

So Ordered.

Dated: March 25, 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.

Chapter 7
Case No. 21-25247-kmp

Thomas C. Souran,
Plaintiff,

v.

Adv. No. 23-2053

EZ Pawn Iowa, Inc., Kerri Putnum, and
Mark Dierdorff,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS ADVERSARY COMPLAINT

Debtor Thomas Souran asserts in this adversary proceeding that the Defendants, a pawn shop and its employees, have violated the automatic stay. He requests, as his remedies, that this Court order the pawn shop to permit him to redeem all of his pawned items and award him actual damages and punitive damages in the amount of \$5 million. The Defendants have moved to dismiss the Complaint on two grounds, arguing that the Court lacks subject matter jurisdiction and that Mr. Souran has failed to state a claim upon which relief can be granted. For the reasons that follow, the Court concludes that it clearly has subject matter jurisdiction to adjudicate an alleged violation of the automatic stay but grants the Defendants' motion to dismiss due to Mr. Souran's failure to state a claim upon which relief can be granted.

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.

Several months later, on April 19, 2023, Mr. Souran filed the Complaint in this adversary proceeding alleging that the Defendants, the EZ Pawn pawn shop and two of its employees, violated the automatic stay of 11 U.S.C. § 362(a)(6) by not permitting him to redeem the property that he had pawned at the pawn shop and seeking damages under § 362(k). As a remedy for the Defendants' alleged stay violation, Mr. Souran asks the Court to enter an order requiring the Defendants to permit him to redeem all of the pawned items and awarding him actual damages and punitive damages in the amount of \$5 million.

Mr. Souran's Complaint describes a typical pawn shop transaction. It states that "EZ Pawn loaned Souran money, and Souran provided security as follows" and provides the following list:

- On Ticket 0088243 (the amount advanced \$185.00)
- On Ticket 0086911 (the advanced amount \$594.00)
- On Ticket 0086979 (loan amount \$500.00)
- On Ticket 0086980 (loan amount \$750.00)
- On Ticket 0086445 (loan amount \$730.00)
- On Ticket 97233 (loan amount \$600.00)
- On Ticket 0086911 (loan amount \$594.00)
- On Ticket 0086912 (loan amount \$726.00)
- On Ticket 0087329 (loan amount \$265.00)
- On Ticket 0088243 (loan amount \$185.00)

Compl. ¶ 3. Other than passing references to a big screen television and computers, the Complaint does not say what property was pawned by Mr. Souran. Nor does it say when Mr. Souran pawned any of the property. Mr. Souran alleges that he "filed for Chapter 7 Bankruptcy by converting his Chapter 13 on May 11, 2022." *Id.* ¶ 1. He states that he "notified Defendants of the filing for Chapter 7" on or about April 28, 2022 and called the corporate office on that date. *Id.* ¶¶ 2, 9. A week later, he received a call back from the regional manager. *Id.* ¶ 10. He also alleges that EZ Pawn "received notice of the bankruptcy filing and automatic stay by text on June 06, 2022, and by the Clerk of the Court." *Id.* ¶ 25. After receiving notice of the automatic stay, the Defendants "intentionally refused to allow Souran the opportunity to redeem his property." *Id.* ¶ 26.

The Defendants have filed a motion to dismiss the Complaint. They argue that the Court lacks subject matter jurisdiction over the claims asserted by Mr. Souran. *See* Fed. R. Civ. P. 12(b)(1) (incorporated in adversary proceedings by Fed. R. Bankr. P. 7012(b)). They further argue that Mr. Souran has failed to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6) (incorporated in adversary proceedings by Fed. R. Bankr. P. 7012(b)).

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). The district courts are permitted by statute to refer bankruptcy cases and proceedings to the bankruptcy judges for the district. 28 U.S.C. § 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, the 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*, 939 F.3d 839, 844 (7th Cir. 2019).

In arguing that the Defendants have violated the automatic stay, Mr. Souran invokes two sections of the Bankruptcy Code. Section 362(a)(6) states that a bankruptcy petition operates as a stay of “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” Section 362(k) states that an individual injured by any willful violation of the stay “shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.”

This Court has subject matter jurisdiction over a complaint that asserts 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 damages based on alleged actions taken by the Defendants in violation of the automatic stay derives directly from the Bankruptcy Code, can only be brought in the context of a bankruptcy case, and falls squarely within this Court’s core jurisdiction.

The Defendants argue in their brief that the claims asserted in this adversary proceeding do not “arise under” Title 11 because the claims have been asserted in an adversary proceeding and “a case under title 11 means the main bankruptcy case and not an adversary proceeding,” citing *Torrence v. Comcast Corp. (In re Torrence)*, No. 15 C 6651, 2016 U.S. Dist. LEXIS 78259, at *12 (N.D. Ill. June 9, 2016). This assertion misreads *Torrence* and conflates “cases under title 11” and “proceedings arising under title 11” as these two separate phrases are used in 28 U.S.C. § 1334(a) and § 1334(b). Federal district courts, and bankruptcy courts by referral, have jurisdiction over “cases under title 11,” meaning the main bankruptcy case, but they also have jurisdiction over all civil proceedings “arising under” the Bankruptcy Code or “arising in” or “related to” bankruptcy cases. A complaint alleging a violation of the automatic stay is

clearly a proceeding “arising under” the Bankruptcy Code and this Court clearly has subject matter jurisdiction over such a claim.

While the Court has subject matter jurisdiction over Mr. Souran’s Complaint, his Complaint fails to state a claim upon which relief can be granted and must be dismissed. When ruling on a motion to dismiss, the Court accepts as true all of the allegations in the Complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “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.’” *Id.* (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.*

Mr. Souran alleges in his Complaint that the Defendants violated the automatic stay set forth in § 362(a)(6). That section states that a bankruptcy petition operates as a stay of “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” The thrust of Mr. Souran’s Complaint is that the Defendants violated the stay of § 362(a)(6) when they refused to permit him to redeem the pawned property.

Mr. Souran has not pled sufficient facts for the Court to determine whether Mr. Souran still had the right to redeem the pawned property at the time that the Defendants allegedly refused to permit him to redeem the pawned property. If Mr. Souran no longer had the right to redeem the pawned property, the Defendants could not have violated the automatic stay by refusing to permit him to redeem the pawned property.

The interplay between Mr. Souran’s rights under the pawn contracts and the timing of his bankruptcy case determines whether Mr. Souran can state a claim for violation of the automatic stay. It is absolutely critical to know when Mr. Souran entered into each pawn contract, the maturity date of each pawn contract, and the redemption period for each pawn contract under state law to determine Mr. Souran’s rights under the pawn contracts during his bankruptcy case and to determine any additional redemption period offered by the Bankruptcy Code. However, Mr. Souran’s Complaint is devoid of any of those dates.

A typical pawn shop transaction proceeds as follows under Illinois law. The pawner deposits property with the pawn shop in exchange for a loan. The pawn contract must disclose the amount of money advanced, the maturity date of the pawn, which must be at least 30 days after the date of the pawn, the total pawn interest and service charge payable on the maturity date, and the total payments that must be made to redeem the pawned goods on the maturity date. 205 Ill. Comp. Stat. 510/2. The pawn contract must be delivered to the person pawning the property and the pawn contract must contain an accurate account and description of the goods pawned, the amount of money received, the time of the pledging of the pawned property, the rate of interest to be paid on the loan, the name and residence of the person making the pawn, and the amount of fees to be charged. 205 Ill. Comp. Stat. 510/4. If the pawner fails to repay the loan by the maturity date, the pawn shop must automatically extend a grace period of 30 days from the

maturity date during which the pawn shop may not dispose of or sell the pawned property. 205 Ill. Comp. Stat. 510/10. The pawner and the pawn shop are permitted to extend or renew a loan upon terms agreed to by the parties. *Id.* In summary, there are four critical dates for a pawn shop transaction under Illinois law: (1) the date the parties enter into the pawn contract; (2) the maturity date of the pawn contract, which must be at least 30 days after the date of the pawn; (3) the redemption date, which is an additional 30 day grace period after the maturity date during which the pawn shop may not dispose of or sell the pawned property and the pawner can redeem the pawned property; and (4) any dates of agreed extensions or renewals of the loan that extend the maturity or redemption deadlines.

Mr. Souran has not pled the dates of the pawn contracts, the dates of any extended or renewed pawn contracts, the maturity dates of the pawn contracts, or the redemption dates of the pawn contracts. It may be that under Illinois law Mr. Souran no longer possessed the right to redeem the pawned property at the time that the Defendants allegedly refused to permit him to redeem the pawned property. If that is true, then the Defendants may not have violated the automatic stay when they allegedly refused to permit him to redeem the pawned property. Mr. Souran is required to plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” He has not done so.

Mr. Souran has also not pled any facts that show that he was entitled to the additional redemption period offered under the Bankruptcy Code. In certain circumstances, the filing of a bankruptcy petition can extend the state law right to redeem pawned property. The Bankruptcy Code provides that

if applicable nonbankruptcy law . . . or an agreement fixes a period within which the debtor . . . may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 60 days after the order for relief.

11 U.S.C. § 108(b). The extension provided by this section is limited. The filing of a bankruptcy petition extends the state law right to redeem pawned property only if the state law redemption period did not expire before the date of the filing of the petition. If the state law redemption period did not expire before the date of the filing of the petition, then the Bankruptcy Code extends the redemption period to the later of the state law redemption period or 60 days after the “order for relief.” The date of the “order for relief” is the date of the filing of the

petition. 11 U.S.C. § 301. The conversion of a case from one chapter to another does not change the date of the order for relief. 11 U.S.C. § 348(a).

Mr. Souran has also not pled any facts that show that he was entitled to the additional redemption period offered under the Bankruptcy Code. The Court is not able to tell from the Complaint whether the state law redemption period expired before the date of the filing of the petition in this case. If the state law redemption period expired before the date of the filing of the petition in this case, then there is no additional redemption period available to Mr. Souran under the Bankruptcy Code. If the state law redemption period did not expire before the date of the filing of the petition in this case, then Mr. Souran may have been entitled to 60 additional days from the date of the filing of his petition to redeem the pawned property.

The Court is also concerned that Mr. Souran believes that the date of the conversion of his case from Chapter 13 to Chapter 7 is the date that he filed the petition in this case for the purpose of obtaining the additional redemption period stated in the Bankruptcy Code. Compl. ¶ 1 (“Souran filed for Chapter 7 Bankruptcy by converting his Chapter 13 on May 11, 2022.”). The Bankruptcy Code explicitly states that conversion of a case does not change the date of the filing of the petition, the commencement of the case, or the order for relief:

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C. § 348(a). The conversion of Mr. Souran’s case did not change the date of the order for relief or the date that he filed his petition. Mr. Souran filed his bankruptcy petition on September 30, 2021, so the additional redemption period offered under the Bankruptcy Code expired when the state law redemption period expired or 60 days after he filed his bankruptcy petition (i.e., November 29, 2021), whichever was later. If Mr. Souran’s right to redeem the pawned property had expired, the Defendants would have been within their rights to dispose of or sell the pawned property. If Mr. Souran no longer had a right to redeem the pawned property, the Defendants could not have violated the automatic stay by refusing to permit him to redeem the pawned property. Given the lack of dates provided in the Complaint, Mr. Souran has not stated a claim for a violation of the stay.

Accepting as true all of the allegations asserted in the Complaint, Mr. Souran has not stated a claim that the Defendants violated the automatic stay. The thrust of the Complaint is that the Defendants violated the automatic stay by refusing to allow Mr. Souran the opportunity to redeem his property. The Complaint assumes that Mr. Souran had a right to redeem the pawned property but there are no facts pled in the Complaint to support that assumption. There are no allegations as to when Mr. Souran pawned any of the property, what the original maturity dates were for any of the pawns, or when the statutory redemption periods expired. The

Complaint simply lists ten pawn ticket numbers and corresponding loan amounts without any dates. Mr. Souran has not pled sufficient factual content that allows the Court to determine that Mr. Souran still had the right to redeem the pawned property under Illinois law at the time that the Defendants allegedly refused to permit him to redeem the pawned property. If Mr. Souran's right to redeem the property had expired, the Defendants would have been within their rights to dispose of or sell the pawned property. If Mr. Souran no longer possessed the right to redeem the pawned property at the time that the Defendants allegedly refused to permit him to redeem the pawned property, then the Defendants could not have violated the automatic stay when they allegedly refused to permit him to redeem the pawned property. Without alleging a stay violation, Mr. Souran has not stated a claim for damages under § 362(k) based on alleged actions taken by the Defendants in violation of the automatic stay.

The Court will afford Mr. Souran one final opportunity to amend his complaint to allege facts that support a claim that the Defendants violated the automatic stay when they refused to permit him to redeem the pawned property. Specifically, the amended complaint must state the date Mr. Souran entered into each pawn contract, the original maturity date of each pawn contract, the dates of any extensions or renewals of any of the loans, any subsequent maturity dates of the pawn contracts, and any asserted redemption dates for the pawn contracts under Illinois state law.

Accordingly,

IT IS THEREFORE ORDERED: the Complaint is dismissed without prejudice for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED: Plaintiff Thomas C. Souran is granted leave to file an amended complaint on or before April 25, 2024. If Mr. Souran fails to file an amended complaint by this date, the Court will enter an order dismissing this adversary proceeding with prejudice for failure to state a claim, failure to comply with a court order, and/or failure to prosecute this adversary proceeding.

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