

ORDERED.

Dated: December 20, 2017



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
LAND RESOURCE, LLC,)	Case No. 6:08-bk-10159-KSJ
)	Chapter 7
Debtor.)	
)	Jointly Administered With Cases
)	6:08-bk-10159-KSJ through 6:08-
)	bk-10192-KSJJ and 6:08-bk-11672-
)	KSJ

ORDER GRANTING MOTION FOR CLARIFICATION

This case came before the Court on November 15, 2017, for consideration of Wells Fargo Bank’s Motion for Clarification or Interpretation and the related responses.¹ This order formalizes the Court’s oral ruling rendered on November 15, 2017.²

The Bank seeks clarification on whether a bar order entered on January 22, 2013,³ prevents completion of a state court foreclosure action its predecessor initiated against J. Robert Ward in

¹ Doc. Nos. 1591, 1647, 1660, 1673. The Court will refer to Wells Fargo and Wachovia as the “Bank” interchangeably. Representatives from Wells Fargo and/or Wachovia will be referred to as “Bank Representatives.”

² Doc. No. 1684.

³ Doc. No. 1365 (the “Bar Order”).

2009.⁴ Mr. Ward was the CEO and principal owner of the Debtor. The Court holds the Bar Order does not encompass the Foreclosure Action or prevent the litigation from continuing.

In 2012, Mr. Ward entered into a settlement with the Chapter 7 Trustee.⁵ The terms provided that Mr. Ward (and the “Ward Parties”) would pay the Trustee money, in part, in exchange for an order that barred certain claims against Mr. Ward and the Ward Parties.⁶

Parties objected to the Bar Order and the settlement;⁷ the Bankruptcy Court entered the Bar Order and approved the settlement over objection;⁸ and the District Court affirmed.⁹ Years after the District Court entered its opinion affirming the Bankruptcy Court, Mr. Ward sought to amend his affirmative defenses in the Foreclosure Action arguing that the Bar Order prevented further litigation.¹⁰ The Bank then sought clarification of the Bar Order in this court.¹¹

The Court must start with a simple explanation of what the Bar Order says. District Judge Honeywell summarized its creation:

[T]he Trustee agreed to seek a bar order and channeling injunction from the bankruptcy court that would permanently enjoin the Trustee and the Debtors’ creditors from pursuing any claims against the Ward Parties arising from, related to, based upon, or deriving from the Debtors’ business activities.¹²

Judge Honeywell noted the Bankruptcy Court found the Bar Order was not overbroad, as some parties argued, because it did not bar claims that were unrelated to the Debtors’ business

⁴ The state court case number is 2009-CA-030179-O in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. The Court will refer to the state court foreclosure action as “the Foreclosure Action.”

⁵ Doc. No. 1216 is the Motion to Approve Compromise.

⁶ Doc. Nos. 1216, 1365.

⁷ Doc. Nos. 1222, 1223, 1224, 1352.

⁸ Doc. No. 1365.

⁹ The District Court case number is 6:13-cv-476-Orl-36. The District Court’s Opinion and Order was entered on February 10, 2014 at Document Number 27 (“District Court Opinion”).

¹⁰ Doc. No. 1591, Exh. 1, filed October 19, 2016.

¹¹ Doc. No. 1591.

¹² District Court Opinion, p. 4.

activities.¹³ In her findings, the Court continued: “The Bar Order *does not* apply to litigation unrelated to claims against the Debtors or unrelated to the Debtors’ activities.”¹⁴

The Bankruptcy Court and the District Court conducted an additional analysis related to the settlement because the settlement contained the Bar Order.¹⁵ The Bankruptcy Court had to determine whether it had subject matter jurisdiction over the barred claims.¹⁶ To have subject matter jurisdiction over the barred claims, there must be “some nexus” between those claims and the bankruptcy case.¹⁷ “The test is whether assertion of the claims proposed to be barred ‘could conceivably have an effect on the estate being administered in bankruptcy.’”¹⁸ “[B]arred claims are sufficiently related to the bankruptcy case ‘if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.’”¹⁹ So, the Court must possess subject matter jurisdiction over the barred claims, but for the claims to be barred they must also be related to the Debtors’ business activities.

In considering the Motion for Clarification and related responses, the Court accepted Mr. Ward’s affidavit as true.²⁰ In his affidavit, Mr. Ward stated the Bank and Bank Representatives worked with him on several of his business dealings.²¹ When Bank Representative, Mr. Larry Howard, encouraged Mr. Ward to move to Florida to save his company “millions in Georgia income tax liabilities,” Mr. Ward responded that he “was not interested in relocating personally to Orlando.”²² Mr. Ward advised Mr. Howard that he would only consider moving to Florida if he

¹³ District Court Opinion, p. 8.

¹⁴ District Court Opinion, p. 20 (emphasis in original).

¹⁵ District Court Opinion, p. 9.

¹⁶ *In re Munford, Inc.*, 97 F.3d 449, 453 (11th Cir. 1996).

¹⁷ *Id.*

¹⁸ District Court Opinion, p. 9 (citing and quoting *In re Munford*, 97 F.3d at 453).

¹⁹ District Court Opinion, p. 9 (citing and quoting *In re Munford*, 97 F.3d at 453).

²⁰ Doc. No. 1660.

²¹ Doc. No. 1660.

²² Doc. No. 1660, ¶ 7.

did not have to pay out of pocket for a down payment on a house.²³ The Bank then financed 100% of the purchase price of the home and allowed the company to provide Mr. Ward with money to renovate the home.²⁴ Mr. Ward stated “I would not have taken the [loan] from the Bank had it not insisted that I purchase a large home and offered to finance the entire purchase price and my relocation and renovation expenses,”²⁵ and “the debt associated with [the purchase of the home] arose from, was related to, was based upon, and derived from dealings between [the company] Land Resource and the Bank.”²⁶

Taken as true, the Court still finds that the Foreclosure Action is unrelated to the Debtors’ business activities. The Foreclosure Action is against Mr. Ward and related to his personal home in Florida. Although Mr. Ward stated that Bank Representatives convinced him to move to Florida to improve his business and offered him attractive financing to purchase and renovate his home, those facts do not translate into the Foreclosure Action being related to the Debtors’ business activities. Mr. Ward made a personal choice to relocate to Florida. He accepted the offered beneficial financing because it made personal sense, not due to any connection between his businesses. The Court finds no sufficient nexus between the Foreclosure Action and the Bar Order. The outcome of the Foreclosure Action would not alter the Debtors’ rights, liabilities, options, or freedom of action, or impact the administration of the bankruptcy case.

Accordingly, it is

ORDERED:

1. The Motion for Clarification (Doc. No. 1591) is **GRANTED**.

²³ Doc. No. 1660, ¶ 7.

²⁴ Doc. No. 1660, ¶¶ 10, 11.

²⁵ Doc. No. 1660, ¶ 13.

²⁶ Doc. No. 1660, ¶ 14.

2. The Florida State Court may continue and complete the pending Foreclosure Action disregarding any limitations imposed by the Bar Order.

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Attorney, Stephen Busey, is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and file a proof of service within three days of entry of the order.