Dated: September 01, 2020
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re JACK WARREN HARANG, Debtor.	Case No. 18-24543-L Chapter 7 (asset)
Bettye S. Bedwell, Chapter 7 Trustee, Plaintiff, and Henry T. Dart and Henry Dart Attorneys at Law, P.C., Intervenor-Plaintiffs, v. HHHH Development, Inc., a Michigan Corporation, and Suzanne Bessette, Defendants, and Suzanne Bessette, Jack W. Harang, and Bettye S. Bedwell, Chapter 7 Trustee, Intervenor-Defendants.	Adv. Proc. No. 19-00039

OPINION CONCERNING DEFENDANT'S MOTION TO DISMISS INTERVENOR'S COMPLAINT

BEFORE THE COURT are the *Motion to Dismiss Intervenor's Complaint Against Suzanne Bessette*, September 29, 2019 [Dkt. No. 73]; *Intervenors' Memorandum in Opposition to*

Motion to Dismiss, October 21, 2019 [Dkt. No. 104]; *Reply to Intervenors' Objection to Bessette's Motion to Dismiss Intervenors' Complaint Against Her and Alternatively Request for Annulment/Voiding of Judgment Pursuant to LSA-C.C.P. Art. 2002,* October 28, 2019 [Dkt. No. 108]; *Intervenors' Supplemental Memorandum in Opposition to Bessette's Motion to Dismiss,* August 21, 2020 [Dkt. No. 198]; and *Objection to and Reply in Opposition to Motion to Dismiss*, August 21, 2020 [Dkt. No. 199]. These motions and responses are concerned with complaints filed pursuant to Louisiana Civil Code art. 2357 to recover former community property alleged to have been disposed of by the former spouse of the Debtor for other than community obligations.

FACTUAL AND PROCEDURAL BACKGROUND

This adversary proceeding was commenced by the Trustee on February 20, 2019, with the filing of the *Complaint for Declaratory Judgment and Injunctive Relief* against HHHH Development, Inc. ("4H"), Suzanne Bessette, and Jennifer E. Goudreau, in her capacity as Mackinac County, Michigan Treasurer. The Complaint seeks a declaration that 4H is the alter ego of the Debtor and that Ms. Bessette's stock in 4H is property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(2). At its inception, it also sought to enjoin tax foreclosure sales initiated by Ms. Goudreau with respect to property in Mackinac County, Michigan, held by 4H. The Complaint was dismissed as to Ms. Goudreau pursuant to the *Consent Order and Stipulation of Voluntary Dismissal Without Prejudice of Jennifer Goudreau, in Her Capacity as Mackinac County, Michigan Treasurer,* June 26, 2020. [Dkt. No. 183].

The Complaint acknowledges that the Debtor and Ms. Bessette were married to each other from 1979 through 2003, and during that time lived in Louisiana under a community property regime. It recites that during the marriage, the parties acquired property including the stock of 4H. The Complaint acknowledges that the Debtor and Ms. Bessette were divorced September 17, 2003,

and the community property regime was terminated retroactive to the date of the filing of the petition, February 13, 2003. The Complaint alleges that a petition to partition the community property was filed by Ms. Bessette on March 2, 2005, which was not concluded when the bankruptcy petition was filed by the Debtor on June 1, 2018. These facts are admitted by Ms. Bessette. [Dkt. No. 26].

Henry T. Dart and Henry Dart, Attorneys at Law (the "Intervening Plaintiffs") were granted leave to file their *Complaint in Intervention* by order entered July 9, 2019. [Dkt. No. 36]. The Intervening Plaintiffs filed separate proofs of claim against the bankruptcy estate in the amount of $1,628,696.14, arising out of a judgment rendered against the Debtor and Jack Warren Harang, a Professional Law Corporation, on January 9, 2018. The claims include prepetition interest calculated from February 18, 2009 until June 1, 2018 in the amount of $455,781.70.[1] The Complaint in Intervention alleges that former community property belonging to the Debtor and Ms. Bessette should form a sub-estate segregated from other property of the bankruptcy estate pursuant to 11 U.S.C. § 726(c),[2] and that the debt owed by the Debtor to the Intervening Plaintiffs

[1] No reason is given for the starting date of the interest calculation, but the court notes that it post dates the dissolution of the parties' marriage by six years.

[2] 11 U.S.C. § 726(c) provides:

> (c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:
>
> (1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.
>
> (2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:
>
> (A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

should be paid from this sub-estate before other creditors. The Complaint in Intervention further asks that, pursuant to Louisiana Civil Code art. 2357,[3] the Debtor and Ms. Bessette be held liable to the Intervening Plaintiffs in the event the remaining community property in their hands is insufficient to satisfy the Debtor's obligation to them.

Ms. Bessette responded to the Complaint in Intervention by filing an answer and amended answer. [Dkt. Nos. 49 and 52]. The Intervening Plaintiffs filed an Amended Complaint in Intervention to correct the case caption to name the Debtor, Ms. Bessette, and the Trustee as Intervenor-Defendants. [Dkt. No. 56]. The Amended Complaint in Intervention, however, seeks

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> (B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.
> (C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.
> (D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

[3] La. Civ. Code art. 2357 provides:

> Art. 2357. Satisfaction of obligation after termination of regime
>
> An obligation incurred by a spouse before or during the community property regime may be satisfied after termination of the regime from the property of the former community and from the separate property of the spouse who incurred the obligation. The same rule applies to an obligation for attorney's fees and costs in an action for divorce incurred by a spouse between the date the petition for divorce was filed and the date of the judgment of divorce that terminates the community regime.
>
> If a spouse disposes of property of the former community for a purpose other than the satisfaction of community obligations, he is liable for all obligations incurred by the other spouse up to the value of that community property.
>
> A spouse may by written act assume responsibility for one-half of each community obligation incurred by the other spouse. In such case, the assuming spouse may dispose of community property without incurring further responsibility for the obligations incurred by the other spouse.

no specific relief with respect to the Trustee. In addition to the answers filed by Ms. Bessette, answers were filed by the Trustee [Dkt. No. 50] (even though it is unclear what relief is sought with respect to the Trustee), and by 4H [Dkt. Nos. 51 and 71] (even though it is not named an Intervenor-Defendant and no relief is sought with respect to it), but not by the Debtor. The Trustee specifically reserved her right to object to the proofs of claim filed by the Intervening Plaintiffs. [Dkt. No. 50, p. 2].

Ms. Bessette filed the Motion to Dismiss which is now before the court on September 29, 2019. Ms. Bessette asks that the Complaint in Intervention be dismissed for failure to state a claim upon which relief can be granted presumably pursuant to Federal Rule of Civil Procedure 12(b)(6) made applicable in the bankruptcy proceeding by Federal Rule of Bankruptcy Procedure 7012.

Specifically, Ms. Bessette alleges that Count 1 of the Complaint in Intervention should be dismissed for one or all of the following reasons: (1) the claims are barred as the result of the failure of Intervening Plaintiffs to join her, an indispensable party, in prior litigation pursuant to Louisiana Code of Civil Procedure art. 641-647;[4] (2) the Intervening Plaintiffs' claims are time-barred pursuant to Louisiana Code of Civil Procedure [sic; should be Louisiana Civil Code] art. 3499;[5] (3) the Intervening Plaintiffs' claims are barred by their failure to give notice to her of

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[4] La. Code Civ. P. 641 provides:

> Art. 641. Joinder of parties needed for just adjudication
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> A person shall be joined as a party in the action when either:
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> (1) In his absence complete relief cannot be accorded among those already parties.
> (2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
> (a) As a practical matter, impair or impede his ability to protect that interest.
> (b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

[5] La. Civ. Code art. 3499 provides: "Unless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years."

their claim pursuant to Louisiana Code of Civil Procedure 735;[6] the Intervening Plaintiffs' claims are barred by the equitable doctrine of laches and statute of repose. Ms. Bessette argues that she has been prejudiced by the Intervening Plaintiffs' delay in bringing their claim against her, and that it is raised now solely for the improper and fraudulent purpose of obtaining priority of payment from the assets of the bankruptcy estate.

Ms. Bessette alleges that Count 2 of the Complaint in Intervention should be dismissed for the same reasons; in addition, Ms. Bessette claims that the Intervening Plaintiffs' request in Count 2 of the Complaint in Intervention violates her civil right to procedural due process pursuant to 42 U.S.C. § 1893 [sic; should be 1983[7]]; that the Intervening Plaintiffs should be sanctioned;

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[6] La. Code Civ. P. 735 provides:

> Art. 735. Marital community
>
> Either spouse is the proper defendant, during the existence of the marital community, in an action to enforce an obligation against community property; however, if one spouse is the managing spouse with respect to the obligation sought to be enforced against the community property, then that spouse is the proper defendant in an action to enforce the obligation.
>
> When doubt exists whether the obligation sought to be enforced is a community obligation or the separate obligation of the defendant spouse, that spouse may be sued in the alternative.
>
> When only one spouse is sued to enforce an obligation against community property, the other spouse is a necessary party. Where the failure to join the other spouse may result in an injustice to that spouse, the trial court may order the joinder of that spouse on its own motion.

[7] 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section,

and that their conduct amounts to fraud and harassment; their claims are presented for an improper purpose, are not warranted by existing law, and are frivolous and financially exhausting to Ms. Bessette.

In support of the Motion to Dismiss, Ms. Bessette notes that she was divorced from the Debtor on September 17, 2003; and that the community of acquets and gains between them was terminated retroactive to February 13, 2003, more than fifteen years prior to the filing of the Debtor's petition in bankruptcy. She notes that her circumstances have changed considerably in the years following her divorce from the Debtor, "including but not limited to, her remarriage, being widowed, suffering medical illnesses, surviving cancer, raising children, moving multiple times to her current domicile in Maine, evidence having been lost or no longer available, witnesses no longer available, lapsing of memories of witnesses and [herself]." [Dkt. No. 73, Ex. 1, p. 5].

The Intervening Plaintiffs filed their *Memorandum in Opposition to Motion to Dismiss* on October 21, 2019 [Dkt. No. 104], and Ms. Bessette filed a *Reply* on October 28, 2019 [Dkt. No. 108]. Each of these pleadings was accompanied by voluminous exhibits, which would compel the court to treat the Motion to Dismiss as one for summary judgment rather than one for judgment on the pleadings if it were to reach the merits of the motion. *See* Fed. R. Civ. P. 12(d), made applicable in this bankruptcy proceeding by Fed. R. Bankr P. 7012(b). For reasons set out below, however, the court will not reach the merits of the Motion to Dismiss because of jurisdictional concerns.

Before the Motion to Dismiss was decided, the Intervening Plaintiffs filed an *Expedited Motion for Stay of Motion to Dismiss Pending Discovery,* September 30, 2019 [Dkt. No. 75], which was granted by order entered November 4, 2019 [Dkt. No. 113]. While that motion for stay was

any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

pending and after it was granted, the parties engaged in extensive discovery disputes that apparently have gotten the parties no closer to a resolution to their differences. After a change in judicial personnel, the stay was vacated on July 29, 2020 [Dkt. No. 188], and the Intervening Plaintiffs were permitted to file a supplemental response to the motion, which they did on August 21, 2020. The Trustee also filed an opposition to the motion on August 21, 2020, which discusses issues concerning the original Complaint as well as the Complaint in Intervention.

While it is always difficult to come behind another jurist (something akin to Monday morning quarterbacking), in this instance, the undersigned is convinced that some clarity must be reached about the issues to be decided, the parties to bring them, and the forums in which they will be decided before any progress can be made toward resolution of the parties' disputes. For this reason, the court takes the unusual step of addressing issues not raised directly by the Motion to Dismiss but certainly touched upon in the various responses to it. It will do so pursuant to its consideration of its jurisdiction and authority to consider the Complaint in Intervention, which it has an obligation to do independent of any objection or lack of objection by the parties. *See* Fed. R. Civ. P. 12(h)(3), made applicable to adversary proceedings in bankruptcy court by Fed. R. Bankr. P. 7012(b); *Arbaugh v. Y & H Corp*., 546 U.S. 500, 506-07, 126 S. Ct. 1235, 1240 (2006), citing *Kontrick v. Ryan*, 540 U.S. 443, 455, 120 S. Ct. 906 (2004); *Mich. Emp. Sec. Comm. v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co., Inc.),* 930 F.2d 1132, 1137 (6th Cir. 1991).

DISCUSSION

Jurisdiction over complaints arising under the Bankruptcy Code or arising in or related to a case under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under

title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the property of the bankruptcy estate is a core proceeding arising under the Bankruptcy Code at 11 U.S.C. § 541(a). Likewise, the determination of the distribution of property of the bankruptcy estate pursuant to 11 U.S.C. § 726 is a core proceeding arising under the Bankruptcy Code. *See* 28 U.S.C. 157(b)(2)(A). Bankruptcy jurisdiction is present with respect to such claims and the bankruptcy court has authority to hear and finally determine them. *See* 28 U.S.C. §§ 1334(b) and 157(b)(1).

The Complaint in Intervention, however, not only seeks a declaration that the Intervening Plaintiffs are entitled to priority of distribution from any community property assets or former community property assets that come into the hands of the Trustee, but also seeks a judgment against the Debtor and Ms. Bessette "for the balance of the claim up to the value of former community property received by her" citing Louisiana Civil Code art. 2357. That section provides in pertinent part:

> An obligation incurred by a spouse before or during the community property regime may be satisfied after termination of the regime from the property of the former community and from the separate property of the spouse who incurred the obligation.
>
> If a spouse disposes of property of the former community for a purpose other than the satisfaction of community obligations, he is liable for all obligations incurred by the other spouse up to the value of that community property.

Although the Debtor did not respond to the Complaint in Intervention, the court notes that the Intervening Plaintiffs' remedies against him are limited as the result of the filing of his petition in bankruptcy. They have filed proofs of claim [s*ee* Claim Nos. 2-1 and 3-1] but did not file a timely complaint to determine the dischargeability of the debt owed to them. *See* 11 U.S.C. § 523(c)(1). To date, no party has filed an objection to these proofs of claim (although the Trustee

has reserved her right to do so at the appropriate time). The claims are deemed allowed by operation of law. *See* 11 U.S.C. § 502(a). It appears that the claims will share in the distribution of the assets of the bankruptcy estate, and the personal liability of the Debtor for the claims will be discharged. The bankruptcy estate will consist of all of the legal and equitable interests of the Debtor in property as of the commencement of the case, including the Debtor's undivided one-half interest in any former community property that had not been partitioned when his bankruptcy case was commenced. *See Northshore Neurological Surgery Assocs. v. Provenza (In re Provenza),* 316 B.R. 177, 211 (E.D. La. 2003) ("Under Louisiana law, when the community of acquets and gains is terminated, the property that had comprised the community of acquets and gains technically is no longer considered 'community property.' Rather, it is considered 'former community property,' even though it has yet to be partitioned."); *Ellington v. Ellington,* 842 So.2d 1160, 1165 (La. Ct. App. 2003) ("Former spouses continue to be co-owners of the former community property even after the termination of the community and until it has been finally partitioned.") (citing La. Civ. Code arts. 2369, 2369.1; *Robinson v. Robinson*, 778 So.2d 1105 (La. 2001)). If the Intervening Plaintiffs successfully assert that they hold "community claims," they will be entitled to priority distribution from any former community property that comes into the estate. *See* 11 U.S.C. § 101(7) ("The term 'community claim' means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.").

In order to prevail with respect to their claim against Ms. Bessette, the Intervening Plaintiffs will have to show (1) that their judgment represents an obligation incurred by the Debtor

during the community regime;[8] (2) that after the termination of the community, Ms. Bessette disposed of former community property for a purpose other than the satisfaction of community obligations; and (3) that the remaining former community property together with the separate property of the Debtor are inadequate to satisfy the obligation. If they are able to do each of these things, and other defenses are not available to Ms. Bessette, she may be found liable for the value of the former community property disposed of by her for purposes other than satisfaction of community claims, which is the limit of the Intervening Plaintiffs' possible recovery against her.[9] The Plaintiffs are entitled to a presumption that obligations incurred during the marriage are community obligations, but the presumption may be overcome in certain statutorily prescribed circumstances. *See* La. Civ. Code art. 2361; 2363.[10]

The Intervening Plaintiffs' claim against Ms. Bessette does not arise under the Bankruptcy Code nor in a bankruptcy case. The right of the Intervening Plaintiffs to seek recovery from

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[8] Jurisdictional concerns prevent the court from reaching the merits of the Motion to Dismiss but the failure of the Complaint in Intervention to plead facts tending to show that the obligations underlying the judgment obtained by the Intervening Plaintiffs were in fact incurred during the marriage is troubling. The Complaint in Intervention states, for example, that the obligations arose out of a joint venture between the Intervening Plaintiffs, the Debtor, and the Debtor's law firm, but gives no information concerning the date of the formation of that joint venture. Ms. Bessette specifically avers that there was no determination by the Louisiana court that the arising acts occurred during the community property regime. [Dkt. No. 26, ¶ 34].

[9] For a very recent case discussing the operation of La. Civ. Code art. 2357, see *Radcliffe 10, L.L.C. v. Burger,* ___ So.3d ___, No. 2019 CA 1094, 2020 WL 4187905 (La. Ct. App. July 21, 2020).

[10] La. Civ. Code art. 2361 provides: "Except as provided in Article 2363, all obligations incurred by a spouse during the existence of a community property regime are presumed to be community obligations."

La. Civ. Code art. 2363 provides:

> A separate obligation of a spouse is one incurred by that spouse prior to the establishment of a community property regime, or one incurred during the existence of a community property regime though not for the common interest of the spouses or for the interest of the other spouse. An obligation resulting from an intentional wrong or an obligation incurred for the separate property of a spouse is likewise a separate obligation to the extent that it does not benefit both spouses, the family, or the other spouse.

Ms. Bessette arose as the result of the entry of their judgment against the Debtor, which led to the filing of his petition in bankruptcy. The action provided by article 2357 against a "disposing spouse" is analogous to an action under the Uniform Fraudulent Transfers Act, which permits a judgment creditor to avoid a transfer to the extent necessary to satisfy the creditor's claim. *See* Unif. Fraudulent Transfer Act § 7(a)(1) ("In an action for relief against a transfer or obligation under this [Act], a creditor, subject to the limitations in Section 8, may obtain: (1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim").[11] It is an action in aid of execution of the judgment against the obligor spouse. It does not transform the obligation of one spouse into the personal obligation of the other, but merely widens the pool of property the judgment creditor may look to for satisfaction of its claim.

Absent the filing of the Debtor's bankruptcy case, if the Intervening Plaintiffs had been unable to satisfy their claim from the property of the Debtor, they would have been free to pursue their action against former community property in the hands of Ms. Bessette, and to obtain a judgment against her for the value of any former community property transferred by her for purposes other than the satisfaction of community debts (assuming all other requirements of Louisiana law were satisfied and objections raised by Ms. Bessette were overcome). As a result of the filing of the petition in bankruptcy, however, the automatic stay prevents the Intervening Plaintiffs from continuing collection of their judgment against the Debtor and property of the bankruptcy estate. *See* 11 U.S.C. § 362(a)(1) and (6).

The Trustee asserts that former community property is property of the bankruptcy estate which she may recover pursuant to 11 U.S.C. § 541(a)(2), and thus that bankruptcy jurisdiction is

[11] The court in no way insinuates that any transfers made by Ms. Bessette were fraudulent or otherwise improper. The Uniform Fraudulent Transfers Act permits avoidance of transfers that were "constructively fraudulent" in that they resulted in an inadequate fund for payment of creditor claims. Recognizing this, in 2014 the Uniform Law Commission proposed a replacement called the Uniform Voidable Transactions Act.

present with respect to the original Complaint pursuant to 28 U.S.C. § 1334(b). Section 541(a)(2), however, is limited to "interests of the debtor and the debtor's spouse in community property as of the commencement of the case" with certain additional qualifications. Ms. Bessette was not the spouse of the Debtor when the bankruptcy case was commenced; and she and the Debtor held no community property at that time by operation of Louisiana Civil Code art. 2356. Thus, section 541(a)(2) is not available to the Trustee. *See Gill v. Warranty Escrow Co., Inc. (In re LaNess),* 159 B.R. 916, 918 (Bankr. C.D. Cal. 1993) ("[W]ithout some clear mandate from Congress, this Court cannot broaden the definition of 'debtor's spouse' as it is used in § 541(a)(2) to include the Debtor's former spouse.").[12] In fact, the Trustee seeks to recover "former community property" from the Debtor's former spouse for the benefit of the estate. The law that permits her to do that cannot be section 541(a)(2), but perhaps could be section 544(a)(2), which provides the trustee in bankruptcy with the rights and powers of an execution creditor whose execution is returned unsatisfied. In other words, with respect to Ms. Bessette, the Trustee is attempting to assert the same cause of action that the Intervening Plaintiffs have asserted under Louisiana Civil Code art. 2357. Unfortunately, this single cause of action rather confusingly has been spread across the two complaints. Either the Trustee may proceed under section 544(a)(2) to

[12] This court respectfully disagrees with the court in *Provenza* which concluded that the Bankruptcy Code does not recognize the distinction between "community property" and "former community property." 316 B.R. at 211. The court also notes the decision of the Fifth Circuit Court of Appeals, *In re Robertson,* which discusses but does not finally decide the issue whether "community property" under the Bankruptcy Code includes "former community property" under Louisiana law. *Anderson v. Conine (In re Robertson),* 203 F.3d 855, fn 1 (5th Cir. 2000) ("We need not concern ourselves with the merits or demerits of *LaNess*, however, because we have concluded that partition of former community property before the bankruptcy petition date prevents inclusion within the bankrupt estate of the separate property received by partition by the non-debtor spouse or former spouse."). This court is convinced that *LaNess* represents the better reading of the Bankruptcy Code with respect to treatment of former community property under Louisiana law as it does not alter the plain meaning of the terms used by Congress, "spouse" and "community property," to "former spouse" and "former community property."

pursue the cause of action for the benefit of the holders of all community claims or the Intervening Plaintiffs should be permitted to pursue it for their own benefit, but not both.

The implications of the parties' decision on how to proceed are central to the establishment of bankruptcy jurisdiction over the dispute concerning former community property in the hands of Ms. Bessette. Bankruptcy jurisdiction is present if the Trustee elects to proceed under section 544(a)(2) of the Bankruptcy Code because that cause of action arises under title 11 and has the express purpose of augmenting the bankruptcy estate for the benefit of community creditors. The Trustee might elect to do that even though at this time it appears that the Intervening Plaintiffs are the only creditors who claim to hold community claims.

The Trustee might conclude, on the other hand, that it is best to leave the Intervening Plaintiffs and Ms. Bessette to resolve their dispute outside of the bankruptcy forum. If the Trustee were to elect not to pursue the section 544(a)(2) claim, then the automatic stay should be modified to permit the Intervening Plaintiffs to attempt to collect their judgment against the Debtor from assets that do not belong to the estate, i.e., from any former community property for which Ms. Bessette may be held accountable pursuant to Louisiana law. This cause of action is one that does not give rise to bankruptcy jurisdiction. Its outcome would have no effect upon the bankruptcy estate. At most, it could potentially reduce the amount of the Intervening Plaintiffs' claim against the assets of the estate, but that fact alone does not give rise to "related to" bankruptcy jurisdiction. *See In re GLC Ltd.,* 475 B.R. 618, 620 (Bankr. S.D. Ohio 2012) ("A third-party action between non-debtors for indemnification of liability to the debtor on the primary complaint is not a related proceeding." (citing cases)).

The balance of the Complaint in Intervention (Count 1) is devoted to anticipated disputes with the Trustee concerning the Intervening Plaintiffs' community claim. The Trustee has

reserved her right to object to the proofs of claim. In effect, the Intervening Plaintiffs seek a preemptory declaratory judgment that they hold an allowed community claim.[13]

CONCLUSION

Careful analysis has shown that the Complaint of the Trustee and the Complaint in Intervention of the Intervening Plaintiffs actually compete with each other insofar as each attempts to make available for payment of community claims former community property (or its value) in the hands of Ms. Bessette. The court will pause here to permit the Trustee to decide whether she intends to proceed under section 544(a)(2) against Ms. Bessette. If the Trustee elects to proceed under section 544(a)(2) to recover any former community property or the value of it in the hands of Ms. Bessette, then Count 2 of the Complaint in Intervention is foreclosed and should be dismissed in favor of the Trustee's claim to recover property of the bankruptcy estate. If the Trustee elects to abandon this claim because of the real possibility that no other creditor will assert that its claim is a community claim, the court will dismiss Count 2 of the Complaint in Intervention for lack of subject matter jurisdiction but modify the automatic stay to permit the Intervening Plaintiffs to pursue their cause of action in an appropriate forum. The court expresses no opinion, of course, about the defenses available to Ms. Bessette in either event. The intent of this opinion and the order that will be entered pursuant to it is simply to clarify the posture of the two sets of plaintiffs and the limits of this court's jurisdiction and authority to entertain their claims. Count 1 of the Complaint in Intervention, which seeks no relief against Ms. Bessette, may go forward as to the Trustee, but the court does not advise it. There are better ways for the issues raised in Count 1 to come before the court.

[13] Although two proofs of claim were filed, they arise out of the same judgment, and thus appear to be duplicative.

A separate order will be entered giving the Trustee thirty days to amend her complaint to assert a claim under section 544(a)(2). In the event that the Trustee does amend her Complaint, the court will enter a separate order dismissing Count 2 of the Complaint in Intervention because the Trustee is the proper party to pursue the claim on behalf of the bankruptcy estate. In the event the Trustee does not amend her Complaint, the court will enter a separate order dismissing Count 2 of the Complaint in Intervention for lack of subject matter jurisdiction.

As to Count I of the Complaint in Intervention, the Intervening Plaintiffs and the Trustee may elect to proceed or may elect to voluntarily dismiss in favor of an objection, if any, to the claims filed by the Intervening Plaintiffs to be filed by the Trustee at the appropriate time.

cc: Debtor
Attorney for Debtor
Plaintiffs
Attorneys for Plaintiffs
Defendants
Attorneys for Defendants