



Dated: October 26, 2022
The following is ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
BUTCHER SHOP OF CORDOVA, LLC,
Debtor.

Case No. 21-22100-L
Chapter 11, Subchapter V

Nadene Day and Michelle Day Harkins,
Plaintiffs,
v.
Agricenter International, Inc.,
Simpson Hughes, and FSH Enterprises, LLC,
Defendants.

Adv. Proc. No. 22-00080

ORDER ON MOTIONS TO DISMISS

BEFORE THE COURT are the *Motion of Agricenter International, Inc. to Dismiss*, filed August 29, 2022 [ECF No. 8] and *Motion of Simpson Hughes and FSH Enterprises, LLC to Dismiss Complaint Pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure*, filed September 1, 2022 [ECF No. 10]. The Plaintiffs filed their *Omnibus Memorandum of Law in Opposition to Defendants' Motions to Dismiss* on September 29, 2022, and requested oral

argument [ECF No. 22]. The Defendants filed Replies on October 11 and 12, 2022 [ECF Nos. 36 and 37]. The Court heard oral argument on October 13, 2022. The Defendants ask that the complaint be dismissed for two reasons: first, because the plaintiffs do not have standing to bring their causes of action, and second, because the complaint fails to state a claim upon which relief can be granted.

BACKGROUND FACTS

The Debtor, Butcher Shop of Cordova, LLC, filed a voluntary petition under Chapter 11, Subchapter V of the Bankruptcy Code on June 29, 2021. The petition was filed by Dennis Day as a member of the Debtor. [Bankr. ECF No. 1].

The Debtor's amended Statement of Financial Affairs names the members of the Debtor as Dennis Day, 61.33%; Michelle Day Harkins, 6.67%; and Simpson Hughes, 32%. The Statement of Financial Affairs also discloses that the Debtor was a defendant in a Forceable Entry and Detainer suit filed by Defendant, Agricenter International, when the bankruptcy petition was filed. [Bankr. ECF No. 16].

Craig M. Geno was appointed Subchapter V Trustee by Paul A. Randolph, Acting United States Trustee for Region 8, on July 6, 2021. [Bankr. ECF No. 7].

On July 16, 2021, Agricenter filed a *Motion for Expedited Relief from Automatic Stay* [Bankr. ECF No. 19]. Both the Debtor and the Subchapter V Trustee filed responses on July 27, 2021 [Bankr. ECF Nos. 26, 27]. By agreement of the parties, the motion for relief from stay has not been argued or submitted to the Court for decision.

Instead, on October 27, 2021, the Debtor filed its *Complaint for Declaratory Judgment under 28 U.S.C. § 2201 and Bankruptcy Rule 7001*, which was assigned adversary proceeding number 21-00106 [the "Declaratory Judgment Complaint"]. The Defendants in that proceeding

are identical to the Defendants in this proceeding. The Declaratory Judgment Complaint asks that the Court declare that the lease between Shelby County Government and Butcher Shop of Cordova, LLC, which was assigned to Agricenter, was not terminated by Agricenter but remains in full force and effect [Decl. Jmt. ECF No. 1].

On December 6, 2021, the Court entered its *Order Granting Joint Ore Tenus Motion to Remove Debtor as Debtor-in Possession Pursuant to 11 U.S.C. § 1185(a)* [Bankr. ECF No. 100]. The United States Trustee, Mr. Hughes, Ms. Harkins, and Ms. Day jointly agreed that the debtor-in-possession should be removed, and that Mr. Geno should serve as operating trustee. He has continued to serve in that capacity to the present day.

Mr. Geno was substituted as plaintiff in the Declaratory Judgment Proceeding on December 13, 2021 [Decl. Jmt. ECF No. 21].

The Plaintiffs commenced this adversary proceeding by filing their *Complaint* on July 28, 2022 [ECF No. 1]. The *Complaint* alleges ten counts consisting of the following:

Count 1 Breach of Fiduciary Duty (Against Hughes)

Count 2 Breach of Duty of Care (Against Hughes)

Count 3 Breach of Duty of Loyalty (Against Hughes)

Count 4 Aiding and Abetting Breach of Fiduciary Duties (Against the Agricenter and FSH)

Count 5 Tortious Interference with Business Relationship (Against Hughes and FSH)

Count 6 Civil Conspiracy (Against All Defendants)

Count 7 Breach of Debtor's Lease (Against Agricenter)

Count 8 Breach of the Implied Covenant of Good Faith and Dealings [sic] (Against the Agricenter)

Count 9 Declaratory Judgment (Against Hughes)

Count 10 Lien on Hughes Membership Interest in the Debtor (Against Hughes).
[ECF No. 1].

Rather than filing answers to the *Complaint*, the Defendants filed their motions to dismiss on August 29 and September 1, 2022 [ECF Nos. 8 and 10]. The motions allege that the *Complaint* should be dismissed because the Plaintiffs lack standing to pursue their claims and the *Complaint* fails to state a claim upon which relief may be granted. Specifically, the Defendants assert that the *Complaint* is barred by the applicable statute of limitations.

JURISDICTION AND AUTHORITY

The district courts have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11. 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 *Complaint* contains only a brief statement concerning jurisdiction. It says, “The Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Although the Defendants did not raise lack of jurisdiction as a basis for the motions to dismiss, the Court has an independent obligation to determine that bankruptcy jurisdiction is present with respect to this adversary proceeding. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 1244 (2006). The Supreme Court makes clear that “subject-matter jurisdiction, because it involves a court’s power to hear a case,

can never be forfeited or waived.” *Id.*, quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781 (2002).

The *Complaint* contains no cause of action that arises under title 11. In fact, it cites no law in support of its claims for relief other than 28 U.S.C. § 2201, which permits the federal courts to render declaratory judgments, and “Rule 7001(2) and (9) of the Federal Rules of Civil Procedure” [Complaint, ¶ 96], which doesn’t exist.¹ The *Complaint* arises either under the laws of the state of Tennessee (*see Plaintiffs’ Omnibus Memorandum of Law in Opposition to Defendants’ Motions to Dismiss*, ECF 22) or under the laws of the state of Delaware (Plaintiffs’ position at oral argument). None of the parties to the *Complaint* is a debtor in bankruptcy. The *Complaint* arises from facts that occurred prior to the filing of the bankruptcy petition. The *Complaint* could have been brought in any court of competent jurisdiction had no bankruptcy case been filed.² In sum, the proceeding neither arises under the Bankruptcy Code nor arises in a bankruptcy case. If bankruptcy jurisdiction is present, it can only be because the proceeding is related to a bankruptcy case. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S. Ct. 1493, 1499 (1995).

A civil proceeding is “related to” a bankruptcy case if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *In re Dow Corning Corp.*, 86 F.3d 482, 489 (6th Cir. 1996) (citations omitted). Further, although “the proceeding need not necessarily be against the debtor or against the debtor’s property ... [a]n action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or

¹ Federal Rules of *Bankruptcy* Procedure 7001 sets out the scope of rules governing adversary proceedings in bankruptcy. It does not provide an independent basis for relief. The *Complaint* references subsection (2), which provides that a proceeding to determine the validity, priority, or extent of a lien or other interest in property is governed by the adversary proceeding rules, and subsection (9), which provides that a proceeding to obtain a declaratory judgment concerning matters governed by the adversary proceeding rules is likewise governed by those rules. To reiterate, Rule 7001 is a procedural rule and does not provide a substantive basis for relief.

² In stating that the *Complaint* could have been filed in another court, this court expresses no opinion concerning the merits of the *Complaint*. The only focus of this opinion is the presence or absence of federal bankruptcy jurisdiction.

freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate.” *Pacor v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984).

Although the *Complaint* alleges that core bankruptcy jurisdiction is present with respect to this proceeding, it fails to specify that it fits within any of the examples of core bankruptcy proceedings provided in section 157(b)(2). 28 U.S.C. §157(b)(2). The Court cannot be expected to speculate concerning the Plaintiffs’ position. At oral argument, counsel for the Plaintiffs was given the opportunity to support the Plaintiffs’ assertion that bankruptcy jurisdiction is present with respect to this adversary proceeding. Counsel pointed to Counts 9 and 10 of the *Complaint*, suggesting that the remedies requested in the *Complaint* bring it within the subject matter jurisdiction of this bankruptcy court.

Count 9 asks that Defendant Hughes be prevented from bidding on or purchasing, directly or indirectly, any assets of the Debtor in any future sale before the bankruptcy court and that the Landlord be prohibited from offering more favorable lease terms for property used by the Debtor to Defendants Hughes or FSH, or any of their affiliates than those currently offered to the Debtor. Setting aside for a moment the concern that this count does not specify a separate cause for relief, the usual result of limiting the persons who may bid on assets in a bankruptcy sale is to depress the price that can be obtained for those assets. The overall theme of the *Complaint* is that the actions of the Defendants injured the Plaintiffs by reducing the value of their interests in the Debtor. The Plaintiffs cannot establish bankruptcy jurisdiction over their *Complaint* by asking the Court to impose a remedy that increases the likelihood of the very injury they complain of. Moreover, the remedy prayed for by the Plaintiffs is at odds with the duty of the Trustee to maximize the value of the assets of the bankruptcy estate for the benefit of creditors. *See*

Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 353, 105 S.Ct. 1986, 1993 (1985).

Count 10 asks that the Court impose a constructive trust on Hughes' membership interest in the Debtor in order that Plaintiffs be provided a remedy in the event they are successful in establishing their claims against the Defendants. According to the *Complaint*, the Plaintiffs and Hughes hold all of the equity interests in the Debtor. [*Complaint*, ¶ 21]. If the Court were to grant the Plaintiffs' request under Count 10, which amounts to a request for a prejudgment attachment, it could have no appreciable effect upon the Debtor. If the Plaintiffs were successful in their claims for relief, the *holders* of the equity interests in the Debtor might change but that change could have no impact upon the creditors or the bankruptcy estate.

CONCLUSION

The *Complaint* neither arises under title 11 of the United States Code nor arises in a bankruptcy case. Given the opportunity to show that the *Complaint* is related to a bankruptcy case, the Plaintiffs failed to show that the outcome could conceivably have an effect on the estate being administered in bankruptcy. Accordingly, the *Complaint* is **DISMISSED** for lack of subject-matter jurisdiction. Because there is no jurisdiction over the dispute between these parties, the Court need not and should not address any of the other grounds raised in support of the motions to dismiss filed by the Defendants. They are rendered **MOOT**.

cc: Debtor
Attorney for Debtor
Plaintiffs
Attorney for Plaintiffs
Defendants
Attorneys for Defendants
Chapter 11 Subchapter V Trustee
United States Trustee