



**SO ORDERED,**

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: December 21, 2018**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**PALAS ATHENE MITCHELL AND  
JOHN ERIC MITCHELL,**

**CASE NO. 15-00852-NPO**

**DEBTORS.**

**CHAPTER 13**

**ORDER ON  
DEBTORS' MOTION TO DETERMINE PROPERTY OF THE BANKRUPTCY ESTATE**

This matter came before the Court<sup>1</sup> for hearing on December 19, 2018 (the "Hearing"), on the Debtors' Motion to Determine Property of the Bankruptcy Estate (the "Motion") (Dkt. 81) filed by the debtors, Palas Athene Mitchell and John Eric Mitchell (the "Debtors"); the Trustee's Response to Motion to Determine Property of the Bankruptcy Estate (Dkt. 83) filed by the chapter 13 trustee, Harold J. Barkley, Jr. (the "Trustee"); and the Cenlar Capital Corporation and MGC Mortgage, Inc.'s Response to Debtors' Motion to Determine Property of the Bankruptcy Estate (Dkt. 88) filed by MGC Mortgage, Inc. ("MGC") and Cenlar Capital Corporation d/b/a Cenlar Federal Savings Bank d/b/a Central Loan Administration & Reporting ("Cenlar") in the Current

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<sup>1</sup> On March 11, 2015, the above-referenced bankruptcy case (the "Current Bankruptcy Case") was assigned originally to United States Bankruptcy Judge Edward Ellington. On December 1, 2018, the Current Bankruptcy Case was transferred to the above-signed United States Bankruptcy Judge.

Bankruptcy Case. At the Hearing, Donald W. Medley represented the Debtors, Joshua Lawhorn represented the Trustee, Frederick Natale Salvo III represented MGC, and Juan C. Ortega represented Cenlar. After fully considering the matter, the Court finds as follows:

On January 6, 2012, the Debtors filed a petition for relief under chapter 13 of the U.S. Bankruptcy Code (the “Code”) (the “Previous Bankruptcy Case”) (Case No. 12-00045-ee, Dkt. 1). On May 30, 2012, the Court entered the Order Confirming the Debtors’ Plan, Awarding a Fee to the Debtors’ Attorney and Related Orders (Case No. 12-00045-ee, Dkt. 35). On June 16, 2014, the Court entered the Order Dismissing Case, dismissing the Previous Bankruptcy Case after the Debtors became more than sixty (60) days delinquent in plan payments to the trustee (Case No. 12-00045-ee, Dkt. 46).

Several months later, on March 11, 2015, the Debtors filed another petition for relief under chapter 13 of the Code in the Current Bankruptcy Case (Dkt. 1). On June 23, 2015, the Court entered the Order Confirming the Debtors’ Plan, Awarding a Fee to the Debtors’ Attorney and Related Orders (Dkt. 57). The Current Bankruptcy Case remains open.

On October 17, 2016, the Debtors filed the Complaint for Accounting and Related Relief with Demand for Jury Trial (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 1) (the “District Court Case”) in the U.S. District Court for the Southern District of Mississippi (the “District Court”), asserting state law claims, some of which arise from events that occurred in 2012 and 2013. On June 28, 2018, the District Court issued the Order to Show Cause to the Debtors “to show cause as to the reason(s) they are not estopped from pursuing the claims they allege in this civil action based on their having failed to disclose those claims to the bankruptcy court in either [the Previous Bankruptcy Case] or [the Current Bankruptcy Case].” (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 103 at 3). On July 8, 2018, the Debtors filed the Response to Order to Show Cause, asserting that

they announced to the trustee at the § 341 meeting of creditors “that they had a claim against the creditor that they planned to pursue.” (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 104). The Debtors further asserted that their counsel and the trustee “agreed that it would not be necessary to file anything further on an unliquidated claim until the civil case was finalized” because “any result in the civil case would automatically impact the [Current Bankruptcy Case] as the defendants in the civil matter represent the same or similar interests as the creditor in the [Current Bankruptcy Case].” (*Id.*) On July 12, 2018, the District Court issued the Opinion and Order (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 105), requiring the parties to file supplemental briefs on whether their claims were properly before the District Court. The parties filed their briefs and subsequent responses accordingly. (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 107-10). On September 26, 2018, the District Court issued the Opinion and Order (the “District Court Opinion”), finding that the Debtors “cannot proceed on their fraud claim or their breach of contract claims arising from any event taken before September 18, 2014, because those claims are property of their bankruptcy estate in [the Prior Bankruptcy Case] which, at the present time, is closed.” (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 111). The District Court further found that the Debtors should have thirty (30) days to amend their schedules in the Current Bankruptcy Case “to disclose the claims they have alleged in [the District Court] case.” (*Id.*)

In the Motion, the Debtors argue that their civil claim is property of the estate in the Current Bankruptcy Case but not in the Previous Bankruptcy Case because “a dismissal of a case . . . revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case.” 11 U.S.C. § 349(b)(3). The Debtors request that this Court order “that the entirety of the claims listed in the Lawsuit are property of the bankruptcy estate of [the Current Bankruptcy Case].” (Dkt. 81 at 2).

At the Hearing, the Trustee, MGC, and Cenlar argued that the District Court Opinion has preclusive effect on the relief that the Debtors seek in their Motion. Res judicata, or claim preclusion, “bars the litigation of claims that either have been litigated or should have been raised in an earlier suit.” *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005). The elements of res judicata are as follows: “(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions.” *Id.* In the Fifth Circuit, courts use the “transactional test” to determine whether the same claim is involved in both actions. Pursuant to the transactional test, “a prior judgment’s preclusive effect extends to all rights of the plaintiff with respect to all or any part of the transaction, or series of transactions, out of which the original action arose.” *Id.* The focus of this inquiry “is whether the two actions are based on the ‘same nucleus of operative facts.’” *Id.* Indeed, “[i]f a party can only win the suit by convincing the court that the prior judgment was in error, the second suit is barred.” *Id.*

With respect to the first element, the Debtors, Cenlar, and MGC are the parties of the Current Bankruptcy Case and the District Court Case. Second, the Debtors commenced the District Court Case in the District Court, so the District Court is “a court of competent jurisdiction” to determine the Debtors’ claims asserted before the District Court. Third, the District Court held in the District Court Opinion that the Debtors “cannot proceed on their fraud claim or their breach of contract claims arising from any event taken before September 18, 2014, because those claims are property of their bankruptcy estate in [the Prior Bankruptcy Case] which, at the present time, is closed.” (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 111). The District Court Opinion, however, “adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties [and]

does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." FED. R. CIV. P. 54(b). Indeed, the parties informed the Court at the Hearing that the Defendants' Joint Motion for Summary Judgment (the "Motion for Summary Judgment") (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 114) in the District Court Case is pending before the District Court. Thus, the District Court Opinion does not constitute "a final judgment on the merits."

While *res judicata* does not apply in this scenario, the Court finds itself guided by the law of the case doctrine. *See Bayou Steel Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 487 F. App'x 933, 936 (5th Cir. 2012) ("The law-of-the-case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issue in subsequent stages in the same case.") (internal quotations and citation omitted). "While *res judicata* has very specific requirements, tests which must be met for its successful invocation, the law of the case doctrine is an 'amorphous concept.'" *In re Pilgrim's Pride Corp.*, 442 B.R. 522, 530 (Bankr. N.D. Tex. 2010). Importantly, "[t]he law of the case doctrine is not limited to situations in which one court retains a case from beginning to end, but also extends to decisions of a coordinate court in the same case." *Id.* at 529. "A bankruptcy case is comprised of all components of the bankruptcy that are 'commenced by the filing of a petition' including all litigation." *Id.* at 530 (quoting 7 COLLIER ON BANKRUPTCY ¶ 1109.04[1][a][i] (16th ed.)). Since counsel for the Debtors reluctantly admitted at the Hearing that the Motion requests for the Court to find that the District Court Opinion "was in

error,” this Court finds that it will not, at this time,<sup>2</sup> reopen the issues decided by the District Court. *See 18 Moore’s Federal Practice* § 134.21[1] (Matthew Bender 3d ed.) (“[T]he law of the case doctrine expresses the general rule that courts will not reopen issues that have already been decided.”). Accordingly, the Court finds that the Motion should be denied without prejudice.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied without prejudice.

##END OF ORDER##

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<sup>2</sup> On December 17, 2018, the District Court entered the Order to Reassign Cases, reassigning the District Court Case from Senior United States District Judge William H. Barbour, Jr. to Chief United States District Judge Daniel P. Jordan III. (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 117). If the reassignment or the outcome of the Motion for Summary Judgment (Case No. 3:16-cv-00814-WHB-JCG, Dkt. 114) pending before the District Court alters the ruling in the District Court Opinion, the Debtors may renew the Motion in the Current Bankruptcy Case.