Dated: September 23, 2016
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
EARL BERNARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Debtors.

Case No. 08-28289-L
Chapter 7 (asset)

Church Joint Venture, L.P., on behalf of
Edward L. Montedonico, Chapter 7 Trustee,
Plaintiff,
vs.
Earl Benard Blasingame,
Margaret Gooch Blasingame,
Blasingame Family Development Generation Skipping Trust,
Blasingame Family Residence Generation Skipping Trust,
Blasingame Family Business Investment Trust,
Katherine Blasingame Church, and
Earl Benard Blasingame, Jr.,
Defendants.

Adv. Proc. No. 15-00021

ORDER DENYING DEFENDANTS'
JOINT MOTION TO ENFORCE SETTLEMENT AGREEMENT

DEFENDANTS' JOINT MOTION TO ENFORCE SETTLEMENT AGREEMENT and Direct Trustee to File a Motion to Approve the APA and Settlement Agreement, or, in the

Alternative to Revoke Plaintiff's Derivative Standing (the "Joint Motion"), filed August 2, 2016, came on for hearing on September 14, 2016. The Motion asks for the following relief: (1) the entry of an order enforcing the APA and Settlement Agreement (described below) against the Trustee and Plaintiff; (2) the entry of an order directing the Trustee and Plaintiff to file a motion to approve the APA and Settlement Agreement; and (3) following the filing of the requested order by the Trustee, the entry of an order revoking the derivative standing of Plaintiff to pursue this adversary proceeding. Counsel for all of the parties were present at the hearing. In addition to a number of exhibits provided by the parties, including the affidavit of Daniel C. Cadle, the court heard testimony from Edward L. Montedonico, Paul G. Jennings, and Gene L. Humphreys. Based upon the court's review of the exhibits and the testimony, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Motion grows out of the chapter 7 bankruptcy case filed by Earl Benard Blasingame and Margaret Gooch Blasingame on August 15, 2008. Over the prior eight years, the court has conducted a number of hearings and issued a number of rulings in connection with that case.
2. Edward L. Montedonico (the "Trustee") was appointed trustee in bankruptcy on August 15, 2008.
3. Plaintiff Church Joint Venture, L.P. ("Church JV") holds the largest unsecured claim against the bankruptcy estate, and was granted derivative standing to represent the interests of the estate with respect to certain claims which ultimately became the subject of this adversary proceeding on September 16, 2015.
4. Church JV is represented by Bruce W. Akerly.

5. Daniel C. Cadle is the chairman of the Cadle Company which is the general partner of Church JV.
6. The Defendants are the Debtors, Benard and Margaret Blasingame; three trusts related to the Debtors; the Debtors' daughter, Katherine Blasingame Church; and the Debtors' son, Earl Benard Blasingame, Jr.[1]
7. All of the Defendants except Katherine Blasingame Church are represented by Michael P. Coury. Katherine Blasingame Church is represented by Paul G. Jennings and Gene L. Humphreys.
8. This adversary proceeding was commenced on January 22, 2015, with the filing of a Complaint for Declaratory Relief. Adv. Proc. Dkt. No. 1.
9. Following a motion to dismiss filed be the Defendants, the Plaintiff filed its First Amended Original Complaint on September 29, 2015. The First Amended Original Complaint seeks (1) a declaration that personal property in the possession, custody and/or use of the Debtors when their bankruptcy case was filed is property of the bankruptcy estate and subject to liquidation by the Trustee; (2) an accounting of all personal property that was in the possession, custody and/or use of the Debtors when the bankruptcy case was filed, its present location and/or disposition since the case was filed; and (3) a judgment for the value of personal property no longer in the possession or control of the Debtors.
10. Another adversary proceeding, number 15-00339, seeks a declaration concerning the status of real property occupied by the Debtors as their residence when the case was filed.

[1] Grace Henley, the sister of Margaret Gooch Blasingame, was originally named as a defendant but a Consent Order Dismissing Complaint as to Defendant Grace Henley with Prejudice [Adv. Proc. Dkt. No. 119] was entered July 1, 2016.

11. Another adversary proceeding, number 12-00454, alleges malpractice on the part of two attorneys who represented the Debtors when their bankruptcy case was filed.
12. Church JV was given authority to pursue these causes of action on behalf of the Trustee for the benefit of the estate.
13. The order which granted Church JV derivative standing to pursue claims regarding personal property expressly provides that, "Church JV will consult with the Trustee and/or his counsel with respect to material decisions involving actions taken on the Claims, including settlement and all such decisions and/or settlement require the Trustee's prior approval." Trustee's Exhibit 1.
14. The order which granted Church JV derivative standing further provides that, "Any settlement of the Action must be approved by the Court after notice and an opportunity for hearing." Trustee's Exhibit 1.
15. In June 2016, the parties unsuccessfully attempted a mediation of three adversary proceedings.
16. Following the unsuccessful mediation, the parties entered into additional negotiation which the Defendants maintain resulted in an oral agreement to settle this adversary proceeding.
17. On June 16, 2016, Mr. Jennings wrote an email to Mr. Akerly stating in part:

> We have reached an agreement to settle the personal property action in full for $150,000. There are some logistics (court approval, 363 sale order (not an auction)) that are part of the settlement that will require some work. Also, obviously the input of you and Mike Coury is necessary to getting this done. Presumably you will also have to deal with the trustee.

Plaintiff's Exhibit 4.

18. Mr. Akerly responded by saying, "Paul, thank you. I will confirm. In the meantime please advise of your understanding of the exact terms of the settlement so there is no misunderstanding." Plaintiff's Exhibit 4.
19. Mr. Jennings replied: "Not sure what else there is to confirm - $150k to fully settle the personal property case on behalf of all defendants. Structure will include a dismissal of that a.p. with prejudice and the assets subject of that a.p. will be transferred pursuant to a 363 Order." Plaintiff's Exhibit 4.
20. Mr. Jennings testified that he reached an oral agreement with Mr. Cadle on June 16, 2016, which had the following three terms: (1) settlement of the adversary proceeding upon the payment of $150,000; (2) dismissal of the adversary proceeding; and (3) structuring of the adversary proceeding as a section 363 sale.
21. Mr. Cadle denies that an agreement was reached. Plaintiff's Exhibit 7.
22. All parties agree that the Trustee was not involved in any discussions concerning the purported settlement until June 23.
23. The Defendants assert that the Trustee acquiesced in the settlement.
24. The Trustee denies that he agreed to settle this adversary proceeding. He testified that he believed he was part of a process that was intended to lead to a written settlement agreement that would be signed by all interested parties but that the negotiations were not successful, or at least, were not complete.
25. There is no written memorandum of the purported agreement.
26. Although a proposed Asset Purchase Agreement and Settlement Agreement and Release were drafted by Mr. Humphreys and commented on by Mr. Akerly and the Trustee, it was never signed by the parties. Defendants' Exhibits 5 and 10.

27. Mr. Cadle wrote a letter to Mr. Jennings and Mr. Coury on July 12, 2016, indicating that he did not believe that it was possible to settle this adversary proceeding without settling the other two adversary proceedings and related issues as well. Defendants' Exhibit 12.
28. The Defendants treat this letter as a breach of the oral agreement to settle this adversary proceeding.
29. Accordingly, the Defendants filed the Joint Motion on August 2, 2016.
30. Both Church JV and the Trustee objected to the Motion and assert that it should be denied.

CONCLUSIONS OF LAW

At the most fundamental level, the Joint Motion raises the question of whether an enforceable agreement was reached by and among the parties. The Defendants assert that an oral agreement was reached between them and Church JV on June 16 in the course of a conversation between Mr. Jennings and Mr. Cadle. They assert that the agreement had three terms: (1) settlement of the adversary proceeding upon the payment of $150,000; (2) dismissal of the adversary proceeding; and (3) structuring of the settlement as a section 363 sale. The Defendants acknowledge that the consent of the Trustee and the approval of the court were necessary to the formation of a binding agreement, but they assert that the Trustee joined in the agreement to settle on or after June 23, 2016, as the result of not voicing a material objection to the terms agreed to by Mr. Jennings and Mr. Cadle. The Defendants ask the Court to compel Church JV and the Trustee to sign the Asset Purchase Agreement and Settlement Agreement and Release and to compel the Trustee to file a motion seeking approval of that agreement. Church JV and the Trustee deny that a binding agreement was ever reached, as evidenced by additional terms that were negotiated and included in the July 8 draft of the Asset Purchase Agreement and Settlement Agreement and Release.

At the hearing, Mr. Akerly raised two preliminary matters. First, he urged the court to deny the Joint Motion because a motion to enforce the settlement of an adversary proceeding should be filed in the main bankruptcy case. Second, he asked the court to deny the Joint Motion because implicitly underlying the relief it seeks, enforcement of a settlement agreement, is a request that the court declare that a binding agreement was reached. This, he said, should have been raised in a separate adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(10), which specifies that a proceeding to obtain a declaratory judgment relating to any of the matters raised in the earlier subsections of Rule 7001 is an adversary proceeding governed by Part VII of the Rules of Bankruptcy Procedure.

The Court raised as a third preliminary matter whether it has subject-matter jurisdiction over the parties' dispute. Counsel for the Defendants not surprisingly argued that the Joint Motion is properly before the Court. Because the question of jurisdiction is foundational to any further action by this Court, that issue will be taken up first.

A. Subject-Matter Jurisdiction

Federal courts are courts of limited jurisdiction. They possess only those powers authorized by the Constitution and by statute. *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377, 114 S. Ct. 1673, 1675 (1994) (and cases cited therein). "A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance." *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S. Ct. 906, 915 (2004), citing *Mansfield v. Swan*, 111 U.S. 379, 382, 4 S. Ct. 510, 28 L. Ed. 229 (1884). Even if the parties remain silent, a federal court is obligated to determine on its own motion whether subject-matter jurisdiction is present. See *Klepsky v. United Parcel Service, Inc.*, 489 F.3d 264 (6th Cir. 2007). "The objection that a federal court lacks subject-matter jurisdiction …

may be raised by a party, or by a court on its own initiative at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506, 126 S. Ct. 1235, 1240 (2006).

Bankruptcy jurisdiction is provided to the district courts at 28 U.S.C. § 1334. That statute provides the district courts with original and exclusive jurisdiction of all bankruptcy cases, and original but not exclusive jurisdiction of all civil proceedings arising under title 11 of the United States Code, or arising in or related to cases under title 11. 28 U.S.C. § 1334(a) and (b). Civil proceedings "arise under" title 11 when a party "invokes a substantive right created by federal bankruptcy law." *Enron Corp. v. Citigroup, Inc. (In re Enron Corp.)*, 353 B.R. 51, 57 (Bankr. S.D. N.Y. 2006). The present dispute does not involve a substantive right created by federal bankruptcy law.

A civil proceeding "arises in" a case under title 11 when, "even though it is not based on a right expressly created by title 11, it would have no existence outside of bankruptcy." *Id.* The Join Motion raises a dispute over whether an adversary proceeding in bankruptcy was settled. The purported settlement occurred outside the courtroom and was not approved by the bankruptcy court. The dispute over the presence or absence of a settlement is a contract dispute which will be decided under principles of state law. The question of whether a binding agreement was reached by the parties could exist outside of bankruptcy. It did not arise in a bankruptcy case, but rather in a civil proceeding arising in or related to a bankruptcy case.

A civil proceeding "relates to" a case under chapter 11 when its resolution '"affects the amount of property available for distribution or the allocation of property among creditors.'" *Buchanan v. Berman, Robert & Kelly,* 131 B.R. 84, 88 (N.D. Ill. 1990), quoting *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir. 1989). "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*." *Michigan Emp. Security Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.),* 930 F.3d 1132, 1142 (6th Cir. 1991), quoting *In re Pacro, Inc.,* 743 F.2d 964, 994 (3rd Cir. 1984) (emphasis in original). Again, although arguably this adversary proceeding is related to a case under title 11, the dispute raised by the Joint Motion is related to that civil proceeding, not to the bankruptcy case itself.

Whether bankruptcy jurisdiction is present with respect to this adversary proceeding, and if so, what kind, has not been decided. The First Amended Original Complaint for declaratory relief in the present adversary proceeding alleges that "[t]his Court has jurisdiction over the relief requested in this action pursuant to 11 U.S.C. § 541(a) and 28 U.S.C. §§ 157(2)(A) and (O), 1334, and 2201." First Amended Original Complaint, Adv. Proc. Dkt. No. 44. The Debtors denied the presence of bankruptcy jurisdiction in their answer. See Answer of Defendants Earl Benard Blasingame and Margaret Gooch Blasingame to Amended Complaint, Adv. Proc. Dkt. No. 56. Defendant Katherine Blasingame Church did not directly address the presence of bankruptcy jurisdiction in her answer, but denied the constitutional authority of the bankruptcy court to adjudicate her property interests and demanded a jury trial, thus indicating a belief that "related to" bankruptcy jurisdiction is present. See Answer of Katherine Blasingame Church to Plaintiff's First Amended Complaint, Adv. Proc. Dkt. No. 75. The Trust Defendants and Defendant Earl Benard Blasingame, Jr. likewise failed to address the presence of bankruptcy jurisdiction, but denied the constitutional authority of the bankruptcy court to adjudicate their property interests and demanded a jury trial, thus also implicitly acknowledging that "related to" bankruptcy jurisdiction is present. See Answer of Defendants Blasingame Family Development Generation

Skipping Trust, Blasingame Family Residence Generation Skipping Trust, Blasingame Family Business Investment Trust, and Earl Benard Blasingame, Jr., Adv. Proc. Dkt. No. 76.

When bankruptcy jurisdiction is present with respect to a civil proceeding, the authority of bankruptcy judges to exercise that jurisdiction is more limited than the authority of the district courts. The authority of bankruptcy judges to hear and determine civil proceedings is limited to core bankruptcy proceedings arising under title 11 or arising in a case under title 11, which have been referred to them by the district court. 28 U.S.C. § 157(b)(1). A bankruptcy judge may hear a civil proceeding that is not a core bankruptcy proceeding but is otherwise related to a bankruptcy case, but cannot enter a final order with respect to that proceeding without the consent of the parties. 28 U.S.C. § 157(c)(1) and (2). *See generally Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594 (2011); *Wellness Int'l Network, Ltd. v. Sharif*, ___ U.S. ___, 135 S. Ct. 1932 (2015).

The Plaintiff filed a motion to strike the Defendants' jury demands on January 12, 2016, which necessarily raised questions concerning the presence of bankruptcy jurisdiction and the bankruptcy court's authority to consider the issues raised by the First Amended Original Complaint. See. Adv. Proc. Dkt. No. 88. That motion was held in abeyance when the parties were ordered to mediation. See Order Holding Motion to Strike Jury Demand in Abeyance Pending Mediation (Adv. Proc. Dkt. No. 108) and Order Directing Parties to Mediation. Adv. Proc. Dkt. No. 111. As a result, there has been no determination concerning the presence of bankruptcy jurisdiction over this civil proceeding or the authority of the bankruptcy court to finally decide the questions raised in the First Amended Original Complaint.

Moreover, the present Joint Motion raises questions that were not addressed in the complaint. It is concerned with events that occurred after that complaint was filed. Setting aside for the moment questions concerning this court's authority to enter a final judgment concerning

the matters which are the subject of the First Amended Original Complaint, the court considers whether, if bankruptcy jurisdiction is present with respect to the First Amended Original Complaint, the dispute over the settlement of the pending adversary proceeding, which raises questions of state contract law, may be adjudicated in federal court under the doctrine of ancillary jurisdiction. The Supreme Court limits ancillary jurisdiction to two purposes:

> (1) To permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; … and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.

Kokkonen, 511 U.S. at 380, 114 S. Ct. at 1676 (citations omitted). *Kokkonen* is factually similar to the present dispute. The question before the Court was whether the federal courts might exercise ancillary jurisdiction over a dispute concerning the enforcement of a settlement agreement. The facts in that case were succinctly described by Justice Scalia:

> After respondent Guardian Life Insurance Company terminated petitioners' general agency agreement, petitioner brought suit in California Superior Court alleging various state-law claims. Respondent removed the case to the United States District Court for the Eastern District of California on the basis of diversity jurisdiction and filed state-law counterclaims. After closing arguments but before the District Judge instructed the jury, the parties arrived at an oral agreement settling all claims and counterclaims, the substance of which they recited, on the record, before the District Judge in chambers. In April 1992, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), the parties executed a Stipulation and Order of Dismissal with Prejudice, dismissing the complaint and cross-complaint. On April 13, the District Judge signed the Stipulation and Order under the notation "It is so ordered." The Stipulation and Order did not reserve jurisdiction in the District Court to enforce the settlement agreement; indeed, it did not so much as refer to the settlement agreement.
>
> Thereafter the parties disagreed on petitioner's obligation to return certain files to respondent under the settlement agreement. On May 21, respondent moved the District Court to enforce the agreement, which petitioner opposed on the ground, *inter alia*, that the court lacked subject-matter jurisdiction. The District Court entered an enforcement order asserting that it had "inherent power" to do so. The United States Court of Appeals for the Ninth Circuit affirmed ….

Kokkonen, 511 U.S. 377, 114 S. Ct. 1674-75.

The Court made short shrift of the application of the first purpose of ancillary jurisdiction to the dispute concerning the settlement agreement. It said that the facts underlying the claim for breach of the agency agreement and those underlying the claim for breach of the settlement agreement had nothing to do with each other. With respect to the second purpose of ancillary jurisdiction, the Court concluded that determination of the dispute concerning the settlement agreement was not required for performance of the district court's functions. The only order entered by the district court was that the suit for breach of agency agreement be dismissed. That order did not include the terms of the settlement agreement or a direction to the parties to comply with the settlement agreement. In that event, the Court said, breach of the settlement agreement would be tantamount to breach of the district court's order and ancillary jurisdiction to enforce the court's order would exist. The Court summed up:

> The judge's mere awareness and approval of the terms of the settlement agreement do not suffice to make them part of his order.
>
> The short of the matter is this: The suit involves a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal-court jurisdiction over the contract dispute. The facts to be determined with regard to such alleged breaches of contract are quite separate from the facts to be determined in the principal suit, and automatic jurisdiction over such contracts is in no way essential to the conduct of federal-court business.

Kokkonen, 511 U.S. at 381, 114 S. Ct. at 1677.

The Joint Motion before this court is similar to the complaint to enforce the settlement agreement filed in *Kokkonen.* It asks that the court enforce an oral agreement (one that the Plaintiff and Trustee adamantly deny ever *was* an agreement) to settle the pending civil proceeding. It is a dispute concerning the formation of a contract which will be determined in an appropriate forum

under state law. Even if there were an agreement, the facts surrounding enforcement of that agreement and the facts raised by the First Amended Original Complaint are completely distinct. In addition, unlike *Kokkonen,* in this case there never was a court order approving the purported agreement so that enforcement of it in no way implicates the authority of this court. The court concludes that it would be improper for this court to exercise ancillary jurisdiction over the parties' dispute in connection with this adversary proceeding. This is especially true when the jurisdiction and authority of the bankruptcy court to enter final orders with regard to the matters that were raised in the First Amended Original Complaint are still subject to dispute.

This conclusion points out the wisdom of Mr. Akerly's preliminary objections. First, a motion to enforce a settlement agreement that had been approved by the bankruptcy court should be filed in the main bankruptcy case where the motion to approve the settlement agreement would have been heard. *See* Fed. R. Bankr. P. 9019(a). Second, although the Joint Motion is styled a motion to enforce a settlement agreement, in fact it is at root a request for declaratory relief. It asks that this court declare that a binding agreement was reached between the parties that is capable of being enforced. As Mr. Akerly points out, requests for declaratory relief with respect to the recovery of money or property are adversary proceedings. Fed. R. Bankr. P. 7001(9). The relief requested in the Joint Motion is, however, a request for declaratory relief concerning a purported agreement to settle a civil proceeding concerning the recovery of money or property. This court has concluded that even if there is bankruptcy jurisdiction over this adversary proceeding, ancillary jurisdiction would not extend to the Defendants' request for declaration and enforcement of the purported settlement agreement. Likewise, even if there is bankruptcy jurisdiction over this adversary proceeding, there is no ancillary jurisdiction to permit this bankruptcy court to order the Trustee to take action with respect to the purported settlement. Any request of that type should

have been brought, if at all, in the main bankruptcy case because it concerns the administration of the bankruptcy estate rather than the particular dispute that is the subject of this adversary proceeding.

The first two requests for relief raised in the Joint Motion must be denied.

B. Revocation of Derivative Standing

The Defendants' third request for relief is that this court vacate its prior Order Granting Amended Motion for Order Authorizing Church Joint Venture to Pursue, on a Derivative Basis, Estate Claims and/or Causes of Action Relating to Personal Property of the Debtors. Bankruptcy Dkt. No. 633. That order was entered in the main bankruptcy case so any motion seeking the vacation of that order properly belongs in the main bankruptcy case. Because it was filed in this adversary proceeding, other creditors and interested parties whose rights would be affected were not given notice or an opportunity to respond to the motion. This court notes, however, that (1) the Trustee is satisfied with the services being performed by Church JV on behalf of the estate; and (2) it is disingenuous for the *Defendants*, who join in resisting the relief sought by Church JV on behalf of the bankruptcy estate, to raise concerns belonging to creditors of that estate. The motion for revocation of derivative standing should be denied.

CONCLUSION

The Joint Motion is **DENIED** with respect to the first two requests for relief, i.e., enforcement of the purported settlement agreement and direction of the Trustee to file a motion to approve the purported settlement agreement, on the basis of lack of subject-matter jurisdiction. The Joint Motion is also **DENIED** with respect to the third request for relief, i.e., that the derivative standing of Church JV to pursue this adversary proceeding be revoked, without prejudice to it being renewed in the main bankruptcy case with notice to all creditors and interested parties.

cc: Bruce W. Akerly, Attorney for the Plaintiff
Edward L. Montedonico, Trustee
Paul G. Jennings, Attorney for Katherine Blasingame Church
Gene L. Humphreys, Attorney for Katherine Blasingame Church
Michael P. Coury, Attorney for Defendants other than Katherine Blasingame Church