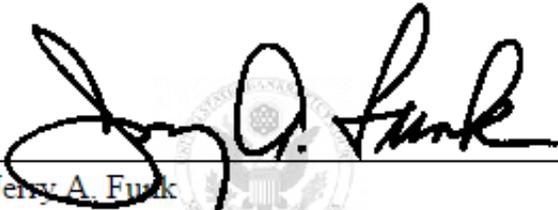


ORDERED.

Dated: January 11, 2018



Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

PATRICIA MARIE LAUER,

Debtor.

PATRICIA MARIE LAUER,

Plaintiff,

v.

WILMINGTON SAVINGS FUND SOCIETY,
FSB, as trustee for the CARLSBAD FUNDING
MORTGAGE TRUST,

Defendant.

Chapter 7

Case No. 3:17-bk-1199-JAF

Adv. No. 3:17-ap-0165-JAF

ORDER OF ABSTENTION

This proceeding is before the Court on the Defendant WILMINGTON SAVINGS FUND SOCIETY, FSB'S ("Wilmington") amended motion to dismiss and request for abstention (Doc. 18) and Plaintiff PATRICIA MARIE LAUER'S ("Debtor") response in opposition (Doc. 23). For the reasons stated herein, Wilmington's request for abstention is granted.

Allegations

Debtor filed the instant adversary proceeding on September 25, 2017. (Doc. 1). Debtor alleges that, in January 2006, she and her husband executed a quitclaim deed in favor of Patricia Joyce (a nonparty) as to certain property located in Ormond Beach, Florida (the “Ormond Beach Property”). (Doc. 1 ¶ 7). In April 2012, Wilmington or its predecessor in interest filed a foreclosure action concerning the Ormond Beach Property, naming Debtor and her husband (among others) as party defendants (the “Foreclosure Action”). (Doc. 1 ¶ 9). Debtor alleges Wilmington knew Debtor and her husband “had no ownership” in the property. (Doc. 1 ¶ 10). A judgment was entered against Debtor and her husband in the Foreclosure Action. (Doc. 1 ¶ 12). Debtor now claims damages resulting from being named a party defendant in the Foreclosure Action. The complaint alleges three counts against Wilmington for the same allegedly tortious conduct: 1) common law fraud; 2) negligence; and 3) defamation.

Wilmington has filed no proof of claim in the main case and is not a creditor of Debtor. Among other things, Wilmington asks that the Court exercise its discretion to abstain from adjudicating Debtor’s claims in this proceeding.

Analysis

“Pursuant to 28 U.S.C. § 1334(c)(1), a bankruptcy court may abstain from exercising jurisdiction over a core or non-core adversary proceeding in the interest of justice or comity with a state court.” In re Annicott Excellence, LLC, 264 B.R. 756, 758 (Bankr. M.D. Fla. 2001). “Section 1334(c)(1) grants a bankruptcy court broad discretion to permissively abstain from exercising jurisdiction.” Id. “There are fourteen (14) factors courts consider for ‘discretionary’ or ‘permissive’ abstention under § 1334(c)(1),” including:

- (1) the effect of abstention on the efficient administration of the bankruptcy estate;

- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court;
- (5) the basis of bankruptcy jurisdiction, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted “core” proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of the bankruptcy court’s docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of non-debtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

In re Blackman, 2017 WL 6033418, at *3 (Bankr. N.D. Ga. Dec. 5, 2017). “Although no single factor is determinative, courts have discretion in determining the relative weight afforded to each factor.” Id.

Here, the Court first notes that this proceeding is a noncore or “related to” proceeding. Each of the three counts are purely state common law tort claims and the allegations fail to cite to or implicate any provision of Title 11. However, if Debtor were to prevail in her tort claims against Wilmington, the proceeds would ostensibly be a prepetition asset of the estate to be distributed to Debtor’s creditors. Thus, while the instant claims do not arise under Title 11 or in a Title 11 case,

the outcome of Debtor's claims could conceivably affect the bankruptcy estate and the Court, therefore, retains subject matter jurisdiction as a "related to" proceeding. See In re Fundamental Long Term Care, Inc., 873 F.3d 1325, 1336 (11th Cir. 2017) (stating the "conceivable effect" test for noncore proceedings); In re Fleet, 53 B.R. 833, 837 (Bankr. E.D. Pa. 1985) ("[U]nder 28 U.S.C. § 1334(b), a plaintiff suing in federal court in a proceeding which is related to a debtor's bankruptcy case need not meet the diversity requirement."). Debtor argues this is a core proceeding under 28 U.S.C. § 157(b)(2)(I), but her assertion is patently incorrect in light of the fact that dischargeability of a debt owed by Debtor is not a question implicated by her complaint. (Doc. 23 at 5).

Having determined this is a noncore proceeding, the Court concludes the analysis strongly favors abstention. In the end analysis, the complaint contains purely state-law causes of actions brought against an entity who is not involved in the main bankruptcy case in any way. The only relation of these claims to the main case is that a potential recovery (if any) would be a prepetition asset that would go to pay Debtor's creditors in the Chapter 7 case. The Court discerns no reason these claims ought to be heard in federal court. Deference to the important interests of comity and respect for state law instruct that this Court should abstain from deciding the claims brought by Debtor. See In re Rodriguez, 633 Fed. App'x. 524, 527 (11th Cir. 2015); In re Annicott Excellence, LLC, 264 B.R. 756, 759 (Bankr. M.D. Fla. 2001); Brown v. JP Morgan Chase Bank, N.A., 526 B.R. 882, 885-86 (M.D. Fla. 2013); In re Blackman, 2017 WL 6033418 (Bankr. N.D. Ga. Dec. 5, 2017); In re Diplomat Const., Inc., 512 B.R. 721, 725 (Bankr. N.D. Ga. 2014).

Accordingly, it is ORDERED that the Court hereby ABSTAINS as to all counts in the complaint. This is a final order for purposes of this proceeding. The Clerk's Office is directed to close this adversary proceeding.