



SO ORDERED,

Neil P. Olack

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 15, 2017

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

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

IN RE:

**OPUS MANAGEMENT GROUP
JACKSON LLC,**

CASE NO. 16-00297-NPO

DEBTOR.

CHAPTER 11

IN RE:

**RX PRO OF MISSISSIPPI, INC., D/B/A
MCDANIEL PHARMACY**

**CASE NO. 16-00288-NPO
JOINTLY ADMINISTERED**

DEBTOR.

CHAPTER 11

**RX PRO OF MISSISSIPPI, INC., D/B/A
MCDANIEL PHARMACY**

PLAINTIFF

VS.

ADV. PROC. NO. 17-00003-NPO

WORLD HEALTH INDUSTRIES, INC.

**DEFENDANT/
THIRD-PARTY PLAINTIFF**

VS.

MITCHELL CHAD BARRETT

THIRD-PARTY DEFENDANT

IN RE:

CARE RX PHARMACY GROUP L.L.C.

CASE NO. 16-00295-NPO
JOINTLY ADMINISTERED

DEBTOR.

CHAPTER 11

CARE RX PHARMACY GROUP, LLC

PLAINTIFF

VS.

ADV. PROC. NO. 17-00004-NPO

WORLD HEALTH INDUSTRIES, INC.

DEFENDANT/
THIRD-PARTY PLAINTIFF

VS.

MITCHELL CHAD BARRETT

THIRD-PARTY DEFENDANT

IN RE:

RX PRO PHARMACY &
COMPOUNDING, INC., D/B/A OPUSRX

CASE NO. 16-00294-NPO
JOINTLY ADMINISTERED

DEBTOR.

CHAPTER 11

RX PRO PHARMACY & COMPOUNDING,
INC., D/B/A OPUSRX

PLAINTIFF

VS.

ADV. PROC. NO. 17-00005-NPO

WORLD HEALTH INDUSTRIES, INC.

DEFENDANT/
THIRD-PARTY PLAINTIFF

VS.

MITCHELL CHAD BARRETT

THIRD-PARTY DEFENDANT

**ORDER GRANTING MOTION TO DISMISS
THIRD-PARTY COMPLAINT AND THE FIRST AMENDED
THIRD-PARTY COMPLAINT FILED BY WORLD HEALTH INDUSTRIES, INC.**

This matter came before the Court at a hearing held on May 19, 2017 (the “Hearing”), on: (1) the Motion to Dismiss the Third-Party Complaint and the First Amended Third-Party Complaint filed by World Health Industries, Inc. (the “Motion to Dismiss”) and the Memorandum in Support of Mitchell Chad Barrett’s Motion to Dismiss the Third-Party Complaint and the First Amended Third-Party Complaint filed by World Health Industries, Inc. (the “Brief”) filed by Mitchell Chad Barrett (“Barrett”) in Adversary Proceeding 17-00003-NPO (the “McDaniel Adversary”) (McDaniel Adv. Dkt. 22-23)¹; Adversary Proceeding 17-00004-NPO (the “Care Rx Adversary”) (Care Rx Adv. Dkt. 22-23); and Adversary Proceeding 17-00005-NPO (the “OpusRx Adversary” or, together with the McDaniel Adversary and the Care Rx Adversary, the “Adversaries”) (OpusRx Adv. Dkt. 23-24) and (2) the Response in Opposition to Mitchell Chad Barrett’s Motion to Dismiss the Third-Party Complaint and the First Amended Third-Party Complaint Filed by World Health Industries, Inc. (the “Response”) (McDaniel Adv. Dkt. 32; Care Rx Adv. Dkt. 32; OpusRx Adv. Dkt. 33) filed by World Health Industries, Inc. (“WHI”) in the Adversaries. The following additional matters, although not before the Court at the Hearing, have been rendered moot as a result of this Order: (1) the Motion of Rx [Pro] of Mississippi, Inc., d/b/a McDaniel Pharmacy to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #13] (the “McDaniel Motion to Sever”) (McDaniel Adv. Dkt. 39) and the Memorandum in Support of Motion of Rx Pro of Mississippi,

¹ Citations to docket entries in adversary proceeding number 17-00003-NPO are cited as “(McDaniel Adv. Dkt. ____)”, in adversary proceeding number 17-00004-NPO, as “(Care Rx Adv. Dkt. ____)”, and in adversary proceeding number 17-00005-NPO, as “(OpusRx Adv. Dkt. ____)”. Citations to docket entries in bankruptcy case number 16-00288-NPO are cited as “(McDaniel Bankr. Dkt. ____)”, in bankruptcy case number 16-00295-NPO, as “(Care Rx Bankr. Dkt. ____)”, and in bankruptcy case number 16-00294-NPO, as “(OpusRx Bankr. Dkt. ____)”. Together, these bankruptcy cases will be referred to as the “Bankruptcy Cases.”

Inc., d/b/a McDaniel Pharmacy to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #39] (McDaniel Adv. Dkt. 40) filed by Rx Pro of Mississippi, Inc. d/b/a McDaniel Pharmacy (“McDaniel Pharmacy”); (2) the Motion of Care Rx Pharmacy Group, LLC to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #13] (the “Care Rx Motion to Sever”) (Care Rx Adv. Dkt. 39) and the Memorandum in Support of Motion of Care Rx Pharmacy Group, LLC to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #39] (Care Rx Adv. Dkt. 40) filed by Care Rx Pharmacy Group, LLC (“Care Rx Pharmacy”); and (3) the Motion of Rx Pro Pharmacy & Compounding, Inc. to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #14] (the “OpusRx Motion to Sever” or, together with the McDaniel Motion to Sever and the Care Rx Motion to Sever, the “Motion to Sever”) (OpusRx Adv. Dkt. 40) and the Memorandum in Support of Motion of Rx Pro Pharmacy & Compounding, Inc. to Sever Third Party Complaint of World Health Industries, Inc., or, in the Alternative, to Order a Separate Trial [Adv. Proc. Dkt. #40] (OpusRx Adv. Dkt. 41) filed by Rx Pro Pharmacy & Compounding, Inc., d/b/a OpusRx (“OpusRx Pharmacy”) in the Adversaries. At the Hearing, Barrett was represented by John D. Moore, and WHI was represented by John M. Lassiter. From the bench, the Court granted the Motion to Dismiss and denied WHI’s motion *ore tenus* to stay the Adversaries. This Order memorializes and supplements the Court’s bench ruling.²

² The following constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Facts

For purposes of the Motion to Dismiss, the Court accepts as true all factual allegations in the First Amended Third-Party Complaint (the “Amended Third-Party Complaint”) (McDaniel Adv. Dkt. 15; Care Rx Adv. Dkt. 15; OpusRx Adv. Dkt. 16) filed by WHI in the Adversaries. *See Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir. 1981).

1. Barrett, who was once WHI’s chief executive officer, sued WHI and others in *Mitchell Chad Barrett v. World Health Industries, Inc.*, Civil Action No. G-2015-241 (the “State Court Action”) in the Chancery Court of Hinds County, Mississippi (the “Chancery Court”) (Am. Third-Party Compl. at 3). The parties settled the State Court Action, and the Chancery Court entered an Agreed Order (McDaniel Adv. Dkt. 15-1 at 18-20; Care Rx Adv. Dkt. 15-1 at 18-20; OpusRx Adv. Dkt. 16-1 at 18-20) on February 27, 2015, which eventually formed the basis of the Master Settlement and Release Agreement (“MSA”) (McDaniel Adv. Dkt. 15-1; Care Rx Adv. Dkt. 15-1; OpusRx Adv. Dkt. 16-1).

2. The MSA, effective as of April 13, 2015, was signed by: (1) Barrett and Tyler Barrett and (2) WHI, Jason Rutland, Christopher Merriweather, James Bennett, Sharon Durham, Angela Nicole Hotard, and Robert Durham. (MSA at 15-16). Attached to the MSA are certain “ownership transfer and related documents” (the “Transaction Documents”)³ “prepared for accomplishing the exchanges and assignments” required by the settlement. (MSA at 2).

³ For a more detailed discussion of the MSA and Transaction Documents, see the Memorandum Opinion and Order (1) Sustaining the Objection of Opus Management Group Jackson, LLC to Proof of Claim of World Health Industries, Inc.—Claim No. 5 and (2) Denying the World Health Industries, Inc.’s Motion to Compel Assumption or Rejection of the Master Settlement Agreement (the “Order Denying Motion to Compel”), *In re Opus Mgmt. Grp Jackson LLC* (Dkt. 675), Case No. 16-00297-NPO (Bankr. S.D. Miss. Feb. 27, 2017) (Dkt. 675), *appealed*, Case No. 3:17-cv-00169-WHB-LRA (S.D. Miss. Mar. 14, 2017). *See infra* at 10.

3. The MSA contained mutual releases and covenants not to sue as well as an indemnity provision. (MSA at 3 & 6; Am. Third-Party Compl. at 3-5). In addition, the MSA contemplated an accounting “true up” to reconcile intercompany transfers (occurring from February 16, 2015, through April 13, 2015) between WHI and entities in which Barrett received an ownership interest pursuant to the “corporate divorce” effectuated by the MSA and Transaction Documents. (MSA at 4-5).

4. On February 2, 2016, petitions for relief under chapter 11 of the Bankruptcy Code were filed by McDaniel Pharmacy, Care Rx Pharmacy, and OpusRx Pharmacy (together, the “Debtors”). (McDaniel Bankr. Dkt. 1; Care Rx Bankr. Dkt. 1; OpusRx Bankr. Dkt. 1).

5. On May 27, 2016, the Accounting True-Up Report (the “True-Up Report”) (McDaniel Adv. Dkt. 1-3; Care Rx Adv. Dkt. 1-3; OpusRx Adv. Dkt. 1-3), as contemplated by the MSA, was delivered to the parties. Consisting of 175 pages, the True-Up Report included balance sheets reflecting the assets and liabilities of each applicable entity as of February 16, 2015, and also as of April 13, 2015.

6. On December 12, 2016, WHI filed proofs of claim in the Bankruptcy Cases in an unspecified amount for “rejection damages” in order “to preserve all rights with respect to the potential rejection of the MSA” (the “POC”) (McDaniel Bankr. POC 9; Care Rx Bankr. POC 9; OpusRx Bankr. POC 12).

7. On January 11, 2017, the Debtors initiated the Adversaries by filing a complaint against WHI (the “Complaint”) (McDaniel Adv. Dkt. 1; Care Rx Adv. Dkt. 1; OpusRx Adv. Dkt. 1). In the Complaint, the Debtors objected to the POC for two reasons. First, the Debtors alleged that the POCs were filed untimely. (Compl. at 13-14). Second, they contended that the MSA and Transaction Documents are not “executory contracts” that WHI may compel them to assume under

11 U.S.C. § 365. (Compl. at 14-19). They were not signatories to the MSA; they signed only Stock Assignment Agreements (the “Stock Assignment Agreement”) that formed part of the Transaction Documents. (Compl. at 8-9). “There can be no rejection damages for a contract to which the Debtor is not a party.” (Compl. at 18). By way of a counterclaim, the Debtors sought recovery of amounts that WHI allegedly owed them pursuant to the balance sheets attached to the True-Up Report, as follows:

McDaniel Pharmacy	\$140,321.31
Care Rx Pharmacy	\$349,629.13
OpusRx Pharmacy	\$3,081,414.98

(Compl. at 13 & 19-20).

8. On February 13, 2017, WHI filed the Answer, Affirmative Defenses and Counterclaim of Defendant World Health Industries, Inc. (the “Answer”) (McDaniel Adv. Dkt. 9; Care Rx Adv. Dkt. 9; OpusRx Adv. Dkt. 10) to the Complaint. In the Answer, WHI asserted that any claims against it were effectively released by the Debtors in the Stock Assignment Agreement, by virtue of its incorporation of the terms of the MSA, and the Confidential Settlement Agreement and Release that resolved a Texas state court action filed by the ShennaCo Investment Corporation, Inc. (the “ShennaCo Agreement”). (Answer at 7-8). WHI did not object to the entry of final orders or judgment by this Court in the Answer. *See* MISS. BANKR. L.R. 7008-1; 7012-1(b) (requiring a statement regarding consent to entry of final orders of judgment by the bankruptcy court). WHI asserted a counterclaim alleging, *inter alia*, that the Debtors breached the MSA/Stock Assignment Agreement and the ShennaCo Agreement by filing the Complaint. (Answer at 12-13). WHI did not demand a jury trial on the counterclaim. On February 16, 2017, WHI filed the Notice of Filing Corrected Exhibit A to Answer, Affirmative Defenses and Counterclaim of Defendant World Health Industries, Inc. (McDaniel Adv. Dkt. 10; Care Rx Adv. Dkt. 10; OpusRx Adv. Dkt. 11).

9. In their answers and affirmative defenses to WHI's counterclaim, the Debtors alleged, *inter alia*, that they were not signatories to the MSA and never agreed to release WHI, either directly or indirectly, through the Stock Assignment Agreement. (McDaniel Adv. Dkt. 11 at 4; Care Rx Adv. Dkt. 11 at 4; OpusRx Adv. Dkt. 12 at 4). They also maintained that the ShennaCo Agreement did not resolve any claims between WHI and the Debtors. (McDaniel Adv. Dkt. 11 at 6; Care Rx Adv. Dkt. 11 at 6; OpusRx Adv. Dkt. 12 at 6).

10. On February 27, 2017, WHI filed the original Third-Party Complaint (the "Original Third-Party Complaint") (McDaniel Adv. Dkt. 13; Care Rx Adv. Dkt. 13; OpusRx Adv. Dkt. 14) against Barrett in the Adversaries, and on March 6, 2017, filed the Amended Third-Party Complaint. In paragraph 26 of the Amended Third-Party Complaint, WHI explained that it brought the suit "to enforce its rights under the MSA, and to recoup damages for actions that have arisen after the execution of the MSA and independent of the Parties' rights and obligations under the MSA." (Am. Third-Party Compl. at 8). WHI alleged that Barrett breached the MSA "by instigating, participating in, encouraging, assisting or aiding [D]ebtors and other third-parties,⁴ . . . to take informal and/or formal legal action against WHI." (Am. Third-Party Compl. at 8). In total, WHI asserted seven third-party claims against Barrett, as follows:

- Count I: Breach of Contract
- Count II: Misrepresentation
- Count III: Suppression
- Count IV: Conversion
- Count V: Interference
- Count VI: Indemnity
- Count VII: Declaratory Judgment

(the "Third-Party Claims") (Am. Third-Party Compl. at 8-14).

⁴ WHI alleged that Estonna Management LLC (Case No. 16-00292-NPO) and World Health Jets, LLC (Case No. 16-00296-NPO), two other affiliated debtors, also breached the MSA.

11. In the jurisdictional paragraphs of the Amended Third-Party Complaint, WHI alleged that “[t]his Court has jurisdiction over these third-party claims under . . . Federal Rules of Bankruptcy Procedure 7014, in that such claims arise out of the transaction and/or occurrence that is the subject matter of the Adversary Claim filed against WHI.” (Am. Third-Party Compl. ¶ 3). WHI also alleged that the Amended Third-Party Complaint is a non-core proceeding and that it does not consent to the entry of final judgments and orders by this Court.⁵ Additionally, WHI demanded a trial by jury. (Am. Third-Party Compl. ¶ 6).

12. Barrett filed the Motion to Dismiss seeking dismissal of the Amended Third-Party Complaint for lack of subject matter jurisdiction.

13. On April 28, 2017, WHI filed the Motion to Withdraw Reference (the “Motion to Withdraw”) and the Memorandum in Support of Motion for Withdrawal of the Reference Pursuant to 28 U.S.C. § 157(d) (McDaniel Adv. Dkt. 29 & 31; Care Rx Adv. Dkt. 29 & 31; OpusRx Adv. Dkt. 30 & 32), seeking to have the Adversaries, in their entirety, heard by the District Court. The Debtors filed objections to the Motion to Withdraw and briefs in support of their objections (McDaniel Adv. Dkt. 37-38; Care Rx Adv. Dkt. 37-38; OpusRx Adv. Dkt. 38-39). On June 6, 2017, the Clerk of the Bankruptcy Court electronically transmitted the Motion to Withdraw and all responses to the District Court, consistent with MISS. BANKR. L.R. 5011-1. (McDaniel Adv. Dkt. 43; Care Rx Adv. Dkt. 43; OpusRx Adv. Dkt. 44).⁶

⁵ In this respect, the Amended Third-Party Complaint differed from the Original Third-Party Complaint in which WHI did consent to a final judgment and orders by this Court. (Orig. Third-Party Compl. ¶ 6).

⁶ The Motion to Withdraw is pending before the District Court in the following actions: 3:17-cv-455-CWR-LRA, 3:17-cv-456-CWR-LRA, and 3:17-cv-457-CWR-LRA.

14. On April 28, 2017, WHI filed the Response, arguing that the Motion to Withdraw, if granted by the District Court, would alleviate the jurisdictional concerns raised by Barrett in the Motion to Dismiss. (Resp. at 2). For that reason, WHI asked the Court to deny the Motion to Dismiss as moot or, in the alternative, allow the District Court to decide the Motion to Dismiss after the reference is withdrawn. (*Id.*). WHI did not file a motion to stay the Adversaries pending a determination of the Motion to Withdraw.

15. On May 16, 2017, the Debtors filed the Motion to Sever pursuant to Rules 7014, 7021, and 7042(b) of the Federal Rules of Bankruptcy Procedure. In support of their request that the Court sever the Amended Third-Party Complaint, the Debtors alleged that the claims in the Complaint and the Third-Party Claims do not present common questions of law or fact, that WHI has requested a jury trial only as to the Third-Party Claims, and that different witnesses and documentary proof will be required. (Mot. to Sever at 6). No response has been filed to the Motion to Sever.

16. At the Hearing, the Debtors and WHI announced a settlement in which WHI agreed to withdraw the POCs and the following contested matters: World Health Industries, Inc.'s Motion to Compel Assumption or Rejection of Executory Contract (Case No. 17-00297-NPO, Bankr. Dkt. 743) and the Amended Application of World Health Industries, Inc. for an Order Allowing Administrative Expense Claim and Compelling Payment of Same (Case No. 16-00292-NPO, Bankr. Dkt. 195; Case No. 16-00294-NPO, Bankr. Dkt. 244; Case No. 16-00296-NPO, Bankr. Dkt. 162). In addition, the Debtors and WHI stipulated that neither will seek any monetary claims against the other based on the True-Up Report. Finally, WHI agreed to withdraw its appeal of the Order Denying Motion to Compel. In general, the claims that appear to remain in the Complaint are the counterclaims asserted by WHI against the Debtors for their alleged breaches of the mutual

releases and covenants not to sue contained in the MSA/Stock Assignment Agreement and ShennaCo Agreement. The Court instructed the parties that the settlement of these matters would require notice and a motion under Rule 9019 of the Federal Rules of Bankruptcy Procedure and an amendment of the Complaint. As of the date of this Order, the parties have not filed the pleadings necessary to effectuate the settlement as outlined by the Debtors and WHI at the Hearing.

Discussion

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b), the Court must dismiss the Amended Third-Party Complaint if it finds that it lacks subject matter jurisdiction to hear the dispute. FED. R. CIV. P. 12(b)(1). The burden of proof rests on WHI, as the third-party plaintiff, to show that jurisdiction is proper. *Wolcott v. Sebelius*, 635 F.3d 757, 762 (5th Cir. 2011).

“Bankruptcy courts find their source of jurisdiction in 28 U.S.C. §§ 157 and 1334.” *Baker v. Baker (In re Baker)*, 593 F. App’x 416, 417, 5th Cir. 2015 (unpublished); *see Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). Under 28 U.S.C. § 1334(b), district courts have jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). Under 28 U.S.C. § 157(a), district courts may refer the matters covered by 28 U.S.C. § 1334(b) to the bankruptcy courts, and all district courts have done so by standing order, local rule, or other means. The District Court for the Southern District of Mississippi on August 17, 2015, issued an internal rule referring to the bankruptcy judges for the Southern District of Mississippi, *nunc pro tunc*, “any and all cases arising under Title 11 of the United States Code and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11.” *See Internal Rule 1, Assignment of Cases to Judges and Magistrate Judges* (effective Sept. 1, 2015), *available at* www.mssd.uscourts.gov. Moreover, Uniform Local Rule 83.6 of the Local

Uniform Civil Rules of the U.S. District Courts for the Southern District of Mississippi provides that “[a]ll cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this District pursuant to 28 U.S.C. § 157(a).” *See* L.U. Civ. R. 83.6 (Dec. 1, 2016), *available at* www.mssd.uscourts.gov. For cause shown, the District Court may withdraw, in whole or in part, any case or proceeding referred under 28 U.S.C. § 157(a) to the bankruptcy court. 28 U.S.C. § 157(d).

It is undisputed that the Third-Party Claims do not “aris[e] under title 11” or “aris[e] in . . . cases under title 11.” 28 U.S.C. § 1334(b). “Arising under title 11” describes proceedings that involve a cause of action created or determined by the Bankruptcy Code, and “arising in” proceedings refer to matters that arise only in bankruptcy cases. *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96-97 (5th Cir. 1987). WHI did not cite any provision of the Bankruptcy Code as a basis for relief against Barrett in the Amended Third-Party Complaint. Since a “related to” matter, unlike an “arising under” or “arising in” proceeding, need not find its source in the Bankruptcy Code, the jurisdictional issue raised by the Debtors hinges on whether the Third-Party Claims are at least “related to” the Bankruptcy Cases.

The statute does not define “related to” jurisdiction. In *In re Wood*, 825 F.2d at 93, the Fifth Circuit Court of Appeals adopted the definition used by the Third Circuit Court of Appeals in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984). In *Pacor*, the Third Circuit explained that an action is related to a bankruptcy case if “the outcome of that proceeding could *conceivably* have any effect on the estate being administered in bankruptcy.” *Id.* at 994 (emphasis added).

In the Motion to Dismiss, Barrett alleged that the Amended Third-Party Complaint is not “related to” any bankruptcy case and has no “conceivable effect” on the administration of the Bankruptcy Cases. (Mot. to Dis. at 2). Barrett contended in the Brief that all of the relief requested

by WHI is related to, or arises out of the MSA, and all causes of action alleged by WHI against Barrett are state law claims. (Br. at 2-3). In support of its contention that this Court lacks subject matter jurisdiction, Barrett relies on the Fifth Circuit's decision in *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562 (5th Cir. 1995), and this Court's application of *Walker* in *Great Southern Investment Group, Inc. v. Wilburn (In re Delta Investments & Development, LLC)*, Adv. Proc. 14-00021-NPO (Bankr. S.D. Miss. May 26, 2015). (Br. at 3-4).

In *Walker*, the debtor brought an adversary proceeding against the Cadle Company ("Cadle") alleging violations of the automatic stay imposed by 11 U.S.C. § 362 and seeking compensation for damages to her personal property. *Walker*, 51 F.3d at 563. When the debtor commenced her bankruptcy case, Cadle held the mortgage on her mobile home. She signed a statement indicating her intent to surrender the mobile home. Before she signed a voluntary release and surrender form, Cadle sold the mobile home on the assumption, based on its poor condition, that she had vacated the premises. *Id.* at 564. Actually, the debtor had not moved out of the mobile home but had been hospitalized with a serious medical condition and, thereafter, had been living with her parents. In removing the mobile home, the buyer's fiancé, Stan Svara ("Svara"), threw out all of the debtor's personal belongings on the lot. Because of exposure to the weather, none of the personal property could be salvaged by the debtor. The debtor sued Cadle seeking recovery for the damages to her personal property. *Id.* at 564-65. Cadle filed a third-party complaint seeking contribution and/or indemnity from Svara for any damages assessed against it. *Id.* at 565. The bankruptcy court awarded the debtor \$2,000.00 and found Svara fifty percent (50%) responsible for the damages. On appeal, the district court determined that the bankruptcy court lacked subject matter jurisdiction over Cadle's third-party claim and reversed the judgment against Svara.

On appeal, the Fifth Circuit in *Walker* affirmed the district court's dismissal of the third-party complaint, holding that the contribution and/or indemnity claim against Svara had no *conceivable* effect on the administration of the debtor's estate and, therefore, the third-party claim was not "related to" the bankruptcy case. *Id.* at 569. "It is difficult to imagine that whether Svara should be required to reimburse Cadle for any money Cadle pays to [the debtor] could somehow affect the estate." *Id.* The Fifth Circuit also rejected any argument that bankruptcy courts may exercise supplemental jurisdiction over third-party claims under 28 U.S.C. § 1367. *Walker*, 51 F.3d at 570. Applying the holding in *Walker*, this Court dismissed a similar third-party claim in *Great Southern*.

In *Great Southern*, the debtor transferred over \$1 million to a bank account owned by Great Southern Investment Group, Inc. ("Great Southern"), which then disbursed the funds to its shareholders. *Great Southern*, Adv. Proc. 14-00021-NPO, slip op. at 3 & n.3. Almost one year later, the debtor filed a petition for relief under chapter 11. The case was converted to chapter 7, and the chapter 7 trustee commenced an adversary proceeding against Great Southern seeking recovery of the funds based on theories of actual and constructive fraud under 11 U.S.C. § 548(a)(1)(A) and (B). *Great Southern*, Adv. Proc. 14-00021-NPO, slip op. at 4. Great Southern filed a third-party complaint against its former shareholders for unjust enrichment and indemnification under state law.

Applying *Walker*, this Court dismissed the third-party complaint against the former shareholders for lack of subject matter jurisdiction. *Id.* at 13. The Court found that the potential liability of the former shareholders to Great Southern had no more conceivable effect on the debtor's bankruptcy estate than the potential liability of Svara to Cadle.

In the Response, WHI does not oppose the Motion to Dismiss on its merits. Instead, WHI asks the Court to deny the Motion to Dismiss as moot in light of WHI's Motion to Withdraw filed on April 28, 2017. (Resp. at 2). To support its argument for withdrawing the reference of the Adversaries, WHI alleged in its brief that the claims in the Complaint and the Third-Party Claims are between "non-[debtor] diverse entities"; that the Third-Party Claims are based on state law and are not among the "core proceedings" listed in 28 U.S.C. § 157(b)(2)(A)-(P); that WHI has asked for a jury trial in the Amended Third-Party Complaint; and that WHI does not consent to the jurisdiction of the bankruptcy court. (McDaniel Adv. Dkt. 31 at 6 & 8-9; Care Rx Adv. Dkt. 31 at 6 & 8-9; OpusRx Adv. Dkt. 32 at 6 & 8-9).

As a threshold matter, the Court finds that WHI's reliance on the Motion to Withdraw as the basis for the Response is misplaced. Rule 5011(c) of the Federal Rules of Bankruptcy Procedure ("Rule 5011(c)") provides that "[t]he filing of a motion for withdrawal of a case or proceeding . . . shall not stay the administration of the case or any proceeding therein before the bankruptcy judge." FED. R. BANKR. P. 5011(c). Therefore, unless and until the District Court withdraws the reference as to the Adversaries, this Court retains jurisdiction to decide the Motion to Dismiss. See *Atlantic Las Olas, Inc. v. Joyner*, 466 F.2d 496, 498 (5th Cir. 1972) (noting that courts have jurisdiction to determine jurisdictional issues).

The Court further finds that WHI has not met its burden of proving that the Third-Party Claims are related to the Bankruptcy Cases. As shown by the allegations in the Motion to Withdraw, WHI agrees that the Third-Party Claims are state law claims asserted against a non-debtor. Consistent with the Fifth Circuit's holding in *Walker* and this Court's holding in *Great Southern*, the Court finds that the Third-Party Claims have no conceivable effect on the administration of the Bankruptcy Cases and, for that reason, the Court lacks subject matter

jurisdiction. Indeed, the vast majority of cases have found “related to” jurisdiction lacking in connection with third-party complaints. *Walker*, 51 F.3d at 570.

Near the end of the Hearing, WHI moved *ore tenus* to stay the Adversaries pending the District Court’s resolution of the Motion to Withdraw. Rule 5011(c) allows a bankruptcy court to stay an adversary proceeding pending a district court’s determination of a motion to withdraw the reference but provides little guidance as to the circumstances under which a bankruptcy court to do so. “[T]he bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion.” FED. R. BANKR. P. 5011(c). Case law applying Rule 5011(c) has limited the circumstances under which a stay may be granted to those under which a preliminary injunction would be appropriate. *See, e.g., In re City of Detroit*, 498 B.R. 777, 780-81 (Bankr. E.D. Mich. 2013); 9 COLLIER ON BANKRUPTCY ¶ 5011.03[2][b] (16th ed. 2016). Accordingly, WHI is entitled to a stay under Rule 5011(c) only if it can show: (1) the likelihood that the Motion to Withdraw will be granted (i.e., the likelihood of success of the merits); (2) that WHI will suffer irreparable harm if the stay is denied; (3) that others will not suffer substantial harm if the stay is granted; and (4) the issuance of the stay would serve the public interest. *Arnold v. Garlock, Inc.*, 278 F.3d 427, 439-42 (5th Cir. 2001); *In re First S. Savs. Ass’n*, 820 F.2d 700, 709 (5th Cir. 1987). When WHI was asked at the Hearing to provide support for its stay request, WHI asserted only that a stay would preserve judicial resources. Thus, other than the fourth criteria, WHI made no attempt to satisfy all of the requirements for a stay. The Court, therefore, finds that WHI’s *ore tenus* motion to stay the Adversaries should be denied without prejudice.

Conclusion

For the above and foregoing reasons, the Court concludes that the Motion to Dismiss should be granted and the Amended Third-Party Complaint against Barrett should be dismissed

for lack of subject matter jurisdiction. In addition, WHI's motion *ore tenus* to stay the Adversaries should be denied. Finally, given the dismissal of the Amended Third-Party Complaint, the Motion to Sever should be denied as moot.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss is hereby granted.

IT IS FURTHER ORDERED that WHI's motion *ore tenus* to stay the Adversaries is hereby denied.

IT IS FURTHER ORDERED that the Motion to Sever is hereby denied as moot.

##END OF ORDER##