

So Ordered.

Dated: July 26, 2024



Katherine M. Perhach
Katherine Maloney Perhach
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:
Thomas Christopher Souran, II,
Debtor.

Case No. 21-25247-kmp
Chapter 7

Thomas C. Souran,
Plaintiff,

v.

Adv. No. 23-2082

Motel 6 and
Kia America, Inc.,
Defendants.

**ORDER GRANTING KIA AMERICA, INC.'S MOTION TO DISMISS COMPLAINT
AND REQUIRING PLAINTIFF TO SHOW CAUSE WHY ACTION
AGAINST MOTEL 6 SHOULD NOT BE DISMISSED**

In this adversary proceeding, Debtor Thomas Souran asserts claims against Motel 6 and Kia America, Inc. (“Kia”) based on the theft of a vehicle from a Motel 6 parking lot. Kia has moved to dismiss the Complaint. For the reasons that follow, the Court dismisses Mr. Souran’s negligence claim against Kia due to lack of subject matter jurisdiction and dismisses Mr. Souran’s claim against Kia for violation of the automatic stay for failing to state a claim upon which relief can be granted. The Court will also require Mr. Souran to show cause why his claims against Motel 6 should not be dismissed based on his failure to properly serve the Summons and Complaint on Motel 6.

On September 30, 2021, Mr. Souran filed a petition for relief under Chapter 13 of the Bankruptcy Code. Mr. Souran’s Chapter 13 plan was never confirmed, and after many months, he filed a motion to convert his case from Chapter 13 to Chapter 7. On May 11, 2022, the Court

converted Mr. Souran's bankruptcy case from Chapter 13 to Chapter 7. On September 26, 2022, the Court entered an Order of Discharge and the Clerk closed the case the same day.

On July 10, 2023, Mr. Souran filed this adversary proceeding against Motel 6 and Kia. The Complaint alleges that on the morning of April 16, 2022, while his Chapter 13 case was pending and prior to the conversion of his case to Chapter 7, Mr. Souran found that his Kia was stolen from the parking lot of a Motel 6 in Oak Creek, Wisconsin.¹ Compl. ¶¶ 2-3, ¶ 39. It is difficult to tell what Mr. Souran's claims against Motel 6 and Kia actually are. The only "cause of action" listed in the Complaint is for a willful violation of the automatic stay. The caption and the footer of the Complaint state that the Complaint is for "negligence" and "breach of duty." Mr. Souran alleges that Motel 6 failed to provide reasonable security and safe parking. Mr. Souran further asserts that Kia failed to install anti-theft technology in its vehicles. The Court will charitably view the Complaint as attempting to state claims for a willful violation of the automatic stay and negligence.

Mr. Souran filed a certificate of service stating that he served the Summons and Complaint on Defendant "Motel 6" via United States Mail addressed to "Motel 6 Principal Office: 10807 Laurel St, Ste #100, Rancho Cucamonga, CA 91730." Docket No. 9. Motel 6 has not responded to the Complaint.

Kia has filed a motion to dismiss the Complaint, arguing that the Court lacks subject matter jurisdiction over the Complaint and that Mr. Souran has failed to state a claim against Kia. *See* Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) (incorporated in adversary proceedings by Fed. R. Bankr. P. 7012(b)).

For the reasons stated below, the Court has subject matter jurisdiction over Mr. Souran's claim for a willful violation of the automatic stay. However, the Court lacks subject matter jurisdiction over Mr. Souran's negligence claim.

A bankruptcy court exercises jurisdiction derivative of and dependent upon a district court's jurisdiction. The district courts have original and exclusive jurisdiction of "all cases under title 11." 28 U.S.C. § 1334(a). The district courts also 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. § 1334(b) (emphasis added). The district courts are permitted by statute to refer bankruptcy cases and proceedings to the bankruptcy judges for the district. 28 U.S.C.

¹ It is not clear to the Court if the Kia was actually owned by Mr. Souran at the time of the theft from the Motel 6 parking lot. For the purpose of this motion to dismiss, the Court accepts as true the allegation in the Complaint that Mr. Souran owns the Kia, but also notes for the record that Mr. Souran's Amended Schedule A/B avers that the Kia is owned by Mr. Souran's girlfriend, stating that Mr. Souran had a claim against Motel 6 because "Debtor's Girlfriend Auto was stolen and Debtor feels that the Hotel was Negligent in Security. Debtor is filing a small claims action against the hotel for \$3,500." *See In re Souran*, Case No. 21-25247-kmp, Amended Schedule A/B, Docket No. 127 at 5. Additionally, Mr. Souran's Amended Schedule A/B avers that he did not own any vehicles and his Amended Statement of Financial Affairs avers that he held or controlled a "2015 Kia Soul. Debtor's former girlfriend's vehicle that is titled in Girlfriend's name." *Id.*, Docket No. 127 at 1; Docket No. 126 at 8.

§ 157(a). The United States District Court for the Eastern District of Wisconsin has made such a reference. *See* Order of Reference (E.D. Wis. July 10, 1984) (available at www.wied.uscourts.gov/general-orders/order-reference).

For this Court to have jurisdiction, each claim asserted in Mr. Souran's Complaint must fall into one of the categories of bankruptcy court jurisdiction. It must be either (1) a proceeding "arising under" the Bankruptcy Code; (2) a proceeding "arising in" a bankruptcy case; or (3) a proceeding "related to" a bankruptcy case. 28 U.S.C. §§ 157, 1334.

Claims "arising under" the Bankruptcy Code "depend on a right created or determined by a statutory provision of title 11." *Nelson v. Welch (In re Repository Techs., Inc.)*, 601 F.3d 710, 719 (7th Cir. 2010). "A dispute 'arises under' the Bankruptcy Code when it presents a substantive question of bankruptcy law." *Bush v. United States*, 100 F.4th 807, 811 (7th Cir. 2024). Proceedings "arising in" bankruptcy cases are "administrative matters that arise *only* in bankruptcy cases" but have "no existence outside of the bankruptcy." *Repository Techs.*, 601 F.3d at 719 (emphasis in original).

The Court has "arising under" subject matter jurisdiction over Mr. Souran's claim for a violation of the automatic stay. A complaint asserting a violation of the automatic stay is a proceeding "arising under" the Bankruptcy Code. A claim under 11 U.S.C. § 362(k) is a right created or determined by a statutory provision of title 11. Mr. Souran has presented a substantive question of bankruptcy law by alleging a violation of the automatic stay and by seeking damages under § 362(k). Mr. Souran's claim for violation of the automatic stay derives directly from the Bankruptcy Code and falls squarely within this Court's jurisdiction.

Kia argues that this Court does not have subject matter jurisdiction over Mr. Souran's claim for a willful violation of the stay because Mr. Souran received a discharge and his bankruptcy case was closed for almost ten months before he filed this adversary proceeding. Section 362(k) does not state that a claim for violation of the automatic stay exists only while the bankruptcy case is pending and it does not state that such a claim can only be brought in an existing bankruptcy case. In fact, the Seventh Circuit has held that "§ 362([k]) creates a cause of action that can be enforced after bankruptcy proceedings have terminated." *Price v. Rochford*, 947 F.2d 829, 830-31 (7th Cir. 1991). The Court has jurisdiction over Mr. Souran's claim for violation of the automatic stay even though his underlying bankruptcy case was closed at the time this adversary proceeding was filed.

As for Mr. Souran's negligence claim, the Court does not have "arising under" or "arising in" subject matter jurisdiction over that claim. A negligence claim does not depend on a right created or determined under a statutory provision of title 11 and it does not present a substantive question of bankruptcy law, so it is not a claim "arising under" the Bankruptcy Code. A negligence claim is also not a claim that arises only in a bankruptcy case. A state law negligence claim exists independent of any bankruptcy case, so the Court does not have "arising in" subject matter jurisdiction over Mr. Souran's negligence claim either.

The Court also does not have “related to” subject matter jurisdiction over Mr. Souran’s negligence claim. A matter “comes within the related-to jurisdiction [of the bankruptcy court] if it ‘could conceivably have any effect on the estate being administered in bankruptcy.’” *Bush*, 100 F.4th at 813 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995)). A proceeding is “related to” a bankruptcy case when resolution of the dispute “affects the amount of property for distribution [i.e., the debtor’s estate] or the allocation of property among creditors.” *In re FedPak Sys.*, 80 F.3d 207, 213-14 (7th Cir. 1996).

Here, the Court does not have “related to” jurisdiction over Mr. Souran’s negligence claim because Mr. Souran’s negligence claim does not have any effect on the estate that has already been administered in bankruptcy and any recovery on the claim would not be available to satisfy the claims of Mr. Souran’s creditors in the bankruptcy case.

The filing of a bankruptcy petition creates an “estate” containing “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). The estate “comprises the pot of assets that will be divided amongst creditors according to various rules.” *Ryan v. Branko Prpa MD, LLC*, 55 F.4th 1108, 1112 (7th Cir. 2022).

Upon conversion of a case from one chapter to another, the definition of “property of the estate” is adjusted. 11 U.S.C. § 348. When a debtor converts a Chapter 13 case to Chapter 7, “property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion.” 11 U.S.C. § 348(f)(1)(A). The property the debtor acquired between the petition date and the conversion date is not property of the estate in the converted case unless the debtor sought to convert the case in bad faith. 11 U.S.C. § 348(f)(2).

In this case, Mr. Souran filed a Chapter 13 bankruptcy case on September 30, 2021. He converted his case from Chapter 13 to Chapter 7 on May 11, 2022. By operation of § 348, the property of the estate in Mr. Souran’s Chapter 7 case consisted of Mr. Souran’s legal and equitable interests in property as of September 30, 2021. Mr. Souran alleges in his Complaint that his Kia was stolen from the Motel 6 parking lot on April 16, 2022, which means that the earliest Mr. Souran had a negligence claim was April 16, 2022. The negligence claim arose between the petition date of September 30, 2021 and the conversion date of May 11, 2022. There is no allegation that Mr. Souran converted his case in bad faith. Accordingly, by operation of § 348, the negligence claim, and any recovery thereon, is not property of the Chapter 7 estate.

For the Court to have “related to” jurisdiction over Mr. Souran’s negligence claim, the claim has to affect the estate being administered in bankruptcy. It has to affect the amount of property available for distribution to Mr. Souran’s creditors. The negligence claim does not affect the estate being administered in bankruptcy because the negligence claim is not property of the Chapter 7 estate. Since it is not property of the estate, any recovery on the negligence claim is not available for distribution to Mr. Souran’s creditors in his Chapter 7 bankruptcy case.

Accordingly, the Court does not have “related to” jurisdiction over Mr. Souran’s negligence claim.

The Court does not have “arising under,” “arising in,” or “related to” jurisdiction over Mr. Souran’s negligence claim. Accordingly, Mr. Souran’s negligence claim against Kia is dismissed pursuant to Fed. R. Civ. P. 12(b)(1) due to lack of subject matter jurisdiction.

As stated above, the Court does have subject matter jurisdiction over Mr. Souran’s claim against Kia asserting a violation of the automatic stay. However, Mr. Souran has not stated a claim for violation of the automatic stay in his Complaint and therefore this claim must be dismissed under Rule 12(b)(6).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’”” *Id.* (quoting *Twombly*, 550 U.S. at 557). A complaint must contain factual allegations that nudge the claims “across the line from conceivable to plausible.” *Id.* at 680 (quoting *Twombly*, 550 U.S. at 570). When ruling on a motion to dismiss, the court must review the complaint to determine whether it contains “enough fact to raise a reasonable expectation that discovery will reveal evidence” to support liability for the alleged wrongdoing. *Twombly*, 550 U.S. at 556. “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do’” and “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

The Court is unable to discern from the facts pled in the Complaint how Kia violated the automatic stay. The filing of a bankruptcy case operates as a stay as to certain actions against the debtor, such as commencing or continuing a lawsuit against the debtor, enforcing a judgment against the debtor, obtaining possession of property of the estate, perfecting a lien against property of the estate, or attempting to collect or recover a claim against the debtor that arose before the commencement of the case. 11 U.S.C. § 362(a). Mr. Souran does not invoke any paragraphs of § 362(a) as the basis for his claim that Kia has violated the automatic stay in this case. Furthermore, Mr. Souran’s Complaint only contains conclusory statements that Kia violated the automatic stay. The only facts pled in support of his claim are that an unknown third party stole his vehicle from a parking lot. Mr. Souran has not pled sufficient facts that permit this Court to draw the reasonable inference that Kia violated the automatic stay when an unknown third party stole his vehicle. Mr. Souran has not pled any facts that show that Kia commenced or continued a lawsuit against him, enforced a judgment against him, obtained

possession of property of the estate, perfected a lien against property of the estate, or attempted to collect or recover a claim against him that arose before the commencement of the case, or otherwise violated any provision of § 362(a). Mr. Souran has not plausibly stated a claim that Kia violated the automatic stay. Accordingly, Mr. Souran's claim against Kia for violation of the automatic stay is dismissed pursuant to Rule 12(b)(6) for failing to state a claim upon which relief can be granted.

Mr. Souran's claims against Motel 6 related to the theft of his Kia from the Motel 6 parking lot suffer from many of the same substantive problems as his claims against Kia do. However, Motel 6 has not responded to the Complaint. But it does not appear that Motel 6 has been properly served with the Complaint.

Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure permits service to be made on a domestic or foreign corporation, a partnership, or another unincorporated association by United States Mail, but the summons and complaint must be mailed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

Mr. Souran filed a certificate of service stating that he served the Summons and Complaint via United States Mail on Motel 6 at the "Motel 6 Principal Office: 10807 Laurel St, Ste #100, Rancho Cucamonga, CA 91730." Docket No. 9. The Court does not know what type of entity Motel 6 is or whether the address stated on the certificate of service is a correct address. However, according to the certificate of service, the documents were not mailed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service does not demonstrate proper service on a corporation, partnership, or other unincorporated association.

Mr. Souran was required to properly serve the Complaint on Motel 6 within 90 days after the Complaint was filed. *See* Fed. R. Civ. P. 4(m) (incorporated in adversary proceedings by Fed. R. Bankr. P. 7004(a)). The Complaint was filed in this case on July 10, 2023. Mr. Souran is hereby put on notice that this Court will dismiss his claims against Motel 6 on or after August 9, 2024 unless Mr. Souran shows good cause for his failure to properly serve Motel 6 with the Summons and Complaint.

IT IS THEREFORE ORDERED: the negligence claim against Kia America, Inc. is dismissed for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

IT IS FURTHER ORDERED: the claim for violation of the automatic stay of 11 U.S.C. § 362(a) against Kia America, Inc. is dismissed for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

IT IS FURTHER ORDERED: on or before **August 9, 2024**, Mr. Souran must show good cause for his failure to properly serve Motel 6 with the Summons and Complaint. If Mr. Souran

does not show good cause for his failure to properly serve Motel 6 with the Summons and Complaint, the Court will enter an order dismissing the claims against Motel 6 without further notice or hearing.

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