

**Dated: November 30, 2020**  
**The following is ORDERED:**



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

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**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT**  
**WESTERN DISTRICT OF TENNESSEE**  
**WESTERN DIVISION**

In re  
**Will J. Nelson and**  
**Hattie N. Nelson**  
Debtors

Case No. 17-20831  
Chapter 7

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**Will Nelson II**  
Plaintiff

v.

Adv. Proc. No. 20-00102

**Cadles of West Virginia, LLC**  
Defendant

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**OPINION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**  
**COMPLAINT AND ADVERSARY PROCEEDING**

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This matter is before the Court on the Motion of Cadles of West Virginia, LLC (“Defendant”) to Dismiss the Petition for Declaratory and Injunctive Relief (the “Declaratory Action”) filed by Will Nelson II (“Plaintiff”) seeking a determination of the validity and enforceability of two claims: (1) Plaintiff’s claim filed in the bankruptcy case of Debtors Will J. Nelson and Hattie N. Nelson (“Individual Debtors”) and (2) Defendant’s claim filed in the bankruptcy case of Debtor Nelson, Inc (“Corporate Debtor”). Defendant’s Motion to Dismiss seeks dismissal of the Declaratory Action based on FED. R. CIV. P. 12(b)(1) and 12(b)(6) (made applicable to this adversary proceeding pursuant to FED. R. BANKR. P. 7012(b)), contending that this Court lacks subject matter jurisdiction to decide the matters alleged in the Declaratory Action, and that the Declaratory Action fails to state a claim for which this Court may grant relief. The Court heard oral argument on November 17, 2020. Based on the pleadings, the arguments of counsel and the entire record before this Court, the Court finds that Plaintiff’s Declaratory Action against Defendant is dismissed as provided herein.

This Court has jurisdiction to decide pretrial matters, such as a motion to dismiss, in accordance with 28 U.S.C. §§ 1334(b) and 157(b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (b)(2)(B), (b)(2)(K) and (b)(2)(O). The following constitutes the Court’s findings and conclusions pursuant to FED. R. BANKR. P. 7052.

### **FACTUAL SUMMARY**

The Individual Debtors commenced their Chapter 13 bankruptcy case on January 27, 2017 (Case No. 17-20831). The case was converted by the Individual Debtors to a Chapter 11 case on or about March 7, 2017 [Case No. 17-20831, DE 28]. This Court then ordered the conversion of the Individual Debtors’ case to Chapter 7 on July 24, 2019 [Case No. 17-20831, DE 305]. Ms.

Bettye Bedwell (“Ms. Bedwell” or “Chapter 7 trustee”) was appointed Chapter 7 trustee on July 25, 2019 [Case No. 17-20831, DE 307].

In addition to the Individual Debtors’ case, Corporate Debtor, an entity owned and operated by the Individual Debtors, also filed its bankruptcy case in this Court under Chapter 11 on October 15, 2017 (Case No. 17-29082), which was then converted by the Court to a Chapter 7 case on September 23, 2019 [Case No. 17-29082, DE 283]. Ms. Bedwell was appointed Chapter 7 trustee in the Corporate Debtor’s case as well [Case No. 17-29082, DE 285].

Plaintiff Will Nelson II, who is the son of the Individual Debtors and an employee and officer of the Corporate Debtor, filed a secured claim on November 19, 2019, in the Individual Debtors’ bankruptcy case in the amount of \$230,000 [Case No. 17-20831, Claim No. 83-1] arising from the Individual Debtors’ default on a promissory note payable to Plaintiff and secured by numerous deeds of trusts.

Defendant Cadles of West Virginia, LLC (“Cadles”) is the holder of the largest claim in both the individual and the corporate bankruptcy cases. Cadles filed an unsecured claim in the Individual Debtors’ bankruptcy case in the amount of \$2,834,997.58 [Case No. 17-20831, Claim No. 69-1] on May 2, 2017, and amended its claim to reflect a secured claim on June 14, 2018 [Claim No. 69-2]. After the Corporate Debtor commenced its bankruptcy case, Cadles similarly filed an unsecured claim in the amount of \$3,017,763.54 [Case No. 17-29082, Claim No. 8-1] on March 27, 2018, and amended its claim to reflect a secured claim on September 6, 2018 [Case No. 17-29082, Claim No. 8-2]. The former corporate debtor-in-possession objected to Claim No. 8-2, but then withdrew its objection without prejudice, reserving the right to file an adversary proceeding to challenge the claim at a later date. [Case No. 17-29082, DE 241].

It is against this backdrop that the Court now considers the allegations set forth in the Plaintiff's Declaratory Action in light of the Defendant's Motion to Dismiss.

### ISSUE

The issue before the Court is whether procedural bars based on concurrent litigation, judicial estoppel, lack of standing and the finality of the Court's prior orders are sufficient to warrant dismissal under FED. R. CIV. P. 12(b).

### DISCUSSION

Plaintiff seeks a declaratory judgment from this Court as to the validity, extent and priority of the parties' respective claims filed in the Corporate Debtor's and Individual Debtors' bankruptcy cases. Specifically, the Declaratory Action seeks an order of declaratory judgment (1) affirming the validity and enforceability of the promissory note and deeds of trust executed between Plaintiff and Individual Debtors that give rise to Plaintiff's claim and (2) denying the validity and enforceability of Defendant's interest in the Revolving Credit Note executed by the Corporate Debtor that give rise to Defendant's claim. Defendant's motion to dismiss is premised on a jurisdictional challenge to the allegations in the Declaratory Action based on FED. R. CIV. P. 12(b)(1), which provides that a party may assert as a defense by motion, the lack of subject-matter jurisdiction, and on Rule 12(b)(6), essentially contending that the Declaratory Action fails to set forth claims for which relief may be granted.

As a general rule, a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction is either a facial attack or a factual attack on the complaint. *Gentek Bldg. Prods., Inc. v. Sherwin-Williams, Co.* 491 F.3d 320, 330 (6<sup>th</sup> Cir. 2007) (citing *Ohio Nat'l. Life Ins. Co. v. United States*, 922 F.2d 320,325 (6<sup>th</sup> Cir. 1990)). A facial attack merely questions the sufficiency of the pleading, and the Court accepts the allegations in the complaint as true when determining whether

jurisdiction exists. *Id.* Where there is a factual attack on the complaint, there is no such presumption of truthfulness but instead the court must address a factual controversy raised in the motion to dismiss in order to determine whether jurisdiction exists. *Id.* In this case, Defendant has not raised a factual controversy, but instead contends that the claims asserted in the Declaratory Action are insufficient to establish subject-matter jurisdiction.

Likewise, a court must look to the sufficiency and plausibility of the allegations in the complaint when considering a motion to dismiss based on Rule 12(b)(6). Rule 12(b)(6) provides that “[e]very defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . (6) failure to state a claim on which relief can be granted.” In reviewing a motion to dismiss, the court must “construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.” *Directv, Inc. v. Treesh*, 487 F.3d 471,476 (6<sup>th</sup> Cir. 2007) (citation omitted). “However, the tenet that a court must accept a complaint’s allegations as true is inapplicable to threadbare recitations of a cause of action’s elements, supported by mere conclusory statements.” *Carnegie Gas, Inc. v. S. & D. Coffee, Inc.* No. 1:19-CV-02809, 2020 WL 4476297 at \*3 (Aug. 4, 2020)(sl. op.)(citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Gregory v. Shelby County*, 220 F.3d 433, 446 (6<sup>th</sup> Cir. 2000)(court will not accept conclusions of law or unwarranted inferences cast in the form of factual allegations.)). The Court considers the Declaratory Action and the Motion to Dismiss pursuant to these standards.

*Validity and Enforceability of Plaintiff’s Claim against the Individual Debtors*

Plaintiff first seeks to establish by declaratory judgment that he holds a valid and enforceable secured claim against certain property of the Individual Debtors’ bankruptcy estate. As Defendant contends and as the Court notes, however, there is already a case pending in this

Court to determine and resolve the validity and extent of Plaintiff's claim. *See Bettye Bedwell, Chapter 7 Trustee v. Will J. Nelson, II (In re Nelson)*, Case No. 17-20831, Adv. Pro. No. 20-00078, United States Bankruptcy Court for the Western District of Tennessee, in which the Chapter 7 trustee has objected to Plaintiff's claim.<sup>1</sup> It is well established in this and other Circuits that in order to minimize duplicative litigation and to protect the parties and the courts from the possibility of conflicting results, courts will apply the "first to file" rule. *Baatz v. Columbia Gas Transmission, LLC*, 814 F3d 785,789 (6<sup>th</sup> Cir. 2016) (citing *EEOC v. Univ. of Pa.*, 850 F2d 969, 977 (3d Cir. 1988) and *West Gulf Maritime Ass'n v. ILA Deep Sea Local 24*, 751 F2d. 721, 729 (5<sup>th</sup> Cir. 1985)). The rule provides that when actions involving the same or nearly identical parties and issues have been filed in two different courts, "the court in which the first suit was filed should generally proceed to judgment." *Baatz* at 789 (citations omitted). Although generally applied when multiple lawsuits are pending in courts of concurrent jurisdiction, the reasoning and analysis of the doctrine is aptly applied in this case, where litigation to resolve an issue presented in this adversary proceeding is already pending in another adversary proceeding.

When determining whether the first-to-file doctrine should be applied to a case, "courts generally evaluate three factors: (1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." *Id.* (citation omitted). If the court determines that these three factors support application of the rule, the court must then address "whether any equitable considerations, such as evidence of 'inequitable conduct, bad faith, anticipatory suits, [or] forum shopping' merit not applying the first-to-file rule in a particular case." *Id.* (citations omitted).

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<sup>1</sup> The Court notes the Chapter 7 trustee is not a party to this adversary proceeding; yet, the Chapter 7 trustee is the representative of the estate. *See* 11 U.S.C. § 323.

Application of the factors to this case clearly instruct that the first-to-file rule should govern. Ms. Bedwell commenced her adversary proceeding objecting to Plaintiff's claim on June 1, 2020 [Adv. Pro. No. 20-00078, DE 1], and Plaintiff filed his Declaratory Action seeking a determination of the validity and extent of his claim on July 28, 2020. Plaintiff is obviously a party to both lawsuits, and the same issues and claims are at stake in both. As Chapter 7 trustee, Ms. Bedwell has both the standing and duty to examine all aspects of Plaintiff's claim, and she has asked this Court to determine its validity in light of issues that she has raised in her adversary complaint. Further, having found that all three factors point the Court to application of the first-to-file rule in this case, the Court finds no equitable considerations to merit not applying the rule.

In its motion to dismiss, the Defendant also contends that the doctrine of judicial estoppel bars Plaintiff from his attempt to prosecute this adversary proceeding, as Plaintiff failed to schedule the debt giving rise to his claim as an asset in his own Chapter 13 bankruptcy case filed in the Eastern District of Virginia as case number 18-13776 on November 6, 2018. This issue was first raised by the Chapter 7 trustee in her adversary complaint objecting to Plaintiff's claim and, pursuant to the Court's reasoning set forth herein, will be resolved accordingly in that first-filed proceeding.

*Validity and Enforceability of Defendant's Claim against the Corporate Debtor*

Plaintiff next challenges Defendant's claim, questioning Defendant's ownership rights to its claim and the validity of Defendant's security interest in the Corporate Debtor's case. In defense, Defendant contends that Plaintiff is without standing to object to its claim, and that the Court's order approving the settlement of Defendant's claim is a final order, not subject to review.

As an initial matter, after review of the Corporate Debtor's claims register and schedules, it appears Plaintiff is not a creditor of the Corporate Debtor, nor has he filed any claim in the

Corporate Debtor's case. *See* Case No. 17-29082, Claims Register and Schedules. There is no evidence in the record, or allegation in the Declaration Action asserting a claim against the Corporate Debtor. Therefore, Plaintiff is not a "party in interest" under 11 U.S.C. § 502(a), and he lacks standing to bring this action seeking declaratory relief regarding the validity and enforceability of Defendant's Claim against the Corporate Debtor.<sup>2</sup>

The Court notes that prior to conversion of the Corporate Debtor's bankruptcy case, an adversary proceeding was filed by the former corporate debtor-in-possession on April 30, 2019, styled *Nelson Inc. v. Cadles of West Virginia, LLC (In re Nelson, Inc.)*, Case No. 17-29082, Adv. Pro. No. 19-00100, United States Bankruptcy Court, Western District of Tennessee, seeking a determination of the extent, validity and priority of Cadles' claim and its security interest in the Corporate Debtor's assets.<sup>3</sup> [Adv. Pro. No. 19-00100, DE 1]. Corporate Debtor also asserted that the claim asserted by Cadles had been purchased numerous times and that there was no documentation included with the proof of claim showing that the claim or any security therefore had been assigned to Cadles. *Id.* Upon conversion to Chapter 7, on September 23, 2019, the Chapter 7 trustee became the sole representative of the corporate debtor and possessed the power to prosecute or defend a proceeding by or against the debtor and to examine proofs of claims. 11 U.S.C. §§ 323, 704(a)(5); FED. R. BANKR. P. 6009. The Chapter 7 trustee is charged with the fiduciary duty to administer the chapter 7 estates expeditiously in the best interests of the estates.

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<sup>2</sup> Furthermore, Plaintiff has no remote interest in the Corporate Debtor's bankruptcy case because there will be no distribution to the debtor, owners or equity holders of Nelson, Inc. The court previously took judicial notice of its own records in the Corporate Debtor's case that the debtor's assets do not exceed the claims filed. FED. R. EVID. 201(b)(2); *see* Case No. 17-29082, DE 423. There will be no surplus available to distribute to the debtor (or its owners) after all creditors and administrative expenses are paid in the Corporate Debtor's bankruptcy case.

<sup>3</sup> The docket minutes of March 31, 2020 and April 16, 2020 indicate that an Agreed Order is to be entered in that case, although no such order has been docketed as of this date.



11 U.S.C. § 704(a)(1). It is the statutorily mandated duty of the Chapter 7 trustee to “examine proofs of claims and object to the allowance of any claim that is improper.” 11 U.S.C. § 704(a)(5).

After examining Cadles’ claim and documentation of the assignment of the claim and security interests in assets to Cadles, the Chapter 7 trustee filed a motion to approve a compromise and settlement of Cadles’ claim in the Corporate Debtor’s bankruptcy case. [Case No. 17-29082, DE 395]. The Court granted the Chapter 7 trustee’s motion on June 26, 2020, over multiple objections including the objection filed by Paul Robinson, Esq. (as counsel for the former debtor-in-possession), finding that the settlement was appropriate under the circumstances and in the best interest of the estate and its creditors. [Case No. 17-29082, DE 423].

The Court is left to wonder why Defendant is now being hauled into court to defend its claim in the Corporate Debtor’s bankruptcy case that was settled with the Chapter 7 trustee. The Court approved the settlement on June 26, 2020, and that Order has not been appealed. The settlement funds were disbursed to Defendant on or about September 28, 2020. [Case No. 17-29082, DE 459]. Thus, the settlement has been fully consummated. The Court will not overturn its prior orders in this case.

Finally, during the hearing on Defendant’s Motion to Dismiss, counsel for Cadles clarified that the settlement order entered in the Corporate Debtor’s bankruptcy case divested it of any remaining security interest and it now stands as a wholly unsecured creditor. Cadles needs to amend its claim in the Corporate Debtor’s case accordingly. To the extent the settlement extended to Cadles’ claim in the Individual Debtors’ case, Cadles should amend its claim to provide clarity

to Nelson II so that he can better determine whether or not it is appropriate to file any objection to Cadles' claim in the Individual Debtors' bankruptcy case.<sup>4</sup>

### **CONCLUSION**

For the reasons stated herein, the Court finds that the Defendant's Motion by Cadles of West Virginia, LLC to Dismiss Complaint and Adversary Proceeding of Will Nelson II is GRANTED.

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<sup>4</sup> The Court is reserving the issue of whether Nelson II has standing to bring such a claim for a later time. It is better for the Court to yield this issue to the previously filed case by the Trustee styled *Bettye Bedwell, Chapter 7 Trustee v. Will J. Nelson, II (In re Nelson)*, Case No. 17-20831, Adv. Pro. No. 20-00078.