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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

SUBJECT COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Robert C. Johnson,

Debtor.

Robert C. Johnson,

Plaintiff,

v.

Commissioner of Internal Revenue,

Defendant.

C/A No. 92-75816

Adv. Pro. No. 02-80185-W

ORDER

Chapter 7

ENTERED

AUG 02 2002

J.G.S.

THIS MATTER comes before the Court upon Commissioner of Internal Revenue's ("Defendant") Motion to Dismiss (the "Motion"). In the Motion, Defendant argues that the Court should dismiss the Complaint filed by Robert C. Johnson ("Plaintiff") pursuant to Federal Rule of Civil Procedure 12(b)(1-2) because the Court lacks subject matter jurisdiction and because there is no personal jurisdiction over Defendant.¹ Specifically, Defendant argues that the Court lacks subject matter jurisdiction because the main bankruptcy case is closed, Debtor has not filed a motion to reopen it, and the Court cannot consider Debtor's new adversary proceeding without first reopening the case. Regarding personal jurisdiction, Defendant argues there is none because Plaintiff failed to serve the Summons and Complaint properly.

To determine whether a bankruptcy court has subject matter jurisdiction, this Court looks

¹ Plaintiff titled the pleading wherein he alleges his causes of action against Defendant as "Petition." To reduce confusion, the Court will refer to this pleading with its typical title of Complaint.

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to 28 U.S.C. §1334. Section 1334(b) provides that a district court has subject matter jurisdiction over matters that arise under the Bankruptcy Code or matters that arise in or are related to bankruptcy cases. For a court to decide whether a proceeding arises under the Bankruptcy Code, it must examine the pleading at issue and discern whether federal bankruptcy law creates the cause of action or if the plaintiff's right to relief necessarily depends upon resolution of a substantial question of federal bankruptcy law. See Poplar Run Five Ltd. P'ship v. Virginia Elec. & Power Co. (In re Poplar Run Five Ltd. P'ship), 192 B.R. 848, 855 (Bankr. E.D. Va. 1995). Applying this test to Plaintiff's complaint, the Court concludes it has subject matter jurisdiction over this adversary proceeding as Debtor raises two causes of action that the Bankruptcy Code created, a violation of the automatic stay and a violation of the discharge injunction.

The Court now considers whether there is personal jurisdiction of Defendant in this case. Federal Rule of Bankruptcy Procedure 7004(b)(4) provides that service upon the United States is performed properly by serving the United States Attorney for the district in which the action is brought, the Attorney General, and, in any action attacking the validity of an order of an officer or an agency of the United States not made a party, the officer or agency. Plaintiff provided Certificates of Service indicating that he served the Commissioner of the Internal Revenue Service, the Attorney General, and the United States Attorney for South Carolina. Defendant acknowledges that Plaintiff almost served the Summons and Complaint correctly but argues that service was deficient because service upon the Attorney General was specifically directed to the Bankruptcy Section of the United States Department of Justice. Defendant argues that service directed specifically to the Bankruptcy Section was improper and that Plaintiff should have directed service only generally to the Attorney General or specifically to the Tax Division.

Defendant, however, cites no case authority to support this argument. Moreover, the Summons and Complaint apparently reached Defendant in a timely manner as Defendant filed a timely motion to dismiss. Because Plaintiff's Certificates of Service indicate compliance with Bankruptcy Rule 7004, the Court finds that service was proper and that there is personal jurisdiction over Defendant.

Accordingly, the Court denies Defendant's Motion.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 31, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

AUG 2 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

Johnson
Adde
Barmittee