

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

AUTO MONEY NORTH LLC,
Debtor.

AUTO MONEY NORTH LLC,
Plaintiff,

v.
TRAVIS ABERNATHY, *et al.*,
Defendants.

C/A No. 22-03309-HB

Adv. Pro. No. 22-80047-HB

Chapter 11

**ORDER GRANTING DEFENDANTS' MOTION FOR AN ORDER OF ABSTENTION
PURSUANT TO 28 U.S.C. § 1334(c)(1)**

Before the Court for consideration is Defendants' Motion pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order dismissing all claims in the above captioned adversary proceeding or, in the alternative, for an order of abstention pursuant to 28 U.S.C. § 1334(c)(1) or, in the further alternative, for an order staying this proceeding pursuant to 11 U.S.C. § 305(a) (the "Motion"). A briefing schedule was established, and briefs were submitted in support.¹

I. ALLEGATIONS OF THE COMPLAINT AND PROCEDURAL HISTORY

Auto Money North, LLC ("Plaintiff") filed the underlying Subchapter V, Chapter 11 case on December 2, 2022,² and filed the Complaint³ herein three days later, along with a related adversary proceeding.⁴

¹ The relief sought was asserted in their Answer to the underlying Complaint. *See* ECF No. 16 and briefs at ECF Nos. 20, 22.

² C/A No. 22-03309-hb.

³ ECF No. 1.

⁴ Adv. Pro. No. 22-80046-hb requests entry of an order declaring that 11 U.S.C. § 362(a) prohibits the commencement or continuation of certain litigation pending in North Carolina by approximately 400 parties and John and Jane Does 1-1000, against an affiliate of Plaintiff, AutoMoney, Inc., while this Chapter 11 case remains pending, and/or entering a preliminary injunction under § 105(a) of the Bankruptcy Code to enjoin the commencement or continuation of any

Plaintiff is a car title loan lender existing under the laws of South Carolina. The loans that it issues are secured by the title to the borrower's motor vehicle. While all of Plaintiff's stores are located in South Carolina, Plaintiff holds loans with North Carolina residents. Some of those loans have resulted in pre-petition litigation commenced by Defendants against Plaintiff, and in some instances, an affiliate of Plaintiff, AutoMoney, Inc. ("AMI"), in North Carolina state courts. The issues raised in that pre-petition litigation involve similar facts and issues which Plaintiff brings to this Court in this adversary proceeding and through the claim objection process.

The Complaint names approximately 400 Defendants⁵ and recognizes that each is a resident of North Carolina. The allegations detail Plaintiff's general practices and procedures of limiting contact with and within North Carolina, but not necessarily Plaintiff's specific, actual conduct and contacts with each Defendant. The Complaint alleges that Defendants traveled to a store location in South Carolina for the purposes of negotiating, applying for, and accepting an offer of a loan. The loan agreements include a choice-of-law provision and a forum selection clause stating that South Carolina law governs. Once the loan was extended, liens were recorded on vehicle titles with the North Carolina Department of Motor Vehicles.

Allegations in the Complaint here include the following summarizing the litigation in the North Carolina state courts and the purpose of this adversary proceeding:

78. Defendants have brought, in varying forms, at least the following claims under North Carolina law: (1) alleged violations of the North Carolina Consumer Finance Act (N.C. Gen. Stat. §§ 53-164, *et seq.*) ("N.C. Consumer Finance Act"); (2) alleged violations of the North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1) ("NCUDTPA"); and (3) alleged violation of North Carolina's usury statutes (N.C. Gen. Stat. §§ 24-1.1, *et seq.*) ("N.C. Usury Law")...

such actions against that affiliate. The relief was denied. Adv. Pro. No. 22-80046-hb, ECF Nos. 33 and 40. Notices of Appeal are currently pending.

⁵ The Complaint includes a list of Defendants in Exhibit A thereto. ECF No. 1.

79. The crux of Defendants' N.C. Consumer Finance Act and NCUDTPA claims is Section 53-190, entitled "Loan Made Elsewhere" (the "Extraterritorial Loan Provision").

80. Subsection (b) of N.C. Gen. Stat. § 53-190 provides: "If any lender or agent of a lender who makes loan contracts outside this State in the amount of the value of fifteen thousand dollars (\$15,000) or less, *comes into this State to solicit or otherwise conduct activities in regard to such loan contracts*, then such lender shall be subject to the requirements of this Article." (Emphasis added).

81. By its own terms, the Extraterritorial Loan Provision is inapplicable to Auto Money North [Plaintiff]. As set forth above, Auto Money North is a licensed South Carolina title lender that does not (and has not ever) "come[] into [North Carolina] to solicit or otherwise conduct activities in regard" to title loans as contemplated by the statute.

82. Moreover, claims based on North Carolina consumer finance laws (and through them, NCUDPTA) fail as a matter of law because application of the Extraterritorial Loan Provision to Auto Money North violates the First Amendment to the United States Constitution (U.S. Const. amend. I,) (the "First Amendment"), the Due Process Clause of the Fourteenth Amendment to the United States Constitution (*id.*, amend. XIV, § 1) (the "Due Process Clause"), and/or the Commerce Clause of the United States Constitution (*id.*, art. I, § 8, cl.3) (the "Commerce Clause") by impermissibly regulating Auto Money North's lending activities within the boundaries of South Carolina.

The Complaint includes: *Count I*- Declaratory Judgment re: Application of South Carolina Law, Generally, and Enforceability of the Loan Agreements 28 U.S.C. § 2201; *Count II*- Declaratory Judgment re: Application of North Carolina Extraterritorial Loan Provision to Auto Money North Violates the United States Constitution 28 U.S.C. § 2201; and *Count III*- Breach of Contract. *Count III* incorporates an exhibit with a list of more than 40 Defendants' loans with current account balances, with the lowest amount owed of \$430.93 and the highest of \$11,352.52. Collectively, the account balances total approximately \$143,062.11.⁶ This list includes only a small number of Defendants.

⁶ See ECF No. 1, Complaint; ECF No. 22, Plaintiff's brief, p. 17-18, n.3 ("The Defendants are North Carolina residents, and there are over \$75,000 in title loan contracts in controversy. See 28 U.S.C. § 1332."), 6 ("The breach of contract cause of action seeks a recovery of \$143,062.11 against certain of the Defendants. The Debtor is a South Carolina entity, whereas all of the defendants are North Carolina residents....")

Pre-petition litigation history among various related parties includes an action filed by Plaintiff's affiliate AMI in the United States District Court for the District of South Carolina in 2019, *AutoMoney, Inc. v. Deirdre Booker Pippins*, No. 2:19-2217-RMG. In an Order abstaining from hearing the matter pending under 28 U.S.C. § 2201 and granting a motion to dismiss, Judge Richard Mark Gergel found:

This matter arises out of a dispute over the applicability of the North Carolina Consumer Finance Act to loans made outside North Carolina in which lenders allegedly "solicit or otherwise conduct activities" within the State of North Carolina. N.C. GEN. STAT. § 53-190(b). This is a subject of considerable litigation within the North Carolina courts, including an action pending in the Superior Court of Guilford County in which the Defendant here, Deirdre Booker Pippins, is the Plaintiff and the Plaintiff here, Automoney, Inc [AMI], is the Defendant.

...First, it is apparent that North Carolina has a strong interest in the enforcement of its consumer protection laws and in protecting the citizens from what under North Carolina law are usurious loan rates. Second, the pending [North Carolina] Superior Court litigation between the parties affords an ample forum in which the parties can efficiently and effectively litigate all of their claims. Third, the creation of a parallel action in the United States District Court in South Carolina would be a potential recipe for confusion and unnecessary entanglement with the North Carolina state courts. Fourth, the initiation of a new action in federal court in South Carolina raises the appearance of procedural fencing and forum shopping, since the North Carolina forum appears perfectly adequate for all parties to litigate their claims.

AutoMoney, Inc. v. Deirdre Booker Pippins, No. 2:19-2217-RMG (D.S.C. Dec. 30, 2019).⁷

Plaintiff here filed a similar action in the same court, *Auto Money North, LLC v. Fentress Brown*, No. 0:21-cv-00393-JMC.⁸ Brown had filed a complaint against Plaintiff and AMI in North Carolina state court arising out of Brown's title loan with AMI. In response, Plaintiff filed the above-referenced action in which it sought a judicial determination under the Declaratory Judgment Act, 28 U.S.C. § 2201, as to whether its title loan with Brown violated South Carolina

⁷ The alleged involvement of AMI is detailed in the complaint, answer, and orders entered by the Court in Adv. Pro. No. 22-80046-hb.

⁸ Fentress Brown is named as a defendant in the Complaint filed in the above captioned adversary proceeding.

consumer lending laws and whether application of North Carolina lending laws to the Plaintiff violated the Commerce Clause of the U.S. Constitution. Judge Michelle Childs considered issues of “federalism, efficiency, and comity” when deciding whether to exercise jurisdiction over the matter, and stated:

In determining whether to exercise declaratory judgment jurisdiction, courts look to (1) the state’s interest in having its own courts decide the issue; (2) the state courts’ ability to resolve the issues more efficiently than the federal courts; (3) the potential for unnecessary entanglement between the state and federal courts based on overlapping issue of fact or law; and (4) whether the federal action is mere forum shopping. *Id.* [citing *Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 201 (4th Cir. 2019)].

Judge Childs determined that the North Carolina state courts have “a strong interest in interpreting the scope and application of its own consumer protection laws” and decided to abstain, in part finding that “the initiation of this action raises, at the very least, the appearance of forum shopping.” *Auto Money North, LLC v. Fentress Brown*, No. 0:21-cv-00393-JMC (D.S.C. Feb. 18, 2022).⁹ Plaintiff’s appeal of that decision is pending before the Fourth Circuit Court of Appeals.¹⁰

The pre-petition litigation in North Carolina for alleged violations of North Carolina consumer lending laws were asserted (1) against Plaintiff and AMI as co-defendants, and (2) only against AMI. Within the second set of civil actions are the claims of the “Remand Defendants”¹¹ whose cases AMI moved to dismiss for lack of personal jurisdiction, failure to state a claim based on the South Carolina choice-of-law provision in the underlying contract, and improper venue based upon the South Carolina forum selection clause in the underlying contract. The North Carolina trial courts denied AMI’s motions to dismiss, and AMI appealed those rulings to the North Carolina Court of Appeals. In July of 2022, in unanimous opinions, the North Carolina Court of

⁹ See also *McDonald v. AutoMoney, Inc.*, No. 1:21-cv-00114, ECF No. 25 (M.D.N.C. Nov. 30, 2021) (federal court remanded removed action back to state court).

¹⁰ *Auto Money North, LLC v. Fentress Brown*, C/A No. 22-1296 (4th Cir. Mar. 18, 2022).

¹¹ The Plaintiff did not name these parties as defendants in this proceeding.

Appeals affirmed the trial court orders denying AMI's motions to dismiss. The Remand Defendants' cases are currently pending in the trial courts of North Carolina. After remand, AMI filed its Answers and, among other defenses, asserted that, as applied to its transactions with the Remand Defendants, the North Carolina Consumer Finance Act, at N.C.G.S. § 53-190, violates the dormant Commerce Clause of the U.S. Constitution. AMI also filed a Petition for Discretionary Review with the Supreme Court of North Carolina.

Pre-petition litigation involving AMI is mentioned because Plaintiff has contended that it relates to this adversary proceeding and that pending state court litigation against AMI should be stayed by this bankruptcy filing pursuant to 11 U.S.C. §§ 105 or 362.¹²

Defendants have filed individual proofs of claim in the Chapter 11 case, Plaintiff has objected, and Defendants responded. Hearings have not yet been held.¹³ The issues raised in the proofs of claim, objections, and responses, mirror those found in the Complaint in this proceeding. As the Responses recognize:

The Debtor [Plaintiff] has incorporated by reference in its Objection [to claim] allegations in Adversary Proceeding No. 22-80047...Claimant [Defendant] does likewise and incorporates herein by reference the arguments and authorities Claimant sets out in Defendant's Brief in Support of Motion to Dismiss Adversary Proceeding No. 22-80047.

Defendants filed a Motion to Dismiss the underlying bankruptcy case pursuant to 11 U.S.C. § 1112. The Court denied that relief and the content of that order is incorporated herein by reference.¹⁴

II. ADDITIONAL FACTS RELEVANT TO THE ABSTENTION ANALYSIS

Plaintiff's proposed plan summarizes its status, in part, as follows:

The primary reason for the Debtor's bankruptcy filing is to resolve the North Carolina Litigation expeditiously and efficiently by asking the Court to determine

¹² See Adv. Pro. No. 22-80046-hb.

¹³ See, e.g., C/A No. 22-03309-hb, ECF Nos. 129, 697 *et. al.*

¹⁴ C/A No. 22-03309-hb, ECF No. 1288, March 28, 2023.

the fundamental question of whether the application of North Carolina's consumer protection laws to the Debtor violates the United States Constitution. The Debtor has filed an adversary proceeding complaint (Auto Money North LLC v. Abernathy, et al., AP No. 22-80047-hb (the "Constitutional Case")) to bring this important constitutional issue before the Court....

If the Debtor prevails in the Constitutional Case and the Claim Objections, the claims asserted by the North Carolina Claimants [essentially the Movants] will be disallowed, and the Debtor will have no liability on those claims. However, the magnitude of the claims filed by the North Carolina Claimants evidences the Debtor's concerns for its ability to continue operating if the North Carolina Claimants prevail in the Constitutional Case and the Claim Objections. In fact, as set forth in this Plan, if the Debtor does not succeed in the Constitutional Case and the Claim Objections, the Debtor will undertake an orderly liquidation of its assets to pay its creditors on a pro rata basis pursuant to the Bankruptcy Code's priority rules. If the Debtor succeeds in the Constitutional Case and the Claim Objections, then the Debtor will pay all of its creditors in full, with interest.

... the defendants in the Constitutional Case filed an Answer containing Motions to Abstain and Dismiss in that action... This Plan proceeds along two parallel paths. The first path sets forth what will transpire in the event that the Debtor is largely successful in the Constitutional Case and the Claim Objections, meaning that the application of North Carolina's consumer protection laws to the Debtor is held to violate the United States Constitution after all appeals have been exhausted. The second path sets forth what will transpire in the event that the opposite is found after all appeals have been exhausted. However, this Plan's viability does not depend on the Court denying the defendants' Motion to Abstain and Dismiss the Constitutional Case. Even if the Court chooses to abstain from the Constitutional Case, the legal issue at its center will still have to be decided, and it is that decision that will determine which path the Debtor will follow.¹⁵

Plaintiff's counsel stated at a prior hearing, "...we are simply saying it's expensive [litigating in numerous proceedings in North Carolina] and it's far more efficient to do it in one case, in one Court, and the only way we can do that and the only jurisdiction we could file in was this one."¹⁶ "As this Court knows, you don't have to be in financial distress to file a bankruptcy,

¹⁵ C/A No. 22-03309-hb, ECF No. 692, p. 8.

¹⁶ Adv. Pro. No. 22-80046-hb, Order at ECF No. 33; Transcript of hearing held December 28, 2022, at ECF No. 28, p. 61, lns. 10-13.

but it will be in financial distress if there is an adverse ruling with regard to that commerce clause.”¹⁷

The Court finds that Plaintiff has engaged in forum shopping by filing the bankruptcy case to bring this adversary proceeding before federal court.

III. DISCUSSION

Defendants request dismissal of this adversary proceeding under Federal Rule of Civil Procedure 12(b)(6), or alternatively ask that the Court abstain, or in the further alternative stay this proceeding pending the conclusion of litigation in North Carolina against AMI, an affiliate of Plaintiff, citing 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 305(a).

A. Motion to Dismiss

1. Applicable law

Federal Rule of Civil Procedure 8(a)(2), made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure, requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. (8)(a)(2). Courts and commentators agree that,

the purpose of a motion under Federal Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; the motion is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff’s case. Thus, [Rule 12(b)(6)] must be read in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim for relief in federal court and calls for ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’

5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (3d ed. April 2022 update) (footnotes omitted, collecting cases).

Rule 12(b)(6), made applicable to this proceeding by Bankruptcy Rule 7012(b), requires

¹⁷ *Id.*, at p. 131, lns. 22-25.

that “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Woods v. City of Greensboro*, 855 F.3d 639, 647 (4th Cir. 2017) (reversing dismissal for failure to state a claim). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Thus, in considering a Rule 12(b)(6) motion, a court “must accept as true all of the factual allegations contained in the complaint,” *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and must “draw all reasonable inferences [from those facts] in favor of the plaintiff.” *See E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations and internal quotations omitted); *see also Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009).

2. Analysis

After careful review of the allegations of the Complaint and arguments in the briefs, the Court finds that the factual allegations contained in the Complaint and the reasonable inferences drawn therefrom in favor of Plaintiff are adequate to defeat Defendants’ Motion under the standards of Rule 12(b)(6). Therefore, the Motion to Dismiss is denied.

B. Motion for Abstention

Defendants assert that the Court should exercise its discretion to abstain from hearing this adversary proceeding, or alternatively stay proceedings in this Court until litigation against AMI in the state courts of North Carolina concludes.

1. Applicable law

28 U.S.C. § 1334 provides:

- (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

- (b) Except as provided in subsection(e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
- (c)
- (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11...

28 U.S.C. § 1334. The District Court has referred such matters to this Court pursuant to 28 U.S.C. § 157. Local Civ. Rule 83.IX.01 (D.S.C.). Discretionary abstention pursuant to § 1334(c)(1) should be the exception, not the rule. *Foxwood Hills Prop. Owners Ass’n, Inc. v. 783-C, LLC* (*In re Foxwood Hills Prop. Owners Ass’n, Inc.*), Adv. Pro. No. 20-80049-hb, 2021 WL 1812668, at *16 (Bankr. D.S.C. May 5, 2021),¹⁸ (citing *In re Morgantown Excavators, Inc.*, Case No. 12-1473, 2013 WL 4829165, at *3 (Bankr. N.D. W. Va. Sept. 9, 2013)). The Supreme Court has found discretionary abstention should only apply in exceptional circumstances to serve an important countervailing interest. *Colo. River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 813 (1976) (involving jurisdiction under 28 U.S.C. § 1345 which provides “Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.” That section confers jurisdiction but does not include any codified abstention provisions similar to § 1334(c)(1)).

Although simply instructive, and all need not be considered, factors that may be relevant to determine whether to abstain include:

- effect or lack thereof on efficient case administration;
- extent to which state law issues predominate;
- difficult or unsettled nature of state law;

¹⁸ The case at hand is vastly different from *Foxwood*, but the factual differences do not impact the Court’s decision on this Motion.

- presence of related proceedings in non-bankruptcy courts;
- basis or lack thereof for federal non-bankruptcy jurisdiction;
- relatedness or remoteness to the main bankruptcy case;
- substance rather than form of an asserted “core” proceeding;
- feasibility of severing state law claims from core bankruptcy matters;
- burdens on the bankruptcy court’s docket;
- likelihood that the proceeding was the result of forum shopping by a party;
- the existence of a right to a jury trial; and
- presence of nondebtor parties in the proceeding.

Foxwood, Adv. Pro. No. 20-80049-hb, 2021 WL 1812668, at *17; *see also BGC Partners Inc. v. Avison Young (Canada) Inc.*, No. 2:15-cv-02057-DCN, 2015 WL 7458593, at *9 (D.S.C. Nov. 24, 2015).

2. Analysis

a. Effect or lack thereof on efficient case administration

Plaintiff argues that the disputes raised in this adversary proceeding will have an overwhelming effect on the administration of the bankruptcy, as the main issue before the Court in this adversary proceeding and the claims objection process in the underlying case is whether a portion of the title loans that Plaintiff issued are legal, enforceable contracts. Further, Plaintiff argues that determination of these disputes will ultimately affect estate assets and liabilities, and nothing could be more central to the administration of this estate and to the outcome of this case. However, there is no indication that litigating the issues raised in the Complaint in another forum, already deeply involved in the issues raised, will significantly impact efficient administration of the bankruptcy.

The Court understands Plaintiff’s argument that prevailing in litigation, pending pre-petition in the state courts, and now brought to federal court by Plaintiff through this bankruptcy filing, is essential to maintaining Plaintiff’s current business model and avoiding liabilities. However, the Court is not convinced that resolving the disputes in the North Carolina state courts rather than here

would have the impact on the estate or estate administration that Plaintiff asserts. The record does not show that Plaintiff lacks sufficient resources to, or otherwise cannot, effectively litigate in the state courts, even if this involves numerous courts. There is no reason to believe that continuing the litigation with Defendants already underway there will result in a slower resolution or different result than doing so in this Court.

Plaintiff argues that handling the disputes between Plaintiff and Defendants included herein, which are intertwined with the claims allowance process, in one forum will be more efficient and economical. That remains to be seen and appears to be an oversimplification of the realities of litigating with the hundreds of individual Defendants, all with a unique transactional history with Plaintiff. Further, Plaintiff has filed a plan that proceeds along two parallel paths not dependent on resolution of the dispute here.

The first path sets forth what will transpire in the event that the Debtor is largely successful in the Constitutional Case and the Claim Objections, meaning that the application of North Carolina's consumer protection laws to the Debtor is held to violate the United States Constitution after all appeals have been exhausted. The second path sets forth what will transpire in the event that the opposite is found after all appeals have been exhausted. However, this Plan's viability does not depend on the Court denying the defendants' Motion to Abstain and Dismiss the Constitutional Case. Even if the Court chooses to abstain from the Constitutional Case, the legal issue at its center will still have to be decided, and it is that decision that will determine which path the Debtor will follow.¹⁹

Therefore, it is possible for the Court to abstain from the litigation in this adversary proceeding while at the same time moving forward with the underlying bankruptcy case. Considering the unusual facts of this case, the effect or lack thereof on efficient case administration does not sway the Court in either direction regarding abstention.

- b. Extent to which state law issues predominate; difficult or unsettled nature of state law

¹⁹ C/A No. 22-03309-hb, ECF No. 692, p. 8.

Plaintiff argues that state law issues do not predominate because this case involves a constitutional challenge under federal law, and that the dispute herein does not involve unsettled issues of state law. The Court disagrees. A dispute over whether a state's law can be applied to the transactions between Plaintiff and Defendants, turning not only on an interpretation of the Commerce Clause but also on the effectiveness of choice of law provisions in their underlying contracts, and if it can be so applied, whether Plaintiff has violated that state law, involves predominantly issues of state law. Further, the dispute at the heart of this adversary rests on the unsettled status of North Carolina state law. Though Plaintiff relies on provisions of the Constitution in asserting that North Carolina consumer protection laws do not apply to its transactions with Defendants, the ultimate issue is the scope of that state law. Therefore, resolving that dispute will primarily involve construing the scope of North Carolina state law. Accordingly, the second and third factors weigh in favor of abstention.

c. Presence of related proceedings in non-bankruptcy courts

Defendants move for abstention to continue pre-petition litigation that has made progress in state courts. Plaintiff argues that while related, the state court litigation is not parallel. The litigation need not be identical, and there is no indication that issues raised in this adversary proceeding cannot be pursued in state court. Resolution of those state court cases—and possibly even the conclusion of only one or a handful of them—could answer some, or all, of the questions raised in this adversary proceeding. The Court finds that this factor weighs in favor of abstention because there is related litigation in non-bankruptcy courts that pre-dates this action.

d. Basis or lack thereof for federal non-bankruptcy jurisdiction

Plaintiff argues there is an independent basis for federal non-bankruptcy jurisdiction based on its request made under the Declaratory Judgment Act, which invokes federal jurisdiction, and

the breach of contract claims which could be asserted in federal court through diversity jurisdiction. When the District Court considered its role in the dispute prior to this bankruptcy proceeding, it concluded that even if jurisdiction was present, abstention was appropriate and declined to exercise federal jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, which is also cited in the Complaint here as grounds for the Court's non-bankruptcy jurisdiction. *Auto Money North v. Brown*, 2022 WL 507423 (D.S.C. Feb. 18, 2022). Regarding the breach of contract claim, Plaintiff cites no authority to support its contention that adding together a number of contract claims against a portion of the Defendants named here supports independent diversity jurisdiction in the federal courts over this entire proceeding pursuant to 28 U.S.C. § 1332. When considering the independent basis for non-bankruptcy jurisdiction over the disputes raised herein, with guidance from the *Brown* decision, the Court is swayed in favor of abstention.

e. Relatedness or remoteness to the main bankruptcy case

The weight of the related claims allowance process and reorganization prospects of Plaintiff in this Chapter 11 case is lightened by the fact that the substance of the underlying dispute involves litigation pending when the bankruptcy was filed, properly brought outside the bankruptcy case, and that appears to have no place in this Court, or in federal court, absent the underlying bankruptcy filing. Further, Plaintiff's filings in the underlying Chapter 11 case indicate: "...[T]his Plan's viability does not depend on the Court denying the defendants' Motion to Abstain and Dismiss the Constitutional Case. Even if the Court chooses to abstain from the Constitutional Case, the legal issue at its center will still have to be decided, and it is that decision that will determine which path the Plaintiff will follow."²⁰ Accordingly, the relatedness of the dispute herein to the main bankruptcy case does not weigh in favor of abstention.

²⁰ C/A No. 22-03309-hb, ECF No. 692, p. 8.

f. Substance rather than form of an asserted “core” proceeding

The substance rather than form of an asserted “core” proceeding is relevant. Core proceedings include:

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;...

The bankruptcy initiated the claim filing and allowance process, and Defendants have filed claims herein that are also encompassed in this adversary. Considering the substance of the underlying “core” matters, they involve disputes that can be and were raised in, and pending before, the courts of another state when this case was filed, properly brought outside the bankruptcy case, and again, appear to have no place in this Court or in federal court absent the underlying bankruptcy filing. The disputes involve interpretation and application of North Carolina state consumer protection laws. Examination of the substance of the issues raised in the adversary proceeding persuades the Court that abstention is appropriate to allow the North Carolina courts to determine these issues.

g. Feasibility of severing state law claims from core bankruptcy matters; burdens on the bankruptcy court’s docket; existence of a right to jury trial

No cause appears to exist to sever any state law claims from core bankruptcy matters. Additionally, there is no issue regarding a jury trial. Even if hearing this case would burden the bankruptcy court’s docket, the Court is not motivated by the facts of this case to base a decision on this self-serving factor.

h. Likelihood that the proceeding was the result of forum shopping by a party

Litigation against Plaintiff raising the bulk of the disputes herein was commenced and pending in other courts before bankruptcy. Plaintiff and AMI previously attempted to bring the same

or similar disputes to federal court before the bankruptcy as detailed above, without success. The only way Plaintiff found to bring this controversy before a federal court was to file the underlying bankruptcy proceeding. Plaintiff's schedules and statements filed in this case indicate Plaintiff was not experiencing insolvency or current financial distress at filing. After an opportunity to observe the credibility of testimony, and a careful review of the schedules and statements filed in the bankruptcy case, the monthly operating reports, as well as the record and progress of the bankruptcy case and related adversary proceedings, the Court finds Plaintiff has engaged in forum shopping by filing this bankruptcy case to bring this dispute before federal court. This finding weighs *heavily* in favor of returning this dispute to state court.²¹

i. Presence of non-debtor parties in the proceeding

Currently, no non-debtor parties are named herein; however, the Complaint, Answer, and pleadings related to this Motion detail involvement of Plaintiff affiliate AMI, and the related adversary proceeding asked this Court to find that the automatic stay of 11 U.S.C. § 362 protects AMI with respect to the litigation pending in state court. Therefore, the parties seem to agree that there is the presence or influence of a non-debtor party. However, AMI is not named in the Complaint. It appears that issues between Plaintiff, Defendants, and AMI could be resolved in the state courts, but not here without AMI participating as a party. Therefore, any impact or presence of the non-debtor party weighs in favor of abstention to allow the state courts to decide the disputes related to all parties properly before it.

3. The relevant factors weigh in favor of abstention

Considered as a whole, after analyzing and weighing these discretionary abstention factors, the Court finds the scales tip in favor of abstaining from hearing the adversary proceeding as allowed

²¹ See also *Auto Money North v. Brown*, 2022 WL 507423 (D.S.C. Feb. 18, 2022).

by § 1334(c)(1), returning the matters to the North Carolina state courts to decide the underlying issues in the cases involving Defendants already pending there. In addition to consideration of the abstention analysis of the statute, the Court is guided by the District Court's decision in *Brown* that decided, outside of the bankruptcy process, not to exercise jurisdiction under 28 U.S.C. § 2201 after considering the substance of the dispute, finding abstention appropriate in the interests of justice, comity with state courts, and respect for state law.²² The underlying bankruptcy case can continue to provide Plaintiff with the structure, asset protection, and reorganization options available through a Chapter 11 case while the disputes pled herein are resolved in the state courts.

IV. CONCLUSION

Pursuant to the foregoing, **IT IS, HEREBY, ORDERED** that Defendants' Motion to Abstain from the matters raised in this adversary proceeding pursuant to 11 U.S.C. § 1334(c)(1), as between Plaintiff and Defendants listed on Exhibit A to the Complaint, is **GRANTED**. All remaining relief requested in the Motion is denied. The automatic stay of 11 U.S.C. § 362 is lifted to allow Defendants herein to resume litigation pending pre-petition in the North Carolina state courts with Plaintiff, including conducting necessary discovery, filing of any pleadings (including but not limited to amended complaints, counterclaims, and procedural and dispositive motions), and pursuing those matters to final judgment and through any relevant appeals. However, for so long as this bankruptcy case is pending, or until further order of this Court, Defendants cannot take

²² Defendants have also requested that the Court abstain from hearing this adversary proceeding or stay proceedings under 11 U.S.C. § 305 pending completion of the AMI North Carolina litigation. Section 305(a) provides for discretionary abstention, suspension, or dismissal, of any or all proceedings in a bankruptcy case if the interests of the creditors and debtor support that relief. The factors considered are (1) fairness; (2) priorities in distribution; (3) capacity to address frauds and preferences; (4) speed; (5) economy; (6) freedom from litigation; (7) the importance of the discharge to the debtor; (8) the existence of pending state proceedings; (9) the number of creditors; (10) the complexity of the bankruptcy process; (11) efficiency; and (12) judicial economy. *Foxwood*, Adv. Pro. No. 20-80049-hb, 2021 WL 1812668, at *20 (citing *In re Remember Enters., Inc.*, 425 B.R. 757, 761 (Bankr. M.D.N.C. 2010)). Consideration of these factors involving § 305 adds nothing new to the Court's decision process. Additional authorities regarding abstention discussed by Plaintiff in its brief will not be addressed here as they were not asserted in Defendants' Motion.

any action to collect from assets of the bankruptcy estate to satisfy any judgment that may be entered without first obtaining leave from this Court. Should any party to this adversary proceeding require additional orders or relief to move these disputes toward resolution in the state courts of North Carolina, additional requests can be made to this Court by written motion, with notice to parties in interest. This Order should not be interpreted as allowing Defendants to initiate any new or other proceedings against Plaintiff outside this Court, nor to pursue any alter ego theory.²³

FILED BY THE COURT
03/28/2023



Entered: 03/28/2023

Chief US Bankruptcy Judge
District of South Carolina

²³ See Order at ECF No. 33, pgs. 12, 15, 20-21, Adv. Pro. No. 22-80046-hb.