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IT IS SO ORDERED.

Guy R. Humphrey
United States Bankruptcy Judge

Dated: June 25, 2010

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

In re: JOSEPH H. MOSER,	Case No. 05-38518
Debtor	Judge Humphrey Chapter 7

Decision: (1) Denying Christo Lassiter's Motion to the Find the Debtor in Contempt (Doc. 83); (2) Denying Affirmative Relief Requested in Debtor's Reply In Opposition To Motion For Contempt (Doc. 85); (3) Denying Christo Lassiter's Motion for Summary Judgment (Doc. 87); and (4) Denying as Moot Joseph Moser's Motion for Summary Judgment

I. Introduction and Statement of Issues

This contested matter is before the court on Christo Lassiter's *Motion to Find Joseph H. Moser, Debtor in Contempt of Court and for all Statutory and Equitable Relief and Memorandum in Support* (Doc. 83); the *Reply in Opposition To Motion For Contempt and Motion To Dismiss With Request For Other Relief* (Doc. 85) filed by the debtor, Joseph H. Moser; Christo Lassiter's *Memorandum in Reply and In Opposition to Debtor's Motion to Dismiss With Debtor's Request for Other Relief* (Doc. 86); Christo Lassiter's *Motion for*

Summary Judgment (Doc. 87); and *Petitioner's Response to Motion for Summary Judgment and Request for Same* (Doc. 88). The issues presented are: a) whether the debtor, Joseph H. Moser, should be held in civil contempt for referencing in his Bankruptcy Appellate Panel brief a letter from the Disciplinary Counsel for the Supreme Court of Ohio which this court restricted from public access in a prior decision pursuant to 11 U.S.C. § 107(b)(2) and Federal Rule of Bankruptcy Procedure 9018 and, if so, whether the Debtor committed an "abuse of process" in referencing such letter and whether the court should award damages or other relief to Lassiter as a result of that asserted contempt; and b) whether the court should order that "all documents purporting to cite, quote, or otherwise refer to the sealed document filed in this Court be sealed or appropriately redacted." Contempt Motion, p. 11. The issues presented by Mr. Moser relate to whether this court should find Mr. Lassiter to be a "vexatious litigator" under Ohio law, and sanction or otherwise discipline him for filing the contempt motion. For the reasons discussed below, all of the relief requested by the parties to this contested matter is denied.

II. Facts and Procedural Background

On April 28, 2010 Christo Lassiter ("Lassiter"), appearing pro se, filed a *Motion to Find Joseph H. Moser, Debtor in Contempt of Court and for all Statutory and Equitable Relief and Memorandum in Support* (Doc. 83) (the " Contempt Motion"). The Contempt Motion relates to a long history of legal battles among Lassiter, Joseph Moser, the debtor, ("Moser"), and Moser's former wife, Devon Dullaghan ("Dullaghan"), formerly Devon Moser and Devon Grove-Merritt, who also filed a Chapter 7 case in this court. This history is chronicled in prior decisions in both Moser's and Dullaghan's cases and in adversary proceedings filed in

Dullaghan's case.[1] The litigation in this court among Lassiter, Dullaghan, and Moser comes in addition to the legal sparring among these parties in other tribunals.[2]

Moser, Lassiter, and Dullaghan filed numerous documents related to the various litigation. Lassiter filed several motions seeking to seal or strike many of the documents filed by Moser and Dullaghan. The decision addressing Lassiter's motions to seal and to strike (the "§ 107 Decision"), and accompanying orders can be found at Docs. 56 and 57 and in Dullaghan's case at Docs. 100 and 101.

One of the documents that the court restricted from public access pursuant to § 107(b)(2)[3] and Federal Rule of Bankruptcy Procedure ("BR") 9018 was a letter from the Disciplinary Counsel for the Supreme Court of Ohio notifying Moser that the disciplinary counsel was not proceeding on his disciplinary complaint against Lassiter (Doc. 19-10 (Ex. J)) (the "Restricted Letter"). While not attaching the Restricted Letter to his appellate brief filed with the Bankruptcy Appellate Panel of the Sixth Circuit ("BAP" and the "BAP Brief") or filing this document with the BAP, Moser made the following statement in his BAP Brief:

> He [Moser] began contacting the state Supreme Court board of disciplinary council (sic) seeking redress immediately in 2004 and has maintained contact with them and contacted other agencies as necessary whenever it appeared that the supreme court (sic) would not hold Lassiter accountable for his

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[1] *See In re Devon Grove-Merritt*, Case No. 07-31887, including *Lassiter v. Grove-Merritt*, Adversary Proceeding No. 07-3215, Doc. 62, and *Slone v. Lassiter,* Adversary Proceeding No. 08-3068, Doc. 70; and *In re Joseph H. Moser*, Case No. 05-38518, *Decision on Christo Lassiter's Motions to Seal and Motions to Strike Records in Cases and Adversary Proceedings*, Doc. 56.

[2] *See Decision on Christo Lassiter's Motions to Seal and Motions to Strike Records in Cases and Adversary Proceedings*, Doc. 56, p. 3, fn. 1 for a description of the various litigation involving Lassiter, Dullaghan, and Moser and their relationships filed in other courts.

[3] Unless otherwise noted, all statutory references are to the Bankruptcy Code of 1978, as amended, 11 U.S.C. §§ 101-1532 (the "Code"), cited hereinafter in this decision as "§ ___".

> misconduct despite the fact that they believed the allegations were "probably true."

Contempt Motion, p. 3.

Lassiter first sought relief with the BAP regarding Moser's statement in his BAP Brief, by filing a motion seeking to hold Moser in contempt. The BAP entered an Order on April 22, 2010 denying the motion before it without prejudice, stating that "in the interest of judicial efficiency, a motion seeking contempt should first be brought before the court issuing the order which has allegedly been violated." Accordingly, Lassiter filed the Contempt Motion with this court. Lassiter requests this court to find Moser "in contempt of Court and for all statutory and equitable relief for publically citing to and quoting a document sealed by this Court." Contempt Motion, p. 2. The specific relief which Lassiter is requesting is:

> 1) That Joseph H. Moser be found in contempt of court for violating bankruptcy court orders published as Docs (57) and (70) and for abuse of process by using litigation in this court to continue publication in violation of Rule V 11 (E)(1) of Rules of Governance for the Supreme Court of Ohio;
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> 2) That Joseph H. Moser be ordered to pay to Christo Lassiter an amount equal to or greater than the $5,137.50 plus statutory interest awarded to him by the bankruptcy court;
>
> 3) That all documents purporting to cite, quote, or otherwise refer to the sealed document filed in this Court be sealed or appropriately redacted. Such documents include: this motion, replies and related filings.

Contempt Motion, p. 11.

On May 14, 2010 Moser filed his *Reply in Opposition To Motion For Contempt and Motion To Dismiss With Request For Other Relief* (Doc. 85) (the "Objection"). In addition to opposing the relief sought by Lassiter, Moser also requested that this court find Lassiter to be a vexatious litigator, sanction and/or discipline him for filing the Contempt Motion.

Lassiter filed his reply to Moser's Objection (Doc. 86) and a separate motion seeking summary judgment (Doc. 87) on May 23, 2010. On June 4, 2010 Moser filed *Petitioner's Response to Motion for Summary Judgment and Request for Same* (Doc. 88) opposing Lassiter's motion for summary judgment and requesting summary judgment in his favor.

III. Legal Analysis

A. Jurisdiction

The court has jurisdiction over these matters and proceedings pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This contested matter is a core proceeding by virtue of 28 U.S.C. § 157(b)(2)(A) and (O).

B. Moser's Reference to the Letter Restricted From Public Access Does Not Constitute Contempt of Any Order of This Court and, Therefore, the Relief Requested in the Contempt Motion (Doc. 83) and in Lassiter's Motion for Summary Judgment is Denied

Moser's reference to the Restricted Letter does not constitute contempt of those orders.

Bankruptcy courts have authority to issue contempt sanctions and to issue other orders that may be appropriate to enforce their orders and court rules. Section 105(a) provides that:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination **necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process**.

11 U.S.C. § 105(a) (bold added). The Sixth Circuit has recognized that bankruptcy courts have contempt powers under § 105(a). *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 423 (6th Cir.

2000) (Section 105 undoubtedly vests bankruptcy courts with statutory contempt powers, but it "does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law . . . ." (citations omitted)).

While Lassiter does not specify what type of contempt he is pursuing, it appears that he wants the court to hold Moser in civil contempt of orders entered on September 2, 2009 and November 3, 2009 (Docs. 57 and 70). Contempt can be civil or criminal. Whether a particular proceeding is one of civil or criminal contempt depends upon the purpose of the proceeding and the potential sanction to be imposed if contempt is found. The purpose of a criminal contempt proceeding "is punitive -- 'to vindicate the authority of the court.'" *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991), *citing Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911). Conversely, the purpose of civil contempt is "to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *Id. See also Glover v. Johnson*, 199 F.3d 310, 313 (6th Cir. 1999). In his prayer for relief Lassiter requests, among other relief, "[t]hat Joseph H. Moser be ordered to pay to Christo Lassiter an amount equal to or greater than the $5,137.50 plus statutory interest awarded to him by the bankruptcy court" and "[t]hat all documents purporting to cite, quote, or otherwise refer to the sealed document filed in this Court be sealed or appropriately redacted." Contempt Motion, p. 11. Thus, the purpose of this proceeding is to coerce Moser into compliance with this court's orders and to compensate Lassiter for losses he has sustained. Therefore, it is civil and not criminal in nature.

In order to prevail in a civil contempt proceeding, the moving party must establish by clear and convincing evidence that the respondent violated a prior court order. *Liberte*

Capital Group, LLC v. Capwill, 462 F.3d 543, 550-51 (6th Cir. 2006); *Glover*, 199 F.3d at 707. The order alleged to have been violated must be "clear and unambiguous" and the movant must establish that the respondent "violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Liberte*, 462 F.3d at 550.

The purpose of an order under § 107(b)(2), such as the orders in question, is to "protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title." 11 U.S.C. § 107(b)(2). BR 9018 implements § 107(b)(2) by providing that "the court may make any order which justice requires . . . (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code[.]"

The court determined that the Restricted Letter that Moser referenced in the BAP Brief, in addition to a number of other exhibits filed in support of, or in opposition to, Moser's and Dullaghan's motions requesting the court to find that Lassiter violated Dullaghan's bankruptcy stay and Moser's and Dullaghan's discharge injunctions, was "scandalous" within the meaning of § 107(b)(2) "[b]ecause the parties agree that these documents are irrelevant and have withdrawn those exhibits, many of these documents contain personal information for which the public has no legitimate need for access, and the documents contain material that could be harmful to the parties' reputations[.]" § 107 Decision, Doc. 56, p. 33. Accordingly, the court ordered the letter restricted from public access. Specifically, the court found and ordered that:

> In accordance with the simultaneously filed Decision on *Christo Lassiter's Motion to Seal and Motions to Strike Records in Cases and Adversary*

> *Proceedings*, the court **FINDS** that Movants' Dullaghan's and Moser's Joint Exhibits 2, 7, 11, 13-16, 18-22, and 26-27 and Respondent's Lassiter's Exhibits N, P, Q, R, S, T, U, V, W, X and Y filed in connection with the hearing on the Motion for Contempt (Doc. 19) are scandalous under 11 U.S.C. § 107(b)(2) and shall continue to be restricted from public access pursuant to Federal Rules of Bankruptcy Procedure 9018 and 9037(d).

Order on Decision on Christo Lassiter's Motions to Seal and Motions to Strike Records in Cases and Adversary Proceedings, p. 1 (Doc. 57). While not restricting access to all of the filings requested by Lassiter, the § 107 Decision did restrict public access to certain documents found to be scandalous under § 107(b)(2), including the Restricted Letter referenced in Moser's BAP Brief.

The orders on the § 107 Decision do not order Moser to refrain from publishing, discussing, or using any document or information in any court filing, in any other forum or through any other means. Therefore, in commenting on the Restricted Letter in his BAP Brief, Moser did not violate any order of this court. Moser correctly notes that the § 107 Decision and accompanying orders only direct court employees to take or refrain from action – specifically those orders require the court to restrict those documents from public access. Accordingly, the court does not find that Moser's conduct in referencing the Restricted Letter "violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Liberte*, 462 F.3d at 550-51. The court finds as a matter of law that Moser's conduct in referencing the Restricted Letter did not violate the court's clear and specific orders. For this reason, Lassiter's requests for an order finding Moser in contempt and for summary judgment are denied. In addition, because Lassiter's damages are requested as part of his

contempt citation, that request is also denied since the court finds as a matter of law that no civil contempt has occurred.[4]

The second prong of Lassiter's request to hold Moser in civil contempt -- that this court find that such alleged contempt also constitutes an "abuse of process" -- is also denied. Lassiter framed his request for an "abuse of process" finding in the context of contempt as follows: "[t]hat Joseph H. Moser **be found in contempt of court for** violating bankruptcy court orders published as Docs (57) and (70) **and for** abuse of process by using litigation in this court to continue publication in violation of Rule V 11 (E)(1) of Rules of Governance for the Supreme Court of Ohio[.]" Contempt Motion, p. 11, emphasis added. Therefore, this court is construing such request as part of Lassiter's request for a contempt citation and not as an independent claim for "abuse of process."[5] Furthermore, this court is not the proper forum for determining whether one of the Ohio *Rules for the Government of the Bar* was violated.[6] Thus, having found no contempt of court and this court not being the

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[4] As noted by the BAP, Lassiter does not provide an explanation for the $5,137.50 in damages that he seeks. This figure is, however, precisely the same amount of damages awarded to Moser on account of the court's finding that Lassiter violated Moser's discharge injunction. *See* Doc. 64. Even if this court found Moser in contempt, it would deny the award of damages to Lassiter in this amount since Lassiter has not provided the court with any basis for such an award of damages. Damages for civil contempt are intended to compensate the party for the injury incurred as a result of the contempt. Lassiter has not explained how he has been damaged in the amount of $5,137.50 by Moser's alleged contempt of this court's orders.

[5] The Sixth Circuit has not ruled on whether there is a separate federally recognized claim for abuse of process. *See Voyticky v. Village of Timberlake*, 412 F.3d 669, 676-77 (6th Cir. 2005).

[6] The court believes that there are questions as to the validity of the premise upon which Lassiter bases his abuse of process allegation -- that Moser published information concerning an Ohio attorney disciplinary grievance investigation in violation of the Ohio *Rules for the Government of the Bar* – including: a) whether these Rules apply to Moser since at no time has it been represented in these proceedings that Moser is an Ohio attorney subject to those Rules. In this regard the court notes that Lassiter refers to these Rules as the "Rules of Governance for the Supreme Court of Ohio" (*See* Contempt Motion, p. 4, ¶ 6 and p. 10); however, it appears that he is referring to the *Rules for the Government of the Bar of Ohio*. *See Gov. Bar R XX*: "These rules shall be known as the Supreme Court Rules for the Government of the Bar of Ohio and shall be cited as "Gov. Bar. R. _." ; and b) whether the provision cited by Lassiter only governs the conduct of those

proper forum for determining whether one of the Ohio *Rules for the Government of the Bar* was violated, the court declines to find any abuse of process as asserted by Lassiter as part of his contempt allegations.

C. Lassiter's Request for an Order Sealing or Redacting References to the Letter Restricted From Public Access Is Denied

In addition to requesting a contempt citation against Moser, Lassiter has also asked that "all documents purporting to cite, quote, or otherwise refer to the sealed document filed in this Court be sealed or appropriately redacted. Such documents include: this motion, replies and related filings." Contempt Motion, p. 11. The request is denied.

The court detailed its ability to issue orders protecting parties from filed documents and information in those documents in the § 107 Decision. The § 107 Decision is incorporated by reference. Certain principles set forth in the § 107 Decision are appropriate to repeat in this Decision in response to Lassiter's request for a protective order. First, the general rule is that records filed with a bankruptcy court are to be open to the public for inspection and copying. *See* § 107 Decision, pp. 13-14. Only when an extraordinary circumstance or a compelling need is present is the public's access to documents filed with the court to be restricted. *Id*. Second, matters that are relevant to the contested matter generally are not restricted from public access even if they are offensive to the movant. § 107 Decision, p. 19.

Lassiter requested that the court find Moser in contempt for referencing the Restricted Letter and issue an order restricting the public's access to references to the letter. Redacting or otherwise removing that reference from the public record will prevent

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involved in adjudicating lawyer grievances filed in Ohio, such as grievance committees, boards, and counsel. *See* Ohio *Rules for the Government of the Bar*, Rule V, Section 11 (E)(1) and (2)(c).

the public from being able to scrutinize this court's actions to ensure the integrity of this court and also could potentially make any appellate review more difficult. *See* § 107 Decision, pp. 13-14.

Situations may occur in which restricting public access to information in a brief or other filing would be appropriate even though that information may be relevant to the court's determination. For example, a party's inclusion of inappropriate material in a filing which compels another party's filing of a protective motion would, under those circumstances, render that reference relevant to the court's determination even though the only basis for the relevancy may be that a party made an inappropriate filing or reference. Thus, under such circumstances, it may be proper to restrict the public's access to such a document or from the offending reference or provision of the document. However, this is not the case in this matter. As noted previously, this contested matter is just another chapter in the litigation saga among Lassiter, Moser, and Dullaghan. *See* footnotes 1 and 2. The accusations among the parties have been rampant. Allegations may be "so vague and so grossly voluminous as to tax the credulity of anyone examining the files." § 107 Decision at p. 17, *quoting In re Sherman-Noyes & Prairie Apartments Real Estate Inv. P'ship*, 59 B.R. 905, 909 (Bankr. N.D. Ill. 1986). The accusations widely broadcasted by Lassiter, Moser, and Dullaghan in the litigation pursued in the various forums fall into that category. Furthermore, as mentioned above, the primary premise upon which Lassiter asserts that references to the Restricted Letter should be sealed – that Ohio's *Rules for the Government of the Bar* prohibit Moser's disclosure of such information – may not be supportable.

Accordingly, since the reference to the Restricted Letter is relevant to ruling on Lassiter's contempt motion and for the other reasons discussed, the court declines to issue an order restricting any documents from public access or ordering that any documents be redacted to delete references to the Restricted Letter. Unless some other tribunal, including the BAP or an appropriate Ohio authority, directs that Moser's references to the Restricted Letter be redacted or restricted from public access, this court declines to do so and denies Lassiter's request to seal or redact the pertinent documents and references.[7]

D. The Affirmative Relief Requested by Moser In His Reply (Doc. 85) Is Denied

In his *Reply*, Moser requests that Lassiter be found a vexatious litigator, an issue previously raised by Moser.[8] For essentially the same reasons as those the court relied upon to deny those prior sanction requests, Moser's pleas to find Lassiter to be a "vexatious litigator" under Ohio law, sanction him, and discipline him under the applicable rules governing attorneys before this court are also denied.

1. Vexatious Litigator Request

The court denies Moser's request for an order finding Lassiter a vexatious litigator under Ohio's vexatious litigator statute, ORC § 2323.52, on the basis of the law of the case doctrine, for lack of jurisdiction, and also as being procedurally improper.

First, the vexatious litigator claim is denied on the basis of law of the case doctrine. Issues decided at an early stage of the litigation, either explicitly or by necessary inference

[7] To be clear, the Restricted Letter shall continue to be restricted from public access; however, the court is not restricting from public access the reference to the Restricted Letter in the filings in this court relating to the Contempt Motion.

[8] *See Order Granting in Part and Denying in Part Respondent's Motion to Dismiss* entered on June 25, 2009 as Doc. 90 in Case No. 07-31887 (*In re Devon Grove-Merritt*).

from the disposition, constitute law of the case. *Brady-Morris v. Schilling (In re Kenneth Allen Knight Trust)*, 303 F.3d 671, 676 (6th Cir. 2002). The law of the case doctrine is "directed to a court's common sense" and is not an "inexorable command," and precludes a court from reconsideration of identical issues. *Hanover Ins. Co. v. American Eng'g Co.*, 105 F.3d 306, 312 (6th Cir. 1997). The three exceptional reasons that courts have held to justify reconsideration of previously decided issues are: "(1) where substantially different evidence is raised on subsequent trial; (2) where a subsequent contrary view of the law is decided by the controlling authority; or (3) where a decision is clearly erroneous and would work a manifest injustice." *Id.* (citations omitted); *see also United States v. Rayborn*, 495 F.3d 328, 337 (6th Cir. 2007). Moser has not described an exceptional circumstance justifying the court's reconsideration of its prior decision finding that it did not have jurisdiction over his vexatious litigator claim against Lassiter. Accordingly, the court's earlier ruling on the vexatious litigator claim is law of the case. However, since that decision was announced orally, the court will reiterate its basis for concluding that it does not have jurisdiction over such a claim.

Bankruptcy courts are courts of limited jurisdiction and not courts of "general jurisdiction," such as state courts. *See Canadian Pacific Forest Products Ltd. V. J.D. Irving, Ltd. (In re The Gibson Group, Inc.)*, 66 F.3d 1436, 1440 (6th Cir. 1995), *citing Wasserman v. Immormino (In re Granger Garage, Inc.)*, 921 F.2d 74 (6th Cir. 1990). First, the district courts and bankruptcy courts have exclusive jurisdiction over bankruptcy cases. 28 U.S.C. § 1334(a). They also have jurisdiction over proceedings in bankruptcy cases that are determined to be core proceedings under 28 U.S.C. § 157(b). 28 U.S.C. § 1334(b); *Amedisys, Inc. v. Nat'l Century*

Fin. Enters, Inc. (In re Nat'l Century Financial Enters., Inc.), 423 F.3d 567, 574 (6th Cir. 2005). Core proceedings raise ordinary bankruptcy issues, such as those pertaining to property of the bankruptcy estate, preference and fraudulent conveyance claims of bankruptcy trustees, and violations of the bankruptcy stay or discharge injunctions. The Sixth Circuit has defined a core proceeding "as matters created by, or determined by, a statutory provision of the Bankruptcy Code." *Dayton Title Agency, Inc. v. Philadelphia Indemnity Ins. Co. (In re Dayton Title Agency, Inc.)*, 264 B.R. 880, 884 (Bankr. S.D. Ohio 2000), *citing Michigan Employment Security Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991). Non-core proceedings "do not invoke a substantive right created by federal bankruptcy law and could exist outside of bankruptcy law." *Id. See also Bliss Techs., Inc. v. HMI Indus., Inc. (In re Bliss Techs., Inc.)*, 307 B.R. 598, 602-03 (Bankr. E.D. Mich. 2004).[9] Moser's perfunctory request under the Ohio vexatious litigator statute is not a "core proceeding" as it does "not invoke a substantive right created by federal bankruptcy law and is one that could exist outside of the bankruptcy." Thus, this claim is not a core proceeding or claim.

However, as a result of General Order No. 05-02, the general order of reference in this district, this court also has original, but not exclusive, jurisdiction over "all civil

[9] The distinction between core and non-core proceedings was a response to the Supreme Court's decision in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) that "held that the Congressional grant of jurisdiction to bankruptcy courts to decide 'private rights' matters, such as state breach of contract claims, was unconstitutional." *Dayton Title Agency, Inc. v. Philadelphia Indemnity Ins. Co. (In re Dayton Title Agency, Inc.)*, 264 B.R. 880, 882-83 (Bankr. S.D. Ohio 2000), citing *Marathon*, 458 U.S. at 87. Under the post-Marathon jurisdictional scheme, core proceedings under 28 U.S.C. § 157(b)(2) are subject to final determinations by the bankruptcy courts. However, in non-core proceedings, that are otherwise "related to" Title 11, bankruptcy courts "shall submit proposed findings of fact and conclusions of law to the district court and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C. § 157(c)(1); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1101 (2nd Cir. 1993).

proceedings arising under title 11" or "arising in or related to cases under title 11" even if those proceedings are not core proceedings. 28 U.S.C. § 1334(b). The vexatious litigator claim does not fall within that jurisdiction either.

The Sixth Circuit has determined that one need not distinguish between "civil proceedings arising under title 11" or "arising in or related to cases under title 11." *Wolverine*, 930 F.2d at 1141. The Court concluded that "[t]hese references operate conjunctively to define the scope of [bankruptcy] jurisdiction." *Id. See also 8300 Newburgh Rd. P'ship v. Time Constr., Inc. (In re Time Constr., Inc.)*, 43 F.3d 1041, 1044 (6th Cir. 1995); *Stewart v. Henry*, 62 Fed. Appx. 610, 613, 2003 WL 1827221 (6th Cir. Apr. 7, 2003). In order to determine whether a matter at issue is within section 1334(b) jurisdiction, the court only needs to determine whether the matter is at least "related to" the bankruptcy. *Wolverine*, 930 F.2d at 1141.

The only possible basis for jurisdiction over the vexatious litigator claim would be if the court had "related to" jurisdiction, which it does not. The test for determining whether a civil proceeding is "related to" bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. *Lindsey v. O'Brien, Tanski, Tanzer and Young Health Care Providers of Connecticut* (*In re Dow Corning Corp.*), 86 F.3d 482, 489 (6th Cir. 1996) (adopting the test from *In Re Pacor v. Higgins*, 743 F.2d 984 (3rd Cir. 1984)). In *Celotex Corporation v. Edwards*, 514 US 300 (1995), the Supreme Court cited approvingly the Third Circuit's *Pacor* test for determining the bankruptcy courts' "related to" jurisdiction. In *Pacor,* also cited approvingly by the Sixth Circuit in the *Dow Corning* decision, the court noted that "the mere fact that there may be common issues of

fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section § 1334(b) [formerly § 1471(b)] and that "judicial economy itself does not justify federal jurisdiction." *Pacor*, 743 F.2d at 994. Instead, "there must be some nexus between the 'related' civil proceeding and the title 11 case." *Dow Corning*, 86 F.3d at 489, *citing Pacor*, 743 F.2d at 994. In the *Celotex* decision, the Supreme Court also noted that "a bankruptcy court's 'related to' jurisdiction cannot be limitless" and that Congress has vested "limited authority" in bankruptcy courts, again referring to the Third Circuit's decision in *Pacor*. *Celotex*, 514 U.S. at 308. Thus, the key to determining whether a proceeding is "related to" a bankruptcy case is its impact on the bankruptcy estate. *See Dow Corning*, 86 F.3d at 489; *Pacor,* 743 F.3d at 994 *and Peabody Landscape Constr., Inc. v. Schottenstein*, 371 B.R. 276, 279-80 (S.D. Ohio 2007).

Moser's request to have Lassiter determined to be a vexatious litigator does not and will not have any impact on his bankruptcy estate. Moser's case is a Chapter 7 liquidation case that would be closed but for the Contempt Motion and Lassiter's appeal of the oral decision this court gave on October 23, 2009 (*See* Doc. 64). Moser's estate was established at the time he filed his petition in 2005. The vexatious litigator allegation raises post-petition issues and, therefore, does not concern property of Moser's bankruptcy estate. Post-petition claims of a Chapter 7 debtor, with exceptions not relevant here, are not property of the bankruptcy estate and, do not impact it. Accordingly, bankruptcy courts do not have "related to" jurisdiction over such claims. *Stewart*, 62 Fed. Appx. at 614, 2003 WL 1827221, at *5; *French v. Inst. for Orthopaedic Surgery*, 2008 WL 3992160 (N.D. Ohio Aug. 12, 2008) and *French v. St. Rita's Med. Ctr.*, 2008 WL 3822278 (N.D. Ohio Aug. 12, 2008). Furthermore, even

if the vexatious litigator claim was property of the bankruptcy estate, only Moser's Chapter 7 trustee would have standing to pursue it. The vexatious litigator claim is merely a state cause of action that has no impact on Moser's bankruptcy estate and has no nexus to his bankruptcy other than the allegation involves Lassiter who filed the Contempt Motion and has been a party to much of the litigation in Moser's and Dullaghan's cases. That factor by itself does not provide this court with jurisdiction over such a claim. Further, the vexatious litigator statute, ORC § 2323.52, on its face is limited to Ohio's state courts both in its application and its enforcement.

Finally, even if the court had jurisdiction over Moser's request to have this court declare Lassiter a vexatious litigator under Ohio law, that claim has not been properly plead. Such a request is an independent claim in the nature of injunctive and declaratory relief for which an adversary proceeding is required under BR 7001. In that regard, Moser's perfunctory request to have Lassiter declared a "vexatious litigator" does not meet the pleading requirements set forth by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007) and *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. 1937, 1949-50 (2009).

2. Sanctions Request

Moser also requests this court to sanction Lassiter for filing a frivolous motion which Lassiter should have known was groundless because the BAP stated that "he did not have grounds." This request also is denied.

First, assuming that Moser is alleging that Lassiter violated BR 9011, then he has not followed the proper procedure for pursuing an alleged violation of that Rule and this court,

therefore, cannot issue sanctions under that Rule. Rule 9011(c)(1)(A) specifically provides that:

> A motion for sanctions under this rule **shall be made separately from other motions or requests** and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. **The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected**, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).

BR 9011(c)(1)(A) (emphasis added). Moser's request for sanctions is not by separate motion and, therefore, is procedurally improper. In addition, there is no evidence that Moser complied with the "safe harbor" provision of this Rule requiring that such a motion be served on the alleged violator first and then only be filed if the alleged offending filing is not withdrawn during the twenty-one day period after it is served on the alleged offender. Thus, procedurally Moser's request for sanctions must be denied.

However, irrespective of the procedural defects of Moser's request for sanctions, the court declines to sanction Lassiter. Despite the court denying the relief requested by Lassiter in his Contempt Motion, the court does not find that it was frivolous and the court does not believe that sanctions are warranted under BR 9011 under the circumstances of this case.

3. Professional Discipline

Finally, Moser's request that this court take disciplinary action against Lassiter also is denied. While this court is denying the Contempt Motion for the reasons stated in this decision, the court does not find that Lassiter violated any of the *Ohio Rules of Professional*

Conduct or other rules governing the conduct of attorneys in this court in filing and prosecution of the Contempt Motion. The court finds that Lassiter filed the Contempt Motion in good faith under the honest belief that Moser violated this court's orders restricting access to certain documents that were filed with this court and after the BAP instructed him to bring his claim before this court since a contempt motion should ordinarily first be addressed to the court whose order is alleged to have been violated. Accordingly, the court declines to proceed with any disciplinary action against Lassiter arising out of his filing and prosecution of the Contempt Motion and that relief requested by Moser is denied.

IV. Conclusion

For the foregoing reasons, the *Motion to Find Joseph H. Moser, Debtor in Contempt of Court and for all Statutory and Equitable Relief and Memorandum in Support* (Doc. 83), including all relief requested in that *Motion*, Lassiter's *Motion for Summary Judgment* (Doc. 87), and all relief requested by Moser in his *Reply In Opposition To Motion For Contempt* (Doc. 85) are **denied**. In light of the court's denial of Lassiter's Contempt Motion, Moser's motion for summary judgment (Doc. 88) is **denied as moot**. Any other relief requested in any of the filings by either Lassiter or Moser not expressly addressed in this decision is **denied**.

As a final matter, the court notes that the voluminous amount of litigation in which the parties have engaged in this court has given rise to numerous decisions. Any further request for relief sought by either party shall conform to the requirements of BR 9011 and, in particular, shall ensure that the relief requested is not presented to this court for an improper purpose and is warranted under the standard of BR 9011(b)(2). In addition, if any relief has been previously sought in this court and denied, any party seeking the same relief

shall establish the basis as to why the court should deviate from its prior ruling and meet all the procedural requirements of the Federal Rules of Bankruptcy Procedure and this court's Local Rules. A failure to conform to these standards (whether a party is pro se or represented by legal counsel) will be addressed with appropriate sanctions. *See* BR 9011(c)(1)(B).

The court will enter a separate order consistent with this decision.

IT IS SO ORDERED.

Copies to: Default List

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