UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re: JAMES E. GARRETT, VERNON E. GARRETT, and VERNON GARRETT RANCHES, INC., Debtors.	Bankr. No. 386-00024 (Jointly Administered) Chapter 11
JAMES E. GARRETT, SANDRA ANN GARRETT, and FIRST STATE BANK OF MILLER, Plaintiffs, -vs- UNITED STATES OF AMERICA, by and through Farm Services Agency (FSA), f/k/a Farmers Home Administration, Defendant.	Adv. No. 98-3013 MEMORANDUM OF DECISION RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

The matters before the Court are the parties' cross motions for summary judgment. This Memorandum of Decision and order and judgment shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court abstains from any jurisdiction over the declaratory relief sought by Plaintiffs. The parties' cross motions for summary judgment will be denied and the adversary proceeding will be dismissed *sua sponte*, all without prejudice.

I.

Generally, a bankruptcy court's jurisdiction ends when a plan is confirmed. *Fairfield Communities, Inc. v. Lobdell (In re Fairfield Communities, Inc.)*, 142 F.3d 1093, 1095 (8th Cir. 1998); *Norwest Equipment Finance, Inc. v. Nath (In re D & P Partnership)*, 91 F.3d 1072, 1074 (8th Cir. 1996). The old debt is essentially replaced by the terms of the confirmed plan and the confirmed plan

becomes a binding contract between the debtor and the pre-confirmation creditor. *In re Ernst*, 45 B.R. 700, 702 (D. Minn. 1985). The automatic stay under 11 U.S.C. § 362 and the post-discharge injunction under 11 U.S.C. § 524 no longer apply. *Id.*

A bankruptcy court may explicitly retain jurisdiction over aspects of administration and interpretation of the plan if the confirmation order or plan so provides. *Fairfield Communities*, 142 F.3d at 1095; *D & P Partnership*, 91 F.3d at 1074. While parties to a bankruptcy case cannot create post-confirmation jurisdiction by consent language in the plan or confirmation order, they may agree what matters may be addressed within the jurisdiction created by statute. *Harstad v. First American Bank*, 39 F.3d 898, 902 and n.7 (8th Cir. 1994); *In re Pauling Auto Supply, Inc.*, 158 B.R. 789, 794 (Bankr. N.D. Iowa 1993).

Contrary to the general rule, jurisdiction is sometimes retained over a confirmed plan, even absent specific language in the plan or confirmation order. Section 1142(b) of the Bankruptcy Code provides that a bankruptcy court can enter such orders as may be necessary for the consummation of a plan. Further,

> [w]here a trustee, custodian, or other person charged with the assets of the estate of a debtor deals with those assets in complete contravention of a confirmed plan[. S]uch assets remain effectively unadministered; they are in *custodia legis* of the bankruptcy court and property of the estate.

United States v. Unger, 949 F.2d 231, 234 (8th Cir. 1991). Finally,

a court retains jurisdiction to enforce its own order. *Koehler v. Grant*, 213 B.R. 567, 569 (8th Cir. B.A.P. 1997) (contempt order entered after case closed). See also *Gray v. Polar Molecular Corp. (In re Polar Molecular Corp.)*, 195 B.R. 548 (Bankr. D. Mass. 1996) (good general discussion of post-confirmation jurisdiction).

II.

This Court has certainly tread in the murky waters of interpreting confirmed Chapter 11 plans before. *See, e.g., In re Dakota Industries, Inc.*, Bankr. No. 87-40209. slip op. (Bankr. D.S.D. April 28, 1997); *see also Smith v. United States (In re Wilbur J. and Betty J. Smith)*, Bankr. No. 97-30162, Adversary No. 94-3010. slip ops. (Bankr. D.S.D. July 24 and Dec. 22, 1995 and June 19, 1997). For several reasons, however, the Court declines to do so in this adversary proceeding.

First, neither the plan nor the confirmation order delineated any post-confirmation jurisdiction. Thus, the parties and the court did not have an understanding at confirmation on what administrative or interpretive jurisdiction this Court would retain. While silence alone would not dictate that the Court abstain, *see* § 1142(b) and, *e.g., Great Southern Savings Bank and Campbell Sixty Six Express, Inc. v. Central Transport, Inc. (In re Campbell Sixty Six Express, Inc.)*, 147 B.R. 200, 201 (Bankr. W.D. Mo. 1992), it is an important consideration for courts in this

jurisdiction. *Fairfield Communities*, 142 F.3d at 1095; *D & P Partnership*, 91 F.3d at 1074; *compare Chase Manhattan Bank, N.A. v. Sultan Corp. (In re Sultan Corp.)*, 81 B.R. 599, 602 (9th Cir. B.A.P. 1987)(post confirmation legal services at issue were performed in aid of the consummation of the plan).

Second, the plan already has been substantially consummated and the case has been closed. As discussed in *Ernst*, the parties are back in the real world and this Court no longer has exclusive jurisdiction to resolve disputes. *Ernst*, 45 B.R. at 702-03. Not all "squabbles and disputes" that arise post-confirmation are for this Court to resolve. *In re Munford, Inc.*, 216 B.R. 913, 915 (Bankr. N.D. Ga. 1997)(bankruptcy court retained jurisdiction to address quarterly fees owed to the United States Trustee) (*quoting Zahn Assocs., Inc., v. Leeds Building Products, Inc. (In re Leeds Building Products, Inc.)*, 160 B.R. 689, 691 (Bankr. N.D. Ga. 1993)).

Further, the binding agreement between Plaintiffs-Garretts and FSA is no longer just the confirmed plan. It is now the stipulation that was reached in the post-confirmation foreclosure action, which incorporates or recognizes the confirmed Chapter 11 plan. This Court is not comfortable "re-taking" jurisdiction after the foreclosure action before the District Court, especially where a stipulation was reached in that action and where the District Court has jurisdiction over all the matters on which Plaintiffs now

seek declaratory relief. Had the stipulation merely stated that Debtors would complete their plan payments and the foreclosure action was dismissed, the Court may not be so cautious. However, the stipulation acknowledged some reduction in FSA's claim due to the sale of certain property, it, in essence, interpreted the confirmed plan by setting forth what payments had to be made to bring the plan current, and it contained additional or clarified security and default terms,

Finally, Debtor James Garrett has not come alone in seeking declaratory relief from this Court. He brought along a creditor and his non debtor spouse. Even if this Court assumed some jurisdiction in this matter, any declaratory relief it gave would be limited to Debtor and limited to interpreting the plan as confirmed. *See, e.g., Marine Midland Business Loans, Inc. v. Miami Trucolor Offset Service Co.*, 217 B.R. 341 (S.D. Fla. 1998) (discussing effect of confirmed plan on non-debtor guarantor). The remaining Plaintiffs and nonparty Edith Garrett would have to litigate elsewhere and the District Court would have to interpret or apply the post-confirmation stipulation entered in the foreclosure action. Such a piecemeal resolution of these interrelated matters is not economical, especially where the District Court could resolve all the matters as to all the parties here.

Accordingly, this Court abstains from the limited jurisdiction it has. *See* 28 U.S.C. § 1334(c)(1); *compare Polar Molecular Corp.*,

195 B.R. at 557. An order denying the parties' cross summary judgment motions and dismissing this adversary proceeding *sua sponte*, both without prejudice, will be entered.

Dated this 28 day of January, 1999.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk
By: M. Kay Sieler
Deputy Clerk

(SEAL)

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JAN 28 1999

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JAN 28 1999

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By M. Kay Sieler

Case: 98-03013 Form id: 122 Ntc Date: 01/28/1999 Off: 3 Page : 1
Total notices mailed: 3

Aty Damgaard, Roger W. PO Box 5027, Sioux Falls, SD 57117
Aty Maher, Thomas M. 201 N. Euclid, Pierre, SD 57501
Aty Ridgway, Michael E. PO Box 5073, Sioux Falls, SD 57117-5073