

Dated: March 29, 2024
The following was SIGNED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

HEATHER PATRICE
HOGROBROOKS HARRIS,
Debtor.

Case No. 17-20334
Chapter 7

HEATHER PATRICE
HOGROBROOKS HARRIS,
Plaintiff.

vs.

Adv. Proc. No. 21-00053

SHELBY COUNTY TRUSTEE and
CITY OF MEMPHIS, TENNESSEE,
Defendants.

OPINION AND ORDER DENYING THE
CITY OF MEMPHIS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DISMISSING ADVERSARY PROCEEDING

This proceeding came before the Court on the City of Memphis's ("City's") Motion for Partial Summary Judgment as to Demolition Costs Assessed against the Real Property Located at 3703 E. Mart Road, Memphis, Tennessee, and Heather Patrice Hogrobrooks Harris's ("Hogrobrooks Harris's") Response to Defendant's Motion for Summary Judgment and Motion

to Strike Defendant's Proffer.¹ For reasons outlined below, the Court abstains from deciding the underlying issue of adequate notice of demolition of 3703 E. Mart Road and the related demolition fees, and dismisses this adversary proceeding.

I. PROCEDURAL AND FACTUAL BACKGROUND²

Although this Court entered an opinion that summarized the procedural and factual background in the main case and this proceeding,³ it is important to encapsulate the events leading up this decision.

On January 12, 2017, Hogrobrooks Harris filed a voluntary petition under Chapter 7, and she was granted a discharge on September 25, 2017.⁴ On October 23, 2020, Hogrobrooks Harris filed a Motion to Reopen Chapter 7 case.⁵ On December 14, 2020, Hogrobrooks Harris filed an Amended Petition and Schedules that disclosed property taxes and four parcels of real property purportedly existing in 2017 but unknown to Hogrobooks Harris until late 2019.⁶ Specifically, Hogrobrooks Harris added four parcels of real property in which she believed to hold potential ownership interests.⁷

¹ Adv. Proc. Nos. 97 and 131.

² This is an adversary proceeding under Fed. R. Bankr. P. 7001(2), (6), (7), and (9). The following shall constitute the court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052.

³ ECF No. 142.

⁴ ECF Nos. 1 and 73.

⁵ ECF No. 91.

⁶ ECF No. 99.

⁷ ECF No. 99.

On May 7, 2021, Hogrobrooks Harris filed a complaint against Shelby County, Tennessee (“County”) and the City, commencing this adversary proceeding and seeking relief from taxes, penalties, and associated attorney’s fees associated with the several parcels of property.⁸

On June 18, 2021, the Chapter 7 trustee filed a Notice of Abandonment of Property of the Estate as to (1) 1771 E. Alcy Road, (2) 3688 E. Mart Road, (3) 123 E. Fernwood Ave, and the property at issue here— (4) 3703 E. Mart Road.⁹ The Court granted the trustee’s proposed abandonment on July 16, 2021.¹⁰

On August 19, 2022, in the main case, the County and the City filed a Motion for Order Confirming No Automatic Stay in Effect.¹¹ On March 31, 2023, the Court entered an *Opinion and Order Confirming that the Automatic Stay is Not in Effect and the Discharge Injunction Does Not Prevent Enforcement Of Statutory Lien Rights Against Real Property* that resolved the disputes regarding the parcels of real property located at: (1) 1771 E. Alcy Road, (2) 123 E. Fernwood Ave, (3) 2688 E. Mart Road, and (4) 3703 E. Mart Road, in which the Court found and concluded that automatic stay is not in effect and the discharge injunction does not bar the City and County from enforcing their statutory lien as described in section 67-5-2101(a) of the Tennessee Code.¹² The only remaining issue for this Court’s determination is adequate notice of

⁸ Adv. Proc. ECF No. 1, Adv. Proc. Number 21-00053.

⁹ ECF No. 126.

¹⁰ ECF No. 130.

¹¹ The ECF numbers are those in the main case. ECF No. 135.

¹² ECF No. 142.

demolition of 3703 E. Mart Road and the related demolition fees.

On June 9, 2023, the Court issued two orders: (1) granting the City of Memphis and Shelby County's Motion for Partial Dismissal of Adversary Complaint as it related to ad valorem taxes and (2) denying as moot the City of Memphis and Shelby County's Motion for Partial Summary Judgment as to ad valorem taxes.¹³

On August 17, 2023, Hogrobrooks Harris filed a Motion to Compel the City of Memphis to respond to her discovery requests and also a motion to extend the time to complete her discovery responses.¹⁴ On August 22, 2023, City filed a Motion for Partial Summary Judgment as to the demolition costs assessed against one of the properties at issue, located at 3703 E. Mart Road.¹⁵ Hogrobrooks Harris filed an Objection to the Motion for Partial Summary Judgment.¹⁶ City then filed a response to Hogrobrooks Harris's objection to the Motion for Partial Summary Judgment as to real property located at 3703 E. Mart Road.¹⁷ Separately, City filed a response to the Motion to Compel Discovery.¹⁸ The Court held a hearing on September 19, 2023, on Hogrobrooks Harris's Motion to Compel and City's response, granting the motion to compel in part.¹⁹ The Court took City's Motion for Partial Summary Judgment and the responses under advisement. While reviewing the pleadings, the Court determined that a further hearing was

¹³ Adv. Proc. ECF Nos. 89, 90.

¹⁴ Adv. Proc. ECF No. 94.

¹⁵ Adv. Proc. ECF Nos. 97-100.

¹⁶ Adv. Proc. ECF No. 104.

¹⁷ Adv. Proc. ECF No. 108.

¹⁸ Adv. Proc. ECF No. 107.

¹⁹ Adv. Proc. ECF No. 114.

necessary to discuss whether the Court should exercise its jurisdiction over the open matters.

On September 29, 2023, the Court issued an order canceling trial set for October 3, 2023.²⁰

On October 17, 2023, the Court conducted a hearing where the City and Hogrobrooks Harris argued the issue of whether the Court should continue to exercise its jurisdiction to decide the issue regarding the noticing and demolition fees of 3703 E. Mart Road.

At the hearing, City argued that this Court has jurisdiction to determine the merits of the motion for partial summary judgment as to the demolition noticing requirements under state law and the demolition fees of 3703 E. Mart Road. Hogobrooks Harris, however, argued that the remaining underlying issues can be determined in state court, with a jury trial. Hogogrook Harris further contends that “this matter” should be dismissed.

The parties were directed to submit supplemental briefs on this matter. Separately, the Court granted Hogrobrooks Harris’s motion to extend time to submit briefing to December 15, 2023.²¹ The City filed a brief on October 16, 2023. City asserts that this Court has subject matter jurisdiction over the adversary proceeding because the chapter 7 case and all related proceedings arise from an alleged violation of a discharge injunction, which is a “core proceeding.”²² Further, the City asserts that Hogrobrooks Harris’s allegations that her due process rights were violated when the City demolished property also is an alleged violation of her bankruptcy discharge.²³

²⁰ ECF No. 144.

²¹ Adv. Proc. ECF Nos. 113 and 128.

²² City of Memphis’ Brief in Support of Jurisdiction, at 3.

²³ *Id.* at 4.

Alternatively, the City asserts that the Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over the alleged due process violations under state law.²⁴ Lastly, the City states that the determination of a discharge injunction does not violate the *Rooker-Feldman* doctrine.²⁵

Hogrobrooks Harris filed a document labeled as a “Motion for Voluntary Dismissal without Prejudice, and Response to Defendant’s Motion for Partial Summary Judgement, and Motion to Strike Defendant’s Proffer of Debra D. Hardaway Declaration,”²⁶ which this Court will interpret as a brief, which states that (1) Hogrobrooks Harris wishes to voluntarily dismiss this case without prejudice, (2) the City has “lied and argued to the Court to accept its lies” and thus should not be granted summary judgment, and (3) Hogrobrooks Harris moves to strike the declaration of Debra D. Hardaway.²⁷

II. ISSUE

The issue before the Court is whether it should exercise its jurisdiction to determine if the City of Memphis appropriately demolished and assessed costs against the structure located on real property at 3703 E. Mart Road when the real property at issue was abandoned by the Chapter 7 trustee and there is no further ongoing administration of the underlying Chapter 7 case.

III. DISCUSSION

Section 1334 of Title 28 provides bankruptcy courts, by referral, with original and exclusive jurisdiction of all cases under Title 11, and original, but not exclusive jurisdiction, of

²⁴ *Id.*

²⁵ *Id.* at 6 (relying on *Hamilton v. Herr*, 540 F.3d 367 (6th Cir. 2008); *In re Isaacs*, 895 F.3d 904, 910 (6th Cir. 2018)).

²⁶ Adv. Proc. ECF No. 131.

²⁷ Plaintiff’s Brief. Adv. Proc. ECF No. 131.

all civil proceedings arising under, arising in, or related to cases under Title 11.²⁸ A bankruptcy court has “arising under” jurisdiction in “core proceedings”— “a right or a cause of action created and directly related to federal bankruptcy law [the Bankruptcy Code or Title 11].”²⁹ The bankruptcy court also has “arising in” jurisdiction over core matters that would not otherwise exist but for the existence of the bankruptcy case.³⁰ Where the action is not a core proceeding, bankruptcy courts have “related to” jurisdiction in a proceeding related to the administration of the bankruptcy case.³¹

In cases where the issue is within the jurisdictional authority of the bankruptcy court, the bankruptcy court may abstain from exercising jurisdiction under subsection 1334(c)(1) of Title 28 when the matter involves state law.³² As a good rule of thumb, a dispute is related to a bankruptcy case and within the court’s bankruptcy jurisdiction if the outcome will have a significant outcome on the administration of the bankruptcy case.³³

²⁸ 11 U.S.C. § 1334(a) and (b) (2024) (“Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.” “. . . 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.”). See also 28 U.S.C. 157(a) (“Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.”).

²⁹ *In re Hickman*, 265 B.R. 873, 876 (Bankr. N.D. Ohio 2001) (citing *Diamond Mortgage Corp. of Ill. v. Sugar*, 913 F.2d 1233 (7th Cir. 1990)); see also *Heartwood, Inc. v. Agpaoa*, 628 F.3d 261, 266 (6th Cir. 2010) (explaining that federal courts have “an independent obligation to investigate and police the boundaries” of their own jurisdiction, which requires federal courts to raise jurisdictional issues when they are present).

³⁰ *In re Webb*, 227 B.R. 494, 497 (Bank. S.D. Ohio 1998).

³¹ 28 U.S.C. § 1334(b) (2024).

³² *In re Gober*, 100 F.3d 1195, 1207 n.5 (5th Cir. 1996) (explaining that it is within the sound discretion of the court to permissively abstain pursuant to 28 U.S.C. § 1334(c)(1)).

³³ *In re Time Construction, Inc.*, 43 F.3d 1041, 1045 (6th Cir. 1995) (“The test of ‘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.’”) (quoting *Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579, 583 (6th Cir. 1990)).

Before choosing to exercise discretionary abstention, courts consider numerous factors, including:

- (1) the effect of abstention on the administration of the bankruptcy case;
- (2) the extent to which state law issues predominate over bankruptcy law issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the existence of a related proceeding in another court;
- (5) whether there is a basis for federal jurisdiction other than bankruptcy;
- (6) the degree to which the proceeding is related to the bankruptcy case;
- (7) the substance, rather than the form, of an asserted core proceeding;
- (8) the feasibility of severing state law claims so that they can be tried in the state court but with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that commencement of the case in the bankruptcy court involves forum shopping;
- (11) whether there is a right to a jury trial; and
- (12) the presence in the proceeding of non-debtor parties other than the defendant.³⁴

Most of these factors support this Court abstaining from deciding the underlying issue of whether Hogrobrooks Harris is entitled to be relieved from the demolition costs of \$8,007 assessed against 3703 E. Mart Road and any potential monetary damages from the City. The Court's abstention will not impact the administration of the bankruptcy case because the case was fully administered by the Chapter 7 trustee, and the Chapter 7 trustee abandoned this property. Also, Hogrobrooks Harris obtained her discharge.

The remaining underlying issues involve the interpretation and analysis of the laws of the State of Tennessee. The state court's familiarity with the laws involving the City's demolition of property and related fees and costs will result in a more appropriate resolution of the issues before this Court. The Court does not see any basis for federal jurisdiction on the underlying issues that have no impact on the administration of the case. Therefore, the state court is in the

³⁴ *Beneficial National Bank v. Best Reception Systems, Inc.*, 220 B.R. 932, 953 (Bankr. E.D. Tenn. 1998) (citing *Refrigerant Reclamation Corp. of Am. v. Todack*, 186 B.R. 78, 84 (Bankr. W.D. Tenn. 1995)) (explaining that abstention is typically reserved for uncertain state law issues in which the state has a unique interest).

best position to analyze the nature of the notice Hogrobrooks Harris received, and the fees assessed.

In the interest of judicial economy, it serves no legal purpose for this Court to decide the underlying issues that have no impact on the administration of the bankruptcy case. Whichever party is successful on the merits (if the issues are litigated in state court) can then enforce the ruling in the state court system. This case, which has been closed and reopened, places a high burden on the bankruptcy court's docket. As one court noted, "adversary proceedings . . . require an enormous expenditure of scarce judicial resources."³⁵ Additionally, there is no pending matter before this court in this case or proceeding other the underlying issues in this proceeding. The Court acknowledges that that there are two other involved parties, however both are local County and City entities, who are familiar with state court practice and procedures.³⁶

Given the existence of only state law issues, and other factors weighing in favor of abstention, the Court finds that a state court is best equipped to determine if Hogrobooks Harris received proper notice under Tennessee law before the demolition of the real property at 3703 E. Mart Road and the appropriateness of the fees and costs assessed.³⁷ The Court understands the City's requests for finality on the underlying issues (sought in the City of Memphis' summary judgment motion), but the Court simply declines the City's invitation to rule on issues that have no impact on the administration of this reopened Chapter 7 case. The Court abstains from

³⁵ *Republic Reader's Serv., Inc. v. Magazine Serv. Bureau, Inc.*, 81 B.R. 422, 428 n. 7 (Bankr. S.D. Tex. 1987) (outlining the factors for the court to consider before deciding to abstain).

³⁶ As one court observed, "[t]he right of nondebtor parties to a nonbankruptcy court forum, particularly if a jury trial right exists in a nondebtor's case, presents a compelling argument for abstention." *Id.* at 428-29.

³⁷ The court need not analyze mandatory abstention under § 1334(c)(2), given its decision to permissively abstain under 28 U.S.C. § 1334(c)(1).

exercising jurisdiction under subsection 1334(c)(1) to Title 28.

IV. CONCLUSION AND ORDER

For reasons outline above, the Court abstains from exercising its jurisdiction to determine the underlying issues regarding the demolition of the real property at 3703 E. Mart Road and the appropriateness of the fees and costs assessed. Accordingly, it is **ORDERED**:

1. The City of Memphis' Motion for Partial Summary Judgment is DENIED.
2. Hogrobrooks Harris's Motion for Voluntary Dismissal is GRANTED.
3. This adversary proceeding is DISMISSED.

Copies to be furnished to:

Plaintiff Heather Patrice Hogrobrooks Harris
Defendant Shelby County Trustee
Attorney for Defendant Shelby County Trustee
Defendant City of Memphis
Attorney for Defendant City of Memphis
Chapter 7 Trustee