

SO ORDERED.**SIGNED this 25th day of June, 2020.**

Benjamin A. Kahn
 BENJAMIN A. KAHN
 UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF NORTH CAROLINA
 GREENSBORO DIVISION

In re:)	
)	Case No. 19-11318
Ronnell Covington Davis,)	
)	Chapter 13
Debtor.)	
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The Heag Pain Management)	
Center, P.A.,)	
)	
Plaintiff,)	
)	
v.)	Adv. Pro. No. 20-02007
)	
Ronnell Covington Davis,)	
)	
Defendant.)	
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ORDER DISMISSING ADVERSARY PROCEEDING

This adversary proceeding is before the Court sua sponte to determine whether the Court retains subject matter jurisdiction over the adversary proceeding following the dismissal of Defendant

Ronnell Covington Davis's underlying bankruptcy case.¹ For the reasons set forth below, the Court finds that it lacks subject matter jurisdiction over this matter based on the ripeness doctrine. As such, the adversary proceeding will be dismissed.

BACKGROUND

On June 19, 2020, the Court denied confirmation of Defendant's proposed chapter 13 plan in the underlying bankruptcy case, Bk. Dkt. No. 106, and dismissed the underlying bankruptcy case, barring Defendant from refiling a petition under any chapter of title 11 for 180 days. Bk. Dkt. No. 108. Because Defendant's bankruptcy case has been dismissed with a bar to refiling, the Court must determine whether the Court retains jurisdiction over the adversary proceeding regarding the dischargeability of the debt owed to Plaintiff.

JURISDICTION & AUTHORITY

Congress conferred on the district courts "original but not exclusive jurisdiction of 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), the United States District Court for the Middle District of North Carolina automatically referred Defendant's underlying bankruptcy case and this proceeding to this Court by its Local Rule 83.11. This

¹ In re Davis, Case No. 19-11318 (Bankr. M.D.N.C. 2019) (docket citations designated as "Bk. Dkt.").

adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(I) in which this Court has authority to enter final judgments.

In addition to statutory subject matter jurisdiction, a court's subject matter jurisdiction is affected by the related but not identical doctrines of standing, mootness, and ripeness.

Although Federal Rule of Bankruptcy Procedure 4007 allows debtors or creditors to file a complaint to determine the dischargeability of a debt, as an initial matter, the Court must determine whether such a matter is justiciable. Justiciability is a concept having its basis in Article III of the United States Constitution, which requires a case or controversy, necessarily involving several related doctrines, including standing, ripeness, and the avoidance of advisory opinions.

In re Erikson, No. 12-59165, 2013 WL 2035875, at *2 (Bankr. E.D. Mich. May 10, 2013).² Ordinarily, a court's subject matter jurisdiction over a matter is determined as of the date of the filing of a complaint and subsequent events cannot oust the court of jurisdiction. See, e.g., Carr v. Alta Verde Indus., Inc., 931 F.2d 1055, 1061 (5th Cir. 1991) (quoting Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 69 (1987) (Scalia, J., concurring)). A court may lose subject matter

² Article III limits federal court jurisdiction to cases and controversies. U.S. Const. art. III, § 2, cl. 1; Chafin v. Chafin, 568 U.S. 165, 171 (2013). "The 'constraint of Article III' includes principles of standing as well as ripeness, which 'presents a 'threshold question of justiciability.'" Maryland v. United States, No. CV ELH-18-2849, 2019 WL 410424, at *12 (D. Md. Feb. 1, 2019) (quoting Scoggins v. Lee's Crossing Homeowners Ass'n, 718 F.3d 262, 269 (4th Cir. 2013)).

jurisdiction, however, if post-filing events render the matter moot, id., or no longer ripe for adjudication. Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477 (1990) (finding that the "case-or-controversy requirement subsists through all stages of federal judicial proceedings it is not enough that a dispute was very much alive when suit was filed.") The latter issue, ripeness, is relevant here.

Ripeness is in part a constitutional requirement for subject matter jurisdiction and in part a prudential consideration. The ripeness criterion asks whether there presently exists an actual controversy of immediate and real consequence or merely circumstances that, on the basis of events yet to occur, may or may not ripen into a real matter in contest.

In re Lynn-Weaver, 462 B.R. 310, 314 (Bankr. D. Mass. 2011). To answer the ripeness question, "a court should consider (a) the likelihood that the harm that plaintiff alleged will ever come to pass; (b) whether the factual record is sufficiently developed to fairly adjudicate the merits of the claims; and (c) the hardship to the parties if judicial relief is denied at that stage." Erikson, 2013 WL 2035875, at *2.

Here, an actual controversy of immediate and real consequence does not exist. The harm Plaintiff alleges—that Defendant's debt to Plaintiff will be discharged—is speculative. In order for the harm to come to pass, Defendant would have to file for bankruptcy

again once the bar to refiling expires in 180 days.³ Currently, there is no pending "discharge from which a debt can be excepted nor is there a discharge to be denied." In re Moseley, 161 B.R. 382, 384 (Bankr. E.D. Tex. 1993). Upon dismissal, Plaintiff may pursue state law remedies to collect on the debt from Defendant. To grant Plaintiff's relief "now would be premature and would amount to an advisory opinion exceeding the bounds of federal court jurisdiction proscribed by Article III of the Constitution." In re Dawson, No. 16-10086, 2016 WL 7335571, at *2 (Bankr. D. Me. Dec. 16, 2016). Accordingly, this adversary proceeding will be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that this adversary proceeding is dismissed without prejudice due to the Court's lack of subject matter jurisdiction.

[END OF DOCUMENT]

³ Additionally, the Defendant would have to qualify as a debtor in such later case under the Bankruptcy Code. See, e.g., § 109(g)(1).

PARTIES TO BE SERVED

All parties and creditors of record shall be served by the
Bankruptcy Noticing Center.