. 1]. Mr. Pulsifer amended this complaint on October 20, 2021 after the Trustee moved to dismiss it [Adv. D.I. 5]. His *First Amended Complaint for Declaratory Relief Pursuant to Fed. R. Bankr. P. Rule 7001 and 11 U.S. Code 105 and/or if Necessary or Appropriate 28 U.S.C. 2201* [Adv. D.I. 7] (the "First Amended Complaint") seeks a declaratory judgment to quiet title and resolve claims concerning units of CredaCash cryptocurrency owned prepetition by Creda Software, Inc. (the "Debtor") in which Mr. Pulsifer now claims an interest. Specifically, Mr. Pulsifer seeks an order declaring that neither the Trustee nor the Debtor's estate has any valid claims, rights, or interests in the subject cryptocurrency, including preference and fraudulent transfer claims. By the Motion, the Trustee moves to dismiss the First Amended Complaint without leave to amend. Oral argument has been requested but it is unnecessary to the Court's decision making on the matter. The matter is thus ripe for adjudication.

The Trustee seeks dismissal of the First Amended Complaint pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, made applicable to the proceeding by Rule 7012 of the Federal Rules

of Bankruptcy Procedure. The Trustee states that he is still investigating Mr. Pulsifer and the cryptocurrency and that his deadline established by 11 U.S.C § 546 to file avoidance actions has not yet passed. The gravamen of the Trustee’s argument is that no actual case or controversy exists yet to warrant the relief requested by Mr. Pulsifer because the Trustee has made no formal demand or filing of claims. The Trustee argues that Mr. Pulsifer seeks an advisory opinion and thus, the First Amended Complaint should be dismissed for, among other things, lack of ripeness.¹

Article III of the United States Constitution prohibits federal courts from issuing advisory opinions by limiting federal jurisdiction to “cases” and “controversies.” *Armstrong World Indus., Inc. v. Adams*, 961 F.2d 405, 410 (3d Cir. 1992). To satisfy the “‘case or controversy’ requirement, an action must present ‘(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for a reasoned adjudication, and (3) a legal controversy so as to sharpen the issues for adjudication.’” *Id.* (quoting *Int’l Bhd. of Boilermakers v. Kelly*, 815 F.2d 912, 915 (3d Cir. 1987)). When declaratory relief is sought, the Court is required to analyze “whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). There is no precise test to determine whether a declaratory judgment action is ripe. *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 912 F.2d 643, 646 (3d Cir. 1990). Rather, the Court of Appeals for the Third Circuit has provided several guiding principles – “the adversity of the interest of the parties, the conclusiveness of the judicial judgment and the practical help, or utility, of that judgment.” *Id.* at 647.

Mr. Pulsifer alleges in the First Amended Complaint that at the meeting of creditors held in the Debtor’s chapter 7 proceeding (the “341 Meeting”), the Trustee demanded that Mr. Pulsifer “amicably” turn over his CredaCash cryptocurrency because both Federal and Delaware law required it. First Am. Compl. ¶ 42. Mr. Pulsifer further alleges that he and the Trustee have engaged in informal and formal discovery concerning the cryptocurrency, and that the Trustee proposed a settlement that he ultimately accepted. *Id.* ¶¶ 38, 40-41, 47-50.² Mr. Pulsifer additionally contends that the Trustee subsequently withdrew the settlement and reserved all rights regarding any and all claims he might have. *Id.* ¶ 51. Finally, Mr. Pulsifer explains that he seeks to sell or otherwise use the cryptocurrency and that the Trustee’s claims and threats are preventing him from obtaining fair value. *Id.* ¶¶ 53-62.

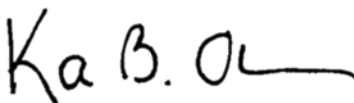
¹ The Trustee also argues that Mr. Pulsifer lacks standing. In doing so, he relies on the same arguments proffered in support of ripeness. As explained by the Court of Appeals for the Third Circuit, “[t]he ripeness doctrine is often confused with the standing doctrine. Whereas ripeness is concerned with *when* an action may be brought, standing focuses on *who* may bring a ripe action.” *Armstrong World Indus., Inc. v. Adams*, 961 F.2d 405, 411 n.13 (3d Cir. 1992). As will be explained, Mr. Pulsifer has alleged a ripe claim. For similar reasons, Mr. Pulsifer also has standing. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (explaining the three elements that establish standing – “the plaintiff must have suffered an injury in fact”, “there must be a causal connection between the injury and the conduct complained of” and “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” (internal quotations omitted)).

² See also Case No. 20-10919, D.I. 78 (Order Granting Motion of George L. Miller, Chapter 7 Trustee Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1, for Entry of an Order Authorizing and Directing Oral Examination of Allen Pulsifer and Directing the Production of Documents).

The totality of these allegations sufficiently set forth a live controversy concerning Mr. Pulsifer's CredaCash cryptocurrency despite the lack of formal demand or legal action by the Trustee. The Trustee has threatened action and behaved in a manner that indicates his threats are real, substantial, and likely to be acted upon in the near future. *Armstrong*, 961 F.2d at 412 (“In some situations, present harms will flow from the threat of future actions. However, ‘[t]o protect against a feared future event, the plaintiff must demonstrate that the probability of that future event occurring is real and substantial, ‘of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” (quoting *Salvation Army v. Dep’t of Cmty. Affairs*, 919 F.2d 183, 192 (3d Cir. 1990))). After all, if the Trustee’s claims are as hypothetical as he suggests, then what was the good faith basis for his turnover demand at the 341 Meeting and his subsequent settlement proposal to Mr. Pulsifer? Furthermore, the circumstances giving rise to claims against Mr. Pulsifer have already occurred, and a ruling from this Court will prove useful because it will provide certainty surrounding the parties’ rights to the cryptocurrency. *Id.*; see also *Step-Saver*, 912 F.2d at 649 (“The idea behind the [Declaratory Judgment] Act was to clarify legal relationships so that plaintiffs (and possible defendants) could make responsible decisions about the future.”). Mr. Pulsifer need not wait until the Trustee decides to file his action. He may seek relief now in order to free himself of the black cloud hanging over his head.³

Accordingly, the Court declines to dismiss Mr. Pulsifer’s First Amended Complaint and will enter an order denying the Trustee’s Motion. The parties are directed to contact the Court to schedule a status conference in January 2022. Prior to such status conference, the parties should meet and confer regarding a proposed scheduling order and whether mediation would be worthwhile.

Very truly yours,



Karen B. Owens
United States Bankruptcy Judge

³ Although unusual, this is not the first time that a party threatened with litigation initiated a proceeding to obtain declaratory relief. See, e.g., *Barsa v. Theseus Strategy Grp., LLC (In re OLD BPSUSH, Inc.)*, No. 19-50726, 2020 WL 6818435, at *1 (Bankr. D. Del. June 30, 2020) (ruling on a motion to dismiss in an action brought by former officers and directors against a litigation trustee who threatened to sue them).

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

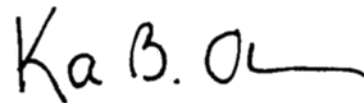
In re: CREDA SOFTWARE, INC., Debtor.	Chapter 7 Case No. 20-10919 (KBO)
ALLEN PULSIFER, Plaintiff, GEORGE L. MILLER, CHAPTER 7 TRUSTEE, etc., Defendant.	Adv. Pro. No. 21-51160 (KBO) Related to Docket No. 11

**ORDER DENYING GEORGE L. MILLER, CHAPTER 7 TRUSTEE'S
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Upon consideration of *George L. Miller, Chapter 7 Trustee's Motion to Dismiss First Amended Complaint* (the "Motion to Dismiss") [Adv. D.I. 11] and all briefing filed in support of and in opposition to the Motion to Dismiss; it is hereby **ORDERED** that:

1. For the reasons set forth in the accompanying Letter Ruling dated December 6, 2021, the Motion to Dismiss is **DENIED**.
2. Pursuant to Local Rule 9022-1, counsel for the Trustee shall serve a copy of the Letter Ruling and this Order on Mr. Pulsifer and file a certificate of service reflecting such service within 48-hours.

Dated: December 6, 2021
Wilmington, Delaware



Karen B. Owens
United States Bankruptcy Judge