

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	Chapter 13
WAYNE A. MICHAUD,)	
)	Case No. 03-11960
Debtor)	
)	

ORDER ON MOTION FOR CLARIFICATION

This Chapter 13 case was commenced by the debtor, Wayne A. Michaud, on October 15, 2003. On September 29, 2004, Press-A-Dent, Inc. (“PAD”), the debtor, and the Chapter 13 trustee, agreed upon the entry of a consent order on PAD’s motion for relief from stay. That order enjoins the debtor from exploiting PAD’s process for painless dent removal and from engaging in prohibited competition against PAD in the field of painless dent removal. Before the court is PAD’s motion for clarification of the status of the consent order. Specifically, PAD wants to know: (a) if the consent order is a final order that will survive the imminent closing of the bankruptcy case; and (b) if this court will permit the enforcement of the consent order in another court after the closing of the case. Despite the debtor’s objection, PAD’s motion for clarification is granted. Clarification will be given because “[a] bankruptcy court retains jurisdiction to interpret its own orders.” Concerto Software, Inc. v. Vitaquest Int., Inc., 290 B.R. 448, 453 (D. Me. 2003)(citing Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d 223, 230 (2nd Cir. 2002)).

The essential facts are not in dispute. PAD is the owner of a trade secret in a process for painless dent removal. The debtor was authorized to use PAD’s process under a written agreement signed before the commencement of this case. The parties terminated that agreement

after bankruptcy and it was rejected by the debtor in his Chapter 13 plan over PAD's objection.¹

Several months after the commencement of the Chapter 13 case, PAD sought relief from the automatic stay to seek an injunction against the debtor in the state courts of Indiana. In the same motion PAD also asked this court to enjoin the debtor from exploiting and/or disclosing the trade secret and from competing with PAD in ways not permitted by their written agreement.

PAD's motion was opposed by the debtor. The consent order entered on September 29, 2004, resolved their dispute. It enjoins the debtor:

- i. from using, exploiting, and/or disclosing the movant's process for painless dent removal or the related technology;
- ii. from performing any type of painless dent removal services until such time as the debtor acquires a commercially viable process for painless dent removal by proper means under the terms of the agreement with the movant. Should the debtor choose to engage in an alternate painless dent removal process, the debtor must satisfy the court that he has obtained an alternate process by legitimate means by application to the court, which shall be subject to notice to the movant and opportunity for the movant to be heard;
- iii. for a period of thirty (30) months from the date of this order within the geographic area as defined in the contract, from performing any type of painless dent removal services and from attempting to divert or take away a customer of the movant for the purpose of having some other person or entity perform painless dent removal services.
- iv. for a period of thirty (30) months from the date of this order, from engaging in or having an interest in a painless dent removal service business.

Order on Motion for Relief from Stay dated September 29, 2004.

On more than one occasion since the entry of the consent order PAD has asked for permission to examine the debtor under Bankruptcy Rule 2004. These motions were denied; but

¹ PAD had argued unsuccessfully that the agreement could not be rejected because it was not an executory contract at the time of confirmation. See Memorandum Opinion with Respect to Confirmation of the Debtor's Chapter 13 Plan dated June 17, 2005.

PAD was told that discovery would be available under the rules of discovery on a motion for contempt of the consent order or in an adversary proceeding for breach of contract. See transcript of May 18, 2006 hearing. Also, this court denied PAD's motion for further relief from stay to enforce this court's contempt order in another court. Id. Yet, despite this court's open invitation to PAD to initiate a contempt action or to seek relief from stay to pursue a contract action in another court, PAD has failed to act. The present motion for clarification stems from PAD's desire to pursue contempt of the consent order in another court after the Chapter 13 case is closed.

Is the consent order a final order that will survive the closing of this case?

Ordinarily, as the end-point in the determination of a discrete matter within a bankruptcy case, an order granting or denying relief from stay is a final, appealable order. See Tringali v. Hathaway Mach. Co., Inc., 796 F.2d 553, 557 (1st Cir. 1986). But the order in question did not grant or deny relief from stay. Instead, by agreement of the parties, it imposed an injunction upon the debtor. Nonetheless it is a final order. But because it arose to protect the bankruptcy estate under the "related to" jurisdiction of the bankruptcy court, the consent order will terminate upon the closing of the bankruptcy case.

Under 28 U.S.C. § 1334(b), the district court "has original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."²

Proceedings "arise under" title 11 if they involve a "cause of action created or determined by a statutory provision of title 11." Wood v. Wood (In re Wood), 825 F.2d 90, 96 (5th Cir. 1987). In contrast, proceedings "arising in" a

² All such proceedings have been referred to the bankruptcy judges of this district. See 28 U.S.C. § 157(a); D. Me. Local Civil Rule 83.6(a). However, a final order in a "related to" proceeding may not be entered by a bankruptcy judge without the consent of the parties. See 28 U.S.C. § 157(c).

bankruptcy case “are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.” *Id.*, at 97. Together, proceedings that “arise in” and “arise under” title 11 constitute the bankruptcy court’s “core” jurisdiction. See 28 U.S.C. § 157(b); *Id.*, at 96-97. . . .

On the other hand, “related to” proceedings fall within the bankruptcy court’s “non-core” jurisdiction. See 28 U.S.C. § 157(c). The test for determining whether a civil proceeding is “related to” title 11 is “whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” In re G.S.F. Corp., 938 F.2d 1467, 1475 (1st Cir.1991) (internal quotations and citations omitted). Thus, the proceeding need not be against the debtor or against the debtor’s property. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir.1984). Rather an action is “related to” bankruptcy if the outcome could “alter[] [the] debtor’s rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate.” G.S.F. Corp., 938 F.2d at 1475 (internal quotation marks and citations omitted).

Concerto, 290 B.R. at 452-453.

What began as a core proceeding for relief from the automatic stay “arising under title 11” became a “related to” proceeding when the parties agreed to the order imposing an injunction against the debtor. The outcome of the parties joint endeavor was an order that would alter the debtor’s “freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate.” Concerto, 290 B.R. at 452-3 (internal citations omitted). That order was entered appropriately by this bankruptcy judge without de novo review by the district court because a non-core, “related to” proceeding may be concluded by a bankruptcy judge when there is consent of the parties. See 28 U.S.C. § 157(c)(2).

Yet, despite the finality of the consent order, it will have no reach beyond the closing of the bankruptcy case. This is so because the “related to” jurisdiction was premised upon the potential for harm to the estate if the debtor had engaged in the

prohibited conduct. Since the estate will not exist after the case is closed, it will not be liable to PAD for damages attributable to post-bankruptcy misconduct by Michaud.³

Will this court permit PAD to enforce the consent order in another court after the closing of the bankruptcy case?

For the reasons stated above, the injunction contained within the consent order will expire upon the closing of this bankruptcy case.

SO ORDERED.

DATED: February 19, 2008



Louis H. Kornreich, Chief Judge
United States Bankruptcy Court

³ It is worth mentioning that paragraphs (iii) and (iv) of the order are stated as being “for a period of thirty (30) months from the date of this order” That thirty month period has already expired.