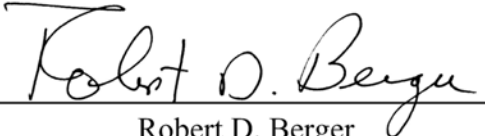


The relief described hereinbelow is SO ORDERED.

SIGNED this 9th day of September, 2025.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**STEVEN WILLIAM BROWN
and BETH ANN LULL,**

Case No. 25-20007
Chapter 7

Debtors.

**DENNIS G. FAIR and DARCY D.
WILLIAMSON, TRUSTEE,**

Adv. No. 25-06009

Plaintiffs,

v.

**FIRST NATIONAL BANK AND
TRUST, PHILLIPSBURG, KANSAS,**

Defendant.

ORDER DENYING MOTION TO DISMISS

Debtor Steven Brown has a 50% membership interest in DFSB, LLC. DFSB owns a Cessna. Defendant First National Bank and Trust has a lien on the Cessna. In this adversary proceeding, plaintiffs Dennis Fair, who has the other 50% membership interest in DFSB, and Darcy Williamson, the Chapter 7 trustee for Brown's bankruptcy estate, ask the Court to determine that First National's lien on DFSB's Cessna is invalid.¹ The proceeding is before the Court on First National's motion to dismiss under Fed. R. Civ. P. 12(b)(1), (2), (3), and (5) for lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, and insufficient service of process.² Because First National has now been served in accordance with Fed. R. Bankr. P. 7004(h), the remaining issues are subject-matter jurisdiction under Rule 12(b)(1) and venue under Rule 12(b)(3). The Court finds that it has "related-to" jurisdiction over this dispute under 28 U.S.C. § 1334(b) and that venue is proper under 28 U.S.C. § 1409(a). First National's motion to dismiss will therefore be denied.

Amended Complaint. Williamson and Fair's amended complaint alleges:

- DFSB, LLC, is a Kansas limited liability company. (Am. Compl. ¶ 7.)
- DFSB has two primary assets: a 1979 Cessna 421C and another airplane. (*Id.* ¶ 13.)

¹ Amended Complaint, ECF 3.

² Mot. Dismiss, ECF 11. Fed. R. Civ. P. 12(b) applies to this adversary proceeding under Fed. R. Bankr. P. 7012(b). First National appears by attorney Patricia Reeder. Trustee Williamson appears by attorney J. Michael Morris. Fair appears by attorney Colin Gotham.

- Steven Brown (“Debtor”) and Dennis Fair each have a 50% membership interest in DFSB. (*Id.* ¶¶ 11-12.)
- Debtor’s 50% membership interest in DFSB is property of his bankruptcy estate.³ (*Id.* ¶ 11.)
- Paragraph 16.2 of DFSB’s operating agreement provides that “[o]nly the manager and no member . . . has the right, power and authority to bind the LLC in contracts and other dealings with third parties.” (*Id.* ¶ 19.)
- Paragraph 1.10 of DFSB’s operating agreement provides that Fair is the manager of DFSB. (*Id.* ¶ 12.)
- On or about March 7, 2023, Debtor borrowed \$200,050 from First National and pledged DFSB’s Cessna as collateral for the debt, signing the security agreement on behalf of DFSB as “Steven William Brown, Member.” (*Id.* ¶¶ 14-15.)
- Debtor was not the manager of DFSB, and acted only as a member, when he executed the security agreement. (*Id.* ¶ 20.)
- The security agreement is therefore invalid. (*Id.* ¶ 20.)
- First National filed an unsecured claim for \$191,351.25 in Debtor’s bankruptcy case.⁴ (*Id.* ¶ 16.)

Rule 12(b)(1): Subject Matter Jurisdiction. Subject-matter jurisdiction is considered a “threshold issue” in every federal case. *See* 5B Arthur R. Miller & A.

³ Brown and his wife filed their joint Chapter 7 petition on January 3, 2025. *See* Case No. 25-20007, ECF 1.

⁴ Although the debt is secured by the lien on DFSB’s Cessna, First National’s claim is deemed unsecured vis-à-vis Debtor because the Cessna is not property of his bankruptcy estate. *See* 11 U.S.C. § 506(a).

Benjamin Spencer, *Federal Practice and Procedure* § 1350 (4th ed., updated May 2025). The burden of establishing it is on the party invoking the jurisdiction of the federal courts. *See Caballero v. Fuerzas Armadas Revolucionarias de Colombia*, 945 F.3d 1270, 1273 (10th Cir. 2019) (citing *Safe Streets All v. Hickenlooper*, 859 F.3d 865, 878 (10th Cir. 2017)).

“The jurisdiction of the bankruptcy courts, like that of other federal courts, is ground in, and limited by, statute.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). A bankruptcy court’s subject-matter jurisdiction extends to (1) cases under title 11⁵ (i.e., bankruptcy cases); (2) civil proceedings arising under title 11;⁶ (3) civil proceedings arising in cases under title 11;⁷ and (4) civil proceedings related to cases under title 11. *See* 28 U.S.C. § 1334(a), (b).⁸ Here, Williamson and Fair argue that a proceeding to determine the validity of First National’s lien on DFSB’s Cessna is “related to” Debtor’s bankruptcy case.⁹

⁵ Title 11 is, of course, the Bankruptcy Code.

⁶ A proceeding “arises under” the Bankruptcy Code if it involves a cause of action created by the Code. *See Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 771 (B.A.P. 10th Cir. 1997). Williamson and Fair do not argue that this proceeding arises under the Bankruptcy Code.

⁷ A proceeding “arises in” a bankruptcy case if it does not involve a cause of action created by the Code but could not exist outside of a bankruptcy case. *See In re Midgard Corp.*, 204 B.R. at 772. Williamson and Fair do not argue that this proceeding could not exist outside of a bankruptcy case.

⁸ Section 1334 grants subject-matter jurisdiction over such matters to the district courts; 28 U.S.C. § 157 authorizes the district courts to refer most of that jurisdiction to the bankruptcy courts. *See Collier on Bankruptcy* ¶ 3.01 (Richard Levin & Henry J. Sommer eds., 16th ed.).

⁹ *See* Pls.’ Response, ECF 16 at 6. Although Williamson and Fair also argue that this Court has “core” jurisdiction under 28 U.S.C. § 157(b)(2)(B) and/or (C), *see id.*, that argument must fail because “[s]ection 157(b)(2) is not a jurisdictional grant.”

A proceeding is “related to” a bankruptcy case if the outcome of that proceeding “could conceivably have any effect on the estate being administered in bankruptcy.” *Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1518 (10th Cir. 1990) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). This determination is made “on a fact-specific, case-by-case basis.” See *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.)*, 591 F.3d 164, 174 n.9 (3d Cir. 2009).

First National argues, citing *In re Mordini*, 491 B.R. 567 (Bankr. D. Colo. 2013), that even if the outcome of this proceeding could affect the value of the estate’s 50% membership interest in DFSB, “courts have determined that the economic effect of litigation on the value of a separate non-debtor entity in which a debtor owns an equity interest is insufficient to create ‘related-to’ jurisdiction.”¹⁰

¹ Hon. William L. Norton, Jr. & William L. Norton III, *Norton Bankr. L. & Prac.* ¶ 4:62 (3d ed. 2013). “Rather, it deals with procedure—the role that the bankruptcy judge . . . is to play in exercising the jurisdiction conferred by section 1334 on the district court.” David G. Epstein, *Bankruptcy and Related Law in a Nutshell* 360 (9th ed. 2017).

¹⁰ Mot. Dismiss 8 (citing *LAR MHP Holdings, LP v. Mordini (In re Mordini)*, 491 B.R. 567, 571 (Bankr. D. Colo. 2013)), ECF 15. See also *Tower Automotive Mexico, S. De R.L. De C.V. v. Grupo Proeza, S.A. De C.V. (In re Tower Automotive, Inc.)*, 356 B.R. 598, 602 (Bankr. S.D.N.Y. 2006) (“For example, a Chapter 7 debtor’s distributable assets might consist exclusively of the stock of a multinational corporation, but that happenstance would not give the bankruptcy court jurisdiction of a patent or antitrust dispute involving that corporation, no matter how important to its financial well-being.”).

Although not specifically styled as such, First National’s argument appears to be a “facial” challenge to subject-matter jurisdiction. Cf. *Laufer v. Looper*, 22 F.4th 871, 875 (10th Cir. 2022) (“A facial attack assumes the allegations in the complaint are true and argues they fail to establish jurisdiction. A factual attack goes beyond the allegations in the complaint and adduces evidence to contest jurisdiction.”).

But the plaintiffs' "jurisdictional hook," as it were, is not based solely on the economic effect of this litigation. According to Williamson and Fair:

DFSB has no debts, other than small maintenance and storage charges and approximately \$25,000.00 to Fair (which probably includes some of these maintenance and storage charges). DFSB's assets are two airplanes, including the disputed Cessna 421C. It is DFSB's intent to sell both airplanes, pay expenses, and disburse the net proceeds to Fair, and the bankruptcy estate, subject to the validity of [First National's] claimed lien.¹¹

Thus: to administer Debtor's bankruptcy estate, Williamson must liquidate the estate's 50% interest in DFSB.¹² That liquidation will require DFSB to sell the Cessna and distribute the proceeds to Debtor and Fair—and DFSB cannot do so without a determination as to the validity of First National's security interest in the Cessna. *Cf.* Kan. Stat. Ann. § 84-9-315(a)(2) (providing that "a security interest attaches to any identifiable proceeds of collateral"). That determination could increase the value of DFSB, but it will be a necessary step in the administration of

¹¹ Pls.' Response 2-3, ECF 16. Williamson & Fair also argue that "[b]y submitting a claim against the bankruptcy estate, a creditor brings themselves within the bankruptcy court's jurisdiction," and that a determination as to the validity of First National's lien is "an 'integral component' of the claims allowance process." *See* Pls.' Response 6 (citing *Langenkamp v. Kulp*, 498 U.S. 42 (1990)). However, "no action of the parties can confer subject-matter jurisdiction upon a federal court." *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). (*Langenkamp* was about waiver of the right to jury trial, not subject-matter jurisdiction.) Moreover, the amount of First National's unsecured claim against Debtor is unaffected by the validity of its lien on DFSB's Cessna (see note 3 *supra*)—and if First National were to receive any proceeds of the Cessna on account of its lien, DFSB would be subrogated to the rights of First National to the same extent. *See* 11 U.S.C. § 509(a).

¹² *See* 11 U.S.C. § 704(a)(1) ("The trustee shall . . . collect and reduce to money the property of the estate . . .").

Debtor's particular bankruptcy estate either way. Under these circumstances, Williamson and Fair have met their burden of demonstrating a "conceivable" effect on the estate and, therefore, "related-to" jurisdiction under *In re Gardner* and 28 U.S.C. § 1334(b).

Rule 12(b)(3): Venue. With exceptions not relevant here, "a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending." 28 U.S.C. § 1409(a). Williamson & Fair have demonstrated "related-to" jurisdiction, and Debtor's case is pending in this district. Venue is therefore proper under § 1409(a).

Conclusion. Because the Court has "related-to" jurisdiction over this proceeding under 28 U.S.C. § 1334(b) and venue is proper under 28 U.S.C. § 1409(a), First National's motion to dismiss under Fed. R. Civ. P. 12(b)(1) and (3) is hereby denied.

IT IS SO ORDERED.

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