

**Dated: April 19, 2007**  
**The following is ORDERED:**



*Jennie D. Latta*

**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re

AL HERBERT THOMAS,  
  
Debtor.

Case No. 07-20561-L  
Chapter 11

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Al Herbert Thomas,  
Plaintiff,  
v.  
Regina Guy, Shelby County Circuit Court Clerk,  
and Shelby County Clerk and Master,  
Defendants.

Adv. Proc. No. 07-00066

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Al Herbert Thomas,  
Plaintiff,  
v.  
Regina Guy,  
Defendant.

Adv. Proc. No. 07-00076

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Al Herbert Thomas,  
Plaintiff,  
v.  
Shirley Harris,  
Defendant.

Adv. Proc. No. 07-00077

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Al Herbert Thomas,  
Plaintiff,  
v.  
John Morris,  
Defendant.

Adv. Proc. No. 07-00078

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**MEMORANDUM OPINION**

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BEFORE THE COURT are motions for relief from the automatic stay and to remand, which are essentially concerned with the Debtor's, and thus the estate's, right to attorney fees, and the claim of Regina Guy, a former associate of the Debtor, to a share of those fees. For the reasons set forth below, the motions of SpenceWalk, PLLC, and Regina Guy will be granted.

**FACTS**

The Debtor, Al Herbert Thomas, is an attorney. Regina Guy ("Guy"), also an attorney, was employed by him as an associate until she left his employ and accepted a position with SpenceWalk, PLLC.<sup>1</sup> The Debtor filed an individual chapter 11 bankruptcy petition on January 17, 2007. Shortly thereafter, he caused four pending cases involving disputes with SpenceWalk and Guy to be removed from various state courts to the federal district court and referred to this bankruptcy court. These cases are (1) *Guy v. Thomas*, Shelby County Chancery CH-05-0906-1, Adversary Proceeding No. 07-00076; (2) *Thomas v. Harris*, Shelby County Chancery CH-06-0823, Adversary Proceeding No. 07-00077; (3) *Herrington v. Morris*, Shelby County Circuit CT-002522-03, Adversary Proceeding No. 07-00078; and (4) *Banzant v. Baptist Memorial Hospital, et al*, Shelby County Circuit CT-001680-02, Adversary Proceeding No. 07-00078. In addition, the Debtor filed a complaint against Guy and the clerks for the Circuit and Chancery courts of Shelby County, Tennessee, seeking the turnover of funds held by those clerks, *Thomas v. Guy, et al.*, Adversary

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<sup>1</sup> It appears from some of the papers filed in connection with these motions and from the Statement of Financial Affairs that the Debtor practiced law under the name "Al Thomas and Associates." Nowhere is it indicated that this was a separate legal entity or that Guy was employed by any person other than the Debtor.

Proceeding No. 07-00066. SpenceWalk and Guy responded by filing a motion to hold the turnover complaint in abeyance pending determination of the Debtor's property rights. SpenceWalk and Guy also filed motions for relief from the automatic stay and/or remand in four cases: (1) *Guy v. Thomas*, Shelby County Chancery CH-05-0906-1; (2) *Herrington v. Morris*, Shelby County Circuit Court CT-002522-03; (3) *Banzant v. Baptist Hospital*, CT-001680-02; and (4) *Harris v. Healthsouth Rehabilitation Hospital*, Shelby County Circuit Court CT-001413-04.<sup>2</sup> The Debtor opposes the motions and asserts that the bankruptcy court is the appropriate forum to settle the disputes between the parties. This court conducted hearings on March 19 and April 2, 2007, at the close of which the court announced its decision in broad outline, but agreed to provide the parties a written memorandum of its decision. The court has now had an opportunity to give further consideration to the positions of the parties, and as a result, modifies its oral ruling as set forth herein.

### ANALYSIS

According to the United States Supreme Court, “[t]he jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute. Title 28 U.S.C. § 1334(b) provides that ‘the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.’” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S. Ct. 1493, 1498 (1995). The district courts are authorized to refer all such proceedings to the bankruptcy judges for the district under section 157(a) of Title 28 of the United States Code. *Id.* “Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, . . . , and may enter appropriate orders and judgments, subject to review under section 158 of . . . title [28].” 28 U.S.C. § 157(b)(1). A bankruptcy judge may also hear a proceeding that is not a core proceeding but is

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<sup>2</sup> This circuit court medical malpractice case, *Harris v. Healthsouth*, was not removed to this court although a copy of the Debtor's Notice of Attorney's Lien filed therein was filed in adversary proceeding number 07-00077 to which the chancery court suit, *Thomas v. Harris*, was removed. It is pursuant to a third party complaint filed in *Thomas v. Harris*, that the Debtor seeks to litigate his claim to fees from the *Harris v. Healthsouth* case.

otherwise related to a case under title 11 and, with the consent of the parties to the proceeding, determine and enter appropriate orders subject to review of the district court under section 158. Bankruptcy judges are charged with determining whether a proceeding is a core proceeding or otherwise related to a case under title 11 on their own motion or that of a party. A determination that a proceeding is not core is not to be made solely on the basis that its resolution may be affected by state law. 28 U.S.C. § 157(b)(3).

As set forth above, “core proceedings” are those proceedings that arise under title 11 or in a case under title 11. 28 U.S.C. § 157(b)(1). A nonexclusive list of sixteen core proceedings is provided at section 157(b)(2) of title 28, which includes, “(A) matters concerning administration of the estate”; and “(B) allowance or disallowance of claims against the estate . . . .” In essence, “[c]ore proceedings are actions by or against the debtor that arise under the [Bankruptcy] Code in the strong sense that the Code itself is the source of the claimant’s right or remedy, rather than just the procedural vehicle for the assertion of a right conferred by some other body of law, normally state law.” *Matter of U. S. Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997). *See also Mich. Emp. Sec. Comm.v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co., Inc.)*, 930 F.2d 1132, 1137 (6th Cir. 1991). An example is a preference action.

Section 1334(e) of title 28 also gives the bankruptcy courts jurisdiction over all of the property of the debtor wherever located as of the commencement of the case and of property of the estate. As explained by Judge Posner,

Enacted in 1984 (but based on a provision of the Bankruptcy Code of 1978, Pub. L. No. 95-598, § 241(a), 92 Stat. 2549, 2669), section 1334[e] was intended to eliminate jurisdictional disputes arising from the equity principle that makes *in rem* jurisdiction over an item of property exclusive in the first court to assert such jurisdiction over it. A creditor might file a lien against property of the debtor in a court in State *A*, and shortly afterward the debtor might declare bankruptcy in State *B*. Control over the debtor's property would be shared by the court in *A* and the bankruptcy court in *B*-it might even be the same piece of property, and more than two states might be involved. Section 1334[e] gives the bankruptcy court control of all the property. Creditors who want to enforce their liens have to do so in that court regardless of the location of the creditor or the property. This is the entire meaning of the statute.

*Matter of U. S. Brass Corp.*, 110 F.3d at 1268 (citations omitted). In an appropriate case, the bankruptcy court may modify or terminate the stay to permit the state court to determine the extent of the Debtor's rights in and to property. *Blachy v. Butcher*, 221 F.3d 896 (6th Cir. 2000); *In re White*, 851 F.2d 170, 172-73 (6th Cir. 1988).. The nature and extent of a debtor's property rights are defined by state law. *Butner v. U.S.*, 440 U.S. 48, 99 S. Ct. 914 (1979). Once defined, however, the debtor's property is property of the bankruptcy estate. It, and any claims against it, are subject to the jurisdiction of the bankruptcy court.

Congress has not defined proceedings that are "related to" cases under chapter 11. *Celotex Corp.*, 504 U.S. at 307. The *Celotex* court, agreeing with the Third Circuit Court of Appeals, opined that Congress intended the "related to" language to give the bankruptcy courts comprehensive jurisdiction so that "they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate," but cautioned that the "'related to' jurisdiction cannot be limitless." *Id.*, citing, *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). As such, "bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Id.* at 308, n. 6.

The Sixth Circuit Court of Appeals has adopted the following test for determining the existence of "related to" jurisdiction, first espoused by the *Pacor* court:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy 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.

*Robinson v. Mich. Cons. Gas Co., Inc.*, 918 F.2d 579, 583 (6th Cir. 1990); quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). The Sixth Circuit adds the caveat that an extremely tenuous connection to the bankruptcy estate will not satisfy the jurisdictional requirement. *Id.*, at 584. In evaluating whether a matter is core or non-core for abstention purposes, each cause of action must be separately scrutinized. *In re Premier Hotel Dev. Group*, 270 B.R. 243, 251 (Bankr. E.D. Tenn. 2001).

This court distinguishes the claims of Thomas and SpenceWalk against their clients for fees from the claim of Guy against Thomas for compensation. The clerks of the Circuit and Chancery courts are holding funds pursuant to orders of those courts that resulted from the settlement of claims belonging to former clients of the Debtor. These funds are not property of the bankruptcy estate, but instead are property of the successful plaintiffs in the underlying medical malpractice cases, subject to the liens for attorney fees asserted against them. Both SpenceWalk and the Debtor have claims against those plaintiffs, but SpenceWalk does not assert a claim against the Debtor. The disputes about the Debtor's entitlement to share in the funds set aside for payment of attorney fees are not core proceedings. These disputes preceded the filing of the bankruptcy case and will be decided pursuant to state law. While the recovery of these funds may indeed be necessary to the Debtor's reorganization effort, the mere filing of a bankruptcy petition does not cause these disputes, which did not arise under the Bankruptcy Code or arise in a bankruptcy case, to become core proceedings. The Debtor has an unliquidated claim against those funds. The Debtor's claim is property of the bankruptcy estate, but the underlying fund is not until the Debtor's portion is identified. *See* 11 U.S.C. § 541(a)(1); *Butner v. U.S.*, *supra*. For this reason, the Debtor's complaint for turnover should be denied until such time as a court of competent jurisdiction determines the value of the Debtor's claim. *See* 11 U.S.C. § 542.

The jurisdiction of the bankruptcy court over the attempts of the Debtor to enforce his attorney liens is "related to" jurisdiction. As such, the court must abstain from hearing them where, as here, a timely motion is made, there is no federal jurisdiction absent the filing of the bankruptcy case, an action was commenced in another forum of competent jurisdiction, and the dispute can be timely adjudicated. *See* 28 U.S.C. § 1334(c); *In re Dow Corning Corp.*, 86 F.3d 482, 497 (6th Cir. 1996). The Debtor has indicated, through his attorneys, the need to have a prompt adjudication of these disputes and that they are ready for trial. As a result, cause exists to terminate the automatic stay and/or remand these disputes to the state courts for prompt adjudication. *See* 11 U.S.C. §§ 362(d)(1) and 28 U.S.C. 1452(b).

The claim of Guy against the Debtor is a somewhat different matter. The basis for Guy's claim against the Debtor is the arrangement between the two concerning Guy's compensation. The court was told by counsel for Guy that her claims in every case are derivative of the claims of SpenceWalk or the Debtor against their clients. That is, Guy does not assert any direct right to be compensated by the clients, but only the right to be compensated by her employer. The court heard testimony to the effect that under her arrangement with the Debtor, Guy was compensated by an annual salary and, in addition, was entitled to receive a percentage of fees recovered in cases that were originated by her. Without more, Guy is a creditor holding a claim against the Debtor that arose before the filing of his bankruptcy petition. *See* 11 U.S.C. §§ 101(5) and (10). As such, she has all the rights of a creditor including the right to file a proof of claim and obtain a share in any distribution from the bankruptcy estate. Proceedings concerning the allowance or disallowance of claims against the estate are among the specifically enumerated core proceedings. *See* 11 U.S.C. § 157(b)(2)(B).

Guy has not filed a proof of claim, however. Additionally, it is her asserted right of compensation with respect to the medical malpractice actions specified above that the Debtor disputes and that Guy seeks to enforce in the chancery court case, *Guy v. Thomas*, removed to this court as adversary proceeding number 07-00076. In order to enforce her asserted right, Guy seeks a declaratory judgment of the parties' compensation agreement, an accounting of the correct amounts due her, a determination that the Debtor has breached the agreement, and damages therefor. All of these are pre-petition state law causes of action over which the bankruptcy court may not exercise core jurisdiction absent the filing of a proof of claim by the claimant. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 84, 102 S. Ct. 2858 (1982); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1102 (2d Cir. 1993); *Matter of U.S. Brass*, *supra*; *In re Best Reception Systems, Inc.*, 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998). Rather, the jurisdiction of the bankruptcy court over the attempts of Guy to obtain a judicial determination of the validity and measure of her asserted right to compensation, in its present posture, is "related to" jurisdiction.

As such, the court must abstain from hearing them where, as here, a timely motion is made, there is no federal jurisdiction absent the filing of the bankruptcy case, an action was commenced in another forum of competent jurisdiction, and the dispute can be timely adjudicated. *See* 28 U.S.C. § 1334(c); *In re Dow Corning Corp.*, 86 F. 3d 482, 497 (6th Cir. 1996). Relief from the stay and remand may be granted in order to permit the state court to determine the extent and value of Guy's claim against the Debtor for compensation. Any enforcement of Guy's or any other claim must be pursued in this court, however, as the bankruptcy court has jurisdiction over all the property of the bankruptcy estate. *See* 28 U.S.C. § 1334(e); *Matter of U.S. Brass, supra*.

In fact, if Guy is to receive payment on account of her claim from the bankruptcy estate, she must timely file a proof of claim. *See* 11 U.S.C. § 1111(a); Fed. R. Bankr. Proc. 3003(c)(2). Her claim appears to be a pre-petition, unsecured claim, but until a proof of claim is actually filed, this court cannot determine whether any portion of Guy's claim is entitled to treatment as a secured or priority claim. The deadline to file proofs of claim in this case is May 23, 2007. If Guy files a proof of claim and the Debtor does not agree with it, he may file an objection. In that event, the question of the allowance of Guy's claim will be a core proceeding, but any factual findings by another court will be entitled to preclusive effect. How allowed claims are to be paid will be the subject of the Debtor's plan of reorganization.

Finally, according to Guy's motion for relief from the automatic stay, the portion of the chancery court case regarding fees already received by the Debtor from the settlement of *Kirk v. UTMG, et al*, was decided by summary judgment on November 7, 2006. Pursuant to the summary judgment, the chancery court awarded Guy the approximate amount of \$230,000 plus interest at ten percent per year from the judgment date. The judgment was certified as a partial final judgment and the Debtor appealed it to the Tennessee Court of Appeals. Since commencement of his bankruptcy case, the Debtor consented to modification of the automatic stay to allow the appeal to proceed in the Tennessee Court of Appeals and an order granting that relief has been entered.

## CONCLUSION

Based upon the foregoing, the court will enter orders in the bankruptcy case and various adversary proceedings as follows:

1. In the bankruptcy case, **GRANTING** the motion of SpenceWalk, PLLC, for relief from the automatic stay in cases styled *Herrington v. Morris*, *Banzant v. Baptist Hospital*, *Harris v. Healthsouth Rehabilitation Hospital*, and *Guy v. Thomas*, and for remand of Adversary Proceedings numbered 07-00076, 07-00077 and 07-00078 to the state courts from which the cases were removed according to the Notices of Removal filed with this court.
2. In the bankruptcy case, **GRANTING** the motion of Regina Guy for relief from the automatic stay and for remand of Adversary Proceeding No. 07-00076 to permit the liquidation of her claim against Thomas, but not the collection of it.
3. In Adversary Proceeding No. 07-00066, **HOLDING IN ABEYANCE** the complaint for turnover, without prejudice, pending a determination of the portion of funds held by the Shelby County Circuit Court Clerk and Shelby County Clerk and Master owed to the Debtor.
4. In Adversary Proceeding No. 07-00076, **REMANDING** the case *Guy v. Thomas*, CH-05-0906-1, to the Chancery Court, Division I, for determination of the value of Guy's claim.
5. In Adversary Proceeding No. 07-00077, **REMANDING** the case *Thomas v. Harris, et al*, CH-06-0823-2, to the Chancery Court, Division II, for determination of the rights of the Debtor and SpenceWalk to funds set aside for payment of attorney fees.
6. In Adversary Proceeding No. 07-00078, **REMANDING** the cases *Herrington v. Morris, et al*, CT-002522-03, to the Circuit Court, Division VII, and *Banzant v. Baptist Memorial Hospital, et al*, CT-001680-02, to the Circuit Court, Division VI,

for determination of the rights of the Debtor and SpenceWalk to funds set aside for payment of attorney fees.

cc: Debtor/Plaintiff  
Attorney for Debtor/Plaintiff  
Defendants  
Attorney(s) for Defendants  
Matrix