

**United States Bankruptcy Court
District of New Mexico**

Document Verification

Case Title: Century Bank, FSB v. Heritage Park, Inc., et al.
Case Number: 99-01216
Nature of Suit:
Judge Code: S
Reference Number: 99-01216 - S

Document Information			
Number:	52		
Description:	Memorandum Opinion re: [37-1] Motion To Amend Counterclaim by Heritage Park, Inc. .		
Size:	7 pages (15k)		
Date Received:	02/26/2001 11:35:14 AM	Date Filed:	02/26/2001
		Date Entered On Docket: 02/26/2001	
Court Digital Signature			View History
3b 53 92 08 3a 21 62 c8 75 7b 72 7f 34 6d 97 30 9e 6c 9d 95 b7 64 90 dd 0c 32 ff 4b a5 d5 2c d1 ed 6f ad 6e a4 34 8e 52 a5 c9 76 dd 0a 4b f1 8d 9c dd 9b 14 af 7a b7 33 28 6a 41 f7 8b d2 ca 8f 51 e8 9c 0d 8e 21 d6 bd b1 72 b8 b9 18 88 63 4d 84 4e 28 49 78 a1 d3 95 57 4f c0 d8 8a 31 8e 55 dd 69 5a 00 c7 2e 36 32 3d c4 58 3a 9e fe 10 31 24 0c 32 1b 6c 36 d1 0f 0d 29 df 16 db d7 67 80			
Filer Information			
Submitted By:			
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

KARLA A. ROYBAL and
REYNALDO J. ROYBAL,
Debtors.

No. 7-99-15513 SS

CENTURY BANK, FSB,
Plaintiff,

v.

Adv No. 99-1216 S

HERITAGE PARK, INC., et al.,
Defendants.

**MEMORANDUM OPINION ON MOTION
BY HERITAGE PARK, INC. TO AMEND COUNTERCLAIM**

This matter is before the Court on the Motion to Amend Counterclaim filed by Heritage Park, Inc. (doc. 37) and the Objection thereto filed by Century Bank, FSB (doc. 43). For the reasons set forth below, the Court finds that the Motion should be denied and that the original counterclaim (doc. 6) should be dismissed, without prejudice, because it is not a "related to" proceeding over which the Bankruptcy Court has jurisdiction.

The Court set out facts relating to this case in a Memorandum Opinion on Trustee's Motion for Summary Judgment issued on this same date. In that opinion the Court ruled that Heritage had only a landlord's lien on the sale proceeds of the collateral, and that the Trustee could avoid Heritage's claimed lien. The Court will assume familiarity with those

facts. In addition, in the counterclaim and amended counterclaim Heritage alleges 1) Century liquidated the collateral in disregard of its position as agent-bailee, 2) Century breached fiduciary duties to Heritage when it liquidated property without consent of Heritage, 3) Heritage's interest in the account is paramount to Century's because of the lien granted in the Agreement for Relocation, 4) the Relocation Agreement prohibits Century from taking action to change the validity or priority of Heritage's lien, 5) Century has violated the Relocation Agreement by bringing this adversary proceeding, 6) Century was a bailee that violated its fiduciary duties. Heritage seeks judgment against Century based on breach of contract and fiduciary duty, asking for damages, interest, and attorney fees. Heritage also seeks judgment against Century for intentional, willful and malicious breach of fiduciary duty, asking for damages, interest, attorney fees and punitive damages.

Bankruptcy Jurisdiction

Federal courts are courts of limited jurisdiction, and empowered to hear only those cases authorized and defined in the Constitution and entrusted to them by Congress. Henry v. Office of Thrift Supervision, 43 F.3d 507, 511 (10th Cir. 1994). Parties cannot waive lack of subject matter

jurisdiction. Id. Federal courts are obligated to examine their own jurisdiction, and subject matter jurisdiction can be raised at any time, by a party or by the court sua sponte. May v. Missouri Department of Revenue (In re May), 251 B.R. 714, 719 (8th Cir. B.A.P. 2000).

Bankruptcy Court jurisdiction is established by 28 U.S.C. § 1334, which lists four types of matters over which the district court has bankruptcy jurisdiction: 1) cases "under" title 11 (which are the bankruptcy cases themselves, initiated by the filing of a Chapter 7, Chapter 11, etc. petition), 2) proceedings "arising under" title 11, 3) proceedings "arising in" a case under title 11, and 4) proceedings "related to" a case under title 11. Wood v. Wood (In re Wood), 825 F.2d 90, 92 (5th Cir. 1987). In the District of New Mexico, all four types have been referred to the bankruptcy court. See 28 U.S.C. § 157(a); Administrative Order, Misc. No. 84-0324 (D. N.M. March 19, 1992). Jurisdiction is then further broken down by 28 U.S.C. § 157, which grants full judicial power to bankruptcy courts over "core" proceedings, but only limited judicial power over "related" or "non-core" proceedings. Wood, 825 F.2d at 91; Personette v. Kennedy (In re Midgard Corporation), 204 B.R. 764, 771 (10th Cir. B.A.P. 1997).

"Core" proceedings are matters "arising under" and "arising in" cases under title 11. Wood, 825 F.2d at 96; Midgard, 204 B.R. at 771. Matters "arise under" title 11 if they involve a cause of action created or determined by a statutory provision of title 11. Wood, 825 F.2d at 96; Midgard, 204 B.R. at 771. Matters "arise in" a bankruptcy if they concern the administration of the bankruptcy case and have no existence outside of the bankruptcy. Wood, 825 F.2d at 97; Midgard, 204 B.R. at 771.

"Non-core" proceedings are those that do not depend on the bankruptcy laws for their existence and that could proceed in another court even in the absence of bankruptcy. Wood, 825 F.2d at 96; Midgard, 204 B.R. at 771. Bankruptcy courts have jurisdiction over non-core proceedings if they are at least "related to" a case 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.")

"[T]he test for determining whether a civil proceeding is related in bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984)(emphasis omitted.) Although the proceeding need not be against the debtor or his property, the proceeding is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action

in any way, thereby impacting on the handling and administration of the estate. Id. ...

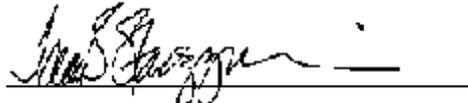
[T]he bankruptcy court lacks related jurisdiction to resolve controversies between third party creditors which do not involve the debtor or his property unless the court cannot complete administrative duties without resolving the controversy. In re Shirley Duke Assocs., 611 F.2d 15, 18 (2nd Cir. 1979).

Gardner v. United States (In re Gardner), 913 F.2d 1515, 1518 (10th Cir. 1990). See also Celotex v. Edwards, 514 U.S. 300, 307 n. 5 (1995) ("Proceedings 'related to' the bankruptcy include (1) causes of action owned by the debtor which become property of the estate pursuant to 11 U.S.C. § 541, and (2) suits between third parties which have an effect on the bankruptcy estate.")

The counterclaim (as well as the proposed amended counterclaim) in this adversary proceeding seeks to establish the liability of one creditor to another for breach of contract and breach of fiduciary duty. It does not seek to enforce any right granted by the bankruptcy code, nor does bankruptcy law determine the outcome of the case. It does not "arise under" title 11. Furthermore, the counterclaim does not concern the administration of the case; its has its own existence independent of the bankruptcy code. It also does not "arise in" a case under title 11. The counterclaim is not against the Debtors, and does not involve the Debtors'

property or the estate's property. The facts alleged in the counterclaim have nothing to do with the debtors' actions. The counterclaim does not seek to determine debtors' rights, liabilities, options, or freedom of action in any way. The counterclaim has no impact on the administration of the estate. The counterclaim is not "related to" the bankruptcy, and the Court lacks jurisdiction. Celotex v. Edwards, 514 U.S. 300, 308 n. 6 ("[B]ankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor.")

The Court will therefore enter an order denying the motion to amend the counterclaim and dismissing without prejudice the counterclaim portion of the Answer, Counterclaim and Cross-Claim of Defendant Heritage Park, Inc. Doc. 6.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on February 26, 2001, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties.

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