Dated: May 04, 2022
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

LINDA ELAM

Debtor.

Case No. 11-21571
Chapter 7

LINDA ELAM

Plaintiff

v.

NATIONSTAR MORTGAGE, LLC D/B/A MR. COOPER and AURORA LOAN SERVICES, LLC

Defendants.

Adv. Proc. No. 21-00098

OPINION AND ORDER DISMISSING ADVERSARY PROCEEDING

This matter came before the Court on Nationstar Mortgage, LLC's ("Nationstar") motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative 12(c). The Court, *sua sponte*, questioned its subject matter jurisdiction and requested additional briefing as to whether the Court had the ability to determine issues brought before the Court.[1] After considering the additional briefing by both parties, as well as the arguments of counsel, the Court finds it lacks subject matter jurisdiction. The following constitutes the Court's findings of fact and conclusions of law in support of dismissal.

PROCEDURAL AND FACTUAL BACKGROUND

The Real Property, Loan and Deed of Trust

The Court hereby adopts the pertinent facts as set forth in the Sixth Circuit's Order of August 9, 2019, in the case of *Elam v. Aurora Loan Servs., LLC,* No. 18-5743, 2019 WL 7603379 (6th Cir. Aug. 9, 2019), [DE 18, Exh.] as follows.

Linda Elam acquired title by warranty deed to real property located on Brierwood Circle in Piperton, Tennessee (the "Real Property") on December 2, 2002. Linda Elam and her husband (the "Elams") subsequently created L & F Irrevocable Trust dated December 12, 2002 (the "Trust"), naming Frederick Elam as the trustee. Linda Elam then conveyed the Real Property, owned by her individually, to the Trust by quitclaim deed. On December 23, 2002, Frederick Elam, in his capacity as trustee, executed a deed of trust pledging the Real Property as collateral to secure a construction loan from Merchants & Farmers Bank in the amount of $386,669.63.

[1] *See* FED. R. CIV. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."); *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.),* 930 F.2d 1132, 1137-38 (6th Cir. 1991) (parties can neither waive the lack of subject matter jurisdiction nor confer it by consent)(citation omitted).

In March, 2004, the Elams, in their individual capacities, received a loan from Realty Mortgage Corporation in the amount of $540,000. The Elams, purportedly in their individual capacities, secured the loan by executing a deed of trust pledging the Real Property as collateral. The Elams used the $540,000 loan to repay their loan to Merchants & Farmers Bank, as well as to make improvements to the house situated on the Real Property. Aurora Loan Services, LLC ("Aurora") eventually became the holder of the Elams' note held by Realty Mortgage Corporation. The Elams executed a Loan Modification with Aurora in May, 2008.

The Bankruptcy Case

Subsequent events led to the filing of Linda Elam's Chapter 7 bankruptcy case on February 16, 2011. Ms. Elam obtained her discharge order and final decree in the Chapter 7 bankruptcy on February 13, 2012. Once the final decree was entered, no additional motions or orders were submitted in the Chapter 7 bankruptcy until the Debtor's counsel filed a Motion to Reopen the case on July 26, 2021.

The Chancery Court Action

In April, 2012, Aurora filed suit in the Chancery Court for Fayette County (Tennessee) against the Elams, the Trust, and several other defendants for notice purposes, in which it sought a declaratory judgment that the December 12, 2002, deed conveying the Real Property from Linda Elam to the Trust was void. Aurora alternatively sought to "assume the priority position of the Merchants & Farmers Bank mortgage." Aurora additionally asked the Chancery Court to find that the Real Property was pledged as collateral for the $540,000 loan, or, in the alternative, that it held an equitable lien on the Real Property. FirstBank, one of the defendants named for notice purposes, filed a cross-claim against the Elams, also seeking a declaratory judgment that the quitclaim deed conveying the Real Property from Linda Elam to the Trust was void.

During that state court proceeding, Nationstar Mortgage, LLC ("Nationstar") became the servicer of the Elams' loan and, on May 16, 2013, the Chancery Court entered a consent order substituting Nationstar for Aurora as the plaintiff. Nationstar thereafter filed a motion for summary judgment, in which it asked the Chancery Court to declare that the Elams pledged the Real Property as collateral to secure the $540,000 loan from Realty Mortgage Corporation. Nationstar alternatively sought a declaration that it held either a priority position "of the Merchants & Farmers Bank mortgage" or a "first priority equitable lien" on the Real Property. The Chancery Court granted Nationstar's motion for summary judgment. In doing so, it found that the Elams, the Trust, and Realty Mortgage Corporation intended that the Real Property would be collateral for the loan. The Chancery Court thus ordered that the March, 2004 deed of trust securing the Real Property as collateral for the $540,000 loan "be reformed to reflect that the interest of the [L & F Irrevocable Trust] was effectively conveyed in said deed of trust through its Trustee, Fred Elam."

The District Court Action

In March 2017, the Elams filed a federal lawsuit against Aurora and Nationstar (and several other defendants) alleging that the defendants violated the Truth in Lending Act ("TILA"), *see* 15 U.S.C. §§ 1601-1667f, unlawfully attempted to foreclose on the Real Property, and attempted to collect on "an illegal judgment." The Elams sought monetary damages and the removal of all liens and mortgages.

Aurora and Nationstar (and other defendants) moved to dismiss the Elams' claims under FED. R. CIV. P. 12(b)(6), arguing, in part, that they were either time-barred or barred by the doctrine of *res judicata*. The Elams opposed the defendants' motions to dismiss and moved for leave to amend their complaint. The Elams' proposed amended complaint clarified the nature of their TILA claims, argued that the defendants' alleged TILA violations amounted to fraudulent

concealment, introduced a Racketeer Influenced and Corrupt Organizations ("RICO") claim, *see* 18 U.S.C. § 1961, *et seq*., and sought remedies beyond what they requested in their initial complaint. The defendants argued in opposition that any amendment to the Elams' complaint would be futile. The magistrate judge agreed with the defendants, determining that: (1) the Elams failed to assert a plausible TILA claim; (2) the TILA, RICO, fraudulent concealment, and illegal foreclosure claims were barred by the doctrine of *res judicata*; (3) the TILA and RICO claims were barred by the applicable statutes of limitations; (4) the Elams' proposed amended complaint contained insufficient factual allegations to support a civil RICO cause of action; and (5) the Elams' allegation that FirstBank possessed an "illegal judgment" was conclusory and failed to make the requisite showing of entitlement to relief. The magistrate judge therefore recommended that the District Court deny the Elams' motion for leave to amend their complaint and grant the defendants' motions to dismiss. The District Court adopted the magistrate judge's report and recommendation over the Elams' objections, denied the Elams' motion for leave to amend their complaint, and granted the defendants' FED. R. CIV. P. 12(b)(6) motions. The District Court further denied the Elams' subsequent motion for reconsideration.

The 6th Circuit Action

On appeal, the Elams challenged the District Court's conclusions that their claims were barred by the doctrine of *res judicata* and the applicable statutes of limitations. *See Elam v. Aurora Loan Servs*., *LLC*, No. 18-5743, 2019 WL 7603379 (6th Cir. Aug. 9, 2019). The Sixth Circuit affirmed the District Court's ruling, noting, "[t]he parties in the first lawsuit litigated the validity of the Elams' mortgage, whereas the Elams' claims in the present suit are aimed at quieting title in their favor due to the defendants' alleged illicit conduct. The issues raised in both lawsuits thus

stem from the same transaction—the creation and enforcement of the $540,000 mortgage loan. An identity of causes of action therefore exists between the first and current lawsuits." *Id.* at *3.

The Reopening of Bankruptcy Case and Adversary Proceeding

Upon motion of Debtor Linda Elam, the bankruptcy case was reopened on September 20, 2021 and Debtor subsequently commenced this adversary proceeding, advancing two arguments for relief: (1) that the assignment of the note to Aurora fails to meet requirements for an assignment under Tennessee state law; and (2) that the loan at issue was extinguished through the discharge in the underlying bankruptcy. [DE 1]

Nationstar subsequently filed its answer [DE 14] followed by its Motion to Dismiss [DE 17-18, 22], citing state law, failure to state a claim upon which relief can be granted, and that the Plaintiff's claims are barred by *res judicata*. In addition, at the request of the Court, Nationstar filed an Amended Brief in support of its Motion to Dismiss [DE 22] in which it addressed the issue before the Court, *i.e*. whether the Court has subject matter jurisdiction. Plaintiff filed her response in opposition to Defendant's Motion to Dismiss [DE 29], as well as a motion to stay this proceeding [DE 23] to allow Plaintiff time to file a Rule 60(b)(6) motion in the Sixth Circuit regarding the Circuit's ruling in a related matter. Plaintiff also filed her brief relating to jurisdiction. [DE 28]

LEGAL ANALYSIS

This Court considers the pending matter before the Court under Fed. R. Civ. P. 12(b)(1), made applicable to bankruptcy proceedings through Fed. R. Bankr. P. 7012, which allows dismissal for lack of jurisdiction over the subject matter. This Court has limited jurisdiction. *See* 28 U.S.C. § 157; 28 U.S.C. § 1334(a) and (b); *Wasserman v. Immormino (In re Granger Garage, Inc*.), 921 F.2d 74, 77 (6th Cir. 1990) (citations omitted). The burden of establishing jurisdiction

lies with the party asserting it, i.e. Plaintiff. *See Kokkonen v. Guardian Life Ins. Co*., 511 U.S. 375, 377 (1994) (citation omitted).

The bankruptcy court must determine what type of jurisdiction, if any, it has in a matter before adjudicating the merits. "The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11." 28 U.S.C. § 157(b)(3).[2]

There are multiple federal statutes that define the scope of the bankruptcy court's subject-matter jurisdiction. First, under 28 U.S.C. § 1334(b), "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." Second, 28 U.S.C. § 157(a) authorizes the district courts to refer "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 ... to the bankruptcy judges for the district." Additionally, 28 U.S.C. § 157(b) allows "[b]ankruptcy judges ... [to] hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section."

The Court turns to whether the Plaintiff's claims asserted in the Complaint constitute a core proceeding or a non-core proceeding which nevertheless qualifies as a "related to" proceeding.

[2] This motion may "challenge the sufficiency of the pleading itself (facial attack) or the factual existence of subject matter jurisdiction (factual attack)." *Cartwright v. Garner,* 751 F.3d 752, 759 (6th Cir. 2014) (citing *United States v. Ritchie,* 15 F.3d 592, 598 (6th Cir. 1994)). In a facial attack, the allegations in the complaint are taken as true and the issue is whether the plaintiff has alleged a basis for subject matter jurisdiction. *Id.* A factual attack (as in this case) addresses the factual existence of subject matter jurisdiction. *Id.* The Court has broad discretion as to what evidence should be considered, with the plaintiff bearing the burden of proof. *Id.* at 759-760 (citation omitted); *see also Hale v. Morgan Stanley Smith Barney LLC*, 982 F.3d 996, 997 (6th Cir. 2020).

1. Core Proceedings

Core proceedings involve rights created by the Bankruptcy Code (*i.e*. the proceeding relies on the Bankruptcy Code for its existence). 28 U.S.C. 157(b)(2); *see Amedisys, Inc. v. Nat'l Century Fin. Enter., Inc. (In re Nat'l Century Fin. Enter., Inc*.), 423 F3d 567 (6th Cir. 2005).

Plaintiff asserts that this proceeding is within the scope of 28 U.S.C. § 157(b)(2)(K) because the complaint involves the "determination[] of the validity, extent, or priority of liens" [DE 1 at p. 2 ¶3] along with the catch-all provision in 28 U.S.C. § 157(b)(2)(O) which renders core "proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims." *Id.*

However, given the Chapter 7 trustee's abandonment of all assets (which includes the claim against Defendants), the discharge and the closing of the Chapter 7 case, any potential impact or monetary recovery that may result will inure solely to the Plaintiff's benefit.[3] *See Maxwell v. HSBC Mortg. Corp. (USA) (In re Maxwell),* Adversary No. 12–5284, 2012 WL 3678609, at *3 (Bankr. N.D. Ga. Aug. 22, 2012). The Real Property in question (including the claim itself) has been abandoned and is no longer part of the estate. Any resolution regarding the validity, priority, and extent of liens on the abandoned Real Property will only affect the Debtor; it will have no effect on the bankruptcy estate. Therefore, it is clear to the Court that the claims asserted in the adversary proceeding fall outside of 28 U.S.C. § 157(b)(2)(K) and (O).

In short, this adversary proceeding is not a core matter under 28 U.S.C. § 157(b)(2).

[3] Debtor received her Chapter 7 Discharge on February 13, 2012 [Bankr. DE 57] with the final decree entered the same day [Bankr. DE 58]. The Chapter 7 case was closed for nine years. Furthermore, the Chapter 7 trustee abandoned all of the estate's assets to the Debtor [Bankr. DE 19]. *See also* 11 U.S.C. § 554(c) and (d).

2. Non-Core Proceedings—"Related To" Jurisdiction

The circuit courts have uniformly adopted an expansive definition of a "related" proceeding under 28 U.S.C. §1334(b). The Third Circuit explained in *In re Pacor, Inc.,* 743 F.2d 984 (3rd Cir.1984):

> The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Id. at 994 (emphasis in original; citations omitted). The *Pacor* formulation has been adopted by the Sixth Circuit, with the caveat that "situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement. . . ." *Kelley v. Nodine (In re Salem Mortg. Co.),* 783 F.2d 626, 634 (6th Cir. 1986); *accord Turner v. Ermiger (In re Turner),* 724 F.2d 338, 341 (2d Cir. 1983).

The "related to" jurisdiction of this Court over the underlying Real Property and related claims dissolved upon the Chapter 7's abandonment of the Real Property and the related claims [Bankr. DE 19], the Debtor's discharge, and the closure of the case.[4] *See Harris v. HSBC Bank, USA (In re Harris),* 450 B.R. 324, 335 n. 46 (quoting *VonGrabe v. Mecs (In re VonGrabe),* 332 B.R. 40, 43-44 (Bankr. M.D. Fla. 2005)) ("[B]ecause discharge had issued and [the] debtor's prepetition claims were abandoned by the Chapter 7 trustee, the debtor was 'revested with the right

[4] 11 U.S.C. § 554(c) expressly provides: "Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for the purposes of section 350 of this title."

to pursue his assorted claims against the various defendants in a more appropriate forum.'"); *United States v. Fleet Nat'l Bank (In re Calore Express Co., Inc.),* 288 B.R. 167, 169-70 (D. Mass. 2002) ("[T]here are two dimensions on which to assess 'related to' jurisdiction: substantive and temporal. A matter may be unrelated to a bankruptcy estate because it substantively has no impact on that estate, or it may be unrelated because the estate does not exist anymore. Either way, if a given dispute is unrelated to a bankruptcy estate, a bankruptcy court ... has no subject-matter jurisdiction over that dispute.").

Here, the Chapter 7 trustee has abandoned the underlying Real Property (and claims relating to the Real Property), Debtor has received her discharge and the underlying case was closed for more than nine (9) years. Plaintiff seeks recovery in this adversary proceeding for her own benefit, not for the benefit of the bankruptcy estate. The proceeding could not conceivably have an effect on the bankruptcy estate because the estate simply does not exist.

a. Discretionary Retention of Proceeding

The Court's analysis does not end here though, because under certain circumstances the Court may exercise discretion to retain the proceeding and decide the matter on its merits. While "[t]he dismissal of a bankruptcy case normally results in dismissal of related proceedings because federal jurisdiction is premised upon the nexus between the underlying bankruptcy case and the related proceedings.... This general rule is not without exceptions." *Melo v. GMAC Mortg., LLC (In re Melo),* 496 B.R. 253, 256 (B.A.P. 1st Cir. 2013) (internal quotations marks and citations omitted) (quoting *Hamilton v. Appolon (In re Hamilton),* 399 B.R. 717, 720 (B.A.P. 1st Cir. 2009)); *Murray v. Safir Law, P.L.C. (In re Murray)*, No. 20-1910, 2021 WL 4026732, at *5 (6th Cir. Sept. 3, 2021) (bankruptcy court "should have recognized that 'dismissal of an underlying

bankruptcy case does not automatically strip a federal court of residual jurisdiction to dispose of matters after the underlying bankruptcy case has been dismissed.'") (citations omitted).

The Court determines, in its "sound discretion," not to exercise any residual jurisdiction it may have. The Court considers four factors to guide its discretion which are economy, convenience, fairness and comity. *Id.*, quoting *Peabody Landscape Constr. Inc. v. Schottenstein*, 371 B.R. 276, 281 (S.D. Ohio 2007).

1. Judicial Economy

The Plaintiff's claims, based on non-bankruptcy law, have been litigated in both state and federal court. The Court finds that Plaintiff can further her litigation efforts in those forums, and by not retaining any residual jurisdiction, this Court furthers judicial economy. The present dispute is between two adversaries - it does not implicate any objectives of the Bankruptcy Code to justify continuation of the action in this Court.

The parties have engaged in little, if any, pretrial discovery in this Court, and the Court has not invested significant resources on the matter. Whereas there has been ongoing litigation in District Court, the 6th Circuit Court of Appeals and State Chancery Court, there would be little waste of judicial resources if the Plaintiff is required to continue her actions in those judicial forums. Judicial economy does not weigh in favor of retaining jurisdiction over the Plaintiff's action.

2. Convenience to the Parties

Similarly, convenience to the parties as a factor weighs against the Plaintiff. Dismissing the adversary proceeding would result in only slight inconvenience to the parties, given the limited time expended in this case by the parties and the ease of continuing the action in a non-bankruptcy judicial forum. The Plaintiff has not submitted any evidence to establish that dismissal

of the proceeding would result in undue delay. On the contrary, the Plaintiff has requested a stay of this adversary proceeding in order to pursue an action in the district court. [DE 23].

3. Comity

To evaluate this factor, the Court considers whether the claims arising in this litigation would be adjudicated best by another court. There are no bankruptcy-related issues left to be decided by this Court. The Plaintiff's claims are predicated upon federal non-bankruptcy law. The claims are not unique to bankruptcy and a bankruptcy court is no better equipped to adjudicate them than any other judicial forum. Comity does not weigh in favor of this Court retaining jurisdiction.[5]

4. Fairness

The final factor to consider is fairness, in this instance, to the Plaintiff if the proceeding is dismissed. The Court finds that Plaintiff will not be prejudiced in any way if this case is dismissed. Plaintiff may attempt to proceed with her appeal before the 6th Circuit Court of Appeals. Thus, this Court will not exercise its discretion to retain jurisdiction.

CONCLUSION

For all of the above reasons, the Court hereby DISMISSES the Debtor's Complaint for lack of subject matter jurisdiction. A separate judgment will be entered to reflect this decision.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

Joel W. Giddens
Wilson & Associates, PLLC

[5] Further, this Court is not the reviewing Court of prior decisions made in Federal Court.

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