

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: ROBERT DON UMBERSON, Debtor

**No. 5:09-bk-71463
Ch. 13**

ROTOWORKS INTERNATIONAL LTD.

PLAINTIFF

v.

5:09-ap-7110

**ROBERT DON UMBERSON,
GRASSWORKS USA, LLC, and
METALWORKS, LLC**

DEFENDANTS

ORDER

On July 7, 2009, Rotoworks International LTD [Rotoworks] filed a complaint to pierce the corporate veils of Grassworks USA, LLC [Grassworks] and Metalworks, LLC [Metalworks] so that damages awarded in the United States District Court for the Western District of Arkansas in favor of Rotoworks and against Grassworks and Metalworks would become the debts of Umberson under a theory of joint and several liability. According to Rotoworks, if Grassworks and Metalworks are found to be alter-egos of Umberson sufficient to make Umberson responsible for the total damages awarded in district court, then those damages should be included in Umberson's bankruptcy schedules. If included, according to Rotoworks, Umberson would then exceed the debt limit allowed in a chapter 13 case. This would result in Umberson either converting the case to chapter 7 or 11, or having the case dismissed. If Umberson converted, then Rotoworks would have a potential cause of action under § 523(a)(6) for a willful and malicious injury based, in part, on the district court's findings. In its current posture, and pursuant to § 1328(a), the alleged § 523(a)(6) claim may be discharged in Umberson's chapter 13 case.

Umberson timely answered Rotoworks's complaint on August 5, 2009. On October 13, 2009, Umberson filed his Motion to Dismiss and Motion For Summary Judgment.

Umberson argues that Rotoworks had the opportunity to argue its theory of piercing the

corporate veil during the district court proceeding and, because it did not, it is now precluded from bringing the action in this Court under the doctrine of res judicata. Rotoworks filed its Plaintiff's Response to Motion For Summary Judgment and Motion to Dismiss on October 26, 2009.

At the trial on October 27, 2009, Theresa L. Pockrus appeared for the debtor, Umberson, and Mark M. Henry and Adam L. Hopkins appeared for the plaintiff, Rotoworks. After hearing arguments on the motion for summary judgment, the Court took the case under advisement so that it could rule on the motion prior to hearing the case on the merits. After a review of the case and consideration of the arguments made to the Court, the Court dismisses the adversary proceeding for lack of subject matter jurisdiction.¹

Although Rotoworks alleges in its complaint, and Umberson admits in his answer, that this Court has jurisdiction of this matter and that it is a core proceeding under 28 U.S.C. § 157(b), the Court disagrees. This Court, by reference from the United States District Court, has jurisdiction of all proceedings arising under title 11 or arising in or related to a case under title 11. 28 U.S.C. § 157. A proceeding is a core proceeding if it arises under title 11 or arises in a case under title 11. A proceeding that arises under title 11 is a proceeding ““that involve[s] a cause of action created or determined by a statutory provision of title 11.”” *In re Farmland Indus.*, 567 F.3d 1010, 1018 (8th Cir. 2009)(quoting *In re Wood*, 825 F.2d 90, 96 (5th Cir. 1987)). A proceeding that arises in a case under title 11 is a proceeding that is not based on a specific right created by title 11, but would have no existence outside the debtor's bankruptcy. *Id.* The act of piercing a corporate veil neither arises under title 11 or arises in a case under title 11; it is a legal determination that is governed by state law. *Stoebner v. Lingenfelter*, 115 F.2d 576, 579 (8th Cir. 1997). In other words, it is not a core proceeding.

¹ Federal Rule of Civil Procedure 12(h)(3), made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 7012, states: “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

Even though it is not a core proceeding, the Court also has jurisdiction over non-core but related to proceedings. A proceeding is related to when the outcome of the proceeding could “conceivably have any effect on the estate being administered in bankruptcy. . . . An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate.” *Id.* at 1019 (quoting *Specialty Mills, Inc. v. Citizens State Bank*, 51 F.3d 770, 774 (8th Cir. 1995)). Admittedly, if Rotoworks was to prevail in its action to pierce the corporate veils and Umberson was found to be liable for the debts of Grassworks and Metalworks, the debtor’s existing personal liabilities could be altered. However, for the reasons stated below, this would have no effect on the administration of the debtor’s current chapter 13 bankruptcy case.

After an initial objection to Umberson’s ability to qualify as a chapter 13 debtor because of the chapter 13 debt limits, which was subsequently resolved, there is no longer any dispute that at the time of filing, Umberson’s noncontingent, liquidated, unsecured debts did not exceed \$336,900. Section 109 of the bankruptcy code states, in part, that “[o]nly an individual with regular income that owes, *on the date of the filing of the petition*, noncontingent, liquidated, unsecured debts of less than \$336,900 . . . may be a debtor under chapter 13 of this title.” 11 U.S.C. § 109(e)(emphasis added). It is the debt owed on the date the petition was filed to which the Court must look to determine chapter 13 eligibility under the code. Even if Umberson was later found to be jointly and severally liable for the debt owed by Grassworks and Metalworks, at the time the petition was filed Umberson was eligible to be a debtor under chapter 13.

Further, because Umberson is not currently liable for the debts of Grassworks and Metalworks, any liability that may attach in the future would be postpetition debt. Only taxes that become payable while a chapter 13 case is pending or consumer debt that arises after the date of the petition may be added to a debtor’s chapter 13 case, and then, only upon the filing of a proof of claim by the creditor. 11 U.S.C. § 1305(a). Because of

this, the Court cannot conclude that piercing the corporate veils would conceivably have any effect on the debtor's bankruptcy estate.


Finally, in Count III of Rotoworks's complaint, Rotoworks objects under § 523(a)(6) to the dischargeability of the debt owed to Rotoworks by Umberson, and, if successful in its joint and several liability argument, by Grassworks and Metalworks. Rotoworks stated in its response to Umberson's motion for summary judgment that the purpose of bringing the § 523(a)(6) cause of action was to preserve "such objection to dischargeability in the event the Debtor converts to Chapter 7." Although the Court appreciates counsel's concern, Federal Rule of Bankruptcy Procedure 1019(2) provides for a new time period within which a creditor may file a complaint to determine the dischargeability of a debt when a chapter 13 case converts to chapter 7. According to the bankruptcy code, after the debtor completes all of his payments under his plan, the debtor is eligible for a discharge of all of the debts provided for by the debtor's plan. 11 U.S.C. § 1328(a). Although there are some exceptions to this provision, a debt under § 523(a)(6) that did not cause personal injury or death to an individual is not included in the exceptions and is dischargeable.

Because the Court finds that it does not have subject-matter jurisdiction over this adversary proceeding, the Court must dismiss Rotowork's complaint pursuant to Federal Rule of Civil Procedure 12(h)(3).

IT IS SO ORDERED.

November 5, 2009

DATE



BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: Theresa L. Pockrus
Mark Murphey Henry
Adam L. Hopkins