

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:18-bk-06721-FMD
Chapter 11

Periwinkle Partners, LLC,

Debtor.

**ORDER ABSTAINING FROM CHARLES
PHOENIX'S AMENDED MOTION
TO ENFORCE SETTLEMENT AGREEMENT
WITH REGIONS BANK**

THIS CASE came before the Court without a hearing to consider *Interested Party Charles Phoenix's Amended Motion to Enforce a Settlement Agreement with Regions Bank* (the "Enforcement Motion"),¹ and Regions Bank's objection to the Enforcement Motion.² For the following reasons, the Court will abstain from the Enforcement Motion.

Facts

On August 13, 2018, Periwinkle Partners, LLC ("Debtor") filed a Chapter 11 petition. Debtor's primary asset was a commercial building in Sanibel, Florida (the "Property"). Debtor's primary creditor was Regions Bank ("Regions"), which held a mortgage on the Property (the "Regions Mortgage").

On December 10, 2019, after conducting a trial on confirmation of Debtor's amended plan of reorganization, the Court entered an *Omnibus Order Denying Confirmation, Dismissing Reorganization, and Granting Other Relief* (the "Dismissal Order").³ In the Dismissal Order, the Court dismissed the Chapter 11 case and retained jurisdiction (1) to enforce Debtor's obligation to file operating reports and pay quarterly fees to the

United States Trustee (the "UST"), (2) to rule on fee applications filed by Debtor's professionals, and (3) "for any other appropriate purpose."⁴

Debtor filed a motion for reconsideration of the Dismissal Order.⁵ On January 6, 2020, the Court entered an *Order Denying Debtor and Interested Parties' Joint Motion for Reconsideration of the Dismissal Order* (the "Reconsideration Order").⁶ No party in interest filed an appeal of the Dismissal Order or the Reconsideration Order, and the Dismissal Order is a final order of the Court. The dismissal of Debtor's case permitted Regions to proceed with its foreclosure sale of the Property. Apparently, Regions acquired title to the Property at the foreclosure sale and, on March 30, 2020, sold the Property to a third party.⁷

In accordance with the Dismissal Order, Debtor's attorney, Robert Bassel ("Mr. Bassel"), timely filed a final fee application (the "Fee Application").⁸ Regions filed an objection to the Fee Application (the "Objection") on the grounds that the funds in Debtor's debtor-in-possession bank account (the "DIP Account"), that would be used to pay Mr. Bassel's fees, were Regions' cash collateral, i.e., additional collateral under the Regions Mortgage.⁹

The Court conducted hearings on the Fee Application and the Objection on April 13, 2020, and May 18, 2020. At the May 18, 2020 hearing, the Court approved the Fee Application to the extent of the amount of compensation requested by Mr. Bassel and directed the parties to mediate the issue of whether funds in the DIP Account could be used to pay Mr. Bassel's fees.¹⁰

Mr. Bassel and Regions thereafter resolved their dispute, and, on July 1, 2020, the Court entered an *Agreed Order on Consideration of Fee Application and Objection*.¹¹ Under their agreement, Debtor is to pay the quarterly fees due the UST and then disburse the remaining balance in the DIP account fifty percent to Mr. Bassel and fifty percent to Regions.

¹ Doc. No. 434.

² Doc. No. 436.

³ Doc. No. 407.

⁴ Doc. No. 407, pp. 3-4.

⁵ Doc. No. 408.

⁶ Doc. No. 413.

⁷ Doc. No. 434, p. 6.

⁸ Doc. No. 414. On January 14, 2020, Mr. Bassel filed a Corrective Fee Application (Doc. No. 415).

⁹ Doc. No. 416.

¹⁰ Doc. Nos. 428, 429 (Transcript of May 18, 2020 hearing, p. 12), 432.

¹¹ Doc. No. 437.

Meanwhile, on June 23, 2020, over five months after the Dismissal Order became a final order, Debtor's manager, Charles Phoenix ("Mr. Phoenix"), filed the Enforcement Motion as an "interested party." In the Enforcement Motion, Mr. Phoenix asserts that he, Debtor, Lisa Phoenix, Rhodes Tucker, NPLP, LLC, The AT Company, Legal Outsource PA, and Regions, although not having executed a written settlement agreement, "had an agreement under Florida law at three (3) different points in time: 2/21/2020, 3/25/2020, and 4/12/2020" (the "Alleged Agreement"). Lisa Phoenix is Mr. Phoenix's wife. Mr. Phoenix is an attorney. Rhodes Tucker is Mr. Phoenix's law firm and had been a tenant in the Property.

Mr. Phoenix contends that the Alleged Agreement provided for (1) payment of Mr. Bassel's fees, (2) documentation of a debt owed by Mr. Phoenix and Lisa Phoenix to Regions, (3) the transfer of artwork from Mr. Phoenix and Lisa Phoenix to Regions, and (4) Regions' regaining possession of the office in the Property that had been occupied by Rhodes Tucker.¹² Mr. Phoenix asks the Court to compel Regions to comply with the Alleged Agreement.

Analysis

Under 28 U.S.C. § 1334(b), a bankruptcy court's jurisdiction is limited to (1) matters arising under title 11, (2) matters arising in a case under title 11, and (3) matters related to a case under title 11.¹³ Generally, the dismissal of a bankruptcy case terminates a bankruptcy court's jurisdiction over all issues other than administrative matters necessary to wind up the case, such as approval of a trustee's final report or approval of pre-dismissal fees incurred by the estate.¹⁴ Under certain circumstances, a bankruptcy court may also exercise post-dismissal jurisdiction to effectuate its orders and vindicate its authority.¹⁵

Here, the administrative matters over which the Court retained jurisdiction in the Dismissal Order (the fees owed to Mr. Bassel and the UST) have

been concluded. The Enforcement Motion does not ask the Court to enforce any order entered by the Court during the bankruptcy case. Rather, Mr. Phoenix seeks to enforce an alleged settlement agreement that, first, was entered into more than two months after the Chapter 11 case was dismissed, and, second, affects the post-dismissal business relationship among Mr. Phoenix, Lisa Phoenix, Rhodes Tucker, and Regions, all of whom are non-debtors. In other words, the agreement that Mr. Phoenix asks the Court to enforce does not arise under title 11, does not arise in a case under title 11, and is not related to a case under title 11.

As in the case of *In re Hargon*, Debtor has no pending case under title 11, Mr. Phoenix's claims arise under non-bankruptcy law and may be resolved in a non-bankruptcy forum, and to the extent that any of his claims are valid, "they have no bearing on the administration of the bankruptcy estate because no bankruptcy estate exists to administer."¹⁶

For these reasons, the Court lacks jurisdiction to consider the Enforcement Motion under 28 U.S.C. § 1334(b).

Accordingly, it is

ORDERED that the Court **ABSTAINS** from *Interested Party Charles Phoenix's Amended Motion to Enforce a Settlement Agreement with Regions Bank*.

DATED: July 6, 2020.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge

¹² Doc. No. 434, pp. 8-9.

¹³ 28 U.S.C. § 1334(b); *In re Flyboy Aviation Properties, LLC*, 525 B.R. 510, 516 (Bankr. N.D. Ga. 2015).

¹⁴ *In re Central Processing Services, LLC*, 607 B.R. 625, 631-32 (Bankr. E.D. Michigan 2019); *In re Hargon*, 581 B.R. 911, 911-12 (Bankr. N.D. Ga. 2018).

¹⁵ *In re Ransom*, 599 B.R. 791, 801 (Bankr. W.D. Penn. 2019).

¹⁶ *In re Hargon*, 581 B.R. at 912.