This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: February 12, 2024

Guy R. Humphrey
United States Bankruptcy Judge

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

In re:	:	
	:	Case No. 08-34460
SYLVESTER BALLARD,	:	Chapter 11
	:	Judge Humphrey
Debtor.	:	
	:	

MEMORANDUM ORDER DENYING MOTION TO REOPEN CASE (DOC. 808)

Debtor Sylvester Ballard ("Ballard") filed a motion captioned *Request to Reopen Secured Claim (Docket #483) to Determine Amount of [Balloon] Payoff of the Agreed Modified Promissory Note with J.P. Morgan Chase, Secured by Real Estate Commonly Know[n] as 1420 Glendale Avenue, Dayton, Ohio* (Doc. 808) (the "Motion") on October 10, 2023. U.S. Bank, in its capacity as Indenture Trustee of CIM Trust 2021-NR4, by and through its attorney-in-fact, Fay Servicing, LLC ("U.S. Bank"), filed an objection on November 27, 2023 (Doc. 822), and Ballard filed a reply on November 30, 2023 (Doc. 823).

I. Procedural and Factual Background

Ballard filed a petition for relief under Chapter 11 of the Bankruptcy Code on September 10, 2008. Doc. 1. J.P. Morgan Chase ("Chase") filed a secured proof of claim in the amount of

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$269,286.68 on October 30, 2008. Cl. 128-1. Ballard filed an objection to Chase's claim and a motion to determine the secured and unsecured amounts of that claim on February 9, 2010. Doc. 483. Ballard and Chase resolved Ballard's objection and motion through an agreed order entered on March 21, 2011 (the "Agreed Order"). Doc. 705. Pursuant to that Agreed Order, Chase's claim was based on an original March 26, 2004 promissory note in the amount of $281,250. *Id.* at 2. Chase was allowed a secured claim in the amount of $134,746.50. *Id.* In addition, the Agreed Order modified the terms of the original promissory note, including modifying the maturity date to March 15, 2021. *Id.*

Pursuant to Ballard's amended Chapter 11 plan of reorganization (the "Plan"), Chase's claim was categorized as a Class 2 claim. As a lender who agreed to a modification of its promissory note, Chase's claim was to be "treated in accordance with the terms and conditions of [the] modified note[]." Doc. 672 at 4. For purposes of Class 2 claims, the Plan also provided that Ballard "shall remain personally liable of the amount of the modified note where a reaffirmation has been filed or an agreed order of modification entered." *Id.* The Plan provided that the court retained exclusive jurisdiction until consummation of the Plan and for various other purposes, such as "[t]o enter an Order concluding and terminating the bankruptcy case." *Id.* at 8-9.

The Plan was confirmed on March 25, 2011. Doc. 723. The confirmation order provided that "[o]nce the Plan has been substantially consummated in accordance with Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Reorganized Debtor shall file a motion with the Court to obtain a final decree to close the case." *Id.* at 2. Additionally, the confirmation order specifically stated that Ballard's objection to Chase's claim was resolved and that the Agreed Order was incorporated by reference into the confirmed Plan. *Id.* at 2-4.

Ballard moved to close this bankruptcy case on December 21, 2011. Doc. 781. In that motion, Ballard alleged that the elements for "substantial consummation" of the Plan had been met. *Id.* at 1. An order of final decree was entered on January 26, 2012. Doc. 787. The case briefly re-opened in 2015 to redact certain personal identifiers pursuant to Federal Rule of Bankruptcy Rule 9037. Docs. 795-98. Other than those filings, this case has been closed for over a decade.

II. Motion to Reopen and Parties' Arguments

Ballard moved to re-open this case on October 10, 2023. Doc. 808. In his Motion, Ballard requests that the court "reopen the case with J.P. Morgan Chase to settle a balance pay-off dispute with their mortgage." *Id.* at 1. Ballard requests that the court determine that $107,306.99 is sufficient to pay off an "agreed modified promissory note with J.P. Morgan Chase" (the "Loan"). *Id.* at 2. Ballard indicates that the Loan is secured by real estate at 1420 Glendale Avenue, Dayton, Ohio. *Id.* Further, he requests punitive damages in excess of $25,000. *Id.* at 1. Ballard alleges that Loan was transferred to Fay Servicing, LLC ("Fay") on May 3, 2018. *Id.* at 3. Ballard continued to make payments on the Loan to Fay through March 31, 2020. *Id.* On April 1, 2020, Fay suspended payments on the Loan for six (6) months as part of a COVID-19 relief program. *Id.* After the COVID-19 relief program ended, Ballard resumed making payments in October 2020, and continued to do so until November 2021. *Id.* At that point, Fay ceased accepting payments on the account as the Loan had matured. *Id.* However, Fay began seeking payments from Ballard on the Loan in February 2022. *Id.* According to Ballard, Fay pledged to modify the terms of the Loan after three (3) months. *Id.* When the three-month period lapsed, Fay declined to modify the terms of the Loan, as the Loan had matured. *Id.* Despite Ballard's attempts to negotiate a resolution, Fay eventually reported that Ballard was delinquent in his payments on the Loan to credit bureaus in September 2023. *Id.* As a result, Ballard's credit rating significantly decreased. *Id.* Ballard

contends that Loan has matured and that Fay has wrongfully appended monthly payments to his account. *Id.*

U.S. Bank objected to the Motion on November 27, 2023.[1] Doc. 822. In its objection, U.S. Bank explains that the present dispute concerns the correct amount required to pay the balance due on the Loan, which will have no effect on Ballard's fully administered estate. *Id.* at 2. U.S. Bank alleges that Ballard seeks to reopen his case to bypass the foreclosure action filed in Montgomery County Court of Common Pleas, No. 2023 CV 05430 (the "Foreclosure Action"). *Id.* On the same day that Ballard filed his Motion (October 10, 2023), U.S. Bank filed its Foreclosure Action. *Id.* at 5. Ballard filed a Notice of Chapter 11 Bankruptcy Filing in the Foreclosure Action on October 16, 2023. *Id.* As a result of that filing, the state court implemented an "administrative dismissal," effectively staying the Foreclosure Action until U.S. Bank can show good cause to reactivate it. *Id.* at 6. In addition, the state court sua sponte vacated the judgment and decree of foreclosure awarded to U.S. Bank. *Id.* U.S. Bank challenges this court's authority to reopen the estate, claiming that the court lacks subject matter jurisdiction. *Id.*

In response, Ballard claims that U.S. Bank lacks standing to object to Ballard's Motion. Doc. 823. Essentially, Ballard contends that the Agreed Order between himself and Chase constitutes a reaffirmation agreement. Ballard alleges that U.S. Bank is precluded from foreclosing on the Loan, as U.S. Bank failed to secure a valid reaffirmation agreement, claiming that (1) the reaffirmation agreement was not assigned to U.S. Bank, (2) Ballard was never notified of any assignment of the reaffirmation agreement, and (3) Ballard did not consent to the assignment of the reaffirmation agreement. *Id.* at 1. Ballard also claims that U.S. Bank violated the Fair Credit Reporting Act. *Id.*

[1] For purposes of adjudicating Ballard's Motion and U.S. Bank's objection, U.S. Bank has accepted Ballard's assertions as true.

III. Law and Analysis

In considering Ballard's Motion, the court must adhere to the applicable standards when deciding to reopen a closed estate, which mandate an assessment of the futility of the underlying issues raised and the court's subject matter jurisdiction over the ultimate issue. These two analyses are inextricably linked. The analysis of futility necessitates the court to scrutinize whether it possesses the requisite subject matter jurisdiction to adjudicate the underlying issues on the merits. In this case, not only has the court determined that the Motion is indeed futile for the reasons cited below but also that the court lacks the necessary subject matter jurisdiction to hear the underlying issues raised by Ballard. Based on the lack of subject matter jurisdiction and the resulting futility of the Motion, Ballard's Motion to reopen his closed estate is denied**.**

A. Motion to Reopen

Section 350 of the Bankruptcy Code provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). "A decision to reopen a case is committed to the sound discretion of the court." *In re Duckett*, No. 05-39580, 2015 Bankr. LEXIS 2790, at *4, 2015 WL 5002522, at *2 (Bankr. N.D. Ohio Aug. 21, 2015) (citing *In re Kapsin*, 265 B.R. 778, 780 (Bankr. N.D. Ohio 2001)). In exercising such discretion, the court "is to consider the equities of each case with an eye toward the principles which underlie the Bankruptcy Code." *Kapsin*, 265 B.R. at 780. "The reopening of a case is a ministerial act, which 'lacks independent legal significance and determines nothing with respect to the merits of the case.'" *Duckett*, 2015 Bankr. LEXIS 2790, at *4-5, 2015 WL 5002522, at *2 (quoting *Cusano v. Klein*, 264 F.3d 936, 948 (9th Cir. 2001)).

Though the court enjoys great discretion, a case will not be reopened "if doing so would be futile." *In re Jenkins*, 330 B.R. 625, 628 (Bankr. E.D. Tenn. 2005); see also *Zirnhelt v. Madaj*

(*In re Madaj*), 149 F.3d 467, 472 (6th Cir. 1998) (case will not be reopened where the reopening will have no effect); accord *Maynard v. IRS* (*In re Aero-Fab, Inc.*), No. 3:21-0206, 2021 U.S. Dist. LEXIS 237759, at *15, 2021 WL 5889979, at *5 (S.D. W. Va. Dec. 13, 2021) (holding that reopening of case would be futile when the court lacked jurisdiction over the issues). "One example of futility is where the court cannot provide the debtor with any relief." *In re Caravona*, 347 B.R. 259, 262-63 (Bankr. N.D. Ohio 2006) (quoting *In re Hardy*, 209 B.R. 371, 373 (Bankr. E.D. Va. 1997) (in deciding a motion to reopen, the court "must determine if the underlying cause of action . . . is likely to be sustained when considered on the merits.")). "Where the court cannot afford the moving party the requested relief, the court does not abuse its discretion in refusing to reopen the case." *Duckett*, 2015 Bankr. LEXIS 2790, at *5, 2015 WL 5002522, at *2 (internal citations omitted). The moving party has the burden of proof by a preponderance of the evidence. *In re Jones*, 174 B.R. 67, 69 (Bankr. N.D. Ohio 1994).

Consistent with the Sixth Circuit's futility analysis, courts have considered various factors within their discretion when determining to reopen a bankruptcy case, including:

> (1) the length of time the case was closed; (2) whether a nonbankruptcy forum has jurisdiction to determine the issue which is the basis for reopening the case; (3) whether prior litigation in the bankruptcy court determined that a state court would be the appropriate forum; (4) whether any parties would suffer prejudice should the court grant or deny the motion to reopen; (5) the extent of the benefit to the debtor by reopening; and (6) whether it is clear at the outset that no relief would be forthcoming to the debtor by granting the motion to reopen.

In re Saint Michael Motor Express, No. 08-11838-E, 2016 Bankr. LEXIS 959, at *8-9 (Bankr. W.D. Tenn. Mar. 9, 2016) (quoting *In re Wilson*, 492 B.R. 691, 695 (Bankr. S.D.N.Y. 2013)); accord *In re Kittrell*, No. 4:09-bk-08537-BMW, 2020 Bankr. LEXIS 2809, at *9 (Bankr. D. Ariz. Oct. 6, 2020) (court declined to reopen case given the length of time that has elapsed since the case was closed and given that reopening the case would be futile) (citing *Dymon Invs., Inc. v. Welch*

(*In re Welch*), No. NV-14-1079-HlPaJu, 2015 Bankr. LEXIS 17, at *10, 2015 WL 65307, at *4 (B.A.P. 9th Cir. Jan. 5, 2015)).

Excluding the brief period of activity between 2015 and 2016, Ballard's case has been closed for about twelve (12) years. In addition, the allegations in Ballard's Motion represent breach of contract claims, which were the subject of litigation in the Foreclosure Action in the state court. These issues are appropriately heard in the state court, as explained more fully below. U.S. Bank has already suffered prejudice from Ballard's attempt to reopen this proceeding by delaying the Foreclosure Action. Ballard has not articulated any benefit to the bankruptcy estate should the case be reopened. Finally, as will be explained, the court lacks subject matter jurisdiction to address Ballard's concerns.

B. Subject Matter Jurisdiction

Federal courts, including bankruptcy courts, have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). This court has an obligation to determine whether it has subject matter jurisdiction over any matter, regardless of whether a party in interest objects or raises an issue as to its jurisdiction. *Mich. Emp't Sec. Comm'n v. Wolverine Radio Co.* (*In re Wolverine Radio Co.*), 930 F.2d 1132, 1137 (6th Cir. 1991). "Parties can neither waive nor consent to subject matter jurisdiction[.]" *Id.* at 1137-38 (citing *Rini v. Clerk* (*In re Rini*), 782 F.2d 603, 608 (6th Cir. 1986)).

The scope of a bankruptcy court's subject-matter jurisdiction is defined by statute. Section 1334 confers upon the district courts exclusive jurisdiction over "cases under title 11," and non-exclusive jurisdiction of "proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(a) and (b). Section 157 authorizes district courts to refer cases and proceedings falling within § 1334(a) and (b) to the bankruptcy courts. 28 U.S.C. § 157(a).

"Because the jurisdictional provisions of § 1334 operate conjunctively to determine the extent of a bankruptcy court's jurisdiction, it is not necessary to distinguish among them and instead it is necessary only to determine whether a matter is at least 'related to' the bankruptcy." *In re Gavitt*, 514 B.R. 243, 248 (Bankr. S.D. Ohio 2014) (internal quotations and citations omitted).

When determining whether a matter falls under a bankruptcy court's "related to" jurisdiction, the Sixth Circuit has adopted the test in *Pacor, Inc. v. Higgins* (*In re Pacor, Inc.*), 743 F.2d 984 (3d Cir.1984). *Gavitt*, 514 B.R. at 248; *Wolverine Radio Co.*, 930 F.2d at 1142; *In re Thickstun Bros. Equip. Co., Inc.*, 344 B.R. 515, 520 (B.A.P. 6th Cir. 2006). In *Pacor*, the Third Circuit explained:

> The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

743 F.2d at 994 (emphasis in original; citations omitted).

From a cursory view, many issues may appear to be "related to" a bankruptcy proceeding. As a result, the Sixth Circuit also clarifies that "situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement[.]" *Kelley v. Nodine* (*In re Salem Mortg. Co.*), 783 F.2d 626, 634 (6th Cir. 1986). "[T]he 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)]." *Lindsey v. O'Brien, Tanski, Tanzer and Young Health Care Providers of Conn.* (*In re Dow Corning Corp.*), 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Pacor*, 743 F.2d at 994). "Instead, there must be some nexus between the 'related' civil proceeding and the title 11 case." *Id.* (quoting *Pacor*, 743 F.2d at 994).

"At the most literal level, it is impossible for the bankrupt debtor's estate to be affected by a post-confirmation dispute because the debtor's estate ceases to exist once confirmation has occurred." *Papas v. Buchwald Capital Advisors, LLC* (*In re Greektown Holdings, LLC*), 728 F.3d 567, 577 (6th Cir. 2013) (quoting *Resorts Int'l Fin., Inc. v. Price Waterhouse & Co., LLP* (*In re Resorts Int'l, Inc.*), 372 F.3d 154, 165 (3d Cir. 2004)). However, in declining to distinguish between pre- and post-confirmation jurisdiction, the Sixth Circuit has rejected a rigid reading of the Third Circuit's interpretation in *Resorts Int'l, Inc.*, noting instead that "[i]t is possible that a bankruptcy court's 'related to' jurisdiction diminishes somewhat post-confirmation." *Giese v. Lexington Coal Co.* (*In re HNRC Dissolution Co.*), 761 F. App'x 553, 560 (6th Cir. 2019) (citing *Greektown Holdings, LLC*, 728 F.3d at 577). Essentially, "'related to' jurisdiction in the post confirmation period expands or contracts depending on the relationship between the post confirmation debtor and the defendant, the language of the confirmed plan and the impact the matter will have on performance of the confirmed plan." *Equip. Finders, Inc. of Tenn. v. Fireman's Fund Ins. Co.* (*In re Equip. Finders, Inc. of Tenn.*), 473 B.R. 720, 731 (Bankr. M.D. Tenn. 2012) (citing *Wolverine Radio Co.*, 930 F.2d 1132; *Gordon Sel-Way, Inc. v. United States* (*In re Gordon Sel-Way, Inc.*), 270 F.3d 280 (6th Cir. 2001); *Linsenmeyer v. United States* (*In re Linsenmeyer*), 92 F. App'x 101 (6th Cir. 2003)).

The Sixth Circuit has many guiding precedents concerning the scope of the bankruptcy court's "related to" jurisdiction in the post-confirmation context. See *Wolverine Radio*, 930 F.2d 1132; *Gordon Sel-Way, Inc.*, 270 F.3d 280; *Linsenmeyer*, 92 F. App'x 101. Beginning with *Wolverine Radio Co.*, the Sixth Circuit found "related to" jurisdiction when a debtor faced a potential indemnification action due to a state agency's assignment of the debtor's past-due contribution obligations to the assignee company. In that case, the debtor confirmed a Chapter 11

plan that sold a radio station to a corporation, which was shortly assigned to another company. *Wolverine Radio Co.*, 930 F.2d at 1135. Pursuant to the purchase agreement incorporated into the plan, the debtor had agreed to indemnify the buyer. *Id.* at 1135-36. Less than a year after the Chapter 11 plan was confirmed, the state employment security commission assigned the debtor's rate of contribution and poor payment history to the assignee company for state unemployment trust fund purposes. *Id.* at 1136-37. Concerned that the assignee company would assert indemnity rights under the purchase agreement against the debtor, the debtor returned to the bankruptcy court and sought an order enforcing the confirmed plan, specifically maintaining that the state agency was precluded from assigning the debtor's experience rating as that rating was an "interest" that was extinguished in the sale pursuant to 11 U.S.C. § 363(f). *Id.* at 1142, 1145-46. In reaching its decision, the Sixth Circuit applied the *Pacor* test and reasoned: "Although we acknowledge the possibility that the [ ] dispute may ultimately have no effect on the debtor, we cannot conclude that it will have *no conceivable* effect." *Id.* at 1143 (emphasis in original).

In *Gordon Sel-Way, Inc.*, a Chapter 11 debtor pursued a claim for a federal tax refund in the bankruptcy court. 270 F.3d at 282. Although the government acknowledged that the debtor was entitled to a refund, the government refused to refund the debtor because the debtor owed past tax penalties. *Id.* The bankruptcy court held that the government was not entitled to set off the tax refund against the debtor's prior debts because the government's claims arose prior to the debtor's filing of the bankruptcy petition and the debtor's refund claim arose post-petition. *Id.* On appeal, the government claimed that the bankruptcy court lacked jurisdiction. *Id.* In affirming the bankruptcy court's decision, the Sixth Circuit again found that the bankruptcy court had "related to" jurisdiction for two reasons. First, resolution of the debtor's tax claim and the government's right to setoff was necessary to hasten the consummation of the plan. *Id.* at 289 (citing 11 U.S.C.

1142(b) ("The court may direct the debtor and any other necessary party . . . to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.")). Second, the Chapter 11 plan in this case provided that "the [c]ourt shall further retain jurisdiction to . . . hear and determine all controversies relating to obligations of the Debtor incurred in the conduct of Sel-Way prior to confirmation." 270 F.3d at 289. The Sixth Circuit concluded: "Given that the present controversy clearly relates to Sel-Way's federal tax penalties that arose prior to confirmation and payment, we believe that the plan of reorganization provides the bankruptcy court with post-confirmation jurisdiction over this matter." *Id.*

However, in *Linsenmeyer*, the Sixth Circuit declined to find "related to" jurisdiction when debtors moved in 2000 to reopen their closed estate after a decade so that the bankruptcy court could appoint a trustee to file an amended tax return for the Chapter 11 estate for 1990. 92 F. App'x at 102-03. Pursuant to a settlement agreement incorporated into the confirmed Chapter 11 plan, a creditor was entitled to foreclose on certain stock if the debtors defaulted on a post-petition loan. *Id.* at 101-02. After missing a payment, the debtors were given an extension; however, the debtors failed to remit payment by that deadline, resulting in the sale of the stock. *Id.* at 102. Although the debtors reported the income from that sale on their individual tax returns for 1990, they failed to pay the tax. *Id.* The Sixth Circuit affirmed the bankruptcy court's denial of the debtors' request. The Sixth Circuit noted that "upon confirmation of a plan of reorganization, the property of the estate vests in the debtor and the estate terminates—that is, unless the plan provides otherwise." *Id.* (citing 11 U.S.C. § 1141(b)) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."). The Sixth Circuit held that the tax liability was properly imposed on the debtors, and not the bankruptcy estate, because the stock was sold after the effective date of the plan. *Id.* at 103. The Sixth Circuit

reasoned that the plan was a contract and both the language of that contract and section 1141(b) provided that all property reverted to or vested in the debtor upon confirmation. *Id.*

In this case, the court finds that Ballard's allegations only form "an extremely tenuous connection" to his closed estate, and as a result, do not satisfy the jurisdictional requirement. The court understands Ballard's Motion to be a request to reopen his closed estate in order to invoke the court's assistance to either settle an alleged dispute with Fay regarding the Loan or to relitigate his previously resolved objection to Chase's claim. Either way, the court lacks the requisite jurisdiction. In reaching this conclusion, the court considers the relationship between Ballard and U.S. Bank, the language of the confirmed Plan, and the impact this dispute would have on the performance of the confirmed Plan. Under the *Pacor* test, jurisdiction is appropriate when the outcome of a proceeding could conceivably have an effect on the estate being administered in bankruptcy. However, in the matter before us, Ballard's estate has been fully administered and closed for the better part of more than a decade. The subject dispute is between Ballard, individually, and U.S. Bank and does not involve Ballard's bankruptcy estate. The unsecured creditors of the Chapter 11 bankruptcy estate will not be impacted in any manner as a result of the resolution of the dispute. Simply put, it is a two-party dispute that bears no connection to Ballard's bankruptcy case or the bankruptcy estate other than that it involves a claim of a secured creditor which was resolved more than a decade ago under the Chapter 11 Plan and the Agreed Order.

Unlike in *Wolverine Radio Co.*, in which the Sixth Circuit found that "related to" jurisdiction existed because an indemnification action against the debtor had a direct impact on the estate, here there is no estate left to be affected; thus, the "related to" jurisdiction cannot exist in this context, and the rationale of *Wolverine Radio Co.* does not apply. The Foreclosure Action by U.S. Bank, while unfortunate for Ballard, is an exercise of U.S. Bank's rights and does not have

any impact on a non-existent estate. Nonetheless, the court is instructed to look to the language of the confirmed Plan in determining whether "related to" jurisdiction is present.

Nothing in the Plan or the order confirming the Plan confers jurisdiction upon this court. In *Gordon Sel-Way, Inc.*, not only was the court's intervention necessary for consummation of the plan, the plan also specifically provided for retention of jurisdiction by the bankruptcy court regarding the dispute. This case is distinguishable as the Plan here contained no such retention of jurisdiction language, other than the standard retention language included in most plans providing the court with exclusive jurisdiction until consummation and to allow for the court to enter an order concluding and terminating the case. Ballard's Plan has already been consummated. The mere presence of this retention language does not automatically confer "related to" jurisdiction for any dispute that may arise in the future. The issue at hand is an alleged breach of the Agreed Order which was incorporated into the Plan—a matter that is fundamentally contractual in nature. The bankruptcy court's intervention at this juncture is unnecessary.

Instead, this case is more akin to that of the one in *Linsenmeyer*, and accordingly, Ballard's Motion to reopen his closed estate is denied. Like in *Linsenmeyer*, Ballard's Plan contemplated negative consequences should Ballard default on his obligations under the Agreed Order incorporated into the Plan. The state court is well within its wheelhouse to construe and apply the Agreed Order and to determine Ballard's and U.S. Bank's rights under the Agreed Order and any other governing instruments in the Foreclosure Action. The subject of the Foreclosure Action does not fall within the jurisdiction of this court under either the *Pacor* test or the instructive Sixth Circuit precedent explained above. The Plan does not confer jurisdiction upon this court for matters that are purely contractual and unrelated to the administration of a closed bankruptcy estate.

C. Section 1141 of the Bankruptcy Code Creates a Binding and Enforceable Contract Under State Law

"[T]he provisions of a confirmed plan bind the debtor . . . and any creditor[.]" 11 U.S.C. § 1141(a). When a bankruptcy court confirms a Chapter 11 plan, the Bankruptcy Code provides that "[e]xcept as otherwise provided in this subsection, in the plan, or in the order confirming the plan . . . discharges the debtor from any debt that arose before the date of such confirmation[.]" 11 U.S.C. § 1141(d)(1)(A). In other words, "while confirmation of a plan of reorganization discharges the debtor from pre-confirmation debts, the confirmation substitutes the obligations of the plan for the pre-confirmation debts." *In re Nylon Net Co.*, 225 B.R. 404, 406 (Bankr. W.D. Tenn. 1998) (citing *In re Page*, 118 B.R. 456, 460 (Bankr. N.D. Tex. 1990)). "[A] chapter 11 plan becomes a binding contract between the debtor and its creditors, and governs their rights and obligations." *Id.* (internal citations omitted). "Although creditors may not attempt to collect pre-confirmation obligations, creditors may engage in lawful collection activities to enforce plan obligations." *Id.* "If a reorganized debtor defaults under a plan, creditors have several options, including enforcing the plan terms in any court of competent jurisdiction." *Nat'l City Bank v. Troutman Enters., Inc.* (*In re Troutman Enters., Inc.*), 253 B.R. 8, 11 (B.A.P. 6th Cir. 2000) (citing *In re Xofox*, *Indus. Ltd.*, 241 B.R. 541, 543 (Bankr. E.D. Mich. 1999)). "[A] state law breach of contract action may be brought for a breach of chapter 11 breach of contract obligations." *Wade v. Farmers Natl. Bank*, W.D. Ky. No. 3:10CV-217-S, 2011 U.S. Dist. LEXIS 112778, at *9, 2011 WL 4587581, at *3 (W.D. Ky. Sept. 30, 2011) (quoting *Nylon Net Co.*, 225 B.R. at 406); see also *Paul v. Monts*, 906 F.2d 1468, 1472 (10th Cir. 1990) (finding a third-party investor to a confirmed plan not bound under § 1141, but may be bound under "general contract law").

The fact pattern before this court has been addressed by other courts within the Sixth Circuit. For example, in *Nylon Net Co.*, the debtor moved to reopen its bankruptcy case in order to

obtain an injunction against pending state collection actions. 225 B.R. at 404. Approximately twelve (12) years after the debtor's plan had been confirmed, two (2) creditors declared the debtor in default of its plan payments and initiated collection suits in state court. *Id.* The court determined that the creditors' claims against the debtor were essentially breach of contract actions arising from the contractual and financial obligations as set forth in the debtor's Chapter 11 plan. *Id.* at 406. The court further found that the state court is the most efficient and appropriate forum to enforce the plan obligations. *Id.* Due to the significant amount of time that had elapsed since confirmation of the plan, the contractual nature of the parties' dispute, and the existing jurisdiction of the state court, the court denied the debtor's motion to reopen the Chapter 11 bankruptcy case. *Id.*

Based on the filings, it is evident that U.S. Bank attempted to enforce the Plan terms in the state court through the Foreclosure Action. Unhappy with the result of that litigation, Ballard now seeks this court to exercise subject matter jurisdiction over the dispute regarding the Loan. The confirmed Plan, including the Agreed Order, effectively constituted a new contract between Ballard and the involved parties. Any disputes arising from the Plan or the Agreed Order are quintessentially matters of state contract law and best adjudicated by the state court. It is the state court that is equipped to handle such contractual disputes and not the bankruptcy court, which no longer has a vested interest in the administration of the estate. Moreover, the Plan provided that this court only retained jurisdiction until consummation of the Plan, and Ballard himself asserted that the Plan had been substantially consummated. Even assuming, for purposes of argument only, that this court could exercise subject matter jurisdiction concerning this claim, the state court would have concurrent jurisdiction and is the most appropriate forum to best serve the parties' interest in enforcement of the Plan obligations.

D. Res Judicata

To the extent Ballard seeks this Court to intervene in order to relitigate his prior objection to Chase's claim or modify the confirmed Plan, Ballard's request is denied. Section 1127(e) provides for modification for confirmed Chapter 11 individual plans for three exclusive reasons:

> (e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—
>
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
> (2) extend or reduce the time period for such payments; or
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

11 U.S.C. § 1127(e). See *In re Stanford*, 498 B.R. 307, 311 (Bankr. D.N.H. 2013) (stating that § 1127(e) provides three exclusive reasons to modify the plan and other modifications are not permitted). Ballard is not proposing to change the plan payments on this claim. Instead, he is seeking to litigate the remaining post-confirmation balance owed on the debt.

"[C]onfirmation of a plan has been described as 'res judicata of all issues that could or should have been litigated at the confirmation hearing.'" *Ruskin v. DaimlerChrysler Svcs. N. Am., L.L.C.* (*In re Adkins*), 425 F.3d 296, 302 (6th Cir. 2005) (quoting *In re Cameron*, 274 B.R. 457, 460 (Bankr. N.D. Tex. 2002)). "The doctrine of res judicata provides 'that a valid and final judgment on a claim precludes a second action on that claim or any part of it,' adding that claim preclusion 'applies not only to bar the parties from relitigating issues that were *actually* litigated but also to bar them from relitigating issues that *could have been raised* in an earlier action.'" *In re Hanson*, No. 4:17-bk-15656-SDR, 2018 Bankr. LEXIS 2932, at *24 (Bankr. E.D. Tenn. Sep. 26, 2018) (citing *In re Gandy*, No. 11-30369, 2013 Bankr. LEXIS 2560, at *10, 2013 WL 3216130,

at *3 (Bankr. E.D. Tenn. June 25, 2013) (quoting *J.Z.G. Res., Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996)).

Ballard's opportunity to litigate and seek the court's intervention regarding Chase's claim has come and gone. Though Ballard had originally objected to Chase's claim, Ballard entered into the Agreed Order with Chase, and both parties agreed to the treatment of Chase's claim through that Agreed Order and the confirmed Plan. Ballard agreed that Chase was allowed a secured claim in the amount of $134,746.50. Any dispute related to Chase's claim was resolved upon confirmation of the Plan. Ballard is now precluded from requesting that this court determine what amount is appropriate to pay off the Loan. The state court is well-equipped to make that determination through the Foreclosure Action.

E. Reaffirmation Agreement Not Required

In his response, Ballard contends that U.S. Bank lacks standing to object to his request because U.S. Bank has not obtained a valid reaffirmation agreement. Ballard improperly refers to the Agreed Order between himself and Chase as a reaffirmation agreement. In addressing this point, the court finds the decision in *Am. First Fed., Inc. v. Theodore*, 584 B.R. 627 (D. Vt. 2018) persuasive. In that case, a debtor challenged the enforceability of a plan when creditors failed to obtain valid reaffirmation agreements. That court held that a reaffirmation agreement is not required, and reasoned:

> Nothing in § 524 states that it applies to debts set forth in a confirmed chapter 11 plan, nor has any court held that plan obligations are enforceable only if further supported by a reaffirmation agreement . . . . Such a requirement would be redundant, requiring a creditor and debtor not only to negotiate for inclusion of a pre-petition debt into a proposed chapter 11 plan which is then approved by the Bankruptcy Court as part of the confirmation process, but also to enter into a separate reaffirmation agreement. This duplication of effort is not required. . . . If reaffirmation agreements were required to render plan obligations enforceable, the Bankruptcy Court should not have confirmed the 2011 Plan or the 2016 Modified Plan without them. To now superimpose a requirement that confirmed plan

> obligations must also be supported by a reaffirmation agreement would ignore the general principle that "[t]he plan is essentially a new and binding contract, sanctioned by the court[.]"

Theodore, 584 B.R. at 634-35 (internal citations omitted). Although a reaffirmation agreement may be required for a post-confirmation contract, the court determined that pre-petition debts which have been modified and which the bankruptcy court approved in its confirmation of the plan are not new obligations that could compromise the fresh start afforded to a debtor. *Id.* at 635-36 (discussing *Sandburg Fin. Corp. v. Am. Rice, Inc.* (*In re Am. Rice, Inc.*), 448 F. App'x. 415 (5th Cir. 2011)).

The fact that U.S. Bank has not obtained a valid reaffirmation agreement is irrelevant. Like in *Theodore*, at issue in this case is a pre-petition debt which was modified by the Agreed Order and approved by this court when the Plan was confirmed. As for Ballard's argument that U.S. Bank lacks standing to object to his Motion, as opposed to Chase, the Court concludes that it is not necessary for this Court to determine whether U.S. Bank is the appropriate party to object to Ballard's Motion. Disputes regarding the assignment of the Loan and who has standing to enforce the loan documents are not properly before this court, as those are matters reserved for the state court when interpreting the Plan, the Agreed Order, the Loan, and any unmodified terms of the original loan documents. Regardless of the entity that holds the debt in question, this court lacks subject matter jurisdiction to address the issues Ballard raises.

F. Violation of the FCRA

Ballard also argues, albeit with little analysis, that U.S. Bank, through Fay, has violated the Fair Credit Reporting Act ("FCRA"). The FCRA exists to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Boggio v. USAA Fed. Sav. Bank*, 696 F.3d 611, 614 (6th Cir. 2012) (quoting *Safeco Ins. Co. v. Burr*, 551

U.S. 47, 52 (2007)). "The FCRA imposes a duty on furnishers of credit information to provide accurate information about their customers to [credit reporting agencies]." *Chandler v. Peoples Bank & Tr. Co. of Hazard*, 769 F. App'x 242, 247-48 (6th Cir. 2019) (citing 15 U.S.C. § 1681s-2(b)). The FCRA provides detailed steps that furnishers of credit information must comply with when notified of a dispute arising over a credit reporting agency's consumer information. See 15 U.S.C. § 1681s-2(b). The FCRA creates a private right of action to enforce § 1681s-2(b) against furnishers for negligently or willfully failing to comply with the relevant requirements. *Chandler*, 769 F. App'x at 248 (citing *Boggio*, 696 F.3d at 616). "There is, however, no private right of action available to a consumer to enforce the duty of furnishers of credit information to provide accurate information." *Davis v. Orion Fed. Credit Union* (*In re Davis*), 558 B.R. 222, 224 (Bankr. W.D. Tenn. 2015).

Even assuming, again for argument only, that the court maintains any subject matter jurisdiction in this case to determine any of Ballard's allegations, Ballard fails to allege an FCRA claim. Aside from alleging injury to his credit rating, Ballard has failed to specify any particular act or omission by U.S. Bank or Fay that would constitute a violation of the FCRA. The FCRA imposes certain duties on creditors with respect to the accuracy, fairness, and privacy of information they report to credit reporting agencies. Without a concrete assertion of which provision of the FCRA has been violated and how U.S. Bank's or Fay's conduct purportedly contravenes said provision, this court would be unable to assess the merit of Ballard's claim. However, since the court finds it lacks subject matter jurisdiction over all of Ballard's claims, this court dismisses the FCRA claim on that basis, and the dismissal is without prejudice to any argument on the merits that Ballard may make to a court of appropriate jurisdiction.

IV. Conclusion

The present dispute is based on state contract law and state court litigation involving an alleged breach of the confirmed Chapter 11 Plan. Interpretation and application of the instruments governing the financial relationship between the parties is firmly within the jurisdiction of the state court in the Foreclosure Action. That determination does not impact Ballard's bankruptcy estate and at this juncture is simply a two-party dispute that does not implicate the subject matter jurisdiction of this court. Therefore, the court finds that the court lacks subject matter jurisdiction in this closed estate to determine the issues involving the Loan.

For all these reasons, the motion to reopen (doc. 808) is **denied**.

IT IS SO ORDERED.

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