

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: BETTY JEAN BACA,

No. 20-11549-j13

Debtor.

DAVID ORTEGA and
SANDRA ORTEGA,

Plaintiffs,

v.

Adversary No. 20-1063-j

BETTY JEAN BACA,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING MOTION TO DISMISS ADVERSARY PROCEEDING

Having voluntarily dismissed her chapter 13 bankruptcy case, Defendant Betty Jean Baca seeks to dismiss this adversary proceeding (“Adversary Proceeding”) to determine dischargeability of debt, reasoning in part that because she no longer seeks a discharge, whether Plaintiff’s claim is non-dischargeable is no longer at issue. *See* Defendant’s Motion to Dismiss (“Motion to Dismiss”—[Doc. 12](#)). Plaintiffs David Ortega and Sandra Ortega oppose the Motion to Dismiss, asserting that, under *In re Johnson*, [575 F.3d 1079](#) (10th Cir. 2009), the Court retains jurisdiction over an adversary proceeding following voluntary dismissal of the underlying bankruptcy case. Plaintiffs also filed a Motion to Enforce Settlement Agreement and for Entry of Judgment (“Motion to Enforce Settlement Agreement”—[Doc. 11](#)), seeking to enforce the “Binding Settlement Following Mediation” the parties executed following mediation of the disputes raised in this adversary proceeding.¹ For the reasons explained below, the Court will

¹ In an Order Resulting from Status Conference ([Doc. 9](#)), the Court fixed deadlines for the parties to file the motions and the responses thereto, with optional reply deadlines, and determined that the Court

deny the Motion to Dismiss and exercise its continuing jurisdiction over this Adversary Proceeding despite Defendant's voluntary dismissal of the underlying bankruptcy case.

BACKGROUND AND PROCEDURAL HISTORY

Defendant filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on July 31, 2020. On November 2, 2020, Plaintiffs filed this Adversary Proceeding against Defendant seeking a determination that a particular debt Plaintiffs allege Defendant owes them (the "Debt") is non-dischargeable under 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).² After Defendant answered the complaint, the parties agreed to attempt to resolve their dispute through mediation. With the consent of the parties, the Court entered a Mediation Order that ordered the parties to mediate, appointed a mediator, set forth mediation procedures, and set a mediation conference on February 25, 2021. Doc. 5.

At the mediation, the parties reached a settlement and executed a "Binding Settlement Agreement Following Mediation" ("Settlement Agreement"). The Settlement Agreement (a) fixed the amount of the Debt that Plaintiffs would pay Defendant at \$165,000, (b) provided for payment of the Debt on the terms specified therein, (c) provided further that in the event of a default Plaintiffs are entitled to a non-dischargeable judgment against Defendant in the amount of \$361,000 net of payments made prior to default, and (d) appointed the mediator as an arbitrator "in the event of a dispute about the meaning of this agreement, the intent of the parties and/or the form of substance of any document executed in accordance with this agreement." Settlement Agreement, ¶¶ 1, 2, 5, and 12. The Settlement Agreement also provided that "[t]he

would decide the Motion to Dismiss before deciding the Motion to Enforce Settlement Agreement. The Court will address the Motion to Enforce Settlement Agreement in a separate memorandum opinion and order.

² All future references to "Code," "Section," and "§" are to Title 11 of the United States Code, unless otherwise indicated.

debt arising from this agreement shall be nondischargeable in any bankruptcy proceeding” and that Defendant would voluntarily dismiss her bankruptcy case. *See* Settlement Agreement, ¶¶ 6 and 8.

Defendant voluntarily dismissed her chapter 13 bankruptcy case. The Court entered an order dismissing the chapter 13 case on March 9, 2021. Plaintiffs filed the Motion to Enforce Settlement Agreement on June 16, 2021. [Doc. 11](#). A copy of the Settlement Agreement is attached to Plaintiffs’ Motion to Enforce Settlement Agreement. Defendant filed the Motion to Dismiss on July 1, 2021. [Doc. 12](#).

DISCUSSION

Whether the Court should dismiss this Adversary Proceeding depends on whether the Court retains jurisdiction to enforce the Settlement Agreement following Defendant’s voluntary dismissal of her underlying bankruptcy case and, if so, whether the Court should exercise such jurisdiction. Defendant argues that the Court lacks jurisdiction following dismissal of the underlying bankruptcy case based on a) mootness, or b) because the Settlement Agreement required dismissal of the bankruptcy case. In the alternative, Defendant argues that even if the Court retains jurisdiction over this Adversary Proceeding following dismissal of Defendant’s chapter 13 case, the Court should decline to exercise such jurisdiction in favor of adjudication of state law issues in state court. The Court will address each of these arguments.

The bankruptcy court is not automatically divested of jurisdiction over an adversary proceeding upon dismissal of the underlying bankruptcy case

As a starting proposition, dismissal of a debtor’s underlying bankruptcy case does not automatically divest the bankruptcy court of its jurisdiction over related adversary proceedings. *In re Johnson*, [575 F.3d 1079](#) (10th Cir. 2009); *see also In re Morris*, [950 F.2d 1531, 1534](#) (11th Cir. 1992) (“[T]he dismissal of an underlying bankruptcy case does not automatically strip a

federal court of jurisdiction over an adversary proceeding which was related to the bankruptcy case at the time of its commencement.”); *Matter of Stat. Tabulating Corp. Inc.*, [60 F.3d 1286, 1289](#) (7th Cir. 1995) (“[S]ection 349 of the Bankruptcy Code lists the various effects of dismissal of the underlying bankruptcy case; conspicuously absent from that list is automatic termination of jurisdiction of related cases.”) (quoting *In re Carraher*, [971 F.2d 327, 328](#) (9th Cir. 1992)).

This Adversary Proceeding is a “core” proceeding because it requests a determination that a particular debt is non-dischargeable under §§ 523(a)(2), (4), and (6) of the Bankruptcy Code. [28 U.S.C. § 157\(b\)\(2\)\(I\)](#) (“Core proceedings include . . . determinations as to the dischargeability of particular debts . . .”). For “core” proceedings, the bankruptcy court often retains its jurisdiction following dismissal of the underlying bankruptcy case, especially where dismissal does not negate the purpose of the adversary proceeding. *Johnson*, [575 F.3d at 1083](#).³ See also *In re John Richards Holmes Bldg. Co., L.L.C.*, [405 B.R. 192, 210](#) (E.D. Mich. 2009) (“[T]here is much support for the proposition that bankruptcy courts retain jurisdiction over core proceedings beyond the dismissal or closure of the underlying bankruptcy case.”) (collecting cases).⁴ Thus, under *Johnson*, dismissal of this Adversary Proceeding is not required following

³ In *Johnson*, the Tenth Circuit determined that the bankruptcy court retained jurisdiction over an adversary proceeding asserting claims for willful violation of the automatic stay, a “core” proceeding derived from the Bankruptcy Code and which can only be brought in connection with a bankruptcy case, despite dismissal of the underlying chapter 13 bankruptcy case. [575 F.3d at 1084](#).

⁴ Non-core proceedings are “[a]ctions which do not depend on the bankruptcy laws for their existence and which could proceed in another court” *In re Gardner*, [913 F.2d 1515, 1518](#) (10th Cir. 1990) (citation omitted). Non-core proceedings fall within the Court’s “related to” jurisdiction. [28 U.S.C. § 1334\(b\)](#). For non-core proceedings, the Court has discretion to retain its jurisdiction following dismissal of the underlying bankruptcy case, taking into consideration factors such as judicial economy, convenience to the parties, fairness, and the degree of difficulty of the legal issues. *Morris*, [950 F.2d at 1534](#) (to determine whether the court should exercise its discretion to retain jurisdiction over an adversary proceeding following dismissal of the underlying bankruptcy case the court should consider “(1) judicial economy; (2) fairness and convenience to the litigants; and (3) the degree of difficulty of the related legal issues involved.”) (citations omitted); *In re Porges*, [44 F.3d 159, 163](#) (2d Cir. 1995) (in determining whether to exercise jurisdiction over a related adversary proceeding following dismissal of the underlying bankruptcy case, the court must consider “judicial economy, convenience to the parties, fairness, and comity.”) (citations omitted); *In re Smith*, [866 F.2d 576, 580](#) (3rd Cir. 1989) (same).

dismissal of the underlying bankruptcy case, at least if dismissal does not negate the purpose of the Adversary Proceeding.

**The Bankruptcy Court is not divested of jurisdiction
because the Adversary proceeding is moot**

Even so, Defendant reasons that dismissal of her underlying bankruptcy case mandates dismissal of this adversary proceeding since the Defendant no longer seeks a discharge in the dismissed chapter 13 case. Defendant is correct that, notwithstanding the “core” nature of a non-dischargeability action, dismissal of a debtor’s underlying bankruptcy case ordinarily moots a pending non-dischargeability action in which non-dischargeability has not been determined, stripping the Court of its continuing jurisdiction.⁵ “Because there will be no discharge [following voluntary dismissal of debtor’s underlying chapter 13 case], any ruling that the debt is dischargeable would be a purely hypothetical endeavor” *Steed v. Educ. Credit Mgmt. Corp. v. Steed (In re Steed)*, [614 B.R. 395, 402-03](#) (Bankr. N.D. Ga. 2020). Thus, the justiciability of a dischargeability claim ends the moment the underlying bankruptcy case is dismissed without the entry of a discharge. *Id.*

Those cases are distinguishable for one key reason. Here, even though Defendant voluntarily dismissed her bankruptcy case and is no longer seeking a discharge of the Debt in her

However, the general rule for “related” proceedings is that dismissal of the bankruptcy case should result in dismissal of the related adversary proceeding because the bankruptcy court’s jurisdiction over noncore, “related-to” proceedings depends on the nexus of the proceeding to the underlying bankruptcy case. *Johnson*, [575 F.3d at 1083](#) (acknowledging that “when the underlying bankruptcy case is dismissed, a noncore, related proceeding ordinarily should also be dismissed”) (citations omitted); *Matter of Querner*, [7 F.3d 1199, 1201](#) (5th Cir. 1993) (“[A]s a general rule the dismissing or closing of a bankruptcy case should result in the dismissal of related [adversary] proceedings.”) (citations omitted); *Morris*, [950 F.2d at 1534](#) (acknowledging the general rule); *Smith*, [866 F.2d at 580](#).

⁵ *In re Moseley*, [161 B.R. 382](#), (Bankr. E.D. Tex. 1993) (dismissing related adversary proceeding following dismissal of underlying bankruptcy case, reasoning that “[a]s a result of the voluntary dismissal of Debtors’ underlying case, the issue of the dischargeability of a specific debt . . . and the issue of the discharge in general . . . is rendered moot.”).

present bankruptcy case, the Settlement Agreement liquidates the amount of the Debt and provides that the Debt is non-dischargeable “in any bankruptcy proceeding.” Per the parties’ agreement, the character of the debt as non-dischargeable has been determined for any future bankruptcy case Defendant may file. Thus, the fact that Defendant no longer seeks a discharge in the underlying chapter 13 case does not moot the need for a determination in this Adversary Proceeding of whether to enforce the Settlement Agreement that determined the non-dischargeable nature of the Debt in future bankruptcy cases in which Defendant is a debtor. *Cf. In re Arneson*, 282 B.R. 883, 891 n.3 (9th Cir. BAP 2002) (“As recognized in § 523(b), a § 523 judgment (other than a judgment under § 523(a)(1), (a)(3), or (a)(8)) has claim preclusive effect in subsequent bankruptcy cases.”).

The Bankruptcy Court is not divested of jurisdiction to enforce the settlement agreement even though it required dismissal of the bankruptcy case

If dismissal of the underlying bankruptcy case does not divest the Court of jurisdiction based on mootness, Defendant asserts in the alternative that the Court lacks jurisdiction to enforce a settlement agreement which required dismissal of the bankruptcy case, relying on *Matter of Hanks*, 182 B.R. 930 (Bankr. N.D. Ga. 1995). In *Hanks*, the debtor sought to reopen his bankruptcy case to enforce an agreement settling a creditor’s claim. The bankruptcy court determined that it did not have jurisdiction to enforce the settlement agreement which required dismissal of the bankruptcy case where the dismissal order neither incorporated the terms of the settlement agreement by reference nor expressly retained jurisdiction to enforce the settlement agreement. The *Hanks* court reasoned that under *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), the court had no authority to consider the settlement agreement unless there was some independent basis for federal jurisdiction. *Hanks*, 182 B.R. at 934–36. This Court disagrees

that dismissal of Debtor's bankruptcy case stripped the Court of jurisdiction to consider Plaintiffs' Motion to Enforce Settlement Agreement.

Hanks, like *Kokkonen*, upon which *Hanks* relies, is distinguishable. In *Hanks* the settlement agreement was reached in the dismissed bankruptcy case. It was not reached in an adversary proceeding that was still pending. *Hanks*, 182 B.R. at 934. Further, enforcement of the settlement agreement did not involve a core issue. *Id.* Similarly, in *Kokkonen* the dismissed lawsuit was the same lawsuit that produced the settlement agreement. *Kokkonen*, 511 U.S. at 377. Here, Defendant voluntarily dismissed her bankruptcy case, not this adversary proceeding. This adversary proceeding is still pending, and the enforceability the Settlement Agreement, which provides that the debt is non-dischargeable in this and any future bankruptcy case Defendant may file, falls within the Court's "core" jurisdiction.

**The Court will exercise its discretion to adjudicate
the Motion to Enforce Settlement Agreement**

Finally, even if the Court retains jurisdiction following Defendant's voluntary dismissal of the underlying bankruptcy case, Defendant requests the Court to exercise its discretion and dismiss this Adversary Proceeding so Defendant can return to state court to litigate whether she was properly served in a state court lawsuit Plaintiffs initially filed in January of 2017 against Defendant's now deceased husband, Ramon Baca, d/b/a Casita Builders (the "State Court Lawsuit"). Defendant points out that she would not be able to pursue that remedy before this Court, and that the remedies she seeks are not bankruptcy remedies, but rather, are exclusively state court remedies. Defendant's argument is misplaced.

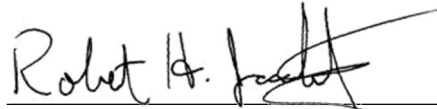
The complaint filed in this adversary proceeding may have arisen from the same transaction that formed the basis of the State Court Lawsuit, but the non-dischargeability action is not premised on any judgment obtained against Defendant in the State Court Lawsuit. Further,

the Settlement Agreement settled not only the validity and amount of the Debt but also the non-dischargeability claims and “precludes any future claim arising from or related to the transaction underlying this dispute.” Settlement Agreement, ¶ 7. Any state law remedies that may be available to Defendant in the State Court Lawsuit if the Settlement Agreement is not enforced is an insufficient reason for this Court to decline to exercise jurisdiction over the Motion to Enforce Settlement. It would be unfair to Plaintiffs for the Court decline to exercise its jurisdiction over the adversary proceeding and the Motion to Enforce the Settlement Agreement, which implicate a bankruptcy remedy, simply because Defendant dismissed her underlying bankruptcy case. *See In re Fleet Serv. Corp., Inc.* [144 B.R. 909, 911](#) (Bankr. M.D. Fla. 1992) (retaining jurisdiction over related adversary proceeding following dismissal of underlying bankruptcy case, reasoning in part that because the claims in the adversary proceeding were uniquely bankruptcy remedies, it would be unjust to allow debtor to take advantage of the dismissal of the bankruptcy case).

Conclusion

In sum, Defendant’s voluntary dismissal of her underlying bankruptcy case does not require dismissal of this adversary proceeding. Dismissal of the bankruptcy case does not moot the non-dischargeability claims that the parties resolved through the Settlement Agreement or otherwise divest this Court of jurisdiction over this Adversary Proceeding. Adjudication of the enforceability of the Settlement Agreement serves an important bankruptcy purpose relating to the dismissed case. The Court will deny the Motion to Dismiss so that it may exercise its jurisdiction to determine whether the Settlement Agreement is enforceable.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: November 3, 2021

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