

Dated: December 20, 2023
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

ROBERT LEE WARD, JR.

Case No. 20-25355
Chapter 13

Debtor.

ROBERT L. WARD, JR.

Plaintiff

v.

Adv. Proc. No. 22-00004

UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT

Defendant.

OPINION AND ORDER REGARDING SUBJECT MATTER JURISDICTION

Defendant, in an unconventional way¹, essentially seeks dismissal of the adversary proceeding under FED. R. CIV. P. 12(b)(1) and 12(h)(3), applicable to this adversary proceeding through FED. R. BANKR. P. 7012(b). After considering the additional briefing by both parties, as well as the arguments of counsel, the Court finds it has subject matter jurisdiction to decide this adversary proceeding. The following constitutes the Court’s Findings of Fact and Conclusions of Law in support of denial of Defendant’s dismissal request.

STANDARD OF REVIEW

The court may dismiss a cause of action for lack of subject matter jurisdiction under Federal Civil Procedure Rule 12(b)(1). FED. R. CIV. P. 12(b)(1) (made applicable by FED. R. BANKR. P. 7012(b)); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-5 (1998) (citations omitted). A Rule 12(b)(1) 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) (citation omitted). In a facial attack, as in this case, 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.* (citing *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994)).

PROCEDURAL AND FACTUAL BACKGROUND

Debtor Robert Ward (“Ward” or “Plaintiff”) is a retiree from the U.S. Department of the Army, and he is entitled to receive a monthly retirement benefit from the Federal Employees Retirement Service (FERS), payable through the U.S. Office of Personnel Management (“OPM” or “Defendant”). [DE 16, p. 3] Prior to his retirement, Ward had two distinct periods of federal service, from October 30, 1985, to January 4, 1986, and from June 9, 1986, to January 8, 1988, for

¹ Defendant brought up the Court’s purported lack of subject matter jurisdiction in its pre-trial brief. At the pre-trial conference, the Court asked the parties to brief the issue of lack of subject matter jurisdiction.

which FERS employee retirement deductions were never taken because these periods were covered exclusively under Social Security and not FERS. *Id.* Ward also had one period of federal service for which he took a purported “refund” of his retirement deductions, November 12, 1989 to January 7, 2000, and for which he is entitled to make a “redeposit” under 5 U.S.C. § 8422(i). *Id.* at pp. 3-4.

Ward filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code on November 13, 2020. [Bankruptcy Case No. 20-25355, DE 1] This Court confirmed his Chapter 13 Plan on March 24, 2021 [Bankruptcy Case No. 20-25355, DE 42], and an Amended Order Confirming Chapter 13 Plan was filed on April 2, 2021 [Bankruptcy Case No. 20-25355, DE 51]. On September 9, 2021, Debtor filed a motion to add the Department of the Army and OPM (for notice purposes) as a creditor. [Bankruptcy Case No. 20-25355, DE 64] The Motion to Add was granted on October 4, 2021. [Bankruptcy Case No. 20-25355, DE 69]

In December 2021, OPM, through Legal Administrative Specialist Perry Timmons, sent Ward a letter concerning the calculation of his retirement annuity with information as to the ability to make a “redeposit” of certain funds which would entitle Ward to a higher monthly annuity. [DE 4]

A motion to amend the order adding Defendant as a creditor in the underlying bankruptcy proceeding was filed on August 31, 2022 to increase the claim amount and change the treatment of said creditor from general unsecured to a special class of unsecured creditor. [Bankruptcy Case No. 20-25355, DE 87] OPM filed an objection to the motion to amend the order. [Bankruptcy Case No. 20-25355, DE 90] OPM also filed a motion to set aside the order on the motion to add creditor. [Bankruptcy Case No. 20-25355, DE 95] Debtor also filed a motion to modify his Chapter 13 Plan

after confirmation pursuant to 11 U.S.C. § 1329 to account for the additional claim. [Bankruptcy Case No. 20-25355, DE 98]

Debtor's Motion to Amend Order Granting Motion to Add Creditor was withdrawn without prejudice by agreement after the parties engaged in settlement discussions. [Bankruptcy Case No. 20-25355, DE 103] Unfortunately, the parties were unable to reach any resolution of the underlying issues before the Court. Therefore, this matter was put back on the Court's docket.

LEGAL ANALYSIS

This Court considers the pending matter under FED. R. CIV. P. 12(b)(1), made applicable to this adversary proceeding 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) (citation omitted). The burden of establishing jurisdiction lies with the party asserting it, i.e. Plaintiff. *See Kokkonen v. Guardian Life Ins. Co.*, 511 US 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).

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 now 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.

A. The Court finds “core,” “arising under” or “arising in” jurisdiction.

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. Enters., Inc. (In re Nat'l Century Fin. Enters., Inc.)*, 423 F3d 567, 573-74 (6th Cir. 2005); *Bliss Techs., Inc. v. HMI Indus., Inc. (In re Bliss Techs., Inc.)*, 307 B.R. 598, 602-3 (Bankr. E.D. Mich. 2004). In this adversary proceeding, the Court considered § 157(b)(2)(A) (“matters concerning the administration of the estate), (B) (“allowance or disallowance of claims against the estate...”), along with the catch-all provision in § 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....” *Id.*

The Plaintiff in this action is the Debtor in the underlying bankruptcy case. In this adversary proceeding, the Court must determine whether the Debtor's interest in his retirement wage benefit is property of his bankruptcy estate and whether certain funds that are due to be “repaid” to Defendant constitute a “claim” as defined under 11 U.S.C. § 101(5) and thus subject to certain rights and protections under bankruptcy law. Under 28 U.S.C. § 157(b)(2)(A), (B) and (O), an action to determine the property of the debtor's bankruptcy estate, the allowance of a claim and the

treatment of the claim under a Chapter 13 plan are core proceedings. These sections of Title 28 grant the Court statutory jurisdiction to determine property of a debtor's bankruptcy estate, the allowance and treatment of a claim, and gives the Court the authority to enforce the protections the Bankruptcy Code affords.

The Court concludes that this is a core proceeding. It is a proceeding “arising under title 11,” and is it one “arising in a case under title 11.” 28 U.S.C. § 157(b)(1). This proceeding is one “arising under title 11” because it does “involve a cause of action created or determined by a statutory provision of title 11.” See *In re Bliss Techs., Inc.*, 307 B.R. at 602 (quoting *Michigan Emp. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991)).

This proceeding also is one “arising in a case under title 11,” because the allegations asserted are allegations that “by their very nature, could arise only in bankruptcy cases.” See *Bliss Techs.*, 307 B.R. at 602 (quoting *Wolverine Radio*, 930 F.2d at 1144); see also *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 567 F.3d 1010, 1018 (8th Cir.2009) (same). Ward’s purported right to cure the “redeposit” amount within his Chapter 13 Plan is a substantive right created by federal bankruptcy law and is one that could not exist outside of bankruptcy; therefore, the right to cure is one that is a core proceeding.

B. The Court finds “related to” jurisdiction.

The Court also concludes that it has “related to” jurisdiction over this adversary proceeding. The circuit courts have uniformly adopted an expansive definition of a “related” proceeding under 28 U.S.C. §1334(b) and its substantially identical predecessor under the Bankruptcy Reform Act of 1978, 28 U.S.C. § 1471(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 that 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). In enacting 28 U.S.C. § 1334(b), Congressional intent was “to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.” *Id.*, citing H. Rep. No. 598, 95th Cong., 2d Sess., 43-48, et al. Proceedings “related to” the bankruptcy case include “more than simple proceedings involving the property of the debtor or the estate.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995). And such “related to” proceedings include even “suits between third parties which have an effect on the bankruptcy estate.” *Id.* at 307 n. 5 (citation omitted). But the Sixth Circuit has cautioned against finding “related to” jurisdiction in “situations ... where [there is] an extremely tenuous connection to the estate[.]” *See Wolverine Radio*, 930 F.2d at 1142.

The *Pacor* test is satisfied—that is, that the outcome of this adversary proceeding “could conceivably have [an] effect on the estate being administered in bankruptcy.” *In re Pacor, Inc.*, 743 F.2d at 994 (citations omitted). The outcome of this adversary proceeding will affect the bankruptcy estate. It will determine Ward’s rights in his annuity payment (i.e. the amount of his monthly annuity payment) and whether the redeposit amount is a claim which can be paid through Ward’s Chapter 13 Plan. Both of these issues will affect - either positively or negatively - the amount of the distributions that creditors of the bankruptcy estate will receive. As a result, the “conceivable effect” test of *Pacor* is easily met in this case, so the Court has “related to” subject matter jurisdiction. *Id.*

C. The Civil Service Retirement System Act of 1978 (“CSRA”), *see* 5 U.S.C. § 1101 *et seq.*, and the Federal Employees’ Retirement System Act (“FERSA”), *see* 5 U.S.C. § 8461(b) *et seq.*, do not affect the Bankruptcy Court’s subject matter jurisdiction.

Defendant spends the majority of its argument on the exclusive jurisdiction in CSRA and contends that OPM shall adjudicate all claims for retirement benefits. [DE 38, 43] While this Court recognizes the Congressional intent of the statutes, what Defendant fails to consider in this case is the fact that Ward is not disputing the amount of the retirement benefit or some other issue that requires adjudication of the “claim” for the retirement benefit itself. Instead, Ward is seeking to use the Congressional intent of Title 11 and to use the Bankruptcy Code to allow for the orderly payment of claims and distribution of assets to pay for the “repayment” of the “redeposit.” At this time, the Court does not see any allegation in the Complaint before it which would require it to “adjudicate all claims” as it relates to the retirement benefit itself. Instead, the Court is only being asked to determine whether the “repayment” amount at issue constitutes a “claim” under Title 11, subject to repayment through Debtor’s Chapter 13 Plan.

CONCLUSION

Because the Court has subject matter jurisdiction of this adversary proceeding, the Court will enter an order denying Defendant's motion to dismiss. 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:

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