

The document below is hereby signed.

Signed: May 21, 2019



S. Martin Teel, Jr.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|----------------------------------|---|-----------------------------|
| In re |) | |
| |) | |
| LULSEGED GUADIE, |) | Case No. 17-00054 |
| |) | (Chapter 7) |
| Debtor. |) | |
| _____ |) | |
| |) | |
| SANTORINI CAPITAL, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Adversary Proceeding No. |
| |) | 17-10022 |
| LULSEGED GUADIE, <i>et al.</i> , |) | Not for publication in |
| |) | West's Bankruptcy Reporter. |
| Defendants. |) | |

MEMORANDUM DECISION AND ORDER
RE DISMISSING COUNTS V AND VI AS TO ALL DEFENDANTS

The court previously dismissed as to both Capital Bank, N.A., and the debtor Counts V and VI of the plaintiff's amended complaint, and ordered the plaintiff to show cause why the claims in those counts ought not be dismissed as to the remaining defendants against whom those claims were pursued, 608 Girard Street, LLC; Guadie Developments, LLC; Abay Guadie; and Michael Guadie. The plaintiff argues that the claims against these

defendants are based on pre-petition conduct. However, that does not suffice to establish subject matter jurisdiction under 28 U.S.C. § 1334(b). The claims do not arise under the Bankruptcy Code and do not arise in the bankruptcy case. Nor are they "related to" the bankruptcy case. As explained in the *Memorandum Decision and Order re Debtor's Motion to Dismiss Counts I, IV, V and VI and to Strike Jury Demand* (Dkt. No. 97 dated June 6, 2018, and entered June 7, 2018) at 23-24:

A matter is "related to a case under title 11" if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis in original), overruled on other grounds, *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 294 (3d Cir. 2012). "The Supreme Court [has] endorsed Pacor's conceivability standard with the caveats that 'related to' jurisdiction 'cannot be limitless,' and that the critical component of the Pacor test is that 'bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.'" *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 294 (3d Cir. 2012) (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 & n.6 (1995)). "An action thus generally is 'related to' a bankruptcy proceeding '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.* (quoting *Pacor*, 743 F.2d at 994).

The plaintiff has failed to demonstrate that the claims against the remaining defendants will have any impact upon the handling and administration of the bankruptcy estate.

In any event, on March 13, 2017, the trustee in the debtor's bankruptcy case filed a *Chapter 7 Trustee's Report of No*

Distribution. In pertinent part, Fed. R. Bankr. P. 5009(a) provides:

if in a chapter 7 . . . case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

Here, the *Chapter 7 Trustee's Report of No Distribution* triggered Rule 5009(a), and the estate was presumed to be fully administered as of April 13, 2017, when no party filed an objection to the Report of No Distribution by April 12, 2017 (30 days after filing of the *Report of No Distribution*). The plaintiff has made no showing that there is an ongoing administration of the estate that could somehow be impacted by its claims in Counts V and VI against the remaining defendants. Plainly those claims will have no impact on the administration of the estate when that administration has come to an end.

Moreover, based on the Rule 5009(a) presumption, the estate has been "fully administered" within the meaning of 11 U.S.C. § 350(a)(1) (such that the case is ready to be closed insofar as estate administration is concerned). Moreover, 11 U.S.C. § 704(a)(1) commands that the trustee "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." The court will therefore close the case to allow the trustee to collect his statutory fee and to allow the debtor

to have scheduled estate assets reconstituted in him pursuant to 11 U.S.C. § 554(c). Then, as allowed by 11 U.S.C. § 350(b), the court will immediately reopen the case to continue hearing this adversary proceeding and any pending proceedings in the main bankruptcy case (such as the lien avoidance proceeding the debtor pursued and the appeal from the disposition of that proceeding). See *In re Carvalho*, 578 B.R. 1, 8 (Bankr. D.D.C. 2017). The belated closing of the case and reconstituting of scheduled property of the estate in the debtor will make all the more clear that there is no administration of an estate ongoing that could be affected by the plaintiff's claims in Counts V and VI against the remaining defendants.

Based on the foregoing, it is

ORDERED that the claims asserted in Counts V and VI of the plaintiff's amended complaint (Dkt. No. 7) are dismissed as to 608 Girard Street, LLC; Guadie Developments, LLC; Abay Guadie; and Michael Guadie for lack of subject matter jurisdiction, and the claims asserted in Counts V and VI stand dismissed as to all defendants. It is further

ORDERED that the claims asserted in the amended complaint stand dismissed as to all defendants except for the claims in Counts II and III of the amended complaint seeking to deny the debtor a discharge. It is further

