

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: THE VAUGHAN COMPANY, REALTORS, No. 10-10759-j11
Debtor.

**ORDER CONFIRMING COURT’S JURISDICTION AND STRIKING
DAVID AND LEE ANN LANKFORDS’ OBJECTION TO THE TRUSTEE’S MOTION
FOR ENTRY OF ORDERS TO COMPLETE AND CLOSE THIS BANKRUPTCY CASE**

On October 4, 2019, Judith A. Wagner, Chapter 11 Trustee (“Trustee”) filed the Motion of Judith A. Wagner, Chapter 11 Trustee, for Entry of Orders (I) Authorizing a Final Distribution, (II) Establishing the Litigation Reserve; (III) Approving the Final Decree and Bar Order (IV), Closing the Chapter 11 Case, and (V) Authorizing Destruction of All Books and Records (“Motion for Entry of Orders to Complete and Close this Bankruptcy Case”). *See* Docket No. 3031. David Lankford and Lee Ann Lankford, *pro se*, objected to the Motion for Entry of Orders to Complete and Close this Bankruptcy Case (the “Objection”).¹ The Trustee then filed a motion to strike the Objection (“Motion to Strike”) (Docket No. 3036).² The Motion to Strike asserts that the Lankfords, by filing the Objection without prior court permission, violated an injunction entered by the United States District Court for the District of New Mexico on December 8, 2017 in Case No. 17-cv-10759 as Docket No. 24 (the “Injunction” or

¹ *See* Objection to Motion of Judith A. Wagner, Chapter 11 Trustee, for Entry of Orders (I) Authorizing a Final Distribution, (II) Establishing the Litigation Reserve, (III) Approving the Final Decree and Bar Order, (IV) Closing the Chapter 11 Case, and (V) Authorizing Destruction of All Books and Records (“Objection”) – Docket No. 3035.

² *See* Chapter 11 Trustee’s Motion to Strike Doc. 3035, the Lankfords’ Objection to Trustee’s Motion for Entry of Orders (I) Authorizing a Final Distribution, (II) Establishing the Litigation Reserve, (III) Approving the Final Decree and Bar Order, (IV) Closing the Chapter 11 Case, and (V) Authorizing Destruction of All Books and Records (“Motion to Strike”) – Docket No. 3036

“Injunction Order”). A copy of the Injunction is attached to the Motion to Strike. The Lankfords filed a response to the Motion to Strike (“Response to Motion to Strike”).³

In the Objection, the Lankfords assert, among other things, that they have been denied due process; that the Trustee and her counsel have committed fraud; and that this Court and other courts that have reviewed decisions of this Court relating to the Lankfords lacked jurisdiction, failed to consider the Lankfords’ evidence of corruption and fraud, are biased, and have covered up the Trustee’s fraud. The Lankfords contend that none of the federal judges who have entered orders or judgments against them have established proof of jurisdiction.

In the Response to Motion to Strike, the Lankfords do not contest that filing the Objection *pro se* without prior Court approval violated the terms of the Injunction. Instead, they contend that the filing of the Objection was not enjoined by the Injunction because the Injunction is void. The Lankfords take the position that all of the judgments and orders previously entered against them, including the Injunction, are void because they were entered in violation of the Lankfords’ constitutional due process rights by courts that lacked jurisdiction. They contend that the entry of the Injunction ignored the Lankfords’ constitutional rights, effectively blocking the Lankfords’ access to the courts.

In addition, similar to their arguments set forth in the Objection, in the Response to Motion to Strike, the Lankfords continue to assert that they have not received due process guaranteed by the Constitution, and that, by failing to establish proof of jurisdiction, this Court lost its jurisdiction over the Lankfords when it entered summary judgment against them.⁴

³ See Response to Chapter 11 Trustee’s Motion to Strike Doc. 3035, The Lankfords’ Objection to Trustee’s Motion for Entry of Orders (I) Authorizing a Final Distribution, (II) Establishing the Litigation Reserve, (III) Approving Final Decree and Bar Order, (IV) Closing Case, and (V) Authorizing Destruction of All Books and Records (“Response to Motion to Strike”) – Docket No. 3037.

⁴ In support for their Response to Motion to Strike, the Lankfords attached to their Response their Motion to Vacate Void Judgments per Rule 60(b)(4) filed November 30, 2017 in Adversary No. 12-1139 and

The Injunction, entered by the Chief Judge of the United States District Court for the District of New Mexico, enjoins the Lankfords, without a prior certification by their counsel of record, or prior court approval if they are acting pro se, from filing any further pleadings or motions in the United States District Court or in this Court related to the subject matter of their existing or prior lawsuits in such courts, including, but not limited to, filings related to the Lankfords' investment in the Vaughn Company, Realtors ("VCR"), the VCR bankruptcy case and any related litigation, including fraudulent transfer litigation; court rulings, including any attempt to attack, vacate, or reconsider this Court's judgments based on bias, fraud, or lack of due process; and any allegations of corruption, bias, or fraud by any party in connection with the VCR bankruptcy case, including judges, the Trustee, counsel, and state or federal agencies. *See* the Injunction.

This Court has an affirmative duty to examine its jurisdiction over the matters that come before it. *See In re Durability, Inc.*, 893 F.2d 264, 265 (10th Cir. 1990) (acknowledging that a federal court has a duty to determine its own jurisdiction *sua sponte*) (citing *Tuck v. United Servs. Auto., Ass'n* 859 F.2d 842, 844 (10th Cir. 1988)); *In re Play Membership Golf, Inc.*, 576 B.R. 15, 20 (Bankr. D. Colo. 2017) ("Federal courts 'have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,' and thus a court may *sua sponte* raise the question of whether there is subject matter jurisdiction 'at any stage in the litigation.'") (quoting *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044, 1048 (10th Cir. 2006) (additional internal quotation marks and citation omitted)). Pursuant to 28 U.S.C. § 157(a), the United States District Court may refer "any or all cases under title 11 or arising in or related to a case under title 11 . . . to the

their Motion to void Order Enjoining Plaintiffs filed in the United States District Court for the District of New Mexico in Case No. 17-cv-00668.

bankruptcy judges for this district.” 28 U.S.C. § 157(a). *See also Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1939, 191 L. Ed. 2d 911 (2015) (explaining that the statute allows each district to refer bankruptcy cases and related proceedings to the bankruptcy judges for the district). This referral is known as the “automatic reference” of bankruptcy matters by the district court to the bankruptcy court.

Section 1334 of Title 28 establishes the bankruptcy court’s jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). Bankruptcy courts have jurisdiction over “core proceedings,” which are proceedings that “have no existence outside of bankruptcy,” and which “depend on the bankruptcy laws for their existence.” *In re Gardner*, 913 F.2d. 1515, 1518 (10th Cir. 1990). Bankruptcy courts also have jurisdiction over matters “related to” bankruptcy cases. “Related to” matters are “civil proceedings that, in the absence of a bankruptcy petition, could have been brought in a district court or state court” but which otherwise relate to the bankruptcy case because 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 bankruptcy estate.” *Id.* With the parties express or implied consent, the bankruptcy court has constitutional authority to hear and finally determine, subject to review under 28 U.S.C. § 158, matters within the court’s related to jurisdiction. *See Wellness*, 135 S. Ct. at 1948 (litigants may give knowing and voluntary express or implied consent to the bankruptcy court’s final adjudication of matters under 28 U.S.C. § 157). Both the Trustee and the Lankfords expressly consented to this Court “hearing and determining all claims and issues in this adversary proceeding [referring to Adversary No. 12-1139] and entering final orders and judgments on all claims including money judgments as

appropriate, subject to review under 28 U.S.C. § 158.” See Consents filed April 30, 2012 in Adversary No. 12-1139 – Docket Nos. 9 and 10.

The fraudulent transfer actions, including the action the Trustee filed against the Lankfords initiating Adversary Proceeding No. 12-1139-j, fall within the Court’s subject matter jurisdiction under 28 U.S.C. § 1334(b). See *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 38, 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014) (fraudulent conveyance claims asserting that property should be recovered as part of the bankruptcy estate for distribution to creditors fall within the bankruptcy court’s “related to” jurisdiction). The matters raised in the Motion for Entry of Orders to Complete and Close this Bankruptcy Case concern the final administration of the bankruptcy estate and exist only because of the bankruptcy laws. Such matters fall within the Court’s core subject matter jurisdiction. The Court is satisfied that it has jurisdiction over the matters raised by the Lankfords in this bankruptcy case and in the related adversary proceeding.

Even the Lankfords have acknowledged this Court’s subject matter jurisdiction in a prior filing. See Adversary Proceeding No. 12-1139-j – Docket No. 155 (“This Court has subject matter jurisdiction over this proceeding as the underlying Bankruptcy Cases, 10-10750-j11, the Chapter 11, *The Vaughan Company, Realtors* and the associated adversary proceeding, 12-1139, *Wagner v. Lankford et al.*, were presented and adjudicated in this Court.”).

The United States District Court had the inherent power to issue the Injunction to restrict the Lankfords, who had a long history of repetitive and abusive filings, from filing additional pleadings or motions unless they obtain prior court permission. See *Cotner v. Hopkins*, 795 F.2d 900, 902 (10th Cir. 1986) (“There is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.”) (citations omitted); *Werner v. State of Utah*, 32 F.3d

1446, 1447 (10th Cir. 1994) (a federal court may impose filing restrictions on abusive litigants “commensurate with its inherent power to enter orders ‘necessary or appropriate’ in aid of jurisdiction.”) (quoting 28 U.S.C. § 1651) (citations omitted); *Tso v. Murray*, No. 17-CV-02523-PAB-STV, 2019 WL 4463285, at *2 (D. Colo., Sept. 18, 2019) (“Filing restrictions are proper where (1) a ‘litigant’s abusive and lengthy history is properly set forth,’ (2) the court provides guidelines as to what the litigant ‘must do to obtain the court’s permission to file an action,’ and (3) the litigant receives ‘notice and an opportunity to oppose the court’s order before it is instituted.’”) (quoting *Tripati v. Beaman*, 878 F.2d 351, 353-54 (10th Cir. 1989)).

The United States District Court entered the Injunction after issuing an Order to Show Cause which detailed the Lankfords’ history of abusive and repetitive filings and which gave the Lankfords an opportunity to oppose the filing restrictions before they were imposed.⁵ The Injunction provides detailed guidelines for the Lankfords to follow if they wish to file a pleading or motion in the United States District Court for the District of New Mexico or in this Court. And because this Court is an arm of the United States District Court for the District of New Mexico, it was within the power of the United States District Court for the District of New Mexico to extend the filing restrictions imposed upon the Lankfords to filings in this Court. *See Segal v. California Energy Dev. Corp.*, 167 B.R. 667, 673 (D. Utah 1994) (“[T]he bankruptcy court is in fact an arm of the United States District Court, and litigation conducted therein constitutes litigation conducted in the United States District Court.”); *Kester v. Schouse*, No. CIV.A.05-2121 KHV, 2005 WL 2491588, at *2 (D. Kan. Oct. 7, 2005) (“Even where the reference of a bankruptcy case has not been withdrawn, the district court still has jurisdiction over bankruptcy matters because the bankruptcy court is merely an arm of the district court to

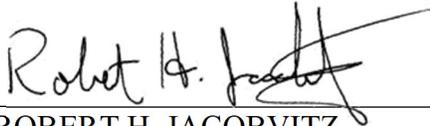
⁵ See Order to Show Cause, Case No. 1:17-cv-668 WJ/GBW – Docket No. 22, entered November 17, 2017, giving the Lankfords 20 days within which to object to the proposed restrictions.

which such matters are referred.”) (citations omitted). “[T]he right of access to the courts is neither absolute nor unconditional.” *Tripati*, 878 F.2d at 352 (citation omitted). The Injunction properly restricted the Lankfords’ access to the Courts to prevent the Lankfords from further repetitive and abusive filings.

The Lankfords’ remaining arguments raised in the Objection, couched in terms loss of jurisdiction due to lack of due process, corruption, fraud, bias, and a cover up, fall within the parameters proscribed by the Injunction Order.⁶ The Lankfords did not seek permission to file the Objection under the permission process established by the Injunction Order, nor did they request from this Court an extension of time to file the Objection in response to the Motion for Entry of Orders to Complete and Close this Bankruptcy Case so that they could follow the permission process in the Injunction Order. There is no indication that the Lankfords have any intent to follow the Injunction Order. To the contrary, the Lankfords continue to file documents in this case that violate the Injunction Order.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Strike is GRANTED.

The Lankfords’ Objection is hereby stricken.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: November 14, 2019

⁶ This Court has already addressed at length and ruled on the merits of the issues the Lankfords raised in the Trustee’s fraudulent transfer litigation against them. Those rulings are contained in a judgment and in various memorandum opinions and orders entered August 8, 2013, September 30, 2013, October 4, 2013, February 14, 2014, May 27, 2014, November 26, 2014, December 11, 2014, June 7, 2017, and December 12, 2017 in Adversary No. 12-1139. As shown by those decisions and by the rulings of other courts, the Lankfords have been afforded due process by courts that impartially and fairly considered the merits of their arguments or dismissed appeals pursuant to applicable rules of procedure.

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