

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

**IN RE: DAVID L. DULANEY and
AMY N. LONG-DULANEY, Debtors**

**No. 5:14-bk-73500
Ch. 13**

DAVID L. DULANEY and AMY N. LONG-DULANEY

PLAINTIFFS

vs.

No. 5:15-ap-07077

NATIONSTAR MORTGAGE LLC

DEFENDANT

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

Before the Court is Nationstar Mortgage LLC’s [Nationstar] February 22, 2018, *Motion to Dismiss* the above-captioned adversary proceeding pursuant to Federal Rule of Civil Procedure 12(c) and Federal Rule of Bankruptcy Procedure 7012. For dismissal, Nationstar argues that the Court now lacks subject matter jurisdiction over this matter following the debtors’ voluntary dismissal of their bankruptcy case. For the reasons set forth below, Nationstar’s motion is GRANTED.

The debtors filed their Chapter 13 bankruptcy case on November 26, 2014. On Schedule D, the debtors listed the mortgage on their primary residence, held by Nationstar, as disputed. On December 30, 2014, Nationstar filed a proof of claim alleging a secured claim on the residence in the amount of \$281,285.03. The debtors commenced this adversary proceeding on July 13, 2015, objecting to Nationstar’s status as a secured creditor and alleging violations of the Fair Debt Collection Practices Act [FDCPA]. On July 20, 2017, the debtors filed an *Amended Adversary Complaint*, further alleging a state law breach of contract action against Nationstar. On January 2, 2018, the Court approved the debtors’ loan modification. Finally, on January 8, 2018, the debtors moved to voluntarily dismiss their bankruptcy case, which the Court granted on January 9.

A long recognized tenet of jurisdiction is that “[f]ederal courts are courts of limited jurisdiction and that limited jurisdiction is conferred only by statute or by the United States Constitution.” See *In re Fitzgerald Gaming Corp.*, 261 B.R. 1, 5 (Bankr. W.D. Mo. 2001) (citing *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinne*, 456 U.S. 694, 701 (1982)). The parties themselves may not confer, consent to, nor waive a court’s subject matter jurisdiction, and courts may raise the issue at any time sua sponte. *Id.* Bankruptcy court jurisdiction is derived from 28 U.S.C. §§ 157 and 1334. Federal district courts are granted original and exclusive jurisdiction over all cases under title 11, as well as original, though not exclusive, 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).

Core proceedings are those that arise under title 11 or arise in a case under title 11. 28 U.S.C. § 157(b). Proceedings “arising under” title 11 involve causes of action expressly created or determined by title 11, such as dischargeability proceedings or actions to recover preferential transfers, which would not otherwise exist absent the bankruptcy. *In re Williams*, 256 B.R. 885, 891 (B.A.P. 8th Cir. 2001); *In re Farmland Indus., Inc.*, 567 F.3d 1010, 1017-18 (8th Cir. 2009). Those proceedings “arising in” a case under title 11 are generally administrative matters that are not expressly created by title 11 but would not exist except for the bankruptcy filing. *Id.*

Non-core proceedings are related civil proceedings that do not invoke the substantive rights created by bankruptcy yet fall under the jurisdiction of the bankruptcy courts. *In re Williams*, 256 B.R. at 891. To qualify as such a proceeding, the proceeding must share a nexus with the bankruptcy case and have a “conceivable effect” on the administration of the debtor’s estate. *In re Farmland Industries*, 567 F.3d at 1019.

The Eighth Circuit Court of Appeals has previously held that the bankruptcy court does not have jurisdiction to hear a claim objection by the debtor after the debtor had been granted a discharge. *In re McAlpin* 278 F.3d 866, 868 (8th Cir. 2002). The court reasoned that because the debtor’s challenge to the claim came after the discharge, “the

claim could no longer have been against the estate, and thus did not involve a right created by bankruptcy law or arising only in bankruptcy” *Id.* (citing *Specialty Mills, Inc. v. Citizens State Bank*, 51 F.3d 770, 773 (8th Cir.1995)). In this case, the debtors’ first cause of action – their objection to Nationstar’s secured status – is a challenge to Nationstar’s proof of claim filed in the bankruptcy case and, thus, a core proceeding arising under title 11. Because the debtors’ bankruptcy case has been dismissed, there is no bankruptcy estate and, therefore, no right under the bankruptcy code to pursue further this cause of action against Nationstar.

The debtors’ second and third causes of action, the FDCPA and breach of contract claims, are claims that would be non-core but related to the debtors’ bankruptcy case. In *McAlpin*, the Eighth Circuit further held that it did not have jurisdiction over the debtor’s post-discharge claim objection because “there was no longer a plan to be confirmed, or an estate, and therefore the proceeding could not conceivably have affected his estate” *Id.* Here, because the bankruptcy case has been dismissed, there is similarly no longer a bankruptcy estate that can be affected. As such, this Court is without jurisdiction to hear the debtors’ FDCPA and breach of contract claims. Absent an active bankruptcy case, the Court is without jurisdiction to hear the remaining claims and objection now before it. Therefore, the Court grants Nationstar’s motion and dismisses the adversary proceeding in its entirety.

IT IS SO ORDERED.

CC: Todd F. Hertzberg
Amy Clemmons Brown