The No.

IN THE

Supreme Court of The United States

RONNIE D. WARD; SHARON DENISE ALBRITTON WARD,
Petitioners,

V.

CROSS KEYS BANK; CALDWELL BANK & TRUST COMPANY
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

I. Should a case removed to bankruptcy court proceed through three levels of federal court without proof of subject matter jurisdiction? The bankruptcy court so far departed from the usual course of judicial proceedings, and the appellate courts sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

II. Should the outcome of a creditor's state law claim against a guarantor be within a federal court's subject matter jurisdiction as a matter of law in a Chapter 7 bankruptcy case? Because of 11 U.S.C. §509, the general rule should be just the opposite.

III. Were the courts below free to ignore the blatant bad faith filing of bankruptcy, which was nothing other than a device to create federal jurisdiction?

IV. Did parties to a case removed to bankruptcy court who objected to subject matter jurisdiction, moved for remand, abstention, and the withdrawal of reference of the case to bankruptcy court voluntarily appear to try the case before a non-Article III adjudicator, and if not, did the bankruptcy judge exceed his constitutional authority when he entered final judgment on a state law claim against a party not in bankruptcy?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

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PETITION FOR WRIT OF CERTIORARI

Ronnie D. Ward and Sharon Ward respectfully petition the Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The decision of the Court of Appeals denying rehearing on October 4, 2022, Appendix page 144a, is not reported. Its decision rejecting petitioners' appeal is at Appendix page 1a and at 2022 WL 4103265. The opinion of the district court affirming summary judgment is at 2021 WL 4314723, Appendix page 18a. The opinion of the district court affirming the bankruptcy decision that stayed counterclaims, Appendix page 54a, is not reported. Summary judgment granted by the bankruptcy court, Appendix page 49a, is not reported.

JURISDICTION

There was no subject matter jurisdiction. The purported basis for jurisdiction is 28 U.S.C. § 1334(b). The judgment of the court of appeals was entered on September 7, 2022. A petition for rehearing was denied on October 4, 2022. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

28 U.S.C. § 1334(b):

> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have 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. § 157(c)(1):

> A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

This case was removed in accordance with 28 U.S.C. §1452 from Louisiana state court by the state court plaintiff under "related to" jurisdiction after filing a petition for involuntary bankruptcy under 11 U.S.C. §303 against a co-defendant.

STATEMENT

A. Introduction

In July 2020, Karcredit, LLC was a party to two state court collection cases filed by Cross Keys Bank (CKB). Ronnie Ward and Sharon Ward were parties to one of the cases which included a dispute between CKB and another bank over the priority of security interests. This case began with the involuntary bankruptcy of Karcredit.

Two days after CKB acquired all the assets of Karcredit in a state court suit, CKB filed a petition for its involuntary bankruptcy under Chapter 7 and removed the case it filed in state court against the Wards to bankruptcy court contending that it was within the bankruptcy court's "related to" jurisdiction. The only purpose of bankruptcy was to get CKB's suit against Ronnie Ward out of a neutral court and into a friendly one.

There was a presumption of subject matter jurisdiction that was never examined.

B. Proceedings in Bankruptcy Court

On July 17, 2020, less than one week before an important hearing in state court involving Ronnie Ward's counterclaims and third-party demands, CKB filed a petition for the involuntary bankruptcy of Karcredit. Immediately upon filing the involuntary petition, CKB removed the state court case to get a

more favorable forum. ROA.94.[1] Bank counsel and the bankruptcy judge had been law partners until John Hodge was appointed to the bankruptcy bench on August 20, 2018.

Although it was unknown to the Wards and the courts for three months, CKB acquired all the assets of the debtor in the other state court proceeding two days before filing the petition for involuntary bankruptcy. Appendix page 74a. Karcredit's assets, including its computers, had been seized in October 2019. CKB was therefore ordered to file schedules and a statement of financial affairs. It did on October 27, 2020, three months into to the bankruptcy. A sheriff's bill of sale of all of the debtor's assets was part of the statement of financial affairs. Appendix page 74a. Only then was it clear that there was no bankruptcy estate that could be affected by the removed case.

At a status conference in bankruptcy court on August 20, 2020, approximately one month after involuntary bankruptcy and removal, the bankruptcy judge announced without the benefit of any evidence that he had **at least** "related to" jurisdiction. "I don't have any doubt that I have jurisdiction over this case." Appendix page 87a. He characterized the adversary proceeding as "a garden variety suit on a note to enforce commercial guarantees." Appendix page 82-83a. He also made a surprising assertion that a defamation counterclaim against CKB and its lawyer

[1] References to "ROA" are to the appellate record from the court of appeals.

filed by Ronnie Ward was property of the Karcredit bankruptcy estate.[2] Appendix pages 92-97a.

The Wards did not immediately sense that the bankruptcy had been filed in bad faith solely for a litigation advantage, but they sensed that the case should not be in federal court. They filed motions to remand and abstain in bankruptcy court, and a motion for the district court to withdraw.

On August 26, 2020, without evidence, the district court denied the Wards' motion to withdraw reference with the observation that:

> The first question is whether the removed case "arises under" or is "related to" a bankruptcy proceeding. Certainly, the suit against the Wards relates to the Karcredit bankruptcy proceeding as the Wards are alleged to have signed a guaranty agreement securing the Karcredit loan and are alleged to have pledged stock in Homeland Bank and a Transamerica Life Insurance policy as collateral. ROA.2616.

That preliminary conclusion, based on the assumption that there was a real bankruptcy proceeding, was not

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[2] A former FBI agent employed by bank counsel published the false statement that Ward had "stolen" $600,000 from Karl Malone. ROA.2195. The bankruptcy judge's intent to rid the adversary proceeding of Ward's defamation claim first appeared in an order dated August 6, 2020, that stated "Louisiana law does not permit a reconventional demand against someone who is not a plaintiff in the principal action.... Messrs. Naus and Blount are not plaintiffs in the principal action and, as such, cannot be joined by reconventional demand." Appendix page 78a.

re-examined after it became apparent that the bankruptcy was nothing but a staging ground for the adversary proceeding against the Wards.

In the earliest days of the case, Ward complained about forum shopping and sought to have the bankruptcy court abstain. This prompted a non sequitur from the bankruptcy judge about Chapter 5 avoidance actions.[3] Appendix page 108a. As Ward pointed out in that discussion, a bankruptcy trustee could initiate an adversary proceeding to pursue any appropriate action without the removal of CKB's suit against the Wards to bankruptcy court.

The hearing in bankruptcy court on the Wards' motions to remand and abstain was scheduled on September 3, 2020, but the bankruptcy judge did not want to consider evidence, at least not from the Wards.[4]

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[3] THE COURT: So, address that point – because I'm not getting the forum shopping aspect of it.

MR. ROUNTREE: Well, why else, what other rational explanation is there for filing an involuntary bankruptcy and a removal three days before a hearing is scheduled in state court?

THE COURT: Can I provide an explanation?

MR. ROUNTREE: Please.

THE COURT: A possible explanation is they preservation of the estate property. It has been represented by Cross Keys Bank, in their pleadings, that there are chapter 5 cause of action that a trustee is needed to avoid and recover transfers made by the debtor prior to the filing of the petition. And so without a trustee exercising strong arm powers, the creditor really had no other remedy.

[4] "THE COURT: Excuse me, Mr. Rountree. That's not in

After noting the absence of schedules and a statement of financial affairs at the hearing on the motion to remand on September 3, 2020, there was conjecture in a colloquy between the bankruptcy judge and the Wards' counsel about what might be in the debtor's financial records. That prompted an agreement to the question of whether Ward's counsel would concede it was conceivable that the estate had Chapter 5 causes of action. Appendix page 111a. That concession -- although legally meaningless and made at a time when neither the bankruptcy judge nor the Wards' counsel were aware of the sheriff's sale immediately preceding the involuntary petition and removal -- was to figure prominently in the district court's denial of Ward's appeal from summary judgment. CKB took its cue from the judge, and when it eventually filed unsworn schedules and unsworn statement of financial affairs, it listed potential claims against Ronnie Ward or related parties as an asset or transfer prior to bankruptcy. ROA.678. Although the bankruptcy court decided that the debtor had claims against Ronnie Ward long before these were filed, the unsworn schedules and statement of financial affairs, that were never offered into evidence, constitute the entirety of "evidence" of the existence of a bankruptcy estate.

The record contains a sworn affidavit of Patricia Ardis filed in connection with CKB's opposition to the motion to remand and withdraw reference. The

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evidence. That was an affidavit attached to a reply brief. It was not an affidavit attached to your initial pleading, so --"Appendix page 107a. The hearing on the motion to remand was not an evidentiary hearing. ROA.907.

affidavit said that there was no transfer, just a change of bank accounts. ROA.787-88.

The Wards amplified their objection to subject matter jurisdiction after learning that CKB had purchased all the assets of Karcredit just before filing the involuntary bankruptcy, but the confidence of the bankruptcy judge that he had subject matter jurisdiction was never shaken. As he explained during the hearing on motions to remand and abstain on September 3, 2020:

> When there is a suit involving a guarantor that is now an adversary proceeding in bankruptcy, the bankruptcy courts have said that a recovery by the creditor against the guarantor will result in a diminution of the proof of claim against the debtor. That's the connection: That it has a conceivable effect upon the estate. Appendix page 104a.

According to the bankruptcy court, the unsworn statement of financial affairs and unsworn schedules filed by CKB on October 27, 2020, **that were never offered into evidence**, revealed property that could be recovered by a trustee thereby creating an **estate** that **conceivably** could be **affected** by the results of the adversary proceeding. The conceivable existence of assets was the end of the analysis that resulted in the determination of subject matter jurisdiction.[5]

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[5] As the Wards discuss below, the outcome of the removed action must have an effect on an estate being administered. The possibility of the existence of a bankruptcy estate has never before been the deciding factor whether the jurisdiction exists.

There are at least two factual problems with this theory. The evidence before the court negated the existence of a *transfer*, an essential ingredient of any Chapter 5 avoidance action. CKB submitted the sworn statement of its officer, Patricia Ardis, in August 2020, two months before the schedules and statement of financial affairs were filed, in which she attested to the fact that Karcredit funds were deposited in a Karcredit account at a bank different from CKB. ROA.787-88. The deposit by Karcredit of funds in a different Karcredit bank account is not a "transfer" within the meaning of the Bankruptcy Code. See, 11 U.S.C. § 101(54). Karcredit did not dispose of or part with property or an interest in property when it deposited money in its account at a different bank.[6]

Any of the avoidance actions that the bankruptcy court imagined requires that there be a transfer of property of the estate.

The other problem with the conjured avoidance actions is the most basic lack of proof. Bankruptcy Rule 1008 requires that "All petitions, lists, schedules, statements, and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." On each page of the schedules and the statement of financial affairs, CKB said the information was provided "to the best of the knowledge, information, and belief of Cross Keys Bank" or that it was submitted "to the best of CKB's knowledge, information, and belief." That is not a sworn statement.

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[6]"Statutory definitions control the meaning of statutory words.....in the usual case." *Burgess v. U.S.*, 553 U.S. 124, 129, 128 S.Ct. 1572, 1577 (2008).

Tarrance v. State of Fla., 188 U.S. 519, 521, 23 S.Ct. 402, 403 (1903); *Rice v. Ames*, 180 U.S. 371, 374–75, 21 S.Ct. 406, 407(1901).

As the case proceeded toward the inevitable motion for summary judgment, Ward remembered his complaint of forum shopping and eventually realized the absence of good faith on the part of CKB when it filed the petition for involuntary bankruptcy. The Wards filed a motion to dismiss for bad faith filing. Appendix page 112a. The motion was never considered because the Wards failed to satisfy the bankruptcy judge with their notice of hearing. Appendix page 119-143a. The result was dismissal of the bad faith complaint with prejudice. Appendix page 143a.

The adversary proceeding against the Wards included a dispute between Caldwell Bank & Trust Company and CKB over their respective priority to the stock of an otherwise unrelated bank, Homeland Bank. Caldwell Bank intervened to assert its security interest in the stock, and it filed a motion for summary judgment against Ronnie Ward who acknowledged his obligation and consented to judgment to stop the exponential growth of bank attorney fees. ROA.1063.

CKB later filed its own motion for summary judgment against the Wards and co-debtors. The bankruptcy court recognized that the claim against the Wards was not a core proceeding and that the bankruptcy court lacked the authority to issue a final judgment. The bankruptcy court also concluded that CKB failed to prove attorney fees accruing post-bankruptcy, and it denied CKB request for Bankruptcy

Rule 54(b) certification because of a lack of the defendant's consent to a final judgment. ROA.4148.

On June 2, 2021, the bankruptcy judge changed his mind about the authority to enter a final judgment. Appendix page 49a. He reasoned that at Ronnie Ward's consent to summary judgment in favor of Caldwell Bank was consent to an entry of a final judgment in bankruptcy court against Ronnie Ward. Ronnie Ward had assumed that his motions to remand, abstain, and withdraw reference negated any idea that he consented to a final judgment in bankruptcy court. Both Wards continuously objected to subject matter jurisdiction, but they did not file a statement under Bankruptcy Rule 9027(e)(3) which requires parties to a removed action to state whether they do or do not consent to the entry of a final judgment in the bankruptcy court. Because Sharon Ward did not file a statement disagreeing with the entry of a final judgment and "because she used the services of the same lawyer her husband, who requested the entry of the consent judgment... it also constitutes a request by Sharon Ward." ROA.6725-26. Counsel to the Wards expressly disagreed, "I do not think the Court has jurisdiction, and I cannot consent to the entry of the final judgment by a Court that doesn't have jurisdiction." ROA.6726.

Despite their objection to the entry of a final judgment in bankruptcy court, a final judgment was rendered on June 7, 2021. Appendix page 49a.

Five other parties, Karcredit, Karproperties, JDB of Monroe, Inc., Keith Albritton, and Ruth Albritton, filed no pleadings. "[B]ecause of their inaction, I've concluded that they have impliedly

consented to the entry of final orders or judgment by this court...." ROA.6724-25.

Bankruptcy Judge Hodge argued the case for CKB during hearings early in the bankruptcy proceeding, and he developed the legal arguments that he found persuasive.[7] He stripped Ronnie Ward of his counterclaim against CKB and other claims.[8] He refused to consider blatant bad faith filing a bankruptcy solely to get a litigation advantage, and he knowingly rendered a final judgment that exceeded his constitutional authority.[9]

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[7] Appendix page 104a, 108a, 110a, and 111a, arguing that any claim against a guarantor of a bankrupt's debt has a conceivable effect on the bankrupt's estate. The only pleadings filed by CKB before the hearing on September 3 consisted of an opposition to be Wards' motion to expedite the hearing on abstention, which was denied the same day it was filed, and its opposition to remand or abstention. A complaint about the deposit of Karcredit funds in a Karcredit bank account in a different bank only vaguely suggested any sort of transfer, but the bankruptcy judge said, "It has been represented by Cross Keys Bank, in their pleadings, that there are chapter 5 causes of action...." Appendix page 108a.

[8] Ward tried to assert his claims in state court after the initial setback in bankruptcy court. A claim against CKB filed in September was also removed to bankruptcy court where it was stayed. Karcredit had adopted some allegations, probably including that CKB defamed Ronnie Ward. Karcredit's agreement that Ward was defamed made the defamation claim property of the bankruptcy estate. The order granting the stay is at Appendix page 72a; affirmed at Appendix page 54a.

[9] Appendix page 49a. Judgment was rendered against seven defendants who did not consent.

C. Proceedings in District Court

The bankruptcy court's summary judgment was affirmed. Appendix page 18a.

By the time of the appeal, the Wards had learned that all the assets of Karcredit were gone, purchased by CKB two days before the involuntary bankruptcy. They had also learned from *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, n. 6, 115 S.Ct. 1493, 1499 (1995), that there are various tests for "related to" jurisdiction, but "Whatever test is used, these cases make it clear that **bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.**" This reinforced their argument that there was no subject matter jurisdiction; there was no estate.

The opinion of the district court repeats criticism of the Wards' brief as if true[10] and reluctantly addressed the issues raised on the appeal, including the subject matter jurisdiction of the court. Appendix pages 36-37a.

The district court affirmed the finding of subject matter jurisdiction because "during the hearing on the Motion to Abstain and Motion to Remand, counsel for the Wards admitted that at the time the First Adversary was removed to the District Court, it was eminently conceivable that the Trustee has Chapter 5 Actions, including possible avoidance actions against Ronnie Ward or a non-insider." Appendix page 40a.

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[10] CKB's misrepresentation that the Wards' appeal brief to the district court contained no statement of the case or citations to the record was so obviously untrue that the Wards did not address it.

The district affirmed the rejection the Wards' argument that the bankruptcy case should have been dismissed for bad faith because of the Wards' failure to "develop an evidentiary, factual record with regard to the Sheriff's Bill of Sale."[11] The district court affirmed the bankruptcy court's authority to enter a final judgment for the same reasons stated by the bankruptcy court, *i.e.*, that they failed to sign a statement saying that they do not consent to final judgment, Ronnie Ward had consented to summary judgment in favor of Caldwell Bank & Trust Company, and because Mrs. Ward used the same lawyer as her husband.

D. Proceedings in the Court of Appeals

The court of appeals affirmed the judgment of the district court in full. The court noted that, as part of main or bankruptcy proceeding, CKB filed schedules that included "a fraudulent-conveyance claim the estate had against Ronnie Ward." Appendix page 3a. According to the opinion, "Cross Keys then removed the existing adversary proceeding from state court to federal court." The case against the Wards was removed three months before CKB filed schedules.

The three-month lacuna is important because of the time of removal is when subject matter jurisdiction is tested. Motions were filed and decided, and hearings

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[11] The record was complete when CKB filed the statement of financial affairs including the sheriff's bill of sale. The only conceivable reason to file a bankruptcy liquidation proceeding of a company already liquidated was to use the bankruptcy to get a more favorable forum for CKB's suit against the Wards. Appendix page 74a, sheriff's bill of sale.

were held without there being any evidence at all of the bankruptcy court's jurisdiction to hear the adversary proceeding from state court.

The authority of the bankruptcy judge to enter a final judgment was characterized as a factual finding that was not clearly erroneous.

The court affirmed the disregard of the bad faith bankruptcy filed solely for a litigation advantage.

The Wards could not persuade the district court or the court of appeals to view the law and facts other than through the lens of the bankruptcy court. Their reluctance to reconsider subject matter jurisdiction is particularly vexing as "jurisdictional requirements cannot be waived or forfeited, must be raised by courts *sua sponte*." *Boechler, P.C. v. Commissioner of Internal Revenue*, 142 S.Ct. 1493, 1497 (2022).

REASONS FOR GRANTING THE PETITION

The effect of the decision in this case is to expand subject matter jurisdiction of bankruptcy courts to all cases involving a creditor's claim against a guarantor of a debtor's obligation. As the court of appeals put it,"[t]he adversary proceeding is the *creditor's* attempt to *enforce* the guarantors' obligations. ... The adversary proceeding is therefore 'related to' the main bankruptcy case." Appendix page 6a. **A relationship between a removed state court action and a bankruptcy case**, however, is not enough to confer subject matter jurisdiction over the case against a non bankrupt party under any accepted formulation. "The usual articulation of the test for determining whether a civil proceeding is related to

bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy* (emphasis by the court)." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984).[12]

The Wards emphasized the absence of an estate as a shortcut explanation why the outcome of CKB's suit against them could not "*conceivably have any effect on the estate being administered in bankruptcy...*" There was no estate being administered in bankruptcy. The court of appeals dispensed with this argument with the observation, "The estate is not empty. At the very least, the bankruptcy schedules confirm that the Karcredit estate contained a fraudulent-conveyance claim against Ronnie Ward at the time of removal." Appendix pages 6-7. At most, there was a potential for there to be something to administer, but no estate being administered.

A categorical rule that a creditor's claim against a guarantor is related to a bankruptcy case and within federal subject matter jurisdiction also ignores the effect of 11 U.S.C. § 509 which substitutes one creditor for another. By disregarding the bad faith filing in bankruptcy, the courts sanctioned a device to create federal jurisdiction. They also disregarded constitutional limitations on the authority of a bankruptcy judge.

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[12] Approved in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, n. 6, 115 S.Ct. 1493, 1499 (1995).

1. There was no Subject Matter Jurisdiction.

"A federal court's entertaining a case that is not within its subject matter jurisdiction is no mere technical violation; it is nothing less than an unconstitutional usurpation of state judicial power."[13]

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, ... **It is to be presumed that a cause lies outside this limited jurisdiction**, ... and the burden of establishing the contrary rests upon the party asserting jurisdiction (emphasis added)."[14] *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675 (1994). "Subject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999). A suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress, *Syngenta Crop Protection, Inc. v. Henson*, 123 S.Ct. 366, 369–70, 537 U.S. 28, 32 (2002).[15] The removing party has the burden of proof if

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[13] 13 CHARLES ALAN WRIGHT & ARTHUR R.MILLER, *Federal Practice & Procedure Jurisdiction* § 3522 (3d ed.).

[14] "I don't have any doubt that I have jurisdiction over this case." Hodge at Appendix page 87a. (August 20, 2020).

[15] This is particularly relevant because CKB chose a state court forum and removed its own case when it appeared inconvenient to remain there.

jurisdiction is contested. *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921).

These admonitions could not have been more thoroughly ignored. When the Wards argued that the outcome of CKB's suit against them could not have any effect on the administration of the Karcredit bankruptcy, the answer was "The estate is not empty." CKB was never required to prove anything. All that was necessary to establish subject matter jurisdiction was speculation (conceivability) by the bankruptcy judge about the possibility of some claim that a trustee could, but did not, assert which might result in the recovery of money and thereby provide something to administer. In any rational world, it should be apparent that the outcome of a creditor's state law claim against a guarantor of a **totally insolvent** Chapter 7 debtor could not affect the administration of its estate.

This Court in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 310, 115 S.Ct. 1493, 1499, 1500 (1995), cautioned that a bankruptcy court's "related to" jurisdiction cannot be limitless and suggested that related to jurisdiction may be narrower in Chapter 7 cases. This case presents an opportunity to make those frequently quoted observations more meaningful.

2. The Outcome of a Creditor's State Law Claim Against a Guarantor Should Not as a Matter of Law Be Within a Federal Court's Subject Matter Jurisdiction in a Chapter 7 Bankruptcy Case.

CKB has recovered a large judgment against Wards, and the Karcredit bankruptcy case still has nothing. Even if Karcredit has an arguable claim against Ronnie Ward, it still has nothing to administer, nothing to distribute any creditor or even pay administrative expenses. It is an empty shell; just a staging ground for adversary proceedings.

As the court said in *Turner v. Ermiger (In re Turner)*, 724 F.2d 338, 341 (2d Cir.1983), "Conceptually, there is no limit to the reach of this jurisdiction, insofar as the matter involved 'arises in or [is] related to' the title 11 case." (quoting 1 Collier, Bankruptcy ¶ 3.01 [1] [e])). The court in *Matter of FedPak Sys., Inc.*, 80 F.3d 207, 214 (7th Cir.1996), noted that "common sense cautions against an open-ended interpretation of the 'related to' language in a universe where everything is related to everything else. (quoting G. Dunne, The Bottomless Pit of Bankruptcy Jurisdiction, 112 Banking L.J. 957 (Nov–Dec.1995)). An interpretation of "related to" jurisdiction more open-ended than the one in this case is not conceivable.

Except in unusual cases like *Randall & Blake, Inc. v. Evans (In re Canion)*, 196 F.3d 579, 586–87 (5th Cir.1999),[16] and contrary to the unlimited suggestion of

[16] The defendants there were not co-debtors. "To prevail against

federal jurisdiction over cases against guarantors suggested by the court of appeals in this case, recovery from a guarantor will ordinarily have no effect except on the identity of a creditor. This is because of 11 U.S.C. §509 which says in part, "an entity that is liable with the debtor on ... a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment." The general rule, at least in Chapter 7 cases, should be just the opposite of that suggested by the court of appeals. An action against a guarantor of a debtor's obligation is not ordinarily within "related to" jurisdiction.

The court in *Fort Wayne Telsat, Inc. v. Simon*, 403 B.R. 590, 594 (Bkrtcy.N.D.Ind.,2009), cited 11 U.S.C. §509 in its explanation of why a creditor's claim against a guarantor should not be within the bankruptcy court's subject matter jurisdiction. "The amount of those claims will remain unchanged by the litigation—the only change may be the identity of the claims' owner and that will not change the distribution to debtor's other creditors. As a result, the court has no jurisdiction to determine the issue." To the same effect, see *In re Foundation for New Era Philanthropy*, 201 B.R. 382, 395 (Bkrtcy.E.D.Pa.,1996) ("The only difference will be in the identity of the claimant, but the identity of the claimant is immaterial in a chapter 7 liquidation case such as this one.")

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the defendants, (the creditor) would have to prove that they engaged in intentionally tortious or fraudulent conduct—exactly the type of conduct that has led Texas courts to deny a remedy lying in equity, including legal subrogation."

In *Hirschfield v. B'nai B'rith International*, 2010 WL 11565250, at *9 (W.D.Pa., 2010), the court said, "Covenant's bankruptcy is a Chapter 7 liquidation that, under *Celotex*, warrants a more narrow scope of bankruptcy jurisdiction." There was no related to jurisdiction in that case because "the causes of action asserted by the Plaintiffs would not affect the property currently available to its creditors in the bankruptcy or the allocation of the assets."

A requirement that a Chapter 7 related case affect the amount of property for distribution or the allocation of property to creditors[17] would eliminate vagueness and uncertainty and be in keeping with this Court's observation in *Home Depot U. S. A., Inc. v. Jackson*, 139 S.Ct. 1743, 1746 (2019) (citing *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U. S. 546, 552, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005)), that "Federal-question jurisdiction affords parties a federal forum in which 'to vindicate federal rights,' whereas diversity jurisdiction provides 'a neutral forum' for parties from different States."

The identity of a creditor may be sufficient in a Chapter 11 case to justify the exercise of "related to" jurisdiction. *In re Island View Crossing II, L.P.*, 598 B.R. 552, 562 (Bkrtcy.E.D.Pa. 2019),[18] a Chapter 11

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[17] Required in all cases, by liquidation or reorganization in the Seventh Circuit. *Matter of FedPak Systems, Inc.*, 80 F.3d 207, 213–14 (7th Cir. 1996); and *Matter of Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir.1987).

[18] "In the chapter 11 context, the identity of the creditor may matter in connection with plan voting. Thus, there may be chapter 11 cases in which the creditor's identity matters enough to justify the exercise of "related to" jurisdiction with regard to an action

reorganization in which the court held there was no subject matter jurisdiction of the creditor's claim against a borrower's principal.

Even if there had been a Karcredit estate, the outcome of a claim against its guarantor could not affect its administration or provide anything to administer. At most, to the extent CKB recovered money from the Ronnie Ward, it would change the identity of a creditor as provided by 11 U.S.C. §509.[19]

3. Bad Faith Bankruptcy Should Have Been Dismissed.

CKB may be the first creditor to employ the litigation strategy of foreclosing on a defunct company's assets, filing a petition for involuntary bankruptcy, and then forum shopping its state law guarantor action to federal court. There was nothing to administer and no an attempt to go through motions to suggest a possibility of an administration in the bankruptcy court. Bankruptcy provided the stage for CKB to prosecute its state law claim against the Wards in a more favorable forum.

The Wards filed a motion to dismiss the bankruptcy for bad faith filing on February 26, 2021. Appendix page 112a. The motion to dismiss

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between a creditor and guarantor."

[19] The extended argument for jurisdiction is that recovery from the Wards would reduce CKB's claim against the estate, and if the trustee recovered anything, there would be more to distribute to other creditors. The Wards' payment of the claim, therefore, was both essential and, in light of §509, fatal.

emphasized the lessons of *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1071–73 (5th Cir. 1986):

> Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings.... [A] good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons (i.e., avoidance of liens, discharge of debts, marshalling and turnover of assets) available only to those debtors and creditors with "clean hands."

Little Creek was called "the seminal bad faith case" *in In re Silberkraus*, 253 B.R. 890, 905 (Bkrtcy.C.D.Cal.,2000).

Courts have the authority to raise bad faith *sua sponte*. That was recognized in *Little Creek* and practiced in *In re Antelope Technologies, Inc.*, 431 Fed.Appx. 272, 273 (5th Cir. 2011), in which the district court vacated an order of confirmation in a Chapter 11 reorganization because it did not appear that bankruptcy was filed in good faith. The case was remanded to find out, and it was determined that bankruptcy was filed in bad faith because the objective was not to reorganize, but rather to gain an unfair advantage in a shareholder derivative action.

The Wards motion to dismiss provoked an immediate, irritated response from the bankruptcy judge:

> IT IS ORDERED that within seven (7) days from the entry of this order, the moving parties must identify the rule or statute upon which the motion is predicated. Failure to provide the statutory basis for the relief sought is cause for the court to deny the relief requested. Appendix page 123a.

The Wards cited 11 U.S.C. § 707(a), but they could not satisfy Judge Hodge with the notice of hearing. That resulted in a finding that the Wards and counsel engaged in "an abuse of process." The motion to dismiss was denied with prejudice and no sense of irony "to prevent the continued abuse of process by the moving parties and their counsel." Appendix pages 141-143a.

The district court agreed that the case should not be dismissed for CKB's bad faith. The "Court finds that Appellants have failed to establish that Cross Keys filed the bankruptcy in bad faith to obtain an advantage in litigation." Appendix page 43a. The proof that should have made a finding of bad faith inevitable was submitted by CKB.

The court of appeals decided that the Wards had forfeited the bad faith issue which it reviewed on an abuse of discretion standard. The court did not review the basis of the district court's judgment.

Forum shopping is bad faith. *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328, 335 (3d Cir. 2015); *In re Brazos Emergency Physicians Ass'n, P.A.*, 471 F. App'x 393, 394 (5th Cir. 2012); *In re: Little Rest Twelve, Inc.*, 662 Fed.Appx. 887, 888 (11th Cir. 2016); *In re Miller*, 2016 WL 5957270, at *11 (9th Cir.BAP 2016), and many more. CKB got the notice of the Wards' motion to dismiss and never even denied its bad faith.

Imposing a good faith standard would protect the jurisdictional integrity of the bankruptcy courts.

4. Final Adjudication by the Bankruptcy Judge Was Unconstitutional.

If this case is any indication, there is no longer a constitutional limitation on the power of a bankruptcy judge to enter a final judgment in a matter that is not within core bankruptcy jurisdiction. The authority of the bankruptcy judge to enter a final judgment was characterized by the court of appeals as a factual finding that was not clearly erroneous, but this is not an issue about which deferential appellate review was appropriate. *Stern v. Marshall*, 131 S.Ct. 2594, 2611, 564 U.S. 462, 487 (2011).

In *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion), the Court invalidated that portion of the Bankruptcy Reform Act of 1978 that authorized bankruptcy courts to decide all civil proceedings arising under Title 11 or arising in or related to cases under Title 11. Insofar as it permitted the bankruptcy court to enter a final judgment on a creditor's state law claim that arose from an

independent common law source, the majority of the Court determined that Article III required an adjudicator with life tenure and salary protection. The Court reached the same conclusion in *Stern v. Marshall*, 564 U.S. 462, 469, 131 S.Ct. 2594, 2601 (2011), and extended that ruling to prohibit a final judgment on a state law counterclaim not resolved in the process of ruling on a creditor's proof of claim. "We conclude that, although the bankruptcy court had the statutory authority to enter judgment on Vicky's counter claim, it lacked the constitutional authority to do so."

The dispute between the majority and the dissent in *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 685, 135 S.Ct. 1932, 1948 (2015), was over the question of whether consent could cure the constitutional obstacle to a bankruptcy court's entry of a final judgment on non-core claims. The Court held that consent could overcome the obstacle, but said, "It bears emphasizing, however, that a litigant's consent - - whether expressed or implied - - must still be knowing and voluntary." That is the case only if the litigant or counsel is "aware of the need for consent and the right to refuse it, and still **voluntarily appeared to try the case**" before the bankruptcy judge (emphasis added).

The Wards were dragged kicking and screaming into bankruptcy court. They repeatedly objected to the bankruptcy court's exercise of subject matter jurisdiction, they filed a motion to remand, a motion to abstain, and a motion for the district court to withdraw the reference to bankruptcy. They did not voluntarily

appear to try the case before the bankruptcy judge. In fact, they expressly denied giving consent. ROA.6726.[20]

Even if the bankruptcy court had subject matter jurisdiction to entertain CKB's state law claim against the Wards, and it did not, the bankruptcy judge overstepped the constitutional limitation on his authority by entering the final judgment.

CONCLUSION

This case illustrates the powerful effect of argument from the bench. The determination of the bankruptcy judge to impose his will on the case against the Wards is apparent from the very beginning of the case in the order dated August 6, 2020 (Appendix page 76a) and his confidence in his subject matter jurisdiction expressed at the status conference on August 20, 2020. (Appendix Page 87a). He convinced the district court and the court of appeals that the possible existence of Chapter 5 claims was a complete answer to the Wards' argument that the outcome of the case against them could have no conceivable effect on the estate being administered in bankruptcy. This led the court of appeals to make a statement that could be construed as a recognition that federal jurisdiction extends to any case against a guarantor of a debtor. The disregard of the presumption against federal jurisdiction was complete.

The courts' disregard of the constitutional limitation on the power of a bankruptcy judge is as

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[20] Five others consented to final judgment through their inaction. ROA.6724-25.

blatant as their disregard for the limitations on subject matter jurisdiction. *Wellness Intern Network LTD vs Shariff*, 575 US 665, 685 (2015), was not a guide, but a license. It requires that a party consenting to bankruptcy court final judgment voluntarily appear to try the case in bankruptcy court. That is inconsistent with a two-year argument over jurisdiction after removal from state court.

Either of those reasons warrants consideration by this Court, but in the opinion of the Wards, the total disregard of jurisdictional integrity of bankruptcy courts by refusing to impose a good faith standard on filing of bankruptcy is even more compelling.

WHEREFORE RONNIE AND SHARON WARD PRAY that the Court reverse the decisions of the courts below and order that the case against them be remanded to state court where it belonged.

Respectfully submitted,

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United States Court of Appeals, Fifth Circuit.
In the MATTER OF: KARCREDIT, LLC, Debtor,
Ronnie D. Ward; Sharon Denise Albritton Ward,
Appellants,
v.
Cross Keys Bank; Caldwell Bank; Trust Company,
Appellees.

No. 21-30649

FILED September 7, 2022

Appeal from the United States District Court for the Western District of Louisiana, USDC No. 3:21-cv-1629, Terry A. Doughty, U.S. District Judge

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Brandon Kelly Black, Jones Walker, L.L.P., Baton Rouge, LA, for Appellee Caldwell Bank & Trust Company.

Before Smith, Duncan, and Oldham, Circuit Judges.

Opinion

Per Curiam:*

Cross Keys Bank loaned Karcredit money. Karcredit defaulted. A bankruptcy court issued a final judgment against Karcredit and its guarantors on a state-law adversary proceeding, and the district court affirmed. Two of the guarantors, Ronnie and Sharon Ward, appeal that affirmance. We reject their arguments and affirm.

I.

Ronnie Ward sold used cars. One of his companies was Karcredit, LLC ("Karcredit"). Karcredit borrowed about $3.5 million from Cross Keys Bank ("Cross Keys") in 2012. When it did so, it gave Cross Keys a security interest in most of its assets. Ronnie Ward and his wife Sharon Ward (collectively, the "Wards") signed on as guarantors of that loan.

Karcredit defaulted in 2019, with over $3 million still outstanding. Cross Keys then called the loans and sued Karcredit and its guarantors in Louisiana state court. We refer to that litigation as the "adversary proceeding." In essence, the adversary proceeding had two aims: first, to hold Karcredit and Karcredit's guarantors liable for Cross Keys' loan to Karcredit; second, to secure a declaratory judgment regarding Cross Keys' security interests in various property. In July of 2020, pursuant to a separate state-court action, Cross Keys forced a sheriff's sale of most of Karcredit's assets. Cross Keys then bought those assets for $700.

Two days after the sheriff's sale, Cross Keys filed an involuntary bankruptcy petition, thereby forcing Karcredit into bankruptcy. We refer to that as the "main proceeding" or the "bankruptcy proceeding."

As a part of that proceeding, Cross Keys filed schedules listing Karcredit's assets. Despite the sheriff's sale, those schedules included some assets, one of which was a fraudulent-conveyance claim the estate had against Ronnie Ward.

Cross Keys then removed the existing adversary proceeding from state court to federal court. *See* 28 U.S.C. § 1452 (allowing removal of some proceedings, provided the bankruptcy court has jurisdiction); 28 U.S.C. § 1334 (the relevant jurisdictional provision). From that point on, the bankruptcy court administered the two proceedings in parallel.

Cross Keys moved for summary judgment on its adversary-proceeding claims. The Wards opposed that motion. The bankruptcy court granted partial summary judgment in Cross Keys' favor. This final judgment was a nearly complete victory for Cross Keys: The judgment held Karcredit and its guarantors (including the Wards) liable for over $3 million (plus interest), and it recognized Cross Keys' security interests in various assets.

The bankruptcy court then had second thoughts about its power to enter a final judgment—as opposed to merely submitting recommended findings of fact and conclusions of law to the district court. *See* 28 U.S.C. § 157(c)(1). So on its own motion, it set a hearing to consider the issue. The next day, the court issued a memorandum opinion holding that it did indeed have power to enter a final judgment in the adversary proceeding. It entered that judgment accordingly.

The Wards appealed that judgment to the district court. They raised the same three arguments they raise in this court, which we describe below. The district court reviewed the bankruptcy court's judgment as a court of appeal and rejected each of those

arguments. *See* 28 U.S.C. § 158(a); *AT&T Univ. Car Servs. v. Mercer (In re Mercer)*, 246 F.3d 391, 402 (5th Cir. 2001). The district court then affirmed the bankruptcy court's judgment. The Wards timely appealed that affirmance to this court. We have jurisdiction to review the district court's final order under 28 U.S.C. § 158(d).

II.

We (A) hold the bankruptcy court had jurisdiction to decide Cross Keys' adversary claims. Then we (B) hold the Wards consented to the bankruptcy court's issuance of a final judgment. And finally, we (C) hold that because the district court didn't abuse its discretion by holding the Wards' bad-faith-filing argument forfeited, that argument remains forfeited on appeal.

A.

Because Cross Keys removed this adversary proceeding from state to federal court, 28 U.S.C. § 1452 governs jurisdiction. With exceptions not relevant here, that provision allows removal of "any claim or cause of action" from state court to federal district court—provided that the district court has jurisdiction under 28 U.S.C. § 1334. Section 1334, in turn, gives district courts "original and exclusive jurisdiction of all cases under title 11"—that is, bankruptcy proceedings themselves. It also gives 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." *Id.* § 1334(b) (emphasis added). As usual, we assess jurisdiction based on the facts as they stood at

the time of removal. *See, e.g., Louisiana v. Am. Nat'l Prop. & Cas. Co.*, 746 F.3d 633, 639 (5th Cir. 2014) (calling this rule "well[-]entrenched").

For 28 U.S.C. § 1334 purposes, a "proceeding is 'related to' a bankruptcy if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1022 (5th Cir. 1999) (quotation omitted). More specifically: "For jurisdiction to attach, the anticipated outcome of the action must both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate." *Id.* "A conceivable effect in this context is any that *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." *Fire Eagle LLC v. Bischoff (In re Spillman Dev. Grp.)*, 710 F.3d 299, 304 (5th Cir. 2013) (quotation omitted); *see also Arnold v. Garlock, Inc.*, 278 F.3d 426, 434 (5th Cir. 2001) ("Certainty, or even likelihood[,] of such an effect is not a requirement.").

It is undisputed that the adversary proceeding before us—in contradistinction to the main bankruptcy proceeding itself—is not a "case[ ] under title 11" within the meaning of 28 U.S.C. § 1334(a). Thus, the parties correctly agree that the only path to jurisdiction is 28 U.S.C. § 1334(b)'s "related to" jurisdiction.

The adversary proceeding is Cross Keys' attempt to enforce its state-law rights. When Cross Keys filed this proceeding in state court, it sought a judgment of over $3 million against both Karcredit and Karcredit's guarantors.

Our analysis is controlled by *Fire Eagle LLC v. Bischoff (In re Spillman Dev. Grp.)*, 710 F.3d 299 (5th

Cir. 2013). There, after a voluntary bankruptcy petition, some of the debtor's guarantors filed an adversary action in bankruptcy court. They sought "a declaratory judgment that ... the [g]uarantors should be released from their obligations under the guaranty agreements," among other things. *Id.* at 303. The relevant creditor argued that the bankruptcy court lacked 28 U.S.C. § 1334 "related to" jurisdiction over that claim. *Id.* at 304. This court disagreed: "If [the creditor] were to succeed on the merits of this suit and proceed to recover against the guarantees ... such a recovery would presumably diminish [the creditor's] deficiency claim against the bankruptcy estate, *conceivably allowing a greater recovery for other unsecured creditors against the estate....*" *Id.* at 305 (emphasis added). Accordingly, it held "that the bankruptcy court's jurisdiction extended to these matters." *Ibid.*

So too here. In *Spillman*, the adversary proceeding was the *guarantors'* attempt to *avoid* their guaranty obligations. *Id.* at 303. This case is the mirror image: The adversary proceeding is the *creditor's* attempt to *enforce* the guarantors' obligations. But the stakes are exactly the same. The adversary proceeding is therefore "related to" the main bankruptcy case. *See id.* at 305; *Bass*, 171 F.3d at 1022.

The Wards have two objections. First, they argue that the estate really has no assets at all. Pointing out that Cross Keys acquired almost all of Karcredit's property in a sheriff's sale just before it forced Karcredit into bankruptcy, the Wards argue that there is simply nothing left. And, it is impossible for the adversary proceeding to have any effect on the administration of an empty estate. *See ibid.*

But the estate is not empty. At the very least, the bankruptcy schedules confirm that the Karcredit

estate contained a fraudulent-conveyance claim against Ronnie Ward at the time of removal. *See In re Positive Health Mgm't*, 769 F.3d 899, 903 (5th Cir. 2014) (explaining that a fraudulent-conveyance claim, if successful, claws assets back into the estate that never should have left in the first place). And "[i]t is well established that a claim for fraudulent conveyance is included within estate property." *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010) (quotation omitted). The Wards insist that, if this claim were *really* worth anything, Cross Keys would have pursued it by now in state court. But again, the relevant facts for jurisdictional purposes are the facts as of the moment of removal. *See Am. Nat'l Prop. & Cas. Co.*, 746 F.3d at 639. What Cross Keys does or does not do afterward is irrelevant.

Second, the Wards try to differentiate this case from *Spillman* by suggesting Cross Keys was the only creditor at the time of filing. *See* 710 F.3d at 305 (relying on the adversary proceeding's conceivable effect on other creditors). This argument fails because the Wards conceded in bankruptcy court that there were multiple creditors. "Although parties may not *consent* to jurisdiction, a party may *stipulate or admit* to *facts* underlying jurisdiction." *Durbois v. Deutsche Bank Nat'l Trust Co.*, 37 F.4th 1053, 1060 (5th Cir. 2022) (citing *Ry. Co. v. Ramsey*, 89 U.S. (22 Wall.) 322, 327 (1874)).

B.

The Wards say the bankruptcy court lacked jurisdiction to enter a final judgment in the adversary proceeding. They contend the court had the power only

to submit recommended findings of fact and conclusions of law to the district court. We disagree.

Bankruptcy courts have statutory jurisdiction to issue final judgments over "core proceedings." 28 U.S.C. § 157(b). As for non-core proceedings, bankruptcy courts may only "submit proposed findings of fact and conclusions of law to the district court." *Id.* § 157(c)(1). And as the Supreme Court explained in *Stern v. Marshall*, 564 U.S. 462 (2011), Article III does not allow Congress to "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or in admiralty." *Id.* at 485 (quotation omitted).

Nevertheless, according to the Supreme Court, "litigants may validly consent to adjudication by bankruptcy courts." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015). Consent can ameliorate both statutory-jurisdiction defects and constitutional defects. *See Sharif*, 575 U.S. at 671 (majority) (statutory defects); *id.* at 679 (constitutional defects); *see also* 28 U.S.C. § 157(c)(2) (allowing bankruptcy courts to enter final judgments on non-core claims by consent). And "waiver based on actions rather than words" may suffice. *Sharif*, 575 U.S. at 684 (quotation omitted). "[T]he key inquiry" is whether "the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the non–Article III adjudicator." *Id.* at 685 (quotation omitted).

Here, the district court found the Wards had impliedly consented to the bankruptcy court's issuance of a final judgment. That was a factual finding, and it wasn't clearly erroneous. *See Saenz v. Gomez (In re Saenz)*, 899 F.3d 384, 391 (5th Cir. 2018) (reviewing a bankruptcy court's implied-consent finding for clear

error); *see also Sharif*, 575 U.S. at 685 (noting the question of implied consent "require[s] a deeply factbound analysis"). Mere days after Cross Keys removed the proceeding to bankruptcy court, the Wards received notice that they should file a statement giving a yes-or-no answer to whether they consented to judgment by the bankruptcy court. And the Wards had notice that the relevant bankruptcy rules required them to give the same yes-or-no answer in their answer to Cross Keys' complaint. But the Wards failed to say one way or another. Instead, after they had notice, they continued to file and amend pleadings and otherwise participated in the adversary proceeding. In other words, after receiving relevant notice, they "still voluntarily appeared to try the case before the non-Article III adjudicator." *Sharif*, 575 U.S. at 685 (quotation omitted). We conclude the district court's consent determination was not clear error.

The Wards respond by invoking policy considerations. But policy is not law. They also point out that, a couple of times during the litigation, the bankruptcy court indicated it planned merely to submit recommended findings of fact and conclusions of law to the district court, rather than entering its own final judgment. This argument, however, overlooks the uncontested sequence of events. As the district court explained, the Wards were notified of these issues a mere six days after Cross Keys removed the case. After that notification, in November 2020, the Wards filed an amended answer to Cross Keys' complaint. And they otherwise continued litigating the adversary proceeding without saying anything about final judgments one way or the other. Ronnie Ward went so far as to affirmatively invoke the bankruptcy court's jurisdiction by asking it to enter a consent judgment on

a related claim. And, though the Wards are correct that the bankruptcy court indicated plans not to enter a final judgment, those indications did not come until the spring of 2021—*after* the Wards' sustained participation in the lawsuit.

C.

Finally, the Wards say Cross Keys forced Karcredit into bankruptcy in bad faith. *See Krueger v. Torres (In re Krueger)*, 812 F.3d 365, 370–73 (5th Cir. 2016) (bad-faith filing is cause for dismissal of a bankruptcy proceeding). But the Wards forfeited this argument by failing to properly present it below.

The Wards attempted to argue the bad-faith issue in a motion to dismiss the main proceeding in bankruptcy court. After giving the Wards many opportunities to remedy various procedural defects with the motion, the bankruptcy court denied it. The Wards appealed that denial to the district court, but the district court held the denial was a mere interlocutory order not fit for review.

After the bankruptcy court entered its final judgment in the adversary proceeding (the subject of this appeal), the Wards again appealed. And they again argued the bad-faith issue. The district court held that, because the Wards had not properly raised the bad-faith issue in the main proceeding in bankruptcy court, they had forfeited it.

When a district court holds that a party forfeited an issue by failing to properly raise it, our review is for abuse of discretion. *Cf. Seed Co. v. Westerman, Hattori, Daniels & Adrian, LLP*, 961 F.3d 1190, 1195 (D.C. Cir. 2020). Here, it is undisputed that, despite repeated warnings from the bankruptcy court, the Wards failed to raise the bad-faith issue in a procedurally adequate

manner. And the whole thrust of forfeiture doctrine is that parties must present issues in a procedurally adequate manner in order to preserve them. *Cf. Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal—or by failing to adequately brief the argument on appeal."). The district court's forfeiture holding was a straightforward application of that basic principle.

All but one of the Wards' counterarguments rely on the incorrect assumption that this court can review forfeiture *de novo*. The Wards' failure even to contend that the district court abused its discretion is fatal to these arguments.

The remaining counterargument is that bad-faith filing is a jurisdictional issue that cannot be forfeited at all. True, this court has at least suggested that bad-faith filing is jurisdictional in the Chapter 11 context. *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071 n.1 (5th Cir. 1986) ("The parties agree that the bankruptcy court has the power to raise the issue of good faith *sua sponte* as an inquiry into its jurisdiction, and former Bankruptcy Act precedent in this circuit confirms their position."). That might make sense because the statutory provision that governs bad-faith filing in Chapter 11 cases uses mandatory terms. *See* 11 U.S.C. § 1112(b)(1) (requiring, with exceptions, that "the court *shall* convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter" if there is "cause" to do so (emphasis added)); *Krueger*, 812 F.3d at 373 (explaining that bad-faith filing can be "cause" in a Chapter 11 case).

But the same is not true in the Chapter 7 context. The statutory provision that governs bad-faith

filing in Chapter 7 cases is permissive. *See* 11 U.S.C. § 707(a) ("The court *may* dismiss a case under this chapter only after notice and a hearing and only for cause" (emphasis added)); *Krueger*, 812 F.3d at 370–73 (holding bad faith filing counts as "cause" in Chapter 7 cases). Some mandatory provisions are jurisdictional, and some mandatory provisions are not. *Gonzalez v. Thaler*, 565 U.S. 134, 142, 146 (2012) (discussing one of each). But to our knowledge, no permissive provision is jurisdictional. We decline to hold that 11 U.S.C. § 707(a) is jurisdictional. The district court's forfeiture holding stands.

United States District Court, W.D. Louisiana,
Monroe Division.
Ronnie WARD, et al.
v.
CROSS KEYS BANK, et al.
CIVIL ACTION NO. 3:21-cv-01629

Signed 09/22/2021

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RULING

TERRY A. DOUGHTY, UNITED STATES DISTRICT JUDGE

Before the Court is Appellants Ronnie Ward and Sharon Ward's Motion for Rehearing [Doc. No. 20] pursuant to Federal Rule of Bankruptcy Procedure 8022 of this Court's Ruling and Judgment [Doc. Nos 18,

19], affirming the judgment of the Bankruptcy Court entered June 7, 2021. For the reasons that follow, the Motion is DENIED.

I. BACKGROUND

The primary issue in this bankruptcy appeal is whether the Bankruptcy Court had subject matter jurisdiction over a First Adversary.

Appellant Ronnie Ward was a principal in several automobile-related businesses that had substantial loans from Cross Keys Bank ("Cross Keys"), including Karcredit, LLC ("Karcredit"), in which he owned a 75% interest. On May 22, 2019, Cross Keys filed a Petition in the Fourth Judicial District Court, Ouachita Parish, Louisiana, No. 19-1665 (the "State Court Action"), against Karcredit and Appellants Ronnie Ward and Sharon Ward. Cross Keys sought judgment against the defendants, in solido, for amounts allegedly due under a promissory note executed by Karcredit in the principal amount of $3,197,829.42. Cross Keys alleged that the Wards personally guaranteed the amounts due under the note pursuant to written guaranty agreements that each of them signed.

Over the next year, various responsive pleadings, amended pleadings, re-conventional demands, interventions, and third-party demands were filed in the State Court Action.

On July 17, 2020, Cross Keys filed an Involuntary Petition Against a Non-Individual with the Bankruptcy Court, Case No. 20-30681, against Karcredit. Cross Keys asserted its claim in the Involuntary Petition, that under the Note, Karcredit owed it at least $2,738,031.63 in principal plus accrued

but unpaid interest, plus prepetition attorneys' fees, expenses, and other amounts allowed by the Note or any other loan documents.

Later that same day, Cross Keys filed a Notice of Removal in the United States District Court for the Western District of Louisiana ("District Court") to remove the pending State Court Action, No. 19-1665 (which became the "First Adversary"), based on its relation to the Bankruptcy Case.

From that point forward, the issue of "related to" subject matter jurisdiction has been extensively litigated in the Bankruptcy Court, and in the appeal to this Court. Appellants argue that the Bankruptcy Court does not have subject matter jurisdiction over Cross Keys' claims against them in the First Adversary. They contend that Cross Keys initiated the proceedings in Bankruptcy Court in bad faith by filing a petition to liquidate an already liquidated debtor.

Cross Keys, on the other hand, submits that subject matter jurisdiction does exist, in part because of allegations that within the year prior to the filing of the Bankruptcy Case, Appellant Ronnie Ward misappropriated and/or diverted funds or caused funds to be misappropriated or diverted from Karcredit and Cross Keys, in an amount totaling at least $142,763.92.

After considering the thoroughly briefed arguments of the parties, this Court denied the appeal. This Court concluded that the Bankruptcy Court had subject matter jurisdiction of the First Adversary, that Appellants failed to establish that Cross Keys filed the bankruptcy in bad faith to obtain an advantage in litigation, and that the Bankruptcy Court was correct in finding that Appellants consented to the Bankruptcy Court's entry of a final judgment on Cross Keys' claims against them in the First Adversary [Doc. Nos. 18, 19].

II. ANALYSIS

Federal Rule of Bankruptcy Procedure 8022(a)(1) allows a party to a bankruptcy appeal to file a motion for rehearing within fourteen days of the district court's order. With respect to content, Rule 8022(a)(2) provides that a motion for rehearing "must state with particularity each point of law or fact that the movant believes the district court ... has overlooked or misapprehended and must argue in support of the motion." Fed. R. Bankr. Proc. 8022(a)(2). Although Rule 8022 does not provide a standard for determining whether rehearing is appropriate, the Fifth Circuit, in an unpublished opinion, has recognized that "such a motion may be granted to correct a 'mistaken use of facts or law' in the prior decision." *In re Mar. Commun./Land Mobile, L.L.C.*, 745 F. App'x 561, 562 (5th Cir. 2018) (per curiam) (internal citations omitted); *see also In re Coleman*, No. 15-569, 2015 WL 7101129, at *1 (E.D. La. Nov. 13, 2015) ("The Court is of the opinion that the standard is simply whether the Court would have reached a different result had it been aware of its mistaken use of facts or law.").

Here, Appellants have failed to identify a mistake of law or fact and, instead, simply rehash prior arguments. They once again argue that the Bankruptcy Court had no subject matter jurisdiction, that the bankruptcy was filed in bad faith, and that they did not consent to the entry of a judgment by the Bankruptcy Court. The Court has previously considered all of the arguments they are making in their Motion for Rehearing and has rejected them. Although Appellants disagree with the Court's determination in this case, the Court finds no reason to grant a rehearing.

III. CONCLUSION

For these reasons, Appellants' Motion for Rehearing [Doc. No. 20] is DENIED.

United States District Court, W.D. Louisiana,
Monroe Division.
Ronnie WARD, et al.
v.
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CIVIL ACTION NO. 3:21-cv-01629

Signed 09/07/2021

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REASONS FOR DECISION

TERRY A. DOUGHTY, UNITED STATES DISTRICT JUDGE

Pending here is an Appeal from the Bankruptcy Court filed by Ronnie Ward and Sharon Ward (collectively "Appellants") [Doc. No. 1]. Appellants seek

relief from a judgment entered June 7, 2021 by the United States Bankruptcy Court for the Western District of Louisiana, Monroe Division [Doc. No. 1-1]. Appellees Ellis Blount ("Blount"), Cross Keys Bank ("Cross Keys"), and Caldwell Bank & Trust Company ("Caldwell Bank") oppose the appeal [Doc. Nos. 11, 12, and 14].

I. BACKGROUND

Appellant Ronnie Ward was a principal in several automobile-related businesses that had substantial loans from Cross Keys, including Karcredit, LLC ("Karcredit"), in which he owned a 75% interest.

On May 22, 2019, Cross Keys filed a Petition in the Fourth Judicial District Court, Ouachita Parish, Louisiana, No. 19-1665 (the "State Court Action"), against Karcredit, Ronnie Ward, and Sharon Ward. Cross Keys sought judgment against the defendants, in solido, for amounts due under a promissory note ("the Note") dated March 19, 2012, executed by Karcredit in the principal amount of $3,197,829.42, plus interest, late fees, attorneys' fees, expenses, and other amounts asserted to be due under the Note [Doc. No. 2-4, p. 12 *et seq.*]. Cross Keys alleged that the Wards personally guaranteed the amounts due under the Note pursuant to written guaranty agreements that each of them signed. Cross Keys also sought a declaratory judgment recognizing and maintaining what it asserted were valid, effective, and first-ranking security interests in certain collateral, specifically 3,175 shares of stock in Homeland Bancshares, Inc. ("Homeland") owned by Ronnie Ward, and a $3,000,000 term life insurance policy issued by Transamerica Life Insurance Company on the life of Ronnie Ward. [*Id.*].

Over the next year, various responsive pleadings, amended pleadings, reconventional demands, interventions, and third-party demands were filed in the State Court Action. The attorney who represented the Wards and Karcredit is the same attorney who has represented Appellants throughout these proceedings.

Pertinent here are the following pleadings. The Wards and Karcredit filed a joint answer to the Original Petition on June 17, 2019, which included a reconventional demand against Cross Keys for damages arising out of the alleged mishandling of a loan to Car King, LLC, a non-party to the suit [*Id.*, p. 82 *et. seq.*].

On June 28, 2019, Caldwell Bank & Trust Company ("Caldwell Bank") filed a Motion for Leave to Intervene and an accompanying Verified Petition in Intervention in which it named Ronnie Ward and Cross Keys as defendants. In its Intervention Petition, Caldwell Bank claimed it, not Cross Keys, had a valid security interest in the 3,175 shares of Homeland stock, and, alternatively, alleged a claim for damages against Ronnie Ward. [*Id.*, p. 88 *et. seq.*]

Cross Keys filed a First Amended and Restated Petition on July 19, 2019 against Karcredit, the Wards, and other guarantors of the Note. In its Amended Petition, Cross Keys sought judgment, in solido, against several additional entities and persons who, like the Wards, had signed guaranty agreements to guarantee the amount due under the Note. [*Id.*, p. 112, *et. seq.*].

On August 5, 2019, the Wards, Karcredit, and two of the additional defendants filed a joint answer to the Amended Petition. No affirmative defenses were contained in the joint answer, but it included a reconventional demand by Ronnie Ward, the non-party Car King, and another entity, against Cross Keys that

was much the same as the one the Wards asserted in their answer to the Original Petition. [Doc. No. 2-5, p. 29 *et. seq.*].

On October 28, 2019, Ronnie Ward filed an answer to the Caldwell Bank Intervention Petition (the "Oct 28 Ward Pleading"). It included a "Supplement to Reconventional Demand," elaborating upon his reconventional demand against Cross Keys, and not Caldwell Bank – the party that filed the Intervention Petition. It purported to add a third-party demand against Ellis Blount ("Blount"), the private investigator hired by Cross Key's counsel, as a third-party defendant to Ronnie Ward's previous reconventional demand against Cross Keys. The October 28 Ward Pleading also purported to add Sharon Ward as a plaintiff in reconvention. [*Id.*, p. 63 *et. seq.*].

On November 4, 2019, Cross Keys filed an Answer to the Intervention Petition, which included a third-party demand against Homeland for any damages sustained by Cross Keys resulting from any valid security interest in the same Homeland stock in favor of Caldwell Bank that primed or invalidated the Cross Keys security interest in the same stock. [*Id.*, p. 74 *et. seq.*].

On December 13, 2019, Blount filed a Peremptory Exception of No Cause of Action asserting he was inappropriately made the subject of a "third-party demand" in the October 28 Ward Pleading. [*Id.*, p. 106].

On July 17, 2020, Cross Keys filed an Involuntary Petition Against a Non-Individual with the Bankruptcy Court, Case No. 20-30681, against Karcredit (aka "the Debtor"). Cross Keys asserted its claim in the Involuntary Petition, that under the Note, Karcredit owed it at least $2,738,031.63 in principal plus

accrued but unpaid interest, plus prepetition attorneys' fees, expenses, and other amounts allowed by the Note or any other loan documents.

Later that same day, Cross Keys filed a Notice of Removal in the United States District Court for the Western District of Louisiana ("District Court") to remove the pending State Court Action, No. 19-1665 (aka the "First Adversary"), based on its relation to the Bankruptcy Case. The District Court assigned the removed action case number 20-cv-00900. [Doc. No. 6-7, p. 1 *et. seq.*] On July 17, 2020, a Minute Entry was filed in the removed action indicating it had been referred to the Bankruptcy Court, and thus the First Adversary was instituted in the Bankruptcy Court on July 22, 2020.

On July 23, 2020, the Wards filed a Motion to Withdraw Reference (the "Motion to Withdraw the Reference"). [*Id.*, pp. 518-532]. This was referred to the District Court, which denied the Motion to Withdraw the Reference on August 26, 2020. The Court stated in part:

> The first question is whether the removed case "arises under" or is "related to" a bankruptcy proceeding. Certainly, the suit against the Wards relates to the Karcredit bankruptcy proceeding, as the Wards are alleged to have signed a guaranty agreement securing the Karcredit loan and are alleged to have pledged stock in Homeland Bank and a TransAmerican life insurance policy as collateral. Therefore, this matter was properly referred to the Bankruptcy Court for the Western District of Louisiana.

[Dist. Ct. Case No. 20-00942, Doc. No. 11, p. 4].

Karcredit did not file an answer or opposition to the Involuntary Petition within 21 days after service of the summons on it (see Bankruptcy Rules 1011(b) and 1013(a)). Accordingly, on August 11, 2020, the Bankruptcy Court entered an order for relief against Karcredit. [*Id.*, p. 11]. Karcredit became a chapter 7 debtor, and a chapter 7 trustee was appointed, namely, John Clifton Conine.

An Order Regarding Procedural Requirements was entered in the First Adversary on July 26, 2020, which reminded all parties to file a statement pursuant to FRBP 9027(e)(3). [Doc. No. 6-7, p. 533-535].

The Wards did not file any statement under FRBP 9027(e)(3).

On July 31, 2020, the Wards filed a "Motion to Abstain and Require Plaintiff to Pay Attorney's Fees and Expenses" ("Motion to Abstain") in the First Adversary, requesting the Bankruptcy Court abstain and remand the removed action (the First Adversary) to state court.

Under FRBP 1007(c), the Debtor's Bankruptcy Schedules and Statement of Financial Affairs ("SOFA"), setting forth the assets and liabilities of the Debtor, are due within fourteen days after the entry of the order for relief. The Debtor failed to file its Schedules or SOFA by this deadline or thereafter. [Doc. No. 6-6, pp. 1-28].

On August 10, 2020, the Wards filed a "Second Motion to Remand" ("Motion to Remand") in the First Adversary, in which they once again asked the Bankruptcy Court to adjudicate whether to remand the First Adversary.

On August 14, 2020, Cross Keys filed a proof of claim in the Bankruptcy Case. [Doc. No. 6-5, pp.1-79]. The basis of Cross Keys' claim is the Note, and the

claim states that the First Adversary was filed to collect the indebtedness owed under the Note from the Debtor and other defendants.

Cross Keys filed oppositions to both the Motion to Abstain and Motion to Remand in the First Adversary. The Wards filed a joint reply to these oppositions. In that reply, the Wards admitted "The claims asserted against Ronnie Ward and Sharon Ward may be 'related to' the Karcredit bankruptcy, but those are not core claims." [Doc. No. 6-8, at p.318, ¶2].

In their Motion to Abstain, the Wards asserted, "Because there is no real estate [sic.] to administered [sic.] in the involuntary bankruptcy proceeding, no amount of delay would be excessive within the meaning of 28 U.S.C. § 1334(c)." [Doc. No. 6-8, p.16]. In its opposition, Cross Keys asserted that the Wards' suggestions to the Bankruptcy Court that Karcredit did not have any assets or that Cross Keys has all the assets were materially false. [*Id.*, pp. 95-96]. Cross Keys alleged that within the two months prior it had learned that after Cross Keys had enforced its security interests in certain contracts of the Debtor by providing notice to account debtors to make their payments directly to Cross Keys; that Ronnie Ward, 75% owner of Karcredit, had opened a new account at BancorpSouth Bank in Karcredit's name, and diverted at least $140,241.05 in payments under certain Karcredit contracts, from June 19, 2019, through at least February 8, 2020, that constituted Cross Keys' collateral, to that account. [*Id.* pp.176-188]. Cross Keys asserted that it learned about this diversion shortly before the Bankruptcy Case was filed. According to Cross Keys, the $140,241.05 is still missing and the Trustee is the sole party that has standing to recover those funds for the benefit of the Karcredit bankruptcy

estate. Cross Keys asserted that based on these machinations and material omissions from Ronnie Ward\Karcredit in the past, that it is reasonable to assume that there are other assets, including without limitation claims for the return of money that Ronnie Ward diverted from Karcredit and used for purposes other than to pay Karcredit's substantial debt to Cross Keys. These claims to recover the $140,000 plus are now property of the bankruptcy estate. *Id.*

On September 3, 2020, the Bankruptcy Court entered orders in the First Adversary denying the motions to remand and abstain filed by the Wards for the reasons it recited on the record at the conclusion of the September 3, 2020 hearing (the "September Hearing").

The Bankruptcy Court discussed "related to jurisdiction" under 28 U.S.C. § 1334. Mr. Rountree (Appellants' counsel) indicated he would not be filing schedules or statements on behalf of the Debtor. He stated: "I have no intention of appearing on behalf of Karcredit in this [First Adversary and Bankruptcy Case]. It is completely unrepresented. I can't speak for it in any way, shape, or form." [Doc. No. 6-9, p.49].

Mr. Rountree asserted that there would be at most two creditors and little to no assets in the bankruptcy estate of the Debtor. He further asserted that he construed an affidavit attached to Cross Key's opposition to the Motion to Abstain to mean that Cross Keys had seized everything that Karcredit had, including its computers, its files and everything else. The Bankruptcy Court, however, indicated that it did not read the affidavit to make that representation, but instead read Cross Keys' position to be that "the debtor has, and now the estate has, other assets that were not seized and primarily Chapter 5 causes of action that

arose upon the entry of the order for relief in this bankruptcy case." [Doc. No. 6-9, p.36, lines 21-25; p.37, lines 1-3].

Counsel for the Wards then stated that he expected that the Trustee eventually would pursue any claim the estate has, "And that could include an avoidance action against Ronnie Ward," or a non-insider "anything like that." [*Id.*, p.51, lines 1-6].

Then, the following exchange occurred:

> THE COURT: And you would concede that at the time of the removal that that chain of events is conceivable, not proved, but it is conceivable that the estate has chapter 5 causes of action.
> MR. ROUNTREE [Counsel for the Wards]: I think it's eminently conceivable.

[*Id.*, p. 51, lines 7-11].

Counsel for the Wards also agreed with the Bankruptcy Court that, pursuant to 11 U.S.C. § 502(h), any person who pays an avoided transfer pursuant to an action brought under chapter 5 of title 11 of the Bankruptcy Code ("Chapter 5 Actions") is authorized to file a proof of claim even if the proof of claim deadline has passed, and that proof of claim is deemed to have been filed as of the petition date. [*Id.*, p. 50, lines 5-19]. In other words, this would conceivably result in additional creditors as of the date the Bankruptcy Case was filed. The Bankruptcy Court also made it clear that based on its understanding of the law, that both Chapter 5 Actions and any recovery resulting from them belong exclusively to the estate of the Debtor, and the recovery does not belong to the secured creditor. [*Id.*, p. 48]. Ward's counsel did not dispute this. *Id.*

With regard to jurisdiction, counsel for the Wards admitted there would be related to jurisdiction on the claims between Cross Keys and the Debtor, and on the claims by and between and among Cross Keys and Caldwell Bank. [*Id.*, p. 41, lines 19-25; p.42, lines 1-2].

When asked whether it was his contention that as to all remaining claims that the Bankruptcy Court was without jurisdiction, counsel for the Wards said, "It's very hard to say with any degree of confidence." [*Id.*, p. 42, lines 6-7].

After the Wards' counsel questioned how Cross Keys' claims against Ronnie Ward could have an effect on the bankruptcy estate, the Bankruptcy Court indicated that the standard in the Fifth Circuit is that a claim must merely have a conceivable effect on the estate in order for the Bankruptcy Court to have jurisdiction, and that courts have said that a recovery by a creditor against a guarantor of the debtor's obligations will result in a diminution of the creditor's proof of claim against the debtor, and that this constitutes a conceivable impact on the estate for purposes of jurisdiction. [*Id.*, pp. 42-43].

To this, the Ward's counsel replied:

> Well, it's -- since it is a single claim against a single debtor, I think it is distinguishable from all the cases in which the courts have held that claims against guarantors are related. But I don't -- I don't have a tremendous level of confidence in that point. I'm just saying that it is improperly removed –

To which, the Bankruptcy Court replied:

> THE COURT: But the mere fact that you don't have confidence in the proposition that the claims have no effect on the estate tells me that they have at least a conceivable impact on the estate.

[*Id.*, p.43, lines 21-24].

In its ruling, the Bankruptcy Court noted that in addressing the Motion to Abstain, it must consider whether it has jurisdiction over the First Adversary, as abstention only applies when the Court has jurisdiction. [*Id.*, p. 63, lines 2-8]. The Bankruptcy Court recognized that this required it to determine whether the First Adversary is at least related to the bankruptcy, and that under Fifth Circuit jurisprudence the usual articulation for this test is whether the outcome of that proceeding could conceivably have any effect on the estate. [*Id.*, p. 69, lines 4-11, 12-25]. The Court concluded that "In this case, the State Court lawsuit contains claims that are, at a minimum, related to the bankruptcy." [*Id.*, p. 70, lines 7-8). The Bankruptcy Court noted that the claim between Cross Keys against the guarantors, Mr. and Mrs. Ward, involved the enforcement of continuing guaranties and a recognition of a first priority security interest in collateral pledged by one of the guarantors, Mr. Ward. The Bankruptcy Court found that these claims, specifically, were related to the Bankruptcy Case because the outcome of these proceedings conceivably affects the estate. "If Cross Keys Bank collects from the guarantor, that means it is required to reduce its proof of claim filed against the debtor. That's the conceivable impact." [*Id.*, p. 75, lines 20-25; p. 76, lines 1-5].

On September 15, 2020, the Wards filed a Motion for New Trial regarding the Order Denying Motion to

Abstain and the Order Denying Motion to Remand and set the matter for hearing on November 12, 2020. In the memorandum, the Wards asserted "A judgment against Ward would have an effect on the administration of the estate and estate itself only if there were other creditors." [*Id.*, p. 7]. In their memo, the Wards relied on the continued failure of the Debtor to file Schedules to support their argument, and assumed only one proof of claim, that of Cross Keys, would ever be filed.

Based on the Debtor's failure and refusal to file Schedules and a SOFA, on September 22, 2020, pursuant to FRBP 1007(k), the Bankruptcy Court ordered Cross Keys to prepare and file inter alia the statements and schedules described in FRBP1007(b)(1)(A), (C), and (D), within thirty-five days. [*Id.*, pp. 16-18].

On October 27, 2020, Cross Keys filed the Debtor's Schedules and SOFA pursuant to the order of the Bankruptcy Court. [Doc. No. 6-3, p.155-246]. These were prepared based upon the Debtor's own records, which Debtor had provided to Cross Keys and that were seized before the Bankruptcy Case was filed. [Doc. No. 6-12, p. 58].

Included in the Debtor's Schedule A\B were claims against Ronnie Ward and K and R Automotive, LLC, for at least $142,763.92. [Doc. No. 6-3, p. 161]. The Schedules also include claims against Ronnie Ward and other of his companies on the basis that they are alter egos of the Debtor, and those claims are property of the the Debtor's bankruptcy estate. *See e.g. Matter of S.I. Acquisition, Inc.*, 817 F.2d. 1142 (5th Cir. 1987). Debtors' Schedule E\F lists seven unsecured creditors, [*Id.*, at p.171-172], including Homeland; Keith Albritton; Cross Keys; Ronnie Ward; RW Olds Buick GMC Truck

Toyota; and others. *Id.* Debtor's Schedule H lists Ronnie Ward and Sharon Ward as "Codebtors."

In response to SOFA question 4, requesting a list of payments or transfers within the year prior to bankruptcy on debts owed to an insider or guaranteed by an insider, a transfer to Ronnie Ward, a 75% member, registered agent and manager of Debtor, in the amount of $142,763.92 was listed, and the reasons for payment were stated to be "misappropriated or diverted the funds and or caused the funds to be misappropriated or diverted from the Debtor and CKB." [*Id.*, p. 179].

In its ruling on the Motion for New Trial, the Bankruptcy Court made several findings, including the following: (1) the Debtor was owned approximately 75% by Ronnie Ward, and is controlled by Ronnie Ward; (2) the Debtor had a statutory duty to file Statements and Schedules in the Bankruptcy Case; (3) the Debtor failed to comply with those duties; (4) the Debtor and Wards had no interest in ensuring schedules and statements were filed in the Bankruptcy Case, (5) the SOFA and Schedules filed by Cross Keys in compliance with an order from the court clearly show that the Debtor has several other creditors other than Cross Keys, and that (6) the Wards have not challenged the accuracy of the Statements and Schedules. [*Id.*, pp. 67-68]. The Court continued:

> As the Wards themselves explained in their brief supporting a motion for new trial, a judgment against the Wards would have an effect on the administration of the estate and the estate itself if there were other creditors. Well, the record proves that the debtor has other creditors. The Court was thus correct when it found that it had

> at least related-to jurisdiction over the removed state court lawsuit and this proceeding is not subject to mandatory or permissive abstention or remand.
>
> The outcome of this proceeding, as the Wards seem to admit, could conceivably have an effect on the estate being administered in bankruptcy.

[*Id.*, pp.67-68].

The Bankruptcy Court entered an order denying the Motion for New Trial on November 12, 2020. [D.E. 6-9, p.327-328]. ("Order Denying the Motion for New Trial").

This Court denied the Wards' unauthorized attempt to take an interlocutory appeal from the Order Denying the Motion for New Trial, the Order Denying Motion to Abstain and the Order Denying Motion to Remand. See Dist. Ct. Case No. 20-1511, D.E. 33 and 34.

Since the order denying the Motion for New Trial, two additional creditors, the Louisiana Department of Revenue and Caldwell Bank, have filed proofs of claim, and under well-established law, these are considered prima facie valid. [See Doc. No. 6-5, pp.80-83, .88-95; FRBP3001(f);11 U.S.C. § 502 (a)].

Following the Order Denying Motion to Abstain and the Order Denying Motion to Remand, the Bankruptcy Court entered a scheduling order, then amended it, and adjudicated the First Adversary pursuant to the timelines in it. [Doc. No. 6-8, pp. 328-331 and Doc. No. 6-12, pp.32-37].

Certain pleadings were amended, including the Wards' Answer to Cross Keys' Amended Petition. See e.g., D.E. 6-9, p.17-18; D.E. 6-9, p.19-24; and D.E. 6-9,

p.329-330. However, while FRBP 7012(b) requires that any responsive pleading in an adversary "include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court," the Wards did not include any such statement in their amended answer. [Doc. No. 6-9, pp.19-24].

All alleged claims against Blount were dismissed pursuant to a motion under Federal Rule of Civil Procedure 12(b)(6), made applicable herein by FRBP 7012 [Doc. No. 6-9, p.321-323], and that dismissal was incorporated into the Final Judgment. [Doc. No. 6-15, pp. 91-96]

On February 24, 2021, Cross Keys filed a motion for partial summary judgment against the Debtor and various guarantors, including the Wards. While the Wards cited ongoing appeals, which they alleged raised issues of jurisdiction as justification for a motion to continue the hearing on this motion for summary judgment, they failed to brief any jurisdictional argument in their written memorandum in opposition to Cross Keys' motion for partial summary judgment, or insert any objection as to entry of a final judgment. [Doc. No. 6-13, pp.1-461]. Except for post-petition attorneys' fees, which Cross Keys later conditionally waived, the Bankruptcy Court entered relief as prayed for by Cross Keys in its order and memorandum ruling on March 24, 2021. [Doc. No. 6-14, pp.126-153; Doc. No. 6-14, pp.154-157). As part of its ruling, the Bankruptcy Court again reviewed whether it had jurisdiction over each of the claims of Cross Keys against the Wards under 28 U.S.C. § 1334(b) and confirmed that it did. [Doc. No. 6-14, p.127-128].

On February 26, 2021, two days after Cross Keys filed its partial motion for summary judgment against the Wards and other defendants in the First

Adversary, the Wards filed a Motion to Dismiss ("Motion to Dismiss") and an accompanying memorandum in the Bankruptcy Case on February 26, 2021. [Doc. No. 6-4, pp.104-109]. Here, the Wards attempted to raise the argument that a Sheriff's Bill of Sale supported their argument that "the liquidation of Karcredit" was complete before the Bankruptcy Case was filed, and that this eliminated "any chance of a meaningful bankruptcy," and thus, allegedly, the Bankruptcy Court had to conclude the Bankruptcy Case was filed in bad faith.

However, the Wards never presented this argument to the Bankruptcy Court at a hearing; thus, the Bankruptcy Court never ruled on the merits of this argument. Instead, the Bankruptcy Court denied the motion with prejudice by order on March 9, 2021, without a hearing, as an abuse of process, when the Wards failed multiple times to comply with relevant local rules and court orders in their attempted prosecution of the motion [Doc. No. 6-4, pp.139-141 ("Order Denying Motion to Dismiss Bankruptcy")]. The Wards filed an appeal of this decision, which this Court rejected as an unauthorized interlocutory appeal. [Dist. Ct. Case No. 21-618, D.E. 15 and 16].

Caldwell Bank filed a motion for partial summary judgment against defendants Ward Chevrolet-Olds, Inc. ("Ward Chevy") and Ronnie Ward, both represented by Mr. Rountree, on November 20, 2020. [Doc. No. 6-9, pp.346-348]. Both Ward Chevy and Ronnie Ward elected to resolve this motion for partial summary judgment by agreeing to the entry of a consent judgment, which counsel for all parties signed, by the Bankruptcy Court on January 8, 2021. [Doc. No. 6-12, pp.152-155].

On April 28, 2021, Cross Keys and Caldwell filed a joint motion for entry of a consent judgment determining the rank and priority of their security interests as to the Homeland Stock. [Doc. No. 6-14, pp. 292-297]. The Wards did not file any opposition to this motion. [Doc. No. 6-6, pp.1-28]. Cross Keys and Caldwell also filed a joint motion for partial summary judgment to inter alia secure a judgment in favor of Caldwell Bank against Homeland, [Doc. No. 6-14, pp. 301-589], and the Wards withdrew their opposition to this motion at the hearing on it. [Doc. No. 6-8, p.22].

On June 1, 2021, the Bankruptcy Court issued a Notice and Order Setting Hearing, pursuant to FRBP 7016(b), on the issue of whether all parties expressly or impliedly consented to entry of final orders or judgments by the Bankruptcy Court. If they did, the court stated it would "hear and determine the proceeding" and enter a final judgment upon disposition of the First Adversary. [Doc. No. 6-15, pp.77-80]. The hearing was held on June 2, 2021. An order was entered thereafter stating that for the reasons in an accompanying memorandum ruling, the Bankruptcy Court would enter a final judgment upon disposition of the First Adversary, under the authority of 28 U.S.C. § 157 and FRBP 7016(b)(1). [Doc. No. 6-15, pp.89-90].

Thereafter, the Bankruptcy Court entered the "Final Judgment" in the First Adversary, on June 7, 2021. [Doc. No. 6-15, pp. 91-96]. Pertinent to this appeal, the Final Judgment included an award in favor of Cross Keys against Ronnie D. Ward, Sharon D. Ward, and other parties in the amount of $3,054,122.18 plus interest. [*Id.*]

Ronnie Ward and Sharon Ward filed an appeal of the Final Judgment on June 11, 2021. [Doc. No. 6-15, pp.104-110].

II. LAW AND ANALYSIS

A. Standard of Review

"The Fifth Circuit has consistently held that the standard of review applicable to bankruptcy appeals in a district court is the same as the standard applied by a Court of Appeals to a district court proceeding." *Wells Fargo Bank, N.A. v. Jones*, 391 B.R. 577, 586 (E.D. La. 2008); *AT&T Univ. Car Servs. v. Mercer (In re Mercer)*, 246 F.3d 391, 402 (5th Cir. 2001) (we apply the same standard of review to the analysis of the bankruptcy court's order as did the district court). Under those standards, "the bankruptcy court's factual findings are reviewed for clear error; its legal conclusions and findings on mixed questions of fact and law are reviewed *de novo*." *Id.*

B. Procedural Objections

Cross Keys first objects to the appeal, and to Appellants' brief, on numerous procedural grounds. Cross Keys contends that Appellants have inadequately briefed their appeal, and that this is sufficient reason for this Court to conclude that Appellants have waived or abandoned all arguments on appeal. *See generally, Friou v. Phillips Petroleum Co.*, 948 F.2d 972, 975 (5th Cir. 1991); *Bailey v. U.S. Bank*, 620 Fed. Appx. 361, 362 (5thCir. 2015); *Ward v. Cross Keys Bank*, Dist. Ct. Case No. 20-1467, D.E. 20 (W.D. La. 4/29/21). Cross Keys asserts that, in violation of FRBP 8014(a) (6) and (8), Appellants have failed to include any citations to the appellate record in their brief. The Fifth Circuit has noted that failure to include citations to the record is inadequate briefing and, alone, justifies a finding that the appellant has abandoned any

issues on appeal. See *Clark*, 407 Fed. Appx. at 795; *Anderson*, 67 Fed. Appx. 243; *Bailey v. U.S. Bank*, 620 Fed. Appx. 361, 362 (5th Cir. 2015); *see also McCoy v. United States*, 2019 WL 1084211, at *3 (S.D. Tx. 3/7/2019) (noting "Bankruptcy Rule 8014(a), which governs the presentation of appellants' briefs in bankruptcy appeals, is not only a technical or aesthetic provision, but also has a substantive function—that of providing the other parties and the [C]ourt with some indication of which flaws in the appealed order or decision motivate the appeal" and that failure to comply with Rule 8014 is sufficient grounds to deny the appeal without more) (*citing In re Stotler and Co.*, 166 B.R. 114, 117 (N.D. Ill. 1994)).

Cross Keys further contends that Appellants' Brief fails to comply with FRBP 8014(a)(6), which requires a "statement of the case" which "set[s] out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record." Cross Keys asserts that Appellants' "Statement of the Case" does not comply with this requirement.

Appellants do not directly address these objections, but instead accuse Cross Keys of "convoluted quibbling over meaningless issues." [Doc. No. 17, p. 4].

The Court notes that Appellants are establishing a pattern of disregarding the Bankruptcy Rules in their appeals in this case, due either to recalcitrance or to a lack of understanding. See *Ward v. Cross Keys Bank*, No. 3:20-cv-01467, 2021 WL 1724868 (W.D. La. April 29, 2021).

Considering these procedural deficiencies, the Appeal should be dismissed. Nevertheless, the Court

will address what it construes to be the merits of the Appeal.

C. The Merits

Appellants make four arguments on appeal:

(1) There is no subject matter jurisdiction for Cross Keys' claim against the Wards;
(2) The Court should remand the claim against the Wards and require Cross Keys to pay costs and attorney fees;
(3) The bankruptcy was filed in bad faith to obtain an advantage in litigation; and
(4) The authority of the Bankruptcy Court was limited to proposed Findings of Fact and Conclusions of Law.

The Court will first discuss the subject matter jurisdiction argument, as a determination of it could affect the second and third arguments.

1. Subject Matter Jurisdiction

Appellants submit that the Bankruptcy Court does not have subject matter jurisdiction over Cross Keys' claims against them in the First Adversary. They contend that Cross Keys initiated the proceedings in Bankruptcy Court by filing a petition to liquidate an already liquidated debtor. Appellants assert this is because Karcredit was also a defendant in Ouachita Parish suit number 19-3153, which resulted in the liquidation of all of its assets through a Sheriff's Bill of Sale dated July 15, 2020. R-30681-#23-2. Two days after the sheriff's bill of sale, Cross Keys filed the petition for involuntary bankruptcy against the "empty shell" of

Karcredit, in a successful bad-faith attempt to get a litigation advantage, according to Appellants.

Appellants state that the issue is whether the claim against Ronnie Ward removed pursuant to 18 U.S.C. § 1452 falls with the subject matter grant of 18 U.S.C. § 1334(b), which provides:

> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. (emphasis added).

28 U.S.C. § 1452 provides in part:

> (a) A party may remove any claim or cause of action in a civil action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

Appellants contend that the only conceivable basis for federal jurisdiction over the claim asserted by Cross Keys against Ronnie Ward and Sharon Ward in the First Adversary is the contention that it is "related to" a case under Title 11, i.e., the Karcredit Bankruptcy. A claim cannot fall within the "related to" jurisdictional grant, however, unless the claim is "capable of affecting the bankruptcy estate." *In re Bass*, 171 F.3d 1016, 1023 (5th Cir. 1999). "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or

negatively) and ... in any way impacts upon the handling and administration of the bankruptcy estate." *Id.*

Appellants argue this presupposes the existence of an estate to be administered, the absence of which is a distinguishing factor of this case, because Cross Keys purchased all of Karcredit's assets at a sheriff's sale just before filing the petition for involuntary bankruptcy. Thus, there was nothing for the Bankruptcy Court to administer, according to Appellants, and there is no bankruptcy estate, and Cross Keys' success or failure in its effort to recover money from Ronnie Ward in no way alters or affects rights, liabilities, options, or freedom of action of Karcredit.

Appellants therefore conclude that the Bankruptcy Court does not have subject matter jurisdiction over Cross Keys' claims against them in the First Adversary.

Cross Keys responds, first, that Appellants' argument is based entirely on their interpretation of the Sheriff's Bill of Sale, and Appellants took no steps to develop an evidentiary, factual record of these allegations in the Bankruptcy Court. Appellants never pressed or raised their argument about the Sheriff's Bill of Sale before the Bankruptcy Court and thus it never ruled on it, as no hearing was ever held on these contentions. Consequently, this Court is prohibited from considering that argument, on appeal, in the first instance, according to Cross Keys.

This Court agrees that Appellants failed to develop an evidentiary, factual record with regard to the Sheriff's Bill of Sale. This Court is not sitting as a trial court, but as an appellate court. Appellants attempted to raise this argument before the

Bankruptcy Court in their Motion to Dismiss in the Bankruptcy Case, but the Bankruptcy Court did not consider the merits of the motion. Rather, it dismissed the motion, based on abuse of process, due to the failure of counsel for the Wards to comply with local rules and court orders in attempting to prosecute the motion. Appellants also failed to raise this argument during the hearings on the Motion to Abstain, Motion to Remand, and Motion for New Trial.

This Court further finds that the existing record and uncontested factual findings of the Bankruptcy Court do not support Appellants' contentions. The Schedules and SOFA filed in the Bankruptcy Case list assets and multiple creditors, like Homeland, which are not guarantors of the debt owed under the Note, and now Final Judgment, to Cross Keys. (D.E. 6-3, p.155-246). The Bankruptcy Court found as part of its ruling on the Motion for New Trial that the Wards never objected to or formally challenged the Schedules or SOFA, that the description of assets and liabilities therein stands, and that those Schedules establish the Debtor has multiple creditors. (D.E. 6-12, p.67-68).

This Court finds that the Bankruptcy Court had subject matter jurisdiction. As indicated above, during the hearing on the Motion to Abstain and Motion to Remand, counsel for the Wards admitted that at the time the First Adversary was removed to the District Court, it was eminently conceivable that the Trustee has Chapter 5 Actions, including possible avoidance actions against Ronnie Ward or a non-insider. (D.E. 6-9, p.36, lines 21-25; p.37, lines 1-3; p.51, lines 1-11).

This was more than just an admission by counsel. The Schedules and SOFA filed by Cross Keys, based on Karcredit's records, also lists claims (assets) against Ronnie Ward based on the fact that within the year

prior to the filing of the Bankruptcy Case, Ronnie Ward misappropriated and or diverted funds or caused funds to be misappropriated or diverted from the Debtor and Cross Keys, in an amount totaling at least $142,763.92. (D.E. 6-3, p.161; D.E. 6-3, p.179).

The Bankruptcy Court found as part of its ruling on the Motion for New Trial that the Wards did not object to or formally challenge the Schedules or SOFA. (D.E. 6-12, p.67-68). In an affidavit Cross Keys submitted in opposition to the Motion to Abstain, Cross Keys explained that after it exercised its rights to collect amounts due under certain Karcredit contracts, it discovered Ronnie Ward had opened a new account at BancorpSouth Bank in Karcredit's name and diverted at least $140,241.05 in payments under the Karcredit contracts, from June 19, 2019, through at least February 8, 2020, that constituted CKB's collateral, to that account. (D.E. 6-8, p.176-188). Among other possible Chapter 5 Actions, under 11 U.S.C. § 548(a)(1), the Trustee may avoid any transfer to or for the benefit of an insider, like Ronnie Ward that occurred within 2 years before the date of the filing of the Bankruptcy Case, if certain conditions outlined therein are satisfied. And, under 11 U.S.C. § 544(b), the Trustee may avoid any transfer of an interest of the debtor in property that is voidable under applicable law by any creditor - like Cross Keys – which holds allowed unsecured claim in the Bankruptcy Case. See also La. C.C. 2036 (the Louisiana revocatory action).

Appellants do not dispute that in a chapter 7 case, only a trustee has standing to pursue chapter 5 avoidance actions and other estate causes of action. *See In re Cooper*, 405 B.R. 801, 807 (Bankr. N.D. Tx. 2009). Furthermore, any property recovered by the trustee in avoidance actions and pursuant to section 544(b)

becomes estate property and is divided pro rata among all general unsecured creditors. *In re Moore*, 608 F.3d 253, 260 (5thCir. 2010); *Matter of Texas General Petroleum Corp.*, 52 F.3d 1330, 1336 (5thCir. 1995).

Cross Key's recovery against the Wards and the collateral securing Ronnie Ward's guaranty obligation, including the Homeland Stock owned by Ronnie Ward and the Policy, all facilitated by the First Adversary, could reduce the amount owed by the Debtor to Cross Keys on account of its proof of claim. In turn, at the time of removal of the First Adversary, this allowed for the possibility that the other creditors listed in the uncontested Schedules and SOFA, and the other creditors who filed proofs of claim, including the Louisiana Department of Revenue and Caldwell Bank (and whose proofs of claim are deemed prima facie valid), would receive a greater distribution of proceeds from the bankruptcy estate.

This constitutes the requisite conceivable effect on the Debtor's rights, liabilities, options, or freedom of action and impact upon the handling and administration of the bankruptcy estate to invoke related to jurisdiction under 28 U.S.C. § 1334.

Accordingly, the Court concludes that the Bankruptcy Court had subject matter jurisdiction on the First Adversary.

2. Remand

Having concluded that the Bankruptcy Court had subject matter jurisdiction, the Court need not consider Appellant's contention that the Court should remand the claim against the Wards and require Cross Keys to pay costs and attorney fees.

3. Bad Faith

For the reasons set forth above, the Court finds that Appellants have failed to establish that Cross Keys filed the bankruptcy in bad faith to obtain an advantage in litigation.

4. Bankruptcy Court Exceeded its Authority

Finally, Appellants argue that the authority of the Bankruptcy Court was limited to proposed Findings of Fact and Conclusions of Law.

The Fifth Circuit has explained that "a bankruptcy court may enter final judgment only if the court has both statutory and constitutional authority to do so." *See In re Galaz*, 765 F.3d 426, 431 (5th Cir. 2014) (*citing Stern v. Marshall*, — U.S. ——, 131 S.Ct. 2594, 2608 (2011)). "A bankruptcy court's statutory authority derives from 28 U.S.C. § 157(b)(1), which designates matters as either "core" or "non-core". *Id.* "A core proceeding either invokes a substantive right created by federal bankruptcy law or one which could not exist outside of the bankruptcy." *Id.* See also *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96-97 (5thCir. 1987). Matters which do not meet this test are "non-core" proceedings. *Id.*

A bankruptcy court may hear, determine, and enter final orders and judgment on non-core matters with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(2); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1948 (2015). Implied consent will suffice. According to the Supreme Court, "nothing in the Constitution requires that consent to adjudication by a bankruptcy court be express. Nor does the

relevant statute, 28 U.S.C. § 157, mandate express consent." *Wellness*, 135 S. Ct. at 1947–48.

The Federal Rules of Bankruptcy Procedure require a bankruptcy court to "decide ... whether: (1) to hear and determine the proceeding; (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (3) to take some other action." Fed. R. Bankr. P. 7016(b). The Rule authorizes the court to decide this issue on its own motion.
According to the Advisory Committee Notes for the 2016 amendments:

> This rule is amended to create a new subdivision (b) that provides for the bankruptcy court to enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. The rule leaves the decision as to the appropriate course of proceedings to the bankruptcy court. The court's decision will be informed by the parties' statements, as required under Rules 7008(a), 7012(b), and 9027(a) and (e), regarding consent to the entry of final orders and judgment. If the bankruptcy court chooses to issue proposed findings of fact and conclusions of law, Rule 9033 applies.

Fed. R. Bankr. P. 7016, Advisory Committee Notes.

The Bankruptcy Court ruled that Cross Keys' claims against the Wards, the claims for enforcement of the guaranty agreements, and for recognition of first priority security interests in collateral pledged by Ronnie Ward, are all "non-core". [Doc. No. 6-14, p.129; Doc. No. 6-9, p.75].

"As [to] 'non-core' proceedings, [as long as they are within the 'related to' jurisdictional grant of 28 U.S.C. § 1334], 28 U.S.C. § 157(c) authorizes a bankruptcy court either to 'submit proposed findings of fact and conclusions of law to the district court,' which are reviewed de novo, or to enter final judgment with the parties' consent." *In re Galaz*, 765 F.3d at 431 (*citing Executive Benefits Ins. Agency v. Arkinson*, 134 S.Ct. 2165, 2172 (2014)).

Appellants argue that they did not consent to the entry of judgment because they disputed that the Bankruptcy Court ever had subject matter jurisdiction in the first place [Doc. No. 17, pp. 11, 12]. As indicated above, this Court has found that the Bankruptcy Court did have subject matter jurisdiction.

The Bankruptcy Court issued a memorandum ruling addressing the Wards' consent to final judgment. The Bankruptcy Court stated in part:

> In an adversary proceeding involving a non-core matter, to determine whether the court can "hear and determine the proceeding," the court is tasked with the responsibility of determining whether all parties expressly or impliedly consented to entry of judgment by the bankruptcy court. In this case, the court can discharge this duty with relative ease.
>
> Three parties – CKB [Cross Keys], Caldwell Bank and Ellis Blount - expressly consented to entry of judgment by this court. The focus, therefore, is on the remaining parties because they were required to, but did not, file a statement pursuant to Fed. R. Bankr. P. 9027(e)(3). A party's failure to file the required

statement, however, does not necessarily mean that the party consents to entry of final orders by this court. To make that determination, the court examines the totality of the circumstances.

...

As for Ronnie D. Ward and Ward Chevrolet-Olds, Inc., they expressly consented to entry of a money judgment (docket no. 144) against them in favor of Caldwell Bank for $442,348.15, plus interest. They were clearly aware of the need for consent and their right to refuse it, yet they filed a pleading stating that: "The parties resolved their differences and agreed to the entry of a consent judgment." (docket no. 140, ¶ 2) (emphasis added). There is no question that they knowingly and voluntarily consented to entry of judgment by this court. *In re Cella III, LLC*, No. AP 19-01145, 2020 WL 7753277, at *3 (Bankr. E.D. La. Dec. 29, 2020) (defendant impliedly consented to entry of judgment by the bankruptcy court "when it requested Judge Brown to enter final judgment on four motions for summary judgment.").

That leaves Sharon D. Ward. She did not file the statement required by Fed. R. Bankr. P. 9027(e)(3), nor did she include such a statement in her Amended Answer (docket no. 60) as required by Fed. R. Bankr. P. 7012(b). However, she used the same attorney as her husband, Ronnie Ward, who requested entry of the consent judgment. When her attorney requested entry of the consent judgment, he knew this court could not enter it without consent of all parties, including Sharon Ward. 28 U.S.C. §

157(c)(2). Sharon Ward is bound by the actions of her lawyer. Her consent is implied.

[Doc. No. 6-15, pp. 81 *et seq.*]

The Court finds no clear error in the Bankruptcy Court's ruling. The Court notes that, six days after removal of the First Adversary, the Wards received a copy of the Order Regarding Procedural Requirements on a Removed Action from the Bankruptcy Court, which notified all parties to file a statement pursuant to FRBP 9027(e)(3) within fourteen days of removal. See D.E. 6-7, p.1; D.E. 6-7, p.533-535. Pursuant to FRBP 9027, the statement must be signed pursuant to FRBP 9011 and state whether the party does or does not consent to entry of final orders or judgment by the Bankruptcy Court. Neither of the Wards filed a FRBP 9027(e)(3) statement.

The Court further notes that the Wards sought and received leave to amend their answer to CKB's Amended Petition in the First Adversary and filed an amended answer on November 16, 2020. [Doc. No. 6-9, p.333-336]. Under FRBP 7012(b), a responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. The Wards did not include any such statement in their amended answer.

Thus, it is clear that Appellants had several opportunities to state that they did not consent to entry of final orders or judgments, yet they elected not to take advantage of those opportunities.

As indicated above, the 2016 Advisory Committee Notes to FRBP 7016(b) provide that the court's decision under that rule regarding consent to entry of final orders and judgment will be informed by

the parties' statements required under FRBP 9027(a) and (e) and FRBP 7012(b).

Additionally, when Caldwell Bank filed its first partial motion for summary judgment against Ronnie Ward in the First Adversary, D.E. 6-9, p.346-348, Ronnie Ward and his company submitted a consent judgment with Caldwell Bank and requested that the Bankruptcy Court enter it, which it did. [Doc. No. 6-12, p.152-155]. The consent judgment does not preserve any objection to jurisdiction, or as to finality of the judgment, but simply grants judgment in favor of Caldwell against Ronnie Ward and Ward Chevrolet. [Id.]. Per the consent judgment: "Ward Chevy and Ward have agreed to the entry of this Consent Judgment, which reflects the agreement of the parties." *Id.* at 2; *accord Saenz v. Gomez*, 899 F.3d 384, 391 (5th Cir. 2018) (wherein the Fifth Circuit held a factor weighing in favor of finding consent to entry of final judgment is whether the party agreed to entry of relief in the court without expressing any limitations on its consent). No party, including Sharon Ward, objected to the entry of the consent judgment. *Id.*

All of these facts support the finding of the Bankruptcy Court that the Wards consented to the Bankruptcy Court's entry of a final judgment on Cross Keys' claims against them in the First Adversary.

III. CONCLUSION

For these reasons, the Court finds no error in the Bankruptcy Court's Order. Accordingly, the Appeal filed by Ronnie Ward and Sharon Ward is DENIED and the Bankruptcy Court's Order is AFFIRMED.

SO ORDERED.

DONE and SIGNED June 7, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE:	§	Case Number: 20-30681
	§	
Karcredit, L.L.C.	§	Chapter 7
Debtor	§	
	§	
Cross Keys Bank	§	Adversary Proceeding
Plaintiff	§	Case No. 20AP-03011
	§	
vs.	§	
	§	
Ronnie D. Ward, et al	§	
Defendants	§	
	§	

Final Judgment

The court having:

a. entered an order (docket no. 89) which dismissed, with prejudice, all claims against Ellis Blount;

b. entered a consent judgment (docket no. 144) which granted the motion for summary judgment (docket no. 110) filed by Caldwell Bank & Trust Company against Ronnie D. Ward and Ward Chevrolet-Olds, Inc.;

c. entered an order (docket no. 178). which granted in part and denied in part the motion for partial summary judgment (docket no. 156) filed by Cross Keys Bank against Karcredit, LLC, Ronnie D. Ward, Sharon D. Ward, KarProperties, a Louisiana general partnership, JDB of Monroe, Inc., Keith Winston Albritton and Ruth Crain Albritton;

d. entered a consent judgment (docket no. 211) which granted the joint motion for entry of consent judgment (docket no. 193) filed by Caldwell Bank & Trust Company and Cross Keys Bank;

e. entered an order (docket no. 210) which denied a motion to set aside entries of default (docket no. 205) filed by Homeland Bancshares, Inc.;

f. entered an order (docket no. 221) which granted the motion for summary judgment (docket no. 195) filed jointly by Caldwell Bank & Trust Company and Cross Keys Bank against Homeland Bancshares, Inc.;

g. entered an order (docket no. 224) which declared that this court will "hear and determine the proceeding" and enter a final judgment as authorized by 28 U.S.C.§ 157 and Fed. R. Banker

7016(b)(1); and

h. determined, upon statements made by the parties' counsel, that the parties desire to dismiss all remaining claims which have not otherwise been adjudicated by this court, withdrawn or waived.

Now therefore, the court issues this final judgment adjudicating all the claims and all the parties' rights and liabilities at issue in this proceeding.

Accordingly, **IT IS ORDERED** that Judgment is hereby rendered:

1. in favor of Caldwell Bank & Trust Company against Ward Chevrolet-Olds, Inc. and Ronnie D. Ward, *in solido*, awarding Caldwell Bank & Trust Company all amounts owed under a promissory note and guaranty agreement of $442,348.15, consisting of (a) $354,331.42 in principal, (b) $1,407.83 in interest accrued through December 31, 2020, (c) collection costs of $1,420.40, and (d) attorney's fees of $85,188.50, (e) with additional interest continuing to accrue after December 31, 2020 on the total amount owed at the rate of 4.0% per annum;

2. in favor of Cross Keys Bank against Karcredit, LLC for $3,054,122.18, which is the amount stated in Cross Keys Bank's proof of claim filed in bankruptcy case no. 20-30681;

3. in favor of Cross Keys Bank against Ronnie D. Ward, Sharon D. Ward, KarProperties, a Louisiana general partnership, JDB of Monroe,

Inc., Keith Winston Albritton and Ruth Crain Albritton, *in solido*, in the amount of $3,054,122.18 as of July 17, 2020, plus interest at the default rate of 21.0% per annum from and after July 18, 2020, until paid in full;

4. in favor of Cross Keys Bank against Ronnie D. Ward recognizing that Cross Keys Bank holds a valid and effective first ranking security interest in: (a) 3,175 shares of stock in Homeland Bancshares, Inc., represented by Homeland Certificate No. 495 and (b) that certain term life insurance policy, Policy No. 42947849, in the amount of $3,000,000.00 issued by Transamerica Life Insurance Company on Ronnie D. Ward's life, and any and all proceeds therefrom, both of which secure the amount owed to Cross Keys Bank under paragraph 2 of this judgment by Karcredit, LLC and the amount owed to Cross Keys Bank under paragraph 3 of this judgment by Ronnie D. Ward, Sharon D. Ward, KarProperties, a Louisiana general partnership, JDB of Monroe, Inc., Keith Winston Albritton and Ruth Crain Albritton, *in solido;*

5. in favor of Cross Keys Bank recognizing that it has a first ranking, valid and perfected security interest in 3,175 shares of stock of Homeland Bancshares, Inc. represented by Homeland Bancshares, Inc. Certificate No. 495 dated November 21, 2011, issued to Ronnie D. Ward;

6. in favor of Caldwell Bank & Trust Company recognizing that it has a second ranking, valid and perfected security interest in 3,175 shares of

stock of Homeland Bancshares, Inc. represented by Homeland Bancshares, Inc. Certificate No. 495 dated November 21, 2011, issued to Ronnie D. Ward;

7. in favor of Caldwell Bank & Trust Company against Homeland Bancshares, Inc. in the amount of $450,088.39, plus interest at 4.0% per annum from and after April 27, 2021;

8. in favor of Cross Keys Banks dismissing, *with prejudice*, all claims, counterclaims and reconventional demands asserted against it by any party;

9. declaring that Caldwell Bank & Trust Company and Cross Keys Bank must bear their own court costs, expenses, and attorneys' fees, except as otherwise set forth in previous judgments or orders of the Court and except the amount of the prepetition attorney's fees and expenses included as part of the amounts due under paragraphs 2 and 3 of this judgment; and

10. dismissing, *with prejudice*, all other pending claims in this proceeding asserted by any party.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

RONNTE WARD, ET AL.	CIVIL ACTION NO. 3:20-cv-01467
VERSUS	JUDGE TERRY A. DOUGHTY
CROSS KEYS BANK, ET AL.	MAG. JUDGE KAYLA D. MCCLUSKY

REASONS FOR DECISION

Pending here is an Appeal from the Bankruptcy Court filed by Ronnie Ward, Sharon Ward, and Car King, LLC (collectively "Appellants") [Doc. No. 1]. Appellants seek relief from "the order enforcing the automatic stay of bankruptcy entered on the motions of Cross Keys Bank and John C. Conine, Trustee, on November 12, 2020, prohibiting appellants from pursing their unrelated claims against Cross Keys Bank and others and ordering the improperly removed adversary proceeding bearing docket number 20-03014 dismissed as a violation of the automatic stay rather than for lack of jurisdiction." [*Id.*] Cross Keys Bank ("Cross Keys") and the duly appointed Chapter 7 trustee of the estate of Karcredit, LLC ("Karcredit"), John C. Conine (collectively "Appellees"), oppose the appeal.

BACKGROUND

This matter arises from three inter-related

proceedings in the United States Bankruptcy Court for the Western District of Louisiana ("Bankruptcy Court"), namely, one bankruptcy case and two adversary proceedings related to the bankruptcy.

A. Pre-Bankruptcy Litigation

Ronnie Ward was a principal in three businesses that had substantial loans from Cross Keys Bank ("Cross Keys"). [Appellant's Brief, Doc. No. 10, p. 3], The first was a Toyota dealership in Ruston, Louisiana. The second was the "brother-sister business" of JD Byrider ("Byrider") and Karcredit [*Id.*]. Byrider sold used cars that were financed by Karcredit, and both received financing from Cross Keys. The third was Car King, LLC, a used car dealership in West Monroe, Louisiana [*Id.*].

On May 22, 2019, Cross Keys filed a Petition in the Fourth Judicial District Court, Ouachita Parish, Louisiana, No. 19-1665, against Karcredit, Ronnie Ward, and Sharon Ward. Cross Keys sought judgment against the defendants, in solido, for amounts due under a promissory note ("the Note") dated March 19, 2012, executed by Karcredit in the principal amount of $3,197,829.42, plus interest, late fees, attorneys' fees, expenses and all other amounts due under the Note [Doc. No. 2-4, p. 12 *et seq.*]. Cross Keys alleged that the Wards personally guaranteed the amount due under the Note pursuant to written guaranty agreements that each of them signed. Cross Keys also sought a declaratory judgment recognizing and maintaining what it asserted are valid, effective, and first-ranking security interests in certain collateral, specifically 3,175 shares of stock in Homeland Bancshares, Inc. ("Homeland") owned by Ronnie Ward, and a $3,000,000

term life insurance policy issued by Transamerica Life Insurance Company on the life of Ronnie Ward. [*Id.*].

The Wards and Karcredit filed a joint answer to the Original Petition on June 17, 2019, which included a reconventional demand against Cross Keys for damages arising out of the alleged mishandling of a loan to Car King, LLC, a non-party to the suit. [*Id.*, p. 82 *et. seq.*]

On June 28, 2019, Caldwell Bank & Trust Company ("Caldwell Bank") filed a Motion for Leave to Intervene and an accompanying Verified Petition in Intervention in which it named Ronnie Ward and Cross Keys as defendants. In its Intervention Petition, Caldwell Bank claimed it, not Cross Keys, had a valid security interest in the 3,175 shares of Homeland stock, and, alternatively, alleged a claim for damages against Ronnie Ward. [*Id.*, p. 88 *et. seq.*]

Cross Keys filed a First Amended and Restated Petition on July 19, 2019 against Karcredit, the Wards, and other guarantors of the Note. In its Amended Petition, Cross Keys sought judgment, in solido, against several additional entities and persons who, like the Wards, had signed guaranty agreements to guarantee the amount due under the Note. [*Id.*, p. 112, *et. seq.*].

On August 5, 2019, the Wards, Karcredit, and two of the additional defendants filed a joint answer to the Amended Petition. No affirmative defenses were contained in the joint answer, but it included a reconventional demand by Ronnie Ward, the non-party Car King, and another entity, against Cross Keys that was much the same as the one the Wards asserted in their answer to the Original Petition. [*Id.*, p. 154 *et. seq.*].

On October 28, 2019, Ronnie Ward filed an answer to the Caldwell Bank Intervention Petition (the

"Oct 28 Ward Pleading"). It included a "Supplement to Reconventional Demand," elaborating upon his reconventional demand against Cross Keys, and not Caldwell Bank – the party that filed the Intervention Petition. It purported to add a third-party demand against Ellis Blount ("Blount"), the private investigator hired by Cross Key's counsel, as a third-party defendant to Ronnie Ward's previous reconventional demand against Cross Keys. The Oct 28 Ward Pleading also purported to add Sharon Ward as a plaintiff in reconvention. [*Id.*, p. 188 *et. seq.*].

On November 4, 2019, Cross Keys filed an Answer to the Intervention Petition, which included a third-party demand against Homeland for any damages sustained by Cross Keys resulting from any valid security interest in the same Homeland stock in favor of Caldwell Bank that primed or invalidated the Cross Keys security interest in the same stock. [*Id.*, p. 199 *et. seq.*].

On January 29, 2020, Defendants Karcredit; the non-party Car King, LLC; and another defendant filed an Intervention pleading. Significant to the instant appeal, in that pleading the parties that filed it adapted by reference all of the allegations made by Ward in his reconventional demand as supplemented. [Doc. No. 2-5, p. 9. *et. seq.*] Karcredit specifically alleged it "was directly damaged by the negligent and/or intentional mishandling of the Karcredit debt including the efforts of Cross Keys Bank and its counsel to, and which did, interfere with prospective contract rights of Ward and Karcredit." [*Id.*]

Subsequently, on February 21, 2020, counsel for the Wards and the Intervenors filed a memorandum in support of the January 29, 2020 Intervention [*Id.*, p. 49, *et. seq.*], in which they represented that "the claims

asserted by Ward in his reconventional demands arguably belong to Car King, LLC, Karkredit (sic), LLC and/or Byrider of Monroe." [*Id.*, p. 51]. They then cited authorities to support the statement that the claims asserted by Ward in reconvention belong to the entities themselves, including Karcredit. [*Id.*].

B. The Bankruptcy Case

On July 17, 2020, Cross Keys filed an Involuntary Petition Against a Non-Individual with the Bankruptcy Court, Case No. 20-30681, against Karcredit (aka "the Debtor"). [Doc. No. 7-1] (the "Bankruptcy Case"). Cross Keys asserted its claim in the Involuntary Petition, that under the Note, the Debtor owed it at least $2,738,031.63 in principal plus accrued but unpaid interest, plus prepetition attorneys' fees and expenses and all other amounts allowed by the Note or any other loan documents.

Karcredit did not file an answer or opposition to the Involuntary Petition within 21 days after service of the summons on it (see Bankruptcy Rules 1011(b) and 1013(a)). Accordingly, on August 11, 2020, the Bankruptcy Court entered an order for relief against Karcredit. [*Id.*, p. 11]. Karcredit is now a chapter 7 debtor, and a chapter 7 trustee has been appointed, namely, John Clifton Conine.

C. The First Adversary

Later that same day, Cross Keys filed a Notice of Removal in the United States District Court for the Western District of Louisiana ("District Court") to remove the pending State Court Action, No. 19-1665 (aka the "First Adversary"), based on its relation to the

Bankruptcy Case. [Doc. No. 7-6], The Notice of Removal provided that pursuant to Local Rule 83.4.1, once removed, the First Adversary should be referred to the Bankruptcy Court for adjudication. [*Id.*] The District Court assigned the removed action case number 20-cv-00900. On July 17, 2020, a Minute Entry was filed in the removed action indicating it had been referred to the Bankruptcy Court, and thus the First Adversary was instituted in the Bankruptcy Court on July 22, 2020.

On July 31, 2020, the Wards filed a "Motion to Abstain and Require Plaintiff to Pay Attorney's Fees and Expenses" ("Motion to Abstain") in the First Adversary, requesting the Bankruptcy Court abstain and remand the removed action (the First Adversary) to state court. [Doc. No. 7-7, p. 28].

On August 10, 2020, the Wards filed a "Second Motion to Remand" ("Motion to Remand") in the First Adversary, in which they once again asked the Bankruptcy Court to adjudicate whether to remand the First Adversary. [Id., p. 46].

On September 3, 2020, the Bankruptcy Court entered orders in the First Adversary denying the motions to remand and abstain filed by the Wards for the reasons it recited on the record at the conclusion of the September 3, 2020 hearing (the "September Hearing"). After the September Hearing, the Bankruptcy Court entered a scheduling order in the First Adversary. The First Adversary case is pending adjudication in the Bankruptcy Court.

As part of its ruling at the September Hearing, during its analysis of the Motion to Abstain, the Bankruptcy Court took the statements made by counsel for the Debtor (Karcredit), the Wards and non-party Car King, LLC, in the First Adversary (state court)

pleadings, as judicial admissions that the Debtor had asserted an ownership interest in all claims made in the state court pleadings or adopted by reference therein, including claims featured in the exhibits attached thereto (in total, the "Estate Claims"). [September Hearing Transcript, [Doc. No. 7-9, pp. 85, 86]. The Bankruptcy Court then noted that, based on the statements made in these pleadings, it was clear that "the debtor asserted an ownership interest in these claims." [*Id.*, pp. 86, 87].

The Bankruptcy Court further observed that there were multiple parties asserting an interest in these same claims. [*Id.*, p. 86]. Citing Fifth Circuit and United States Supreme Court jurisprudence, the Bankruptcy Court explained that with respect to claims where the Debtor asserted ownership interest in the claims, whether in whole or in part, it is a core matter for the Bankruptcy Court to determine the ownership of those claims. [*Id.*, p. 87]. The Bankruptcy Court stated it had the sole authority to determine the bankruptcy estate's exact interest in the Estate Claims. [*Id*]. Given the statements made in the state court pleadings, the Bankruptcy Court determined that the subject claims and causes of action should be treated as if they "are now owned by the [D]ebtor or are co-owned between the [D]ebtor and non-debtor parties and are subject to the trustee's administration pursuant to Section 541 of the Bankruptcy Code." [*Id.*, p. 86]. The Bankruptcy Court also noted that "to the extent [the claims] are co-owned with a non- debtor party, the Bankruptcy Code provides a procedure for the trustee to dispose of co-owned claims pursuant to Section 363(h) of the Bankruptcy Code." [*Id.*, pp. 86, 87].

The Wards have filed a separate notice of appeal concerning the Bankruptcy Court's rulings on the

Motion to Abstain and Motion to Remand, which appeal has been docketed in this District Court as case number 20-1511 ("Appeal of Motion to Abstain/Remand"). The review of the Bankruptcy Court's rulings on the Motion to Abstain and Motion to Remand in the First Adversary is being addressed in a separate, simultaneous ruling by this Court.

D. The Second Adversary

On September 17, 2020, the Wards and Car King, LLC, without seeking authority from the Bankruptcy Court to do so, filed a second state court case asserting claims almost identical to the Estate Claims with the Fourth Judicial District Court, Ouachita Parish, State of Louisiana, namely, *Ronnie Ward, et al v. Cross Keys Bank, et al.*, No. C-2020-2474.

On October 2, 2020, three defendants in the second state suit, including Cross Keys, removed it to the District Court on the basis that it is related to the Bankruptcy Case because it consisted of Estate Claims. [Doc. No. 7-13]. The removing parties requested that the District Court refer the removed lawsuit to the Bankruptcy Court pursuant to District Court Local Civil Rule 83.4.1. The District Court acted on that request, referring the second removed state court lawsuit to the Bankruptcy Court, where it was assigned case number 20-03014 (the "Second Adversary").

On October 14, 2020, Cross Keys, later joined by the Trustee, filed a Motion for Entry of An Order Enforcing the Automatic Stay and Related Court Orders and Incorporated Memorandum (the "Motion to Enforce Stay") in the Bankruptcy Case, asserting that the filing of the second state court lawsuit by the Wards and Car King, LLC, on September 17, 2020,

violated the automatic stay of 11 U.S.C. § 362. and requesting an order enforcing the stay and recognizing that the second state court lawsuit, then the Second Adversary, was invalid, [Doc. No. 7-2; Doc. No. 7-1, p. 28). It was set for hearing on November 12, 2020.

Cross Keys and the Trustee contended that a comparison of the Second Adversary Petition and the pleadings in the First Adversary shows that, with a few minor elaborations or variations, they assert the same Estate Claims. They further contended that these are claims in which the Debtor has asserted an ownership interest and should be treated as claims owned either entirely by the Debtor, or at the very least, co-owned by the Debtor. As noted above, during the September Hearing, the Bankruptcy Court had held it had the sole authority to determine the estate's exact interest in those claims, and had held that, given the assertion of ownership interest by the Debtor, these are claims that are subject to the trustee's administration in the Bankruptcy Case. [*Id.*]

Cross Keys additionally asserted that, under 11 U.S.C. § 362(a)(3) the petition initiating the Bankruptcy Case operated as a stay of "any act to obtain possession of property of the estate of or property from the estate or to exercise control over property of the estate," and that a non-debtor party's decision to prosecute litigious claims in which the Debtor had asserted some interest, as had occurred with the Second Adversary, violates this provision. Citing several Fifth Circuit cases, Cross Keys noted that the automatic stay of § 362 covers property that is merely arguably property of the estate, though a final determination on whether or not such property is or is not property of the estate has yet to be finally adjudicated. Finally, Cross Keys asserted that as an action violative of the stay, the Second Adversary

should be declared void and dismissed. [*Id.*]

Before the hearing on the Motion to Enforce Stay, Cross Keys and another defendant in the Second Adversary filed a motion to dismiss that adversary pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, made applicable therein under Bankruptcy Rule 7012 ("Motion to Dismiss Second Adversary"), and also set it for hearing on November 12, 2020.

Appellants filed oppositions to the motions and a Motion to Dismiss for Lack of Jurisdiction, arguing that the state court claims consisted solely of contract and tort claims based on state law, and that there was no federal question contained in the pleadings. [Doc. No. 7-13, p. 303 *et seq.*].

The Bankruptcy Court rendered an oral ruling granting the Motions to Enforce Stay during the hearing on November 12, 2020, as documented in the transcript of that hearing. [Doc. No. 16-1, p. 103 *et seq.*] And, after that hearing, the Bankruptcy Court entered orders in the Bankruptcy Case, granting each of the Motions to Enforce Stay. [Doc. No. 7-13, p. 433]. The Bankruptcy Court then entered an order in the Second Adversary, dismissing it without prejudice, and holding that all other pending motions in the Second Adversary, including Appellants' motion to dismiss for lack of jurisdiction, were now moot. [Doc. No. 7-13, p. 428].

Appellants thereafter filed a Notice of Appeal [Doc. No. 16-1, p. 99] and an Amended Notice of Appeal [*Id.*, p. 101] in the Bankruptcy Case but have not filed any Notice of Appeal in the Second Adversary.

LAW AND ANALYSIS

A. Standard of Review

"The Fifth Circuit has consistently held that the standard of review applicable to bankruptcy appeals in a district court is the same as the standard applied by a Court of Appeals to a district court proceeding." *Wells Fargo Bank, N.A. v. Jones*, 391 B.R. 577, 586 (E.D. La. 2008); *AT&T Univ. Car Servs. v. Mercer (In re Mercer)*, 246 F.3d 391, 402 (5th Cir. 2001) (we apply the same standard of review to the analysis of the bankruptcy court's order as did the district court). Under those standards, "the bankruptcy court's factual findings are reviewed for clear error; its legal conclusions and findings on mixed questions of fact and law are reviewed *de novo*." *Id.*

B. Procedural Objections

Appellees first object to the appeal, and to Appellants' brief, on numerous procedural grounds. Appellees state that Appellants failed to file any notice of appeal in the Second Adversary, which they assert is the only adversary proceeding in which the sole order cited in the Appellants' Brief that is the subject of this appeal was entered, and, thus, the District Court does not have jurisdiction over this appeal. Appellants further state that this Court's lack of jurisdiction over this appeal is established by the fact that Appellants failed to file a notice of appeal that (a) cited any specific order of the Bankruptcy Court, or (b) complied with Bankruptcy Rule 8003(a)(3) by attaching the order or orders appealed from.

Appellees thus argue that the appeal should be dismissed since it is now moot as a result of Appellants' failure to file a notice of appeal in the Secondary

Adversary and the finality of the order dismissing the Second Adversary.

Next, Appellees argue that Appellants have failed to comply with Bankruptcy Rule 8014 regarding the content of their Brief. There is no argument section in Appellants' Brief as required by Bankruptcy Rule 8014(a)(8); there is no statement of the issues presented, and, for each one, a concise statement of the applicable standard of appellate review as required by Bankruptcy Rule 8014(a)(5); several arguments in Appellants' brief fall outside the limited scope of the pre-brief statement of issues; Appellants fail to cite any part of the Bankruptcy Court Oral Ruling during the November 12 Hearing or identify any errors in it, and have, therefore, abandoned any arguments on or regarding that Ruling; Appellants have failed to support their Brief with adequate citations in the record; and, considering their Brief as a whole, Appellants have abandoned all issues on appeal, a defect which may not be remedied in a reply brief.

Finally, Appellees contend Appellants have improperly made several arguments on appeal that were not presented to the Bankruptcy Court for its consideration in the first instance.

Appellants do not dispute Appellees' contentions. Instead, Appellants merely respond:

> Cross Keys Bank has once again failed to address the substance of the matter before the court, instead complaining in mind numbing detail that appellants' brief was not in

proper form.

[Appellants' Reply Brief, Doc. No. 19, p.1].

The Court finds that the numerous deficiencies in Appellants' briefing make it difficult for Appellees to determine the exact nature, scope, and parameters of Appellants' appeal, which is violative of due process and relegates Appellees (and the Court) to simply guess or surmise how to respond to Appellants' appeal. These core deficiencies are prejudicial to Appellees, meriting dismissal of Appellants' alleged appeal. *See Bailey v. U.S. Bank*, 620 Fed. Appx. 361, 362 (5th Cir. 2015) (noting that appellant's failure to comply with Rule 28 of the Fed. R. Appellate Procedure - "FRAP", the corollary rule to Bankruptcy Rule 8014, left appellee to speculate and attempt to deduce both the factual basis of the challenge to the lower court ruling and the specific arguments on the same, and thus was prejudicial to appellee, meriting dismissal). *See also McCoy v. United States*, 2019 WL 108211, at *3 (S.D Tx. March 7, 2019) (noting "Bankruptcy Rule 8014(a), which governs the presentation of appellants' briefs in bankruptcy appeals, is not only a technical or aesthetic provision, but also has a substantive function—that of providing the other parties and the [C]ourt with some indication of which flaws in the appealed order or decision motivate the appeal" and that failure to comply with Rule 8014 is sufficient grounds to deny the appeal without more) (*citing In re Stotler and Co.*, 166 B.R. 114, 117 (N.D. Ill. 1994)).

As the Fifth Circuit has held, "[i]t is not the function of an appellate court... to divine arguments on behalf of litigants from a substantial narrative; undeveloped arguments are rightly ignored." *See In re*

Lothian Oil, Inc.,531 Fed. Appx. 428, 436 n. 9 and 439 n.10 (5th Cir. 2013); *see also In re Lothion Oil, Inc.*, 508 Fed. Appx. 352, 357 (5th Cir. 2013). Such inadequate briefing necessarily results in Appellees attempting to speculate and deduce both the basis of the Appellants' challenge and their specific arguments on appeal; this deficiency, in and of itself, warrants dismissal. *See Bailey v. U.S. Bank*, 620 Fed. Appx. 361, 362 (5th Cir. 2015).

It is well-established that "issues not raised or argued in the brief of the appellant may be considered waived and thus will not be noticed or entertained by the court of appeals." *Texas Mortgage Services Corporation v. Guadalupe Savings & Loan Assoc., (In re Texas Mortgage Services Corporation)*, 761 F.2d 1068, 1073-74 (5th Cir. 1985); *Hornbuckle v. Massachusetts Mutual Life Insurance*, 399 Fed. App'x. 863, 865 (5th Cir. 2010) (holding appellant failed to preserve issues for appeal and appeal could be dismissed summarily when, inter alia, appellant's brief failed to state the issues for review and state the applicable standard of review for each issue purportedly appealed).

Further, issues are not preserved for appeal unless they are properly framed and included in the statement of issues on appeal filed pursuant to Bankruptcy Rule 8006 prior to submission of an appellant's brief. *See In re McClendon*, 765 F.3d 501, 506 and n. 14 (5th Cir. 2014) (under the law of this circuit, an issue that is not designated in the statement of issues filed pursuant to Bankruptcy Rule 8006 is waived on appeal).

Merely asserting a factual narrative, without coupling it with citations to the record, identifying specific relevant errors and supporting authorities

results in abandonment of their appeal. *See Clark v. Waters*, 407 Fed. Appx. 794, 795 (5th Cir. 2011); *Anderson v. L.E. Fleming*, 67 Fed. Appx. 241 (5th Cir. 2003).

Considering these procedural deficiencies, the Appeal should be dismissed.[1] Nevertheless, the Court will next address what it construes to be the merits of Appellants' Appeal.

C. The Merits

Appellants state that they filed a notice of "appeal from the order enforcing the automatic stay of bankruptcy entered on the motions of Cross Keys Bank and John C. Conine, trustee, on November 12, 2020, prohibiting the appellants from pursuing their unrelated claims against Cross Keys Bank and others and ordering the improperly removed adversary proceeding bearing docket number 20-03014 dismissed as a violation of the automatic stay rather than for lack of jurisdiction." [Appellants' Reply Brief, Doc. No. 19, p.1).

Appellants further state that, "[w]e are here because the bankruptcy court does not understand that a judicial admission or confession is a means of establishing a fact that is in contention and not a means of creating or transferring property rights." [Appellant's Appeal Brief, Doc. No. 10, p.1]. Appellants

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[1] On March 18, 2021, the Court directed Appellants to file a memorandum no later than March 25, 2021, to explain why their appeal should not be dismissed as the appeal of an interlocutory order or decree in accordance with 28 United States Code 158 and Bankruptcy Rule 8004 [Doc. No. 18]. Appellants failed to do so, providing the Court another reason to deny the appeal on procedural grounds.

further argue that the Bankruptcy Court had no jurisdiction over the second removed state court proceeding because that proceeding was based solely on state law contract and tort claims, and it did not involve the bankruptcy estate in any way.

With regard to the judicial admissions or confessions at issue, Appellants contend that, "[n]othing Ward or his counsel could say [in the first state court proceeding] could have the effect of taking a property right that belongs to Ronnie Ward and putting it into Karcredit LLC. That transfer of ownership is essential to the merit of the ruling of the bankruptcy court." [*Id.*, p. 10].

Appellants assert that the idea that Karcredit acquired Ronnie Ward's defamation *per se* claim by way of a judicial admission is lacking any basis in law or fact. Appellants thus conclude that the Bankruptcy Court had no jurisdiction over the second state court proceeding.

The Court finds no error and no abuse of discretion by the Bankruptcy Court. Title 11 United States Code § 362(a)(3) provides that the filing of a bankruptcy petition operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

With regard to Appellants' arguments as to the sufficiency of the judicial admissions involved here, the Automatic Stay extends to property that is even arguably property of the estate, though a final determination on whether or not such property is or is not property of the estate has yet to be finally adjudicated. *See In re Chestnut*, 422 F.3d 298, 303-304 (5th Cir. 2005); *see also In re Burgess*, 392 F.3d at 785 ("the conditional, future, speculative, or equitable

nature of an interest does not prevent it from being property of the bankruptcy estate"). And the property covered by section 362(a)(3) includes all "rights of action" of the Debtor, regardless of whether they are based on federal or state law. *See id.; see also Burgess* v. *Sikes (In re Burgess)*, 392 F.3d 782, 785 (5th Cir. 2004) (scope of property of the estate includes intangible property and causes of action).

A comparison of the second state court petition (Second Adversary Petition) and the pleadings relating to the reconventional demands in the first state court proceedings (First Adversary) shows that, with a few minor elaborations or variations, they assert the same claims. These are claims in which the Debtor has asserted an ownership interest and should be treated as claims owned either entirely by the Debtor, or at the very least, co-owned by the Debtor. The Bankruptcy Court has the sole authority to determine the estate's exact interest in those claims. Further, given the assertion of ownership interest by the Debtor, these are claims that are subject to the trustee's administration in the Bankruptcy Case.

Therefore, given the dispute as to the ownership of the subject claims, as well as the pre-bankruptcy assertions of ownership by the Debtor to these claims while represented by Appellants' counsel,[2] whether or

---

[2] The signature of an attorney to a pleading constitutes a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies that each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Sec Louisiana Code of Civil Procedure Art. 863.

not these assertions are considered "judicial admissions," the Bankruptcy Court has exclusive jurisdiction to resolve the ownership dispute over the claims. Thus, the stay applies to prevent non-debtor parties from exercising control over the claims and causes of action until such a determination is made or another appropriate order is entered by the Bankruptcy Court.

In sum, the Bankruptcy Court did not err in finding that the filing of the second state court proceeding (the Second Adversary) violated the automatic stay, in granting each of the Motions to Enforce Stay, in dismissing the Second Adversary without prejudice, and in holding that all other pending motions in the Second Adversary, including Appellants' motion to dismiss for lack of jurisdiction, were rendered moot.

CONCLUSION

For these reasons, the Court finds that the Bankruptcy Court's November 12, 2020 Orders were not an abuse of discretion. The Appeal filed by Ronnie Ward, Sharon Ward, and Car King, LLC, is therefore **DENIED** and the Bankruptcy Court's Orders are **AFFIRMED.**

Monroe, Louisiana, this 29th day of April, 2021.

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

SO ORDERED.

DONE and SIGNED November 12, 2020.

JHON S. HODGE
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE:	CASE NO. 20-BK-30681
KARCREDIT, L.L.C.	CHAPTER 7
Debtor	

ORDER

Considering the *Motion for Entry of An Order Enforcing The Automatic Stay and Court Orders and Incorporated Memorandum* ("Motion") filed by Cross Keys Bank ("CKB"), the relevant law, the record of this case and the record of the related adversary proceedings - bankruptcy adversary cases 20-3011 and 20-3014 (the latter referred to herein as the "Second Adversary"):

IT IS ORDERED that the Motion is

GRANTED;

IT IS FURTHER ORDERED that the filing of the Petition by Ronnie Ward, Sharon Ward and Car King, LLC, on September 17, 2020, in the Fourth Judicial District Court of the State of Louisiana, Parish of Ouachita, which initiated the Second Adversary, violated the automatic stay imposed pursuant to 11 U.S.C. § 362(a)(3) upon the filing of the captioned bankruptcy case;

IT IS FURTHER ORDERED that therefore the filing of that Petition was and is invalid, void and of no legal effect;

IT IS FURTHER ORDERED that a copy of this order shall be filed in the docket of the Second Adversary;

IT IS FURTHER ORDERED that, to the extent necessary, all further proceedings in the Second Adversary are stayed pursuant to this order;

IT IS SO ORDERED.

ORDER PREPARED AND SUBMITTED BY:

WIENER, WEISS & MADISON, APC

By: /s/ Patrick L. McCune
WIENER, WEISS & MADISON, A.P.C.
Patrick L. McCune (La. Bar No. 31863)
445 Louisiana Avenue
Baton Rouge, Louisiana 70802
Tel: 225-910-8084
Fax: 225-910-8082
Email: pmccune@wwmlaw.com

And

WIENER, WEISS & MADISON, A.P.C.

BILL OF SALE

Be it known that on the 15 DAY OF July, 2020, after having complied with all the legal requisites, I did expose for public sale and did sell to:

CROSS KEYS BANK
400 MCMILLAN RD.
WEST MONROE, LA 71291

FOR THE SUM OF: $700.00

THE FOLLOW DESCRIBED PROPERTY, TO-WIT:

THE KARCREDIT MOVABLE PROPERTY:

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software, but excluding all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts, constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software

relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

FURTHER INFORMATION IS CONTAINED IN THE PROCESS VERBAL RETURNED IN THE CASE OF:

CROSS KEYS BANK
VS. NO. 20193153
KARCREDIT, L.L.C. AND JDB OF MONROE, INC.

FILED IN THE FOURTH DISTRICT COURT, OUACHITA PARISH, MONROE, LA.

JAY RUSSELL, SHERIFF
OUACHITA PARISH

BY:__
LAURA MILSTEAD
Deputy Sheriff

SO ORDERED.

DONE and SIGNED August 6, 2020.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE:	§	Case Number: 20-30681
	§	
Karcredit, L.L.C.	§	Chapter 7
Debtor	§	
	§	
Cross Keys Bank	§	Adversary Proceeding
Plaintiff	§	Case No. 20AP-03011
	§	
vs.	§	
	§	
Ronnie D. Ward	§	
Sharon Denise	§	
Albritton Ward	§	
Karcredit, L.L.C.	§	
Keith Winston	§	
Albritton	§	
Ruth Crain Albritton	§	
JDB of Monroe, Inc.	§	
Karproperties		

Defendants §

Order Regarding Status Conference

By virtue of the filing of a notice of removal, a state court lawsuit involving the debtor has been removed to this court for adjudication. The state court petition seeks to collect a promissory note and enforce commercial guarantees. The petition also seeks a determination of the validity, extent and priority of certain liens.

After the petition was filed, Caldwell Bank & Trust Company and Homeland Bancshares, Inc. were added as parties by virtue of an intervention and a third-party demand, respectively. In addition, two of the guarantors asked the state court for leave to join other parties, viz. R. Joseph Nous and Ellis Blount, by virtue of either a reconventional demand or a third-party demand. At the time of the removal, the state court had not yet ruled on whether leave should be granted.

After the removal of the lawsuit to this court, two of the defendants hied a motion asking this court to abstain (docket no. 12). A motion for abstention is governed by Fed. R. Bankr. P. 9013 and 9014 and LBR 9013-1 and 9014.1, Notice of a hearing is required. The moving party has a duty to file and serve the notice of hearing. LBR 9013-l(h). Thus far, the moving party has neither filed nor served a proper notice of hearing. An example of a proper notice of hearing is posted at: https://www.lawb.uscourts.gov/forms/shreveport-forms. Assuming the moving party eventually files and serves a notice of hearing, the court will consider the abstention motion after conducting a hearing. In the meantime, the court will hold a status conference which

is scheduled for August. 20, 2020, at 10:00 AM (docket no. 5).

Accordingly,

IT IS ORDERED that the parties should be prepared to discuss the following issues at the status conference:

1. Jury Trial. As a general rule, Louisiana law does not permit a jury trial for a suit on a promissory note or guaranty absent, certain except ions which do not seem applicable here. See, La. C.C.P. article 1732(2). According to La. C.C.P. article 1731 and the comments thereunder, a jury trial is not available on an incidental demand when the principal demand is not triable by a jury. Are there any issues in this proceeding triable by a jury under Louisiana law?

2. Proposed Joinder of Naus and Blount. Louisiana law does not permit a "reconventional demand" against someone who is not a plaintiff in the principal action. See, La. C.C.P. article 1061(A). Messrs. Naus and Blount are not plaintiffs in the principal action and, as such, cannot be joined by reconventional demand. Likewise, Louisiana law does not permit the filing of a third-party demand unless the third party may be liable to an existing party for all or part of the principal demand. See, La. C.C.P. article 1111. As a matter of law, the alleged actions of Messrs. Naus and Blount will not make them liable to any of the guarantors for their indebtedness owed to Cross Keys Bank. What is the basis under Louisiana law for the proposed joinder of Messrs. Naus and Blount in a suit to enforce a guaranty?

3. Proposed Intervention by Car King, LLC. Prior to the removal of the case to this court, a third party, Car King, LLC, filed a motion seeking authority to intervene. The state court did not rule on the motion.

Car King is neither a maker nor guarantor of the promissory note at issue in this litigation. There appears to be no connexity between Car King and any issue presented in the state court action. In Louisiana, a connexity is required to intervene. Sec, La C.C.P. article 1091. What is the basis for permitting Car King to intervene in this suit to enforce a guaranty? The moving parties should be prepared to cite the rule or statute upon which the requested relief is predicated.

4. Core Proceedings. This proceeding undoubtedly constitutes a "core" proceeding within the meaning of 11 U.S.C. § 157(b)(2)(B) (allowance and disallowance of claims against the estate), (K) (determinations of the validity, extent and priority of liens), and (O) (other matters affecting the adjustment of the debtor-creditor relationship) as it asserts claims against the debtor and seeks a determination of the validity, extent and priority of liens. Are there any non-core matters involved in this proceeding which can be adjudicated by this court under 28 U.S.C. § 157(c)(1)?

5. Unresolved motions. Other than the matters referenced above, are there any matters that were unresolved by the state court at the time of the removal of this proceeding?

###

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE:	:	CASE NO. 20-30681
KARCREDIT, L.L.C.	:	Chapter 7
	:	
		ADVERSARY
CROSS KEYS BANK	:	PROCEEDING CASE
(Plaintiff):		NO. 20-03011
Versus	:	
RONNIE WARD, et al	:	
(Defendants.):		August 20, 2020

TRANSCRIPT OF THE HEARING REGARDING:
(Doc. #5) *Status Conference Hearing*
before the Honorable John S. Hodge
United States Bankruptcy Judge

20 August 2020

Transcribed by: Richard Simpson
1120 Hallmark Dr.
Shreveport, LA 71118
318-688-1860

Proceedings recorded by FTR, electronic sound recording; transcript produced by transcription service.

A-P-P-E-A-R-A-N-C-E-S
(All counsel appearing telephonically)

For Cross Keys Bank : R. JOSEPH "CHIP" NAUS
: SETH M. MOYERS
: PATRICK L. McCUNE
: Wiener, Weiss & Madison
: 330 Marshall St., Suite 1000
: Shreveport, LA 71101

For Ronnie D. Ward, et al : JAMES A. ROUNTREE
: Rountree Law Office
: 400 Hudson Lane
: Monroe, LA 71201-5504

For Caldwell Bank & Trust : BRANDON K. BLACK
: Jones Walker
: Four United Plaza, 5th Floor
: 8555 United Plaza Blvd.
: Baton Rouge, LA 70809

For Ellis Blount : BERNARD S. JOHNSON
: Cook, Yancey, King & Galloway
: 333 Texas Street, Suite 1700
: Shreveport, LA 71101

(*Transcription completed without a speaker identification log; therefore, except for The Court, where speaker identifications were made, they were made on a contextual or best-guess basis where possible.*)

20 AUGUST 2020, 10:09 A.M.

THE COURT: All right. Our next matter is the Cross *Keys Bank versus Ward, et al.* adversary. It's 20-03011.

Appearances, starting with plaintiff's counsel?

MR. NAUS: Your Honor, Chip Naus, Seth Moyers, and Patrick McCune for Cross Keys Bank.

MR. ROUNTREE: Jim Rountree for Ronnie Ward and Sharon Ward.

MR. JOHNSON: Bernard Johnson for George Ellis Blount.

MR. BLACK: Brandon Black for Caldwell Bank.

THE COURT: Is that the entire universe? Anybody else want to make an appearance?

All right. This matter is a status conference. And the purpose of the status conference is: The Court to examine the issues presented in this adversary proceeding and arriving at an appropriate disposition of them in due course. We won't make any decisions or rulings today, but I issued what amounts to an agenda for today. And I would like for us to look at that agenda, and I want to start in reverse order. I want to start with core proceedings, whether this matter is core or non-core.

As I stated in my order, in my view this proceeding constitutes a core proceeding. This is a garden-variety suit on a note and to enforce commercial

guarantees. The debtor is the maker of the note and the guarantors are insiders of the debtors. As I appreciate it, the guarantors are the co-owners and their wives.

The suit was started pre petition and removed to this court, and the pre-petition suit was effectively transformed into a core proceeding once the creditor filed the proof of claim. And I checked this morning and it looks like Mr. Naus filed a proof of claim. And the case law on that is very clear. Essentially, the lawsuit against the debtor is the same issue that I will have to resolve in either allowing or disallowing the proof of claim.

So with respect to the claims asserted against the debtor, in my view that matter is core; not only is it core, but the claims against the debtor are stayed by the automatic stay. And I have exclusive authority on whether to modify the stay to permit the litigation in state court.

Now, as my order suggested, that's not really the end of the inquiry. I just stated in my order that the proceeding is core, but I asked the question: Are there any non-core matters involved in this proceeding which can be adjudicated by this Court under 28 U.S.C. 157(c)(1)?

And what I mean by that is: I understand that it's core against the debtor, but it's likely, at least in my view, non-core against the non-debtor guarantors and the other parties.

And so what I would like to do is to hear the position of the parties, (1), with respect to what I just said, that it is a core proceeding with respect to the debtor; but, (2), I would like the benefit of your analysis as to whether the actions against the non-debtor parties are core or non-core.

In my view, a single adversary proceeding may

contain discrete proceedings, each of which must be separately analyzed for the core or non-core status. In other words, the core proceeding analysis doesn't apply to the case as a whole; it applies to each cause of action within the case. And so we've got a lot going on in this lawsuit and I want to know what matters are core and what matters are not core. So, I'm going to start with Mr. Naus and then I will go to Mr. Rountree.

Mr. Naus, or somebody on your side, whether it's Mr. Moyers or Mr. McCune, somebody share your side's analysis with respect to the claim against the debtor, whether that's core, and then the claim against the non-debtor.

MR. NAUS: Your Honor, I'm going to – I will start that and then if Patrick or – or Mr. McCune or Mr. Moyers have anything to add, they can certainly speak up.

But essentially we think that the claim against the debtor, which is the principal obligation, is certainly core, and that the claim, the accessory obligations that relies from that, namely, the guarantees and the security interests that are at issue are also core because the amount of that claim directly impacts the obligation of the other parties to the bank. And so we think that, you know, because of those reasons and because it's so intertwined with what has to be decided as far as the amount owed by the debtor under the note, which also establishes the amount of the guarantee and any credits that are due from any other assets of the debtor that are out there, and we think there are some, and that's why we filed the involuntary. So we think that it's so intertwined that it makes it core; and if it's not core, it's certainly "related to." But the principal obligation is the crux of the suit: How much does Karcredit owe us? In turn, how much are the guarantors – how much do the

guarantors owe the bank and what is the extent of the security interests, which are also accessory obligations that secure the principal obligation?

THE COURT: Mr. Naus, I understand what you just told me, that it's intertwined, and I get that a collection by Cross Keys Bank on the guarantees will have an effect on the estate because it will decrease the amount of the claim. I understand that it has a conceivable effect. That doesn't make it core. I mean, that analysis is relevant to whether it is "related to" jurisdiction in my mind. But I don't, I don't know if what you just told me makes it core. And so that's, that's what I want us to discuss today, and that's what of course you'll have to address at the hearing on the motion to abstain that's coming up on September 2nd.

So I don't know if you have any –

MR. NAUS: Is that the 2nd or the 3rd?

THE COURT: Go ahead, Mr. Naus.

MR. NAUS: Is that the 2nd or the 3rd, Your Honor?

THE COURT: Oh, I'm sorry. Whatever date is.

MR. NAUS: Okay.

THE COURT: Hang on. Let's clear this up now. I don't want anybody to have any confusion.

MR. NAUS: Okay.

THE COURT: It's September 3rd. In my mind it's September 2nd because, federal employees, we get Labor Day off – oh, no, it looks like Labor Day is September 7th. I thought I was going to get a free Monday that week but I guess I'll have to work.

Yeah, no side comment from the lawyers on that.

Tell me, Mr. Naus. What – I mean, I don't know if you have any additional analysis today other than what you've said. But in my mind, what – I understand completely that the collection on the guarantee has a

conceivable effect on the estate. But that analysis is appropriate for "related to" jurisdiction, whether it's non-core.

Do you have any additional thoughts you'd like to share on that?

MR. NAUS: I'm going to defer to Mr. McCune or Mr. Moyers right now, if they want to say anything.

MR. McCUNE: And, Your Honor, this is Mr. McCune. There is case law that discusses the fact that to the extent that a action could considered non-core if it becomes inexorably intertwined with the adjudication of core proceeding that is at issue. It transforms a non-core to a core proceeding. And so I think to the extent that there can be an argument made that some of these subset matters that you're addressing right now could be considered non-core, there is an argument to be made that they are core because they are inexorably intertwined due to adjudication of proof of claim.

THE COURT: That's fine. Thank you. You know, it helps me to understand the positions of both parties so I can be prepared for the hearing on September 3rd.

Mr. Rountree, I think I framed the issue. I'd like to hear your thoughts on both whether you agree that the action against the debtor is core and also whether you agree that the action against the debtor is stayed and that I have exclusive authority on whether that action is tried in state court.

And then thirdly, what is your position on the non-core elements?

MR. ROUNTREE: Your Honor, I agree with everything you've said. Your analysis is exactly like mine. I believe that the claim against the Wards' state law claim, enforce private rights clearly non-core,

arguably related, with "related to" jurisdiction. But on those points and, of course, the stay, absolutely, I agree with everything you say. I hate to admit it, but it's – you're right.

THE COURT: I understand, Mr. Rountree.

And I think, my statement was slightly stronger than yours. You said it was arguably related. I think I would say: At a minimum, it is "related to" jurisdiction.

And not to belabor the point, but I don't have any doubt that I have jurisdiction over this case. The question is, in my mind, is whether it's core or non-core. And that doesn't really–

MR. ROUNTREE: Let me raise a doubt then.

THE COURT: Yeah, that really doesn't go to jurisdiction. That goes to whether I have the judicial power to enter a final order. I mean, I even have the statutory authority to adjudicate the claims. If it's non-core, I have to issue proposed findings of fact and conclusions of law. But I have the statutory authority to preside over that trial.

MR. ROUNTREE: Well, let me raise a doubt for you.

THE COURT: All right. Please do.

MR. ROUNTREE: The case was not properly removed to federal court. That is addressed in the motion to withdraw reference brief. This week Mr. Naus filed his brief on Monday; I filed my brief yesterday.

A plaintiff does not have the right to remove a civil action from state court to federal court.

THE COURT: Under the removal –

MR. ROUNTREE: The statute says move a claim to–

THE COURT: Excuse me.

MR. ROUNTREE: – to federal court. No doubt

that he could do that, but he can't remove the civil action. The law is pretty clear in this circuit that the removal was improper and if it was improper, the court lacks jurisdiction.

THE COURT: Well, let me say this. I don't have the benefit of your analysis that you filed in the district court. I will look at it after this conference. I have access to the district court's records; I just didn't do it in preparation for this status conference.

But my antenna went up when you said that, you know, you're looking at the removal statute. You know, the bankruptcy removal statute is a different removal statute. And I don't have the benefit of having read your work that you submitted to the district court, but I have heavy skepticism that what you just said is correct. But if it is, it is. And I'll be glad to take a look at that.

And look, if the removal is improper, then you may be right that I do not have jurisdiction. I just don't think that it is proper to say that a plaintiff, for removal under the bankruptcy removal statute, cannot remove it. And I bet a quick reference to *Colliers* or some other bankruptcy treatise could provide me an answer to that just within seconds.

MR. NAUS: Your Honor, this is –

THE COURT: But to me that just strikes me as incorrect. But that – you know, that is what it is. I mean, the law is what it is.

Yes, Mr. Naus?

MR. ROUNTREE: (Indiscernible phrase) you in the statute. I think it is things from 1441 and 1446. 1452 refers to the removal of a claim or cause of action in a civil action. 1441 refers to the removal of the civil action. Language is different.

THE COURT: Okay.

Yes, Mr. Naus?

MR. NAUS: Your Honor, I would just say that we intend to respond to Mr. Rountree's argument that he made in his reply brief. We're going to ask for relief to file a sur-reply. And we take the position that the reference to "party" in 1452 indicates that any party, whether plaintiff or defendant, may simply remove claims related to bankruptcy proceeding and that includes the plain language of Section 1452 indicates that a single party may remove the action without obtaining consent from the other party. And in our proposed reply memorandum, we cite several cases on that in the – cited by the federal district courts in the Fifth Circuit. And there's actually a Fifth Circuit opinion that where the opinion was withdrawn that also supports our position. But we intend to file that today, that motion for leave with the Court. We need to get Mr. Rountree, whether he consents, and being able to tell us in our certificate whether he consents or not, but we intend to file that motion for leave today in the district court proceeding.

MR. ROUNTREE: I consent.

MR. NAUS: Okay. Thank you, Jim.

THE COURT: Just so you'll know, since we've been on the phone and this issue has been raised. I took a peek at Collier's – 17 Colliers, Section 29.17. 17 Colliers, Section 29.17, and it said this with respect to bankruptcy removal.

The notice may be filed by a party, either plaintiff or defendant, in the non-bankruptcy court suit.

The entire paragraph reads: The notice of removal shall be filed with the court for the district and division within which it is located, the non-bankruptcy court where the civil action is pending.

And it cites 28 U.S.C. 1452(a).

And then it says: The notice may be filed by a party, either plaintiff or defendant, in the non-bankruptcy court suit.

So that's always been my impression. But, Mr. Rountree, I do agree with –

MR. ROUNTREE: I don't disagree with that –

THE COURT: – I do agree with you on one thing.' If the notice of removal was improper, I do not have jurisdiction. I just think the notice of removal was proper.

MR. ROUNTREE: I don't disagree with anything you read from *Colliers*. The point of disagreement is the language of the statute and the distinction between 1441 and 1452.

THE COURT: All right. Well, if you think that this Court –

MR. ROUNTREE: Anyway. Assuming that I'm wrong, I agree with you on everything else.

THE COURT: Okay. So I guess what I'm asking is: If you think I don't have jurisdiction, why are you asking me to decide whether to abstain or not? If I don't have jurisdiction, then my thoughts on this subject are meaningless.

MR. ROUNTREE: Well, if you don't have jurisdiction, I think that's the end of it. If you conclude that I'm wrong and Naus is correct, then you have to abstain.

THE COURT: Have you asked me to decide whether I have jurisdiction? I guess that's a threshold issue I need to decide anyway, so. I mean, since you – I don't remember seeing that in your motion to abstain but maybe it's there and I just didn't see it.

Mr. Rountree, do you want – have you –

MR. ROUNTREE: It's in the second motion to remand, I believe.

THE COURT: Okay. Well, you'll get a ruling from me whether I have jurisdiction. And I've given you the benefit of my thoughts, so you can refine your fine legal skills and show me the errors of my ways. But –

MR. ROUNTREE: Your Honor, I hope that I have run these thoughts through my mind before I started talking.

THE COURT: You're fine, Mr. Rountree, you're fine. Okay. I've gotten the views of Mr. Naus and Mr. Rountree. There are other parties that I have not heard from.

Caldwell Bank, I'd like to hear your thoughts. Are you taking a position one way or the other on the motion to abstain or motion to remand?

MR. BLACK: Your Honor, this is Brandon Black for Caldwell Bank.

We're sitting in the back of the movie theater with a box of popcorn watching this play out on the screen and we're not really taking a position. And whether we land in your court, we'll be happy with, or if we land in state court in Monroe, we'll be happy with that, too. So we're just sitting on the sidelines.

THE COURT: Thank you, Mr. Black. I want to know if the movie is rated PG-13 or worse.

MR. BLACK: Right now it's rated R but moving to X.

THE COURT: Yeah. If 2 plus 2 is 4, yeah, I know. Mr. Johnson, tell me: What is the position of your client, if any?

MR. JOHNSON: Well, I guess, Your Honor, if Mr. Black is in the back of the movie theater, my client is several blocks away and thinks he should not be involved in this and is not interested in paying me to delve into the niceties of the jurisdictional questions.

We have filed a statement saying that we consent to your entry of final judgments and orders, and that's really the extent of the position that we have taken.

THE COURT: All right.

Let's go to the next issue in reverse order: The proposed intervention by Car King. And what I want to talk about in this status conference – let me get to the state court record – is in the intervention –

In the intervention, Mr. Rountree states in paragraph 3: Intervenors – which includes the debtor, Karcredit – intervenors adopt by reference all of the allegations made by Ward in his reconventional demand as supplemented and attached copies of the same as exhibits.

Now, setting aside for the moment whether Mr. Rountree, on behalf of his clients, was authorized to file an intervention – and I understand the state court hasn't ruled on that – I want us to focus on the meaning of paragraph 3, setting aside whether this intervention is effective. When I read this, I walk away with the firm conclusion that Karcredit, who is named as an intervenor, has adopted all of the counterclaims or reconventional demands asserted by Ward. And if that's the case, that's property of the bankruptcy estate. And the sole party on this planet that has the authority to bring those claims is the Chapter 7 Trustee. And it's not just that –

MR. ROUNTREE: That –

THE COURT: Hang on, Mr. Rountree.

It's not just that statement that was made on January 29, 2020. There was another pleading that you filed in February, on February 21 of this year, where you're talking about the intervention, and you said: Look, Ward assumes that Mr. Naus meant to say "no right of action." That makes some sense because claims

asserted by Ward – listen to this, Mr. Rountree; I want to get your thoughts – the claims asserted by Ward in his reconventional demands arguably belong to Karcredit.

MR. ROUNTREE: Oh –

THE COURT: – and Car King and Byrider.

MR. ROUNTREE: I'm sorry –

THE COURT: So, I'm reading those two statements and I'm walking away with the firm impression that there has been a statement by counsel for all of the, you know, guarantors and counsel for Car King and counsel for the debtor, which you were in the state court suit, saying: These claims really belong, not to Mr. Ward, they belong to the debtor.

And if they belong to the debtor, I – you know, my job as the bankruptcy judge is to preside over disputes about property of the estate.

So I want to hear your thoughts.

MR. ROUNTREE: Well, it was obviously a mistake, because it should have been reference to Car King, LLC. All of the complaint, the reconventional demand, none of it relates to Karcredit, to my knowledge – I can't recall anything – or the Byrider.

THE COURT: But, Mr. Rountree, in paragraph 5 of the intervention, you directly reference Karcredit. After you say that Karcredit, that all of the claims previously asserted by Ward are Karcredit's claims, you go on to specifically say Karcredit – meaning the debtor, of which I am presiding over the debtor's case – the debtor was directly damaged by the negligent and/or intentional mishandling of Karcredit debt, including the efforts of Cross Keys Bank and its counsel, intended to, and which did interfere with the prospective contract rights of Ward and Karcredit.

Was that a mistake, too?

MR. ROUNTREE: Yes.

THE COURT: Any other mistakes?

MR. ROUNTREE: Yes.

THE COURT: I mean, how am I to deal with these judicial admissions in the state court record? I mean, this directly relates to the issue that we're going to try on September 3rd. Because when I read stuff like this, it's like: Well, what other judge on this planet has the authority to preside over the counterclaims or reconventional demands or proposed intervention when you're dealing with claims that have been represented to the state court belong to the debtor, exclusively to the debtor?

MR. ROUNTREE: I guess you'd have to look at the facts alleged – the error.

THE COURT: Well, that's a head scratcher to me, Mr. Rountree.

MR. ROUNTREE: Well, it's not the first mistake I've ever made and won't be the last.

THE COURT: I understand.

Mr. Naus, I would like to hear your thoughts before I see if the popcorn gallery has any thoughts.

MR. NAUS: Your Honor, I think those points are all well taken and those are points that we intend to address when we respond to the motion to abstain. And that's been on file in the state court pleading and it's, you know, it's, to me it's clear. I mean, I don't know how you can make extensive allegations like that, adopting by reference, and say that that was a mistake. I mean, I just, I don't get it.

THE COURT: Not only did Mr. Rountree –

MR. NAUS: Mistake –

THE COURT: Not only did Mr. Rountree adopt it by reference, he attached copies of all of them. I mean, it's not just a throw-away sentence, 'I hereby

adopt all prior reconventional demands,' he attached copies of them.

All right. Well –

MR. NAUS: I agree.

THE COURT: – please address that. And then what I'm referring to is the popcorn gallery, using the movie metaphor, anybody have any thoughts that you wish to share on behalf of Caldwell Bank or Ellis Blount?

MR. BLACK: Brandon Black for Caldwell Bank. Your Honor, until it's amended, it's a judicial admission. So, you know, it would have to be amended by Mr. Rountree to fix it.

THE COURT: Well, –

MR. NAUS: I don't think Mr. Rountree has standing to amend anything that the Karcredit has said now. That's the trustee's job.

THE COURT: I agree with both statements. But I am supposed to, when dealing with a motion to remand, look at the pleadings as they stand on the date of the removal. And I have allegations which I think constitute judicial admissions saying: All these claims of Ronnie Ward, they really belong to the debtor. Here, here, they're attached.

MR. ROUNTREE: And if you look at the claims, you'll see. they do not relate to Karcredit or J.D. Byrider.

THE COURT: Well, but the same lawyer for Karcredit at the time – you, Mr. Rountree – you also represented Ronnie Ward.

MR. ROUNTREE: Does that make a difference?

THE COURT: Well, I think it does. I think there's – I think it does.

Well, anyway. Please address that. We've got a lot to talk about on September 3rd.

In reverse order on my agenda, the proposed joinder of Naus and Blount, you have my thoughts, Mr. Rountree. I did read your reply that you filed in the record of this adversary proceeding pointing out that reconventional demands do not need to be connected. But I'd like to hear the thoughts of other parties.

Mr. Naus, we'll go first to you and then to Mr. Rountree.

MR. NAUS: Your Honor, first of all, there has been no leave granted to file those claims. We filed a response essentially saying there is no cause of action as we've set forth in our filing in the district court. That has not been ruled upon. So, we don't think that there is a claim at all and leave has not been granted to file any claim against me.

And it's my understanding that leave – I'll let Mr. Johnson speak to it, but I'm not sure that leave has been granted to file anything against Mr. Blount at this time, either.

THE COURT: All right.

MR. JOHNSON: That's my understanding as well, Judge.

THE COURT: Mr. Rountree, any thoughts you wish to share? Your pleading, I think, pretty much told me your position, but I don't want to rob you of the opportunity to express your thoughts.

MR. ROUNTREE: When I added Chip as a defendant in the reconventional demand, I noticed that I had named Blount, and it finally dawned on me that I was talking about events that occurred after the original petition. So I proposed to the state district court that it vacate the order which it signed granting me permission to name Mr. Blount, because that was incorrect.

So it is accurate that neither – that the motion

was not ruled upon because of what I would suggest to you, and I have suggested before, is the plaintiff's forum shopping. They filed this involuntary bankruptcy and removal to avoid the rulings of the state district court.

THE COURT: Were there any substantive rulings by Judge Rambo in this case?

MR. ROUNTREE: In what respect?

THE COURT: Well, you're suggesting that Cross Keys Bank is running away from Judge Rambo because he didn't like the rulings that were being made. Were there any substantive rulings –

MR. ROUNTREE: No, I don't think Judge Rambo did anything to make them skittish. But it was set for a hearing on July 22nd, and the Friday before that date, the involuntary was filed and the notice of removal. I mean, it does look something like 2 plus 2.

THE COURT: Well, again, in light of the – I can't overemphasize the statement made in the intervention, how significant that is to me. I mean, the parties are going to need to address it, because I pretty – I've been pretty blunt during this status conference telling you where I am.

When I read the statements in the intervention indicating that Karcredit owns every dad-gummed claim asserted by Ronnie Ward, and it was Ronnie Ward's lawyer who signed that pleading, I got to tell you, jurisdiction to determine what constitutes property of the estate lies exclusively with the Bankruptcy Court. And so on the date of the notice of the removal, Ronnie Ward's lawyer, on behalf of the debtor, said: These claims belong to the debtor.

And I got to tell you, this relates to what you're saying why Mr. Naus ran to Bankruptcy Court and removed this. What he's already said in the status

conference is there were reasons justifying the involuntary, that there are other assets of the estate that he needed a trustee to safeguard. And I think it's only rational for someone to remove a suit when the allegation by you, Mr. Rountree, is that these claims actually belong to the estate.

MR. ROUNTREE: The trustee has every right to pursue those claims. There's no question about it. I will apologize to, I think it's Conine and Luster because I've given them a bad claim to pursue, but nonetheless, they've got it; the trustee has it.

THE COURT: Well, and so with that statement in mind, I mean, that you recognize that the trustee has the right to pursue these causes of action, what's the justification for me telling the trustee: Go to state court and pursue these actions? Isn't that my job? I thought I was supposed to preside over the liquidation of property of the estate.

MR. ROUNTREE: As I said earlier, I don't question the ability of a plaintiff to remove a claim to Bankruptcy Court. And Cross Keys could – and perhaps it would be viewed as if it did, and then everything that you've said is entirely accurate. I mean, and I have no complaint or disagreement with anything you've said. But my point is: Cross Keys did not have the authority to remove a civil action. And that's what they attempted to do.

THE COURT: But, Mr. Rountree, what we've talked about is that there's a judicial admission on the date of the removal suggesting that every single, every single word uttered by Ronnie Ward in this case has been adopted by the debtor.

MR. ROUNTREE: That's incorrect. The statement was it adopts the claim.

THE COURT: I know. Adopts every allegation;

that's the statement. Every allegation.

MR. ROUNTREE: All right. So what does that mean?

THE COURT: If you'll recall – the reason why I'm laughing is, if you'll recall, I think that's what I asked you: What does that mean?

MR. ROUNTREE: Okay.

THE COURT: I mean, you wrote the sentence, so what did it mean to you?

MR. ROUNTREE: I just told you. I misspoke.

THE COURT: Okay. All right.

MR. ROUNTREE: It obviously means a lot more to you.

THE COURT: Yeah, this is a big – I got to tell you: This is – that is statement in the intervention – and it wasn't just one isolated pleading; you made the statement in January in a legal pleading and then you made the statement again in February in a legal pleading. And I got to tell you it sounds intentional to me. It does not sound like an oversight, particularly when you went through the trouble of attaching all of the prior reconventional demands asserted by Ronnie Ward. It sounds very much intentional. And it sounds like – I mean, that's just what it sounds like to me.

MR. ROUNTREE: Clearly, clearly, the involuntary bankruptcy has been filed, the Court has appointed a trustee and permitted the trustee to retain counsel. Clearly, the trustee has the authority to pursue whatever claim, whether it was, you know, accurately spoken or not. The trustee has that and they pursue it and they pursue it in your court as a core proceeding. No question.

THE COURT: And determining what claims belong to the estate and what claims belong to Ronnie Ward, when Ronnie Ward's lawyer says they all

belong to the debtor, I mean, am I supposed to send that to Judge Rambo and say: You make that decision? Or am I supposed to make that decision?

MR. ROUNTREE: What – I don't understand what you're saying. I mean, you're saying that the Karcredit has this claim. And I'm saying Karcredit has this claim. Karcredit is in bankruptcy; there's no question about that. The involuntary was not challenged; you know, the case is there.

THE COURT: Well, if all the counterclaims asserted by Ronnie Ward now belong to the debtor and you're conceding that I am the proper judge to preside over that, why – what is there for a state court judge to do?

MR. ROUNTREE: You just said two different things. You said if I am conceding that all of Ronnie Ward's claims belong to Karcredit, then you rolled that thought out. I don't concede that. I concede that the – that Karcredit has whatever claim it has and the trustee has the right to pursue it. That doesn't say that I have abandoned the claims of Ronnie Ward. The claim of Ward against Blount and Moss is defamation. They said he stole $600,000 from Karl Malone. That clearly has nothing to do with Karcredit.

THE COURT: But that's not what you said in your pleading. In your intervention, you said these claims belong to Karcredit. You're the lawyer for Ronnie Ward and you're the lawyer for Karcredit – or you were the lawyer for Karcredit.

And now you're telling me: Well, it's a mistake. Well, I've got to deal with the pleadings – it's a snapshot. I've got to deal with the pleadings as they existed on the date of the removal.

And I guess what I'm –

MR. ROUNTREE: What are you trying to say?

THE COURT: I'm trying to –

MR. ROUNTREE: You're saying –

THE COURT: I'm trying to ask, Mr. Rountree: Why would a bankruptcy judge allow a state court judge to decide which claims belong to the estate and which claims belong to a third party? Why would a bankruptcy judge do that?

MR. ROUNTREE: I don't think a bankruptcy judge should do that. I mean, after all, Karcredit is in bankruptcy and whatever claim it has is in your court to be pursued.

THE COURT: That's all of the claims.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE: :		CASE NO. 20-30681
KARCREDIT, L.L.C.	:	Chapter 7
	:	
CROSS KEYS BANK	:	ADVERSARY
(Plaintiff):		PROCEEDING CASE
Versus		NO. 20-03011
	:	
RONNIE WARD, et al	:	
(Defendants.):		03 September, 2020

TRANSCRIPT OF THE HEARING REGARDING:
(Doc. #12) Motion to Abstain,
(Doc. #33) (Second) Motion for Remand
before the Honorable John S. Hodge
United States Bankruptcy Judge

03 September 2020
(Proceedings held in Shreveport Bankruptcy Court)

Transcribed by: Richard Simpson
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Proceedings recorded by FTR, electronic sound recording; transcript produced by transcription service.

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the claims between Cross Keys Bank and the debtor?

MR. ROUNTREE: Yeah, I don't – I don't – that's –

THE COURT: All right. But as to all remaining claims, it is your contention that this Court is without jurisdiction?

MR. ROUNTREE: It's very hard to say with any degree of confidence that that's the case. But that's what it seems to me. And I know all those cases that say –

THE COURT: But if the standard is – as I'm going to represent to you it is in the Fifth Circuit – that all it must have is a conceivable effect. They don't have to prove their claim in order to remove the claim to federal court and then have federal court refer it to the bankruptcy court. If it has a conceivable effect on the estate, that you contend that none of the other claims presented in the state court lawsuit will even have a conceivable effect on the estate?

MR. ROUNTREE: I have struggled with that question for days, trying to figure out how the claim against Ronnie Ward has an effect on the bankruptcy estate.

THE COURT: Well, I suggested one earlier to you, which is the case law is: When there is a suit involving a guarantor that is now an adversary proceeding in bankruptcy, the bankruptcy courts have said that a recovery by the creditor against the guarantor will result in a diminution of the proof of claim against the debtor. That's the connection: That it has a conceivable effect upon the estate.

MR. ROUNTREE: Well –

THE COURT: But right – I mean, think about this. If Cross Keys Bank collects 100 percent from guarantor Ronnie Ward, then the proof of claim in the

bankruptcy case must be reduced to zero, correct?

MR. ROUNTREE: In which case – and I know this is not quite on point with what you're saying – because Ronnie Ward is a surety as to Karcredit, the same claim still exists; it's just in a different hand.

THE COURT: I got it. But that's what the claims resolution process is all about. Section 502 of the Bankruptcy Code deals with the bankruptcy court having exclusive authority to determine the claims against the estate.

MR. ROUNTREE: Well, it's – since it is a single claim against a single debtor, I think it is distinguishable from all the cases in which the courts have held that claims against guarantors are related. But I don't – I don't have a tremendous level of confidence in that point. I'm just saying that it is improperly removed –

THE COURT: But the mere fact that you don't have confidence in the proposition that the claims have no effect on the estate tells me that they have at least a conceivable impact on the estate.

MR. ROUNTREE: But that doesn't answer the question. That's on this hand, and over on this hand, the first question is: Was this claim properly removed?

I submit it was not. And I submit that the Eastern District cases that talk about the distinction among claims are more logical than the other cases that have said a single defendant or a single party can remove an entire civil action.

I think Judge Vance explained it best where she said that a defendant can remove a claim against him or her or it, but that doesn't affect the other parties.

The cases that are different, that are contrary to the Eastern District authorities, there are only two appellate-level cases: *Creasy versus Coleman*

Furniture, which is a 1985 Fourth Circuit case, and Mid-Atlantic Resources – no, not – *California Public Employees Retirement versus Wilcom.*

In *Creasy versus Coleman*, the court looked at "claim" and "civil action" as synonymous. And in that case, they were synonymous, so it didn't make any difference whether there was a, factually difference or whether the language difference had an effect. The other appellate level case, the Second Circuit case, simply cited *Creasy for* the proposition and moved on without any analysis of the difference in the language.

Even if the Court concludes that the removal was proper – and I disagree but you're the judge and I'm the lawyer – it's still something for which the Court should abstain. The bankruptcy statute, jurisdiction statute, 1334, talks about permissive and mandatory abstention. I think both of them are applicable to this case. Under 1334(c)(2), it says on a timely motion of a party in a proceeding based on a State law claim...

I think that's important to note that language again: A proceeding based on a State law claim or a State law cause of action, related to a case under title 11 but not arising Under title 11, or arising in a case under title 11, with respect to which an action could not have been filed or commenced in federal court, absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action commenced can be timely adjudicated in a State forum of appropriate jurisdiction.

All of the elements of mandatory abstention are present here.

And going back to the first point that I made: The timeliness of the resolution of the fight between Cross Keys Bank and Ronnie Ward doesn't affect administration. But there's no evidence – the only

evidence before the Court as to the timeliness or the ability of the State court to resolve this in a timely fashion is the affidavit of Ronnie Ward, who strongly believes that it can be, and so do I. The –

THE COURT: Excuse me, Mr. Rountree. That's not in evidence. That was an affidavit attached to a reply brief. It was not an affidavit attached to your initial pleading, so –

MR. ROUNTREE: Well –

THE COURT: – I don't want to give you the impression that the Court is considering that to be evidence.

And I also believe that it would be hard for a layman to express an opinion about the State court's ability to timely adjudicate it. I don't think a layman can opine about the State court's ability to timely adjudicate this. So, I didn't mean to interrupt you, but I wanted you to be aware that I do not consider the affidavit of Ronnie Ward to be evidence.

MR. ROUNTREE: Well, regardless. Since this case can proceed – the only thing this case is doing, actually you're running interference for the counterclaims. The presence of Ward in this case is nothing more than that kind of interference. It is blatant forum shopping. I mean, Cross Keys Bank chose the State court forum to pursue its claims. It decided: I don't like this court anymore; I –

THE COURT: What makes you conclude that? You know, we talked about this at the status conference where I raised the point of: Typically in a forum shopping case, one of the litigants says, this isn't going very well in this forum; I need to change my forum. But in this case, the presiding judge in the State court case, to my knowledge, has not made any substantive ruling.

I mean it's not the typical scenario where a litigant says: Gosh, I got to get away from this presiding judge because it's not going well.

MR. ROUNTREE: It's –

THE COURT: So, address that point – because I'm not getting the forum shopping aspect of it.

MR. ROUNTREE: Well, why else, what other rational explanation is there for filing an involuntary bankruptcy and a removal three days before a hearing is scheduled in State court?

THE COURT: Can I provide an explanation?

MR. ROUNTREE: Please.

THE COURT: A possible explanation is the preservation of estate property. It has been represented by Cross Keys Bank, in their pleadings, that there are chapter 5 causes of action that a trustee is needed to avoid and recover transfers made by the debtor prior to the filing of the petition. And so without a trustee exercising strong arm powers, the creditor really had no other remedy. I mean, so you're asking –

MR. ROUNTREE: There's an answer –

THE COURT: The way you posed it was: This must be forum shopping because there's no rational explanation as to why the involuntary would have been filed. And I just provided you what strikes me as a rational explanation.

MR. ROUNTREE: Okay. Then there is no rational explanation for the removal other than forum shopping because Cross Keys is complaining about its cash collateral, and apparently expecting the trustee to pursue its cash collateral claim. And that's fine. That right of action is in the bankruptcy court and the trustee can pursue it without the adversary proceeding, Ronnie Ward being up here in the adversary proceeding.

THE COURT: Can I just say that I have historically taken the position as a trustee before I had this job, and now as the bankruptcy judge, that chapter 5 causes of action and the proceeds derived from chapter 5 causes of action are not the cash collateral of any secured creditor. Those are estate causes of action that belong exclusively to the estate.

MR. ROUNTREE: That's interesting.

THE COURT: And so if Cross Keys Bank is taking the position that any recovery by a chapter 7 trustee should go to the secured creditor, you know, good luck; you'll have to appeal my ruling on that.

MR. ROUNTREE: I'm so far divorced from bankruptcy that that is a new information to me.

THE COURT: Mr. Rountree, I've known you for 30 years; you're not divorced from bankruptcy.

MR. ROUNTREE: Oh, god, yes, I am.

THE COURT: You know more bankruptcy law than you give yourself credit for.

MR. ROUNTREE: I have learned a lot in the last few weeks. But after the 2005 Bankruptcy Act changes, I had no interest. I mean, all they're doing is protecting credit cards and encouraging chapter 13 mills. And that's not what I do. But anyway, that's beside the point.

I did not know that you consider that estate funds. But in this case, it doesn't make any difference because the only creditors – and by the way, why do we not have Statement of Affairs and Schedules that were required seven days after the case was filed?

THE COURT: Well, that's an odd question for you to ask because you represent the debtor and the debtor has the statutory duty to file the statements.

MR. ROUNTREE: Well, how could it do that with all its computers and files seized? It can't –

THE COURT: The debtor did not seek relief from this Court saying: I need additional time to file the Statements and Schedules because I don't have any of the records to do it. Instead, I just – it's crickets, nothing.

MR. ROUNTREE: Well, you know, I don't – I have no intention of appearing on behalf of Karcredit in this case. It is completely unrepresented. I can't speak for it in any way, shape, or form. But I can tell you that this case, you're not going to have a real bankruptcy case until it gets done. And when it gets done, you're going to find out that whether you call it the bank's cash collateral or not, you're going to have two creditors, that I know of, Ward – I'm going to just lump together any related entity that might have advanced money to keep Karcredit going – and Cross Keys.

THE COURT: And then any recovery made pursuant to a chapter 5 cause of action. For example, if the trustee sues "person A" because "person A" received a transfer from the debtor that the trustee seeks to avoid and recover on behalf of the estate, then "person A," if "person A" actually pays the avoided transfer, pays it to the trustee –

MR. ROUNTREE: Right.

THE COURT: – then "person A" has a right under the Code, pursuant to Section 502 (h), to file a proof of claim even though the proof of claim deadline has passed.

MR. ROUNTREE: I vaguely remember that.

THE COURT: Yes.

MR. ROUNTREE: I do.

THE COURT: And the proof of claim, incidentally, is deemed to had been filed as of the petition date.

MR. ROUNTREE: But, again, it is not material

because –

THE COURT: How do you know that?

MR. ROUNTREE: No, to this discussion. I'm sorry.

Because the distinction is this. I expect Conine and Luster to eventually get their hands on some papers that will tell us whether I'm right or wrong about the number of creditors, and pursue any claim that the estate has. And that could include an avoidance action against Ronnie Ward. Who knows?

THE COURT: Or even a non-insider, correct?

MR. ROUNTREE: Or a non – yeah, it could be anything like that.

THE COURT: And you would concede that at the time of the removal that that chain of events is conceivable, not proved, but it is conceivable that the estate has chapter 5 causes of action.

MR. ROUNTREE: I think it's eminently conceivable. I just don't think the presence of Ronnie Ward and Sharon Ward in this case has any effect on that at all because the trustee is at liberty to pursue any such claim with or without the removed case. The presence of the Wards really doesn't do anything to assist in the resolution of the – or the administration of the bankruptcy case.

I do want to point out something that I anticipate to come up shortly, and that would be a reference to *Regal Row Fina, Inc.* That's a Texas case that the bank has emphasized that said that a related case can become core under certain facts. It was distinguished in two subsequent Texas cases. And there is one called Legal Extranet, Inc. that made the very apt point that this court disagrees with Regal Row's overreliance on the catchall provision of Section 157(b)(2)(0), that's other

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION
Judge: John S. Hodge

In Re: Karcredit, L.L.C. Chapter: 7
Debtor Case Number: 20-30681

MOTION TO DISMISS - CASE FILED IN BAD FAITH

Ronnie Ward and Sharon Ward respectfully move the court to dismiss this case. It was filed in bad faith in search of a more favorable forum as discussed more thoroughly in the accompanying memorandum.

Respectfully submitted,

/s/James A. Rountree
James A. Rountree, 11491
Rountree Law Offices
400 Hudson Lane
Monroe, Louisiana 71201
Telephone: (318) 398-2737
Facsimile: (318) 398-2738

CERTIFICATE OF SERVICE

I hereby certify that copies of Ronnie Ward's and Sharon Ward's motion to dismiss has been served upon the following by electronic mail or by placing the same in the United States Mail, properly addressed, with adequate first-class postage affixed thereto, as further delineated below, and by electronic notice to the following and all other persons who have requested

notice via the PACER/ ECF/CMS system:

Brandon K. Black
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Attorneys for Caldwell Bank & Trust Company
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Bernard S. Johnson
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rdarden@homelandfsbank.com

John W. Luster
Attorney for Chapter 7 Trustee, John Clifton Conine
By Electronic Mail
Luster_j@bellsouth.net
coninejc@gmail.com

Monroe, Louisiana this 26th day of February, 2021.

/s/ James A. Rountree

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION
Judge: John S. Hodge

In Re: Karcredit, L.L.C. Chapter: 7
Debtor Case Number: 20-30681

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BAD FAITH BANKRUPTCY FILING

The petition for involuntary bankruptcy filed against Karcredit LLC was filed for one reason and one reason only, and that had nothing to do with the administration of a bankruptcy estate. The bankruptcy was filed as a device to get the Louisiana state court suit Cross Keys Bank filed against Ronnie Ward into a friendlier court.

This experience in bankruptcy court had not been so difficult, expensive, and unpleasant, Ronnie Ward might call it a farce. The liquidation of the assets of Karcredit, LLC was completed in state court two days before the involuntary petition was filed. The sheriffs bill of sale, dated July 15, 2020, is attached to the statement of financial affairs filed by Cross Keys Bank at R-30681-#23-2. Cross Keys purchased all the assets of the debtor for $700. The description in the sheriff's bill of sale is:

> All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment

property, money, other rights to payment and performance, and general intangibles (including but not limited to all software, but excluding all payment intangibles); all oil, gas and other minerals before extraction; all oil gas, other minerals and accounts, constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any right in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

As of February 22, 2021, eight months after the involuntary bankruptcy petition was filed, exactly two claims have been filed. Cross Keys Bank filed a claim for more than three million dollars, and the Louisiana Department of Revenue filed a claim for $500.31.

"Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a

standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings." *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071-72 (5th Cir. 1986). Just before that statement, the court said:

> Bankruptcy is an equitable remedy whereby a debtor is clothed with the protection of an automatic stay, preventing his creditors from acting against him for a period of time, in order to facilitate rehabilitation or reorganization of his finances and to promote a "fresh start" through the orderly disposition of assets to satisfy his creditors.

There can be no fresh start or orderly disposition of Karcredit assets. Cross Keys Bank took care of that in state court.

The requirement of good faith runs throughout the Bankruptcy Code and the cases that have arisen under it. A Chapter 11 reorganization expressly requires that the plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. §1129(a)(3). Chapter 13 has the same requirement in 11 U.S.C. §1325. There are good faith components in §§362 and 363. A section of the opinion in *In re Lots by Murphy, Inc.*, 430 B.R. 431, 434-35 (Bkrtcy. S.D. Tex. 2010), is entitled "B. Under Fifth Circuit Precedent, a Chapter 7 Petition Should Be Dismissed if the Purposes of Bankruptcy Will Not Be Fulfilled." (Emphasis added)

It is usually concern over debtor's conduct that brings the requirement of good faith into focus, but the concern is not so limited. As the court explained further in *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th

Cir. 1986):

> [A] good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons (i.e., avoidance of liens, discharge of debts, marshalling and turnover of assets) available only to those debtors and creditors with "clean hands."

Cross Keys Bank does not have clean hands; this proceeding mocks the very concept of integrity.

The Court in *Northern Pipeline Const. Co.* v. *Marathon Pipe Line Co.*, 102 S.Ct. 2858, 2871 -72, 458 U.S. 50, 71-72 (1982), said the restructuring of debtor-creditor relations "is at the core of the federal bankruptcy power," and in *Midlantic Nat. Bank v. New Jersey Dep't of Envtl. Prot.*. 474 U.S. 494, 508, 106 S. Ct. 755, 763, 88 L. Ed. 2d 859 (1986), Justice Scalia observed that "the overriding purpose of bankruptcy liquidation (is) the expeditious reduction of the debtor property to money, for equitable distribution to creditors." The Fifth Circuit echoed this sentiment in *In re Gandy*, 299 F.3d 489, 498 (5th Cir. 2002), where the court said the expeditious and equitable distribution of assets of the debtor's estate is a central purpose of the Bankruptcy Code. To the same effect see, *In re Acis Capital Management, L.P.*, 600 B.R. 541, 560 (Bkrtcy. N.D.Tex. 2019); and *In re Idearc, Inc.*, 2011 WL 203859. at *16, n. 26 (Bkrtcy. N.D. Tex. 2011).

There will be and can be no restructure of debtor-creditor relations and no reduction of the debtor's property to money for equitable distribution to creditors. Any chance of a meaningful bankruptcy proceeding was eliminated when all of its assets were

liquidated in state court.

The involuntary bankruptcy petition was filed in bad faith for the purpose of forum shopping, not bankruptcy.

Respectfully submitted,

/s/James A. Rountree
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Rountree Law Offices
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Facsimile: (318)398-2738

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Judge: John S. Hodge

In Re:

Debtor(s):	Case Number: 20-30681
Karcredit, L.L.C.	Chapter: 7

Address: 910 Louisville Avenue
Monroe, Louisiana 71201

Identification: xx xxx2890

NOTICE OF MOTION TO DISMISS

Ronnie and Sharon Ward have filed papers with the court to dismiss the bankruptcy due to the bad faith filing of involuntary bankruptcy.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney if you have one. If you do not have an attorney, you may wish to consult one.

If you do not want the court to dismiss the bad faith filing of bankruptcy or if you want the court consider your view on the motion, then on or before March 10, 2021, you or your attorney must file with the court a written response at

United States Bankruptcy Court
300 Fannin Street, Suite 2201
Shreveport, Louisiana 71101-3141

If you mail your response to the court for filing, you must mail it early enough so that the court will

receive it on or before the date stated above.

You must also send a copy to:

James A. Rountree
Rountree Law Office
400 Hudson Lane
Monroe, Louisiana 71201
jim@jrountree.com

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief south in the motion or objection and may enter an order granting that relief.

/s/ James A. Rountree
James A. Rountree
Rountree Law Office
400 Hudson Lane
Monroe, Louisiana 71201
Tel: (318)398-2737
Fax: (318) 398-2738

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Judge: John S. Hodge

In Re:
Debtor; Case Number: 20-30681
Karcredit, L.L.C. Chapter: 7

Address: 910 Louisville Avenue
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NOTICE OF MOTION TO DISMISS

Ronnie and Sharon Ward have filed papers with the court to dismiss the bankruptcy due to the bad faith filing of involuntary bankruptcy.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney if you have one. If you do not have an attorney, you may wish to consult one.

A hearing is scheduled in the United States Courthouse, 201 Jackson St., Monroe, LA on Thursday, March 18, 2021, at 10 AM. If you do not want the court to dismiss the bad faith filing of bankruptcy or if you want the court consider your view on the motion, then on or before March 10, 2021, you or your attorney must file with the court a written response at

United States Bankruptcy Court
300 Fannin Street, Suite 2201
Shreveport, Louisiana 71101-3141

If you mail your response to the court for filing, you must mail it early enough so that the court will

receive it on or before the date stated above.
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Monroe, Louisiana 71201
jim@jrountree.com

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief south in the motion or objection and may enter an order granting that relief.

/s/ James A. Rountree
James A. Rountree 11491
Rountree Law Office
400 Hudson Lane
Monroe, Louisiana 71201
Tel: (318) 398-2737
Fax: (318) 398-2738

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Karcredit, L.L.C.

Chapter: 7
Case Number: 20-30681

Order Compelling Moving Parties to Identify Statutory Basis for Relief Sought

On February 24, 2021, Ronnie D. Ward and Sharon D. Ward filed a motion to dismiss along with a supporting memorandum (docket nos. 50 and 51 and later amended at docket nos. 54 and 55). Neither the motion nor the memorandum, however, cited a statute or rule upon which the motion is predicated, as required by Local Bankruptcy Rule 9013-1(a)(3).

Accordingly,

IT IS ORDERED that within seven (7) days from the

entry of this order, the moving parties must identify the rule or statute upon which the motion is predicated. Failure to provide the statutory basis for the relief sought is cause for the court to deny the relief requested.

###

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Judge: John S. Hodge

In Re:

Debt nr (s): Chapter: 7
Karcredit, L.L.C. Case Number: 20-30681

RESPONSE TO ORDER COMPELLING RONNIE D. WARD AND SHARON D. WARD TO IDENTIFY STATUTORY BASIS FOR RELIEF SOUGHT

11 U.S.C. S 707(a).

Respectfully submitted,

/s James A. Rountree
Rountree Law Offices
400 Hudson Lane
Monroe, Louisiana 71201
Telephone: (318) 398-2737
Facsimile: (318) 398-2738

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana
Judge: John S. Hodge

In Re:
Debtor(s): Karcredit, L.L.C.
Chapter: 7
Case Number: 20-30681

Order Regarding Deficient Notice of Hearing
(Docket no. 56)

An amended notice of hearing was filed as docket no. 56 by Ronnie D. Ward and Sharon D. Ward. The moving parties were prompted to amend the notice of hearing by virtue of this court's order filed as docket no. 53 which noted various deficiencies in the original notice. The amended notice provides an incorrect response deadline.

Local Bankruptcy Rule 9013-1(i) provides that objections must be served and filed so as to be received not later than seven (7) days prior to the hearing date.

In this case, the hearing date is March 18, 2021. Therefore, the response deadline is March 11, 2021.

Accordingly,

IT IS ORDERED the filing parties must correct the deficiency within seven (7) days from the entry of this order. Failure to timely correct the deficiency is cause for the court to deny the relief requested.

###

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Judge: John S. Hodge

In Re:

Debtor(s): Chapter: 7
Karcredit, L.L.C. Case Number: 20-30681

RESPONSE TO ORDER COMPELLING RONNIE D. WARD AND SHARON D. WARD TO IDENTIFY STATUTORY BASIS FOR RELIEF SOUGHT

11 U-S.C. 6 707(a).

Respectfully submitted,

/s James A. Rountree
Rountree Law Offices
400 Hudson Lane
Monroe, Louisiana 71201
Telephone: (318) 398-2737
Facsimile: (318) 398-2738
/s/James A. Rountree
James A. Rountree

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Karcredit, L.L.C.

Chapter: 7

Case Number: 20-30681

Order Regarding Deficient Filings (Docket nos. 50, 51 and 52)

The Things listed below are deficient for the reasons indicated:

1. Motion to Dismiss filed as docket no. 50 (fails to contain the proper caption as required by Fed. R. Bankr. P. 9004);

2. Memorandum in Support of Motion to Dismiss filed as docket no. 51 (fails to contain the proper caption as required by Fed. R. Bankr. P. 9004): and

3. Notice of Hearing filed as docket no. 52 (fails to contain the proper caption as required by Fed. R. Bankr. P. 9004: also fails to comply with Local Bankruptcy Rule 9007-1 which requires all notices to conform substantially to Official Form 420A which, in turn, requires all notices to include a response deadline and provide instructions as to where a response must be filed). An example of a notice of hearing which complies with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules is posted on this court's website at: https://www.lawb.uscourts.gov/forms/shreveport-forms

Accordingly,

IT IS ORDERED that the filing parties must correct the deficiencies within seven (7) days from the entry of this order. Failure to timely correct the deficiencies is cause for the court to deny the relief requested.

###

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Karcredit, L.L.C.

Chapter: 7
Case Number: 20-30681

Order Compelling Moving Parties to Identify Statutory Basis for Relief Sought

On February 24, 2021, Ronnie D. Ward and Sharon D. Ward filed a motion to dismiss along with a supporting memorandum (docket nos. 50 and 51 and later amended at docket nos. 54 and 55). Neither the motion nor the memorandum, however, cited a statute or rule upon which the motion is predicated, as required by Local Bankruptcy Rule 9013-l(a)(3).

Accordingly,

IT IS ORDERED that within seven (7) days from the entry of this order, the moving parties must identify the rule or statute upon which the motion is predicated. Failure to provide the statutory basis for the relief sought is cause for the court to deny the relief requested.

###

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Chapter: 7
Karcredit, L.L.C. Case Number: 20-30681

Order Regarding Deficient Notice of Hearing
(Docket no. 56)

An amended notice of hearing was filed as docket no. 56 by Ronnie D. Ward and Sharon D. Ward. The moving parties were prompted to amend the notice of hearing by virtue of this court's order filed as docket no. 53 which noted various deficiencies in the original notice. The amended notice provides an incorrect response deadline.

Local Bankruptcy Rule 9013-1(i) provides that objections must be served and filed so as to be received

not later than seven (7) days prior to the hearing date. In this case, the hearing date is March 18, 2021. Therefore, the response deadline is March 11, 2021.

Accordingly,

IT IS ORDERED the filing parties must correct the deficiency within seven (7) days from the entry of this order. Failure to timely correct the deficiency is cause for the court to deny the relief requested.

###

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Judge: John S. Hodge

In Re:

Debt or(s); Chapter: 7
Karcredit, L.L.C. Case Number: 20-30681

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED Ronnie Ward and Sharon Ward filed a motion to dismiss in this bankruptcy proceeding because of the petition for involuntary bankruptcy was filed in bad faith by Cross Keys Bank.

You are further notified that a hearing on the motion to dismiss will be held on March 18, 2021 at 10:00 AM in the United States courthouse, 201 Jackson Street, Monroe, Louisiana, **IF AND ONLY IF AN OBJECTION IS FILED ON OR BEFORE THE RESPONSE DEADLINE NOTED HEREIN.** No hearing will be conducted hereon unless a written response is filed with the clerk of The United States Bankruptcy Court at 300 Fannin Street, Suite 2201, Shreveport, Louisiana 71101-3141, before the close of business on March 11, 2021, which is seven (7) days before the hearing. A copy of the response should be served upon counsel for the moving party by the response deadline.

IF NO OBJECTION OR RESPONSE IS TIMELY FILED, THE RELIEF REQUESTED SHALL BE DEEMED TO UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE

NOTICED ACTION MAY BE TAKEN.
Amended notice date February 26, 2021.

Respectfully submitted,

BY: /s/ James A. Rountree
James A. Rountree
Rountree Law Office
400 Hudson Lane
Monroe, Louisiana 71201
Tel: (318) 398-2737
Fax: (318)398-2738

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Karcredit, L.L.C.

Chapter: 7
Case Number: 20-30681

Order Regarding Deficient Notice (Docket No. 64)

This is the third time this court has issued an order regarding a deficient notice of hearing for a motion to dismiss (docket no. 50) filed by Ronnie D. Ward and Sharon D. Ward. This will be the last such order. The first order (docket no. 53) noted that the first notice of hearing failed to use the correct caption in violation of Fed. R. Bankr. P. 9004 and failed to conform substantially to Official Form 420A in violation of Local Bankruptcy Rule 90071. Thereafter, the moving parties filed an amended notice of hearing as docket no. 56. Unfortunately, the amended notice was also deficient

because it referred to the wrong response deadline in violation of Local Bankruptcy Rule 9013- 1(i). This prompted the court to issue another order of deficiency (docket no. 59). Thereafter, the moving parties filed a second amended notice as docket no. 64, but it was also deficient because it used the "if and only if" notice procedure in express violation of Local Bankruptcy Rule 9007-1(e)(1) (the "if and only if" notice procedure may not be used for motions to dismiss filed by a party in interest other than the debtor, the trustee or the court).

Accordingly,

IT IS ORDERED that the moving parties must correct the deficiency within seven (7) days from the entry of this order. Failure to timely correct the deficiency is cause for the court to deny the relief requested. The court will not give the moving parties another opportunity to correct the deficiency.

###

SO ORDERED.

DONE and SIGNED February 26, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court
Western District of Louisiana

Judge: John S. Hodge

In Re:

Debtor(s): Karcredit, L.L.C.

Chapter: 7

Case Number: 20-30681

Order Regarding Deficient Notice (Docket No. 64)

This is the third time this court has issued an order regarding a deficient notice of hearing for a motion to dismiss (docket no. 50) filed by Ronnie D, Ward and Sharon D. Ward. This will be the last such order. The first order (docket no. 53) noted that the first notice of hearing failed to use the correct caption in violation of Fed. R. Bankr. P. 9004 and failed to conform substantially to Official Form 420A in violation of Local Bankruptcy Rule 90071. Thereafter, the moving parties filed an amended notice of hearing as docket no. 56.

Unfortunately, the amended notice was also deficient because it referred to the wrong response deadline in violation of Local Bankruptcy Rule 9013-l(i). This prompted the court to issue another order of deficiency (docket no. 59). Thereafter, the moving parties filed a second amended notice as docket no. 64, but it was also deficient because it used the "if and only if" notice procedure in express violation of Local Bankruptcy Rule 9007-1(e)(1) (the "if and only if" notice procedure may not be used for motions to dismiss filed by a party in interest other than the debtor, the trustee or the court).

Accordingly,

IT IS ORDERED that the moving parties must correct the deficiency within seven (7) days from the entry of this order. Failure to timely correct the deficiency is cause for the court to deny the relief requested. The court will not give the moving parties another opportunity to correct the deficiency.

###

SO ORDERED.

DONE and SIGNED March 9, 2021.

JOHN S. HODGE
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IN RE:	§	Case Number: 20-30681
	§	
Karcredit, L.L.C.	§	Chapter 7
Debtor	§	
	§	

Order Denying Motion to Dismiss

Before the court is a motion to dismiss this bankruptcy case filed as docket no. 50, which was later amended and filed as docket no. 54. The court issued a total of four (4) orders noting various deficiencies in the motion, the supporting brief and the notice of hearing. *See* Orders entered as docket nos. 53, 58, 59 and 65. Those orders noted the following deficiencies:

1. Failure of the motion, supporting brief and notice of hearing to contain the proper caption as required by Fed. R. Bankr. P. 9004;

2. Failure of the motion or notice of hearing to recite the statutory basis for relief as required by Local Bankruptcy Rule 9013-1(b)(3);

3. Failure of the notice of hearing to conform substantially to Official Form 420A as required by

Local Bankruptcy Rule 9007-1;

4. Failure of the notice of hearing to provide the correct response deadline as required by Local Bankruptcy Rule 9013-l(i); and

5. Failure of the notice of hearing to comply with Local Bankruptcy Rule 9007-1(e)(1) which expressly prohibits the use of the "if and only if" notice procedure[1] for motions to dismiss when such motions are filed by a party in interest other than the debtor, the trustee or the court.

Each order gave the moving parties an opportunity to correct the deficiencies. Each order clearly stated that the failure to correct the deficiencies would constitute cause for this court to deny the relief requested.

The moving parties timely corrected all deficiencies except for the "if and only if' notice of hearing which is clearly prohibited by Local Bankruptcy Rule 9007-1(e)(1) for this type of motion. This court's order (docket no. 65) entered on March 1, 2021, expressly required the moving parties to correct the deficiency within seven (7) days from the entry of

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[1] In many instances, the Bankruptcy Code authorizes a bankruptcy court to act or grant relief only "after notice and hearing." 11 U.S.C. § 102(1) construes the phrase "after notice and hearing" to authorize an act without an actual hearing if a notice is given properly and if a hearing is not requested timely by a party in interest. The Local Bankruptcy Rules establish a notice procedure known as an "if and only if" notice which is a notice of hearing that informs all parties that a hearing will be held on a matter IF AND ONLY IF an answer, objection or opposition is filed within a prescribed time. The "if and only if" notice procedure compiles with 11 U.S.C. § 102(1)(B) and it is an important tool in the court's management of a busy docket. The Local Bankruptcy Rules specify when the notice procedure may be used and, importantly, when the procedure may not be used.

that order. The order also provided: "Failure to timely correct the deficiency is cause for the court to deny the relief requested. The court will not give the moving parties another opportunity to correct the deficiencies."

The moving parties have either failed or refused to comply with this court's order entered on March 1, 2021 as docket no. 65. The moving parties do not deserve another opportunity to correct the deficiencies. Enough is enough.

This court finds that the moving parties and their counsel have engaged in an "abuse of process" within the meaning of 11 U.S.C. § 105(a).

Accordingly, pursuant to the provisions of 11 U.S.C. § 105(3). to prevent the continued abuse of process by the moving parties and their counsel, the motion to dismiss is hereby **DENIED**, *with prejudice.*

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10/4/22

United States Court of Appeals, Fifth Circuit.

In the MATTER OF: KARCREDIT, LLC, Debtor,
Ronnie D. Ward; Sharon Denise Albritton Ward,
Appellants,
v.
Cross Keys Bank; Caldwell Bank; Trust Company,
Appellees.

No. 21-30649

Appeal from the United States District Court for the Western District of Louisiana, USDC No. 3:21-cv-1629,

Before Smith, Duncan, and Oldham, Circuit Judges.

Per Curiam:*

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.