

Dated: January 16, 2013



*Eileen W. Hollowell*

Eileen W. Hollowell, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 7
	)	
JENNIFER MICHELE HARWOOD,	)	Case No. 4:11-bk-34126-EWH
	)	
	)	<b>MEMORANDUM DECISION</b>
Debtor.	)	
_____	)	

**I. INTRODUCTION**

On January 10, 2012, Jennifer Michele Harwood (“Harwood”) filed a motion to reopen (“Motion”) her Chapter 7 case (“Case”) to permit her to amend Schedule B to add claims under: (1) RESPA<sup>1</sup>; (2) breach of contract; (3) breach of covenant of good faith and fair dealing; (4) quiet title; (5) declaratory relief and injunctive relief against various lenders and the Mortgage Electronic Registration System, for alleged wrongful conduct regarding the mortgage secured by Harwood’s residence (collectively the “Additional Claims”). She also seeks to amend Schedule C to list the Additional Claims as exempt on the grounds that the Additional Claims “arose from damage to exempt property.” The Motion will be denied for the reasons explained below.

<sup>1</sup> Real Estate Settlement Procedures Act, 12 U.S.C. § 2601-2617.

1 **II. PROCEDURAL HISTORY**

2 Debtor filed a Chapter 7 case on December 16, 2011. She listed her residence  
3 (“Residence”) as exempt on Schedule C. No objection was filed to the exemption. She  
4 received a discharge on April 12, 2012. One day later, she filed an adversary  
5 (“Adversary”) seeking a declaration that she owned the Residence free and clear from  
6 claims of various defendants (“Defendants”) due to assertions regarding the alleged  
7 wrongful transfers of the note and deed of trust secured by the Residence. The  
8 Adversary’s claims are substantially similar, but do not encompass all of the Additional  
9 Claims. The Defendants are the same parties which are the subjects of the Additional  
10 Claims. On May 15, 2012, the trustee (“Trustee”) filed her report of no distribution. The  
11 Chapter 7 case was closed on May 22, 2012, but the Adversary remained open. The  
12 Adversary was dismissed without prejudice on June 22, 2012<sup>2</sup> because the Court found  
13 that, as a result of the entry of Harwood’s discharge, the Adversary was neither a core  
14 or related to proceeding under 28 U.S.C. § 157(b)(2) or (3) because it did not concern  
15 estate property and that, therefore, the Court lacked jurisdiction to hear the Adversary.  
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19 **III. DISCUSSION**

20 11 U.S.C. § 350(b) permits a case to be reopened to administer assets or to  
21 accord relief to the Debtor. Here, neither reason applies. The Trustee is not seeking to  
22 reopen the Case in order to administer the Additional Assets. While, according to  
23 Harwood, the Trustee does not object to the reopening of the Case, that, by itself, does  
24 not satisfy the requirements of § 350. A trustee must affirmatively seek to administer  
25 assets to satisfy § 350. Here, the Trustee has not done so. Therefore, reopening the  
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27 \_\_\_\_\_  
28 <sup>2</sup> Three days prior to the dismissal hearing, Harwood filed a Chapter 13, which was dismissed on October 30, 2012 for delinquent plan payments.

1 Case can only be justified if doing so would provide relief to Harwood. But, for the same  
2 reason that the Court dismissed the Adversary, it cannot provide the Debtor with any  
3 relief regarding the Additional Claims because it lacks the jurisdiction to adjudicate  
4 those claims. Because the Additional Claims “arose from damage to exempt property”  
5 (the “Residence”) which was claimed as exempt, the Additional Claims are not property  
6 of the bankruptcy estate. See Smith v. Kennedy ( In re Smith), 235 F.3d 472, 478 (9<sup>TH</sup>  
7 Cir. 2000) (“it is widely accepted that property deemed exempt from a debtor’s  
8 bankruptcy estate reverts in the debtor”). Litigation regarding the Additional Claims is,  
9 therefore, neither a core or related to proceeding because it does not concern  
10 bankruptcy estate assets. Instead, the Additional Claims are Harwood’s property, not  
11 subject to this Court’s jurisdiction because she has received her discharge. As  
12 explained to Harwood at the dismissal hearing in the Adversary, claims related to her  
13 Residence must be litigated in a court of competent jurisdiction. This is not such a  
14 court. In the alternative, even assuming that jurisdiction in this Court is proper, the  
15 Court, pursuant to 28 U.S.C. § 1334 abstains from considering the Additional Claims  
16 because the claims involve questions of Arizona law, not federal bankruptcy law.  
17 Accordingly an order will be entered this date denying the Motion.  
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21 Dated and signed above.  
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24 Notice to be sent through  
25 the Bankruptcy Noticing Center  
26 to the following:

26 Jennifer Michele Harwood  
27 44263 West McClelland Drive  
28 Phoenix, AZ 85138

1 Gayle Eskay Mills  
2 P.O. Box 36317  
3 Tucson, AZ 85740

4 Office of the U.S. Trustee  
5 230 N. First Ave., Ste. 204  
6 Phoenix, AZ 85003

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