

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE:

ALBERT CARL MAIER,

CASE NO.: 3:12-bk-283-JAF
Chapter 7

Debtor.

**ORDER SUSTAINING DEBTOR'S OBJECTION TO CHAPTER 7 TRUSTEE'S NOTICE
OF INTENT TO COMPROMISE CLAIMS**

This case is before the Court on the Debtor's Objection (Doc. 98, the "Objection") to the Chapter 7 Trustee's Notice of Intent to Compromise Claims (Doc. 82, the "Motion to Approve Settlement"). On December 5, 2012, the Court held a hearing on the Objection (Doc. 111, "Minutes"). At the conclusion of the hearing, the Court took the matter under advisement and directed the parties to file briefs in support of their respective positions. Such briefs having been filed (Docs. 113, 115, 116), the matter is now ripe for the Court's determination. The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A). For the reasons set forth herein, the Debtor's Objection is sustained.

I. Factual Background

On January 19, 2012, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code¹ in the above-styled case (Doc. 1). Subsequently, on July 25, 2012, the Debtor filed a Notice of Conversion from Chapter 13 to Chapter 7 (Doc. 66). The following day, July 26, 2012, Gregory Atwater was appointed as the Chapter 7 Trustee (the "Trustee") (Doc. 67).

¹ Unless otherwise indicated, all references to the "Bankruptcy Code" or "Code" are to 11 U.S.C. § 101 *et seq.*, and all references to a "Bankruptcy Rule" or "Rule" are to the Federal Rules of Bankruptcy Procedure.

Prior to filing the petition, Steele Matheny (“Matheny”) brought a mortgage foreclosure action against the Debtor in the Commonwealth of the Bahamas (the “Bahamian Case”). On November 30, 1993, the Bahamian Court issued an opinion finding against the Debtor and permitting Matheny to foreclose his mortgage. The Bahamian Court reserved jurisdiction to tax costs. The Debtor appealed the decision of the Bahamian Court. The decision was affirmed, and on February 7, 2005 the Bahamian Court awarded costs to Matheny in the amount of \$290,017.53 (the “Certificate of Taxation”).

On March 2, 2006, Matheny recorded the Certificate of Taxation as a foreign judgment in Alachua County, Florida (*see* Doc. 115 at 2). On April 6, 2006, the Debtor recorded an objection to the Certificate of Taxation in Alachua County, Florida (the “Domestication Objection”). The Debtor’s bases for the Domestication Objection are, *inter alia*, the state’s purported lack of jurisdiction over him and Matheny’s purported failure to provide adequate notice of the request to seek taxation of costs in the Bahamian Court (Doc. 82 at 3). On June 18, 2008, Matheny filed a state court action in the Circuit Court, Eighth Judicial Circuit, Alachua County, Florida (Case No. 01 2008 CA 003235 (the “State Court Case”)) seeking to domesticate the Certificate of Taxation in accordance with Florida’s Foreign Money-Judgment Recognition Act. *See* Fla. Stat. §§ 55.601 – 55.607. The Debtor opposes the domestication of the Certificate of Taxation in the State Court Case (*see* Doc. 116 at 18).

On February 14, 2012, in relation to the Certificate of Taxation, Matheny filed a claim in the Chapter 13 case in the amount of \$490,612.97 (the “Claim”). On March 11, 2012, the Debtor objected to the Claim (the “Objection to Claim”) as being, *inter alia*, time-barred (Doc. 15 at 1). Based on the Debtor’s conversion of the case to one under Chapter 7 of the Code, the Trustee succeeded to the interests of the Debtor. In accordance therewith, on October 5, 2012, the Trustee filed the Motion to Approve Settlement (Doc. 82) between the estate and Matheny. The Motion to Approve Settlement provides in pertinent part: (1) upon payment by Matheny of \$2,500.00 to the estate, the Trustee will

consent to the Court entering an order denying the Objection to Claim as moot; (2) withdraw the Domestication Objection; and (3) consent, in the State Court Case, to the Certificate of Taxation being domesticated as a Florida judgment (Doc. 82 at 4).

On October 25, 2012, the Debtor filed the Objection (Doc. 98) to the Motion to Approve Settlement. On October 29, 2012, Matheny commenced an adversary proceeding (Case No.: 3:12-ap-688-JAF) objecting to the discharge of the Debtor.

II. Analysis

In the Objection and brief in support thereof (Docs. 98, 115), the Debtor asserts the Trustee lacks authority to waive his defense(s) in the State Court Case over his objection. For their part, both the Trustee and Matheny maintain the Debtor does not have standing to object to the proposed settlement because the Trustee has succeeded to all of the interests of the Debtor, including any defense(s) he may have in the State Court Case. The Court, however, finds the Trustee may not wave the Debtor's defense(s) in the State Court Case over his objection.

More particularly, section 558 of the Code provides, in pertinent part: "The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate.... A waiver of any such defense by the debtor after the commencement of the case does not bind the estate." 11 U.S.C. § 558. This provision simply enables a trustee to use defenses that are available to the debtor. It does not, however, deny the debtor the use of any such defense(s). Pursuant to section 558, "the trustee is entitled to use the defense to its fullest extent without preventing the debtor from raising the same. The trustee's right under § 558 to assert the debtor's defenses differs from the exclusive right to assert the debtor's causes of action." *In re Larkin*, 468 B.R. 431, 435-36 (Bankr. S.D. Fla. 2012) (internal quotations and citations omitted); *see also In re Nasr*, 120 B.R. 855, 858 (Bankr. S.D. Tex. 1990). A cause of action is an asset of the estate, whereas a defense may prevent a claim against the estate. "If

a defense can be raised by both the trustee and the debtor, the possibility of recovery from the estate is minimized.” 3 *Collier on Bankruptcy* ¶ 558.01[1][a] (4th Ed. 2012).

The primary case relied upon by the Trustee and Matheny in support of their respective positions in this regard is this Court’s unpublished decision in *In re Ballou*, Case No. 3:10-bk-2735-PMG, 2011 WL 4530314 (Bankr. M.D. Fla. 2011). In that case, the Chapter 7 trustee proposed a compromise with a creditor of the debtor to resolve a foreclosure action involving the debtor’s non-exempt residential property. The compromise additionally proposed to settle a pre-petition counterclaim filed by the debtor in the foreclosure action. The counterclaim was described only as a “violation of Federal and Florida law” and was scheduled as having an “unknown” value. *Id.* at *5. The debtor filed an objection to the proposed compromise.

In the objection, the debtor asserted he was willing to pay more to the estate than the Chapter 7 trustee would receive pursuant to the proposed settlement. *Id.* at *2. The Court, however, found the debtor lacked standing to object to the terms of the proposed settlement. In this regard, the Court stated the following:

[A] Chapter 7 debtor generally lacks standing to object to the trustee’s compromise involving property of the estate. Since title to property of the estate no longer resides in the Chapter 7 debtor, the debtor typically lacks any pecuniary interest in the Chapter 7 trustee’s disposition of that property. Unless the estate’s assets will generate a surplus, the debtor’s interests are not affected by the compromise.

Id. at *5 (internal quotations and citations omitted).

The Court’s reasoning in this regard, *supra*, applied to the disposition of estate property (which included the debtor’s interest in the counterclaim asserted in the foreclosure action). *In re Ballou* did not involve a proposed compromise that would waive the debtor’s defense(s) in a state court action over the debtor’s objection. The policy behind permitting the debtor to assert his or her defense(s) to an action is exemplified in this instance. Specifically, if Matheny were to prevail in the adversary

proceeding objecting to the Debtor's discharge, the Debtor would be liable on the judgment consented to by the Trustee, after having effectively been stripped of his defenses in the State Court Case. Here, the Trustee may waive the Debtor's defenses on behalf of the estate, but he may not limit the Debtor's right to avail himself of any defense(s) he may have in the State Court Case. *See In re Larkin*, 468 B.R. at 436.²

III Conclusion

Based on the foregoing, it is **ORDERED**:

1. The Debtor's Objection (Doc. 98) to the Chapter 7 Trustee's Notice of Intent to Compromise Claims is sustained.
2. The Chapter 7 Trustee's Motion to Approve Settlement (Doc. 82) is denied.

DATED this 14th day of December, 2012 in Jacksonville, Florida.

/s/ Jerry A. Funk
Jerry A. Funk
United States Bankruptcy Judge

Copies to:

Wendell Finner, counsel for the Debtor;
Jacob A. Brown, counsel for the Chapter 7 Trustee;
Lance P. Cohen, counsel for Steele Matheny

² In some instances, a debtor's defense seeks monetary relief and, thus, is more akin to a counterclaim. In such instances, the defenses that are equivalent to counterclaims may be settled or waived by the trustee. *Id.* Here, however, the Debtor's defenses in the State Court Case do not seek monetary relief. Such defenses are being asserted by the Debtor for the sole purpose of attempting to prevent the domestication of the Certificate of Taxation as a Florida judgment.