Docket #0058 Date Filed: 7/10/2013

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered
AMERICAN RESIDENTIAL EQUITIES, LLC, in its own individual capacity and in its capacity as Trustee under that certain American Residential Equities, LLC Master Trust Agreement dated August 8, 2005,	Adv. Case No. 12- 01934 (MG)
Plaintiff,	
v.	
GMAC MORTGAGE, LLC, as successor by merger to GMAC Mortgage Company, and BALBOA INSURANCE COMPANY,	
Defendants.	

DEFENDANT BALBOA INSURANCE COMPANY'S SUPPLEMENTAL BRIEF CONCERNING SUBJECT MATTER JURISDICTION AND ABSTENTION

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Pursuant to the Court's Order at the June 12, 2013 hearing in this Adversary Proceeding, Defendant Balboa Insurance Company ("Balboa") respectfully submits this Supplemental Brief addressing i) the existence of subject matter jurisdiction over the various state law tort claims asserted by Plaintiff American Residential Equities, Inc. ("ARE") against Balboa; and ii) if jurisdiction does exist, whether the Court should abstain from exercising jurisdiction over those claims pursuant to 28 U.S.C. § 1334(c)(1).[1] As set forth more fully below, jurisdiction does not exist over ARE's claims against Balboa because Balboa has not, cannot and will not assert any claim for contribution against Debtor-Defendant GMAC Mortgage LLC ("GMAC") in the underlying bankruptcy, and ARE's claims against Balboa therefore are not "related to" the bankruptcy. The Court also should decline to exercise its discretion to assert supplemental jurisdiction over ARE's claims against Balboa because, as ARE admits, those claims predominate over and have nothing to do with the single claim in this proceeding, against GMAC, that arguably raises bankruptcy law-related issues. Because jurisdiction therefore does not exist over ARE's claims against Balboa, the Court should dismiss them on this basis. In addition, although the Court need not reach the abstention issue as to ARE's claims against Balboa, ARE has requested, and GMAC has informed us that they will request that the Court abstain from exercising jurisdiction over this case pursuant to 28 U.S.C. § 1334(c)(1). Balboa agrees with these requests, and also requests that the Court abstain from hearing and dismiss the claims against Balboa.[2]

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[1] Although no party previously raised the issue of subject matter jurisdiction, "[a]n argument that subject-matter jurisdiction is lacking may be raised at any time, by any party, or even *sua sponte* by the court." *Presidential Gardens Assocs. v. United States ex rel. Sec'y of Hous. & Urban Dev.*, 175 F.3d 132, 140 (2d Cir. 1999) (citing *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 514 (1940)).

[2] In addition, even if jurisdiction exists, and the Court declines to abstain, the Court can dismiss all of ARE's claims against Balboa premised on the alleged "kickback scheme" under the filed

ARGUMENT

I. SUBJECT MATTER JURISDICTION DOES NOT EXIST OVER ARE'S VARIOUS STATE LAW TORT CLAIMS AGAINST BALBOA.

A. This Court Does Not Have Jurisdiction Over ARE's Claims Against Balboa Because Those Claims Are Not "Related To" the Bankruptcy.

Jurisdiction does not exist over ARE's claims against Balboa under 28 U.S.C. § 1334 -- the only basis for jurisdiction asserted by ARE in the First Amended Adversary Complaint -- because those claims are not "related to" the underlying bankruptcy. ARE's arguments to the contrary in its Supplemental Brief with Regard to Jurisdiction and Forum, filed June 26, 2013 ("Pl. Supp. Br."), ignore or mischaracterize applicable legal principles concerning "related to" jurisdiction, and should be rejected.

The scope of district courts' bankruptcy jurisdiction is delineated by 28 U.S.C. § 1334, and 28 U.S.C. § 157(a) permits district courts to refer cases within such jurisdiction to a bankruptcy court. Pursuant to 28 U.S.C. § 1334, district courts have original and exclusive jurisdiction over all cases under Title 11, *id.* § 1334(a), and original but not exclusive jurisdiction over cases "arising under title 11, or arising in or *related to cases under title 11*," *id.* § 1334(b) (emphasis added).[3] As this Court has noted previously, "'related to' jurisdiction is a broad grant of federal jurisdiction." *Sealink Funding, Ltd. v. Deutsche Bank AG (In re Residential Capital LLC)*, 489 B.R. 36, 44 (Bankr. S.D.N.Y. 2013) (Glenn, J.) (citations omitted). However, "related

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rate doctrine, and because any other claims fail to state a claim. *See* Balboa Motion to Dismiss, filed April 26, 2012 (ECF No. 33).

[3] Cases "under title 11" are bankruptcy petitions themselves. *See In re Calvary Constr., Inc.*, No. 09-CV-5123 (KMK), 2013 WL 1972235, at *3 (S.D.N.Y. May 13, 2013) (citations omitted). Cases "arising under Title 11" are those that "invoke[] a substantive right created by federal bankruptcy law." *Id.* (citations omitted). Proceedings "arising in" cases under Title 11 are those that "would have no existence outside of bankruptcy." *Id.* (citations omitted) Here, as ARE does not dispute, the state law tort claims asserted against Balboa are not brought under Title 11, do not involve federal bankruptcy law, and could exist independently of any bankruptcy proceeding.

to" jurisdiction is not limitless. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 308 & n.6 (1995) (agreeing with circuit court decisions that concluded that "bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor"). Cases are only "related to" a bankruptcy proceeding "if the action's 'outcome might have any conceivable effect on the bankrupt estate.'" *Allstate Ins. Co. v. Credit Suisse Secs. (USA) LLC*, No. 11 Civ. 2232 (NRB), 2011 WL 4965150, at *3 (S.D.N.Y. Oct. 19, 2011) (quoting *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 579 (2d Cir. 2011)); *Sealink Funding, Ltd.*, 489 B.R. at 44. An action has a "conceivable effect" and is therefore "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." *In re WorldCom, Inc. Secs. Litig.*, 293 B.R. 308, 322 (S.D.N.Y. 2003) (quoting *Celotex*, 514 U.S. at 308 n.6); *Sealink Funding, Ltd.*, 489 B.R. at 44.

In addition, such "conceivable effects" typically alter the amount of property that is available for distribution from the bankruptcy estate, or the allocation of such property among creditors. *See Allstate*, 2011 WL 4965150, at *3 (citing *In re Kolinsky*, 100 B.R. 695, 702 (Bankr. S.D.N.Y. 1989)). Thus, courts have found a "conceivable effect," and "related to" jurisdiction, where a non-debtor defendant asserts a contractual or statutory claim for indemnity against the debtor. *See, e.g.*, *Sealink Funding, Ltd.*, 489 B.R. at 45 (finding "related to" jurisdiction based on debtor's "indemnification obligations" to defendants who had filed timely proofs of claim); *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 386-87 (5th Cir. 2010) (finding "related to" jurisdiction based on contractual indemnity). Similarly, courts have held that contribution claims by a non-debtor defendant against a debtor may have a "conceivable effect" by altering the distribution of estate assets among creditors, even when such

claims have not yet been reduced to judgment and are merely contingent. *See, e.g.*, *In re WorldCom*, 293 B.R. at 323; *Gen. Elec. Capital Corp. v. Pro-Fac Coop., Inc.*, No. 01 Civ. 10215, 2002 WL 1300054, at *2 (S.D.N.Y. June 11, 2002) (finding "related to" jurisdiction because the defendant had filed "contingent contribution and indemnity claims in the bankruptcy case, seeking to recover from the [d]ebtor").

Most importantly, contribution or indemnification claims only "actually affect the allocation of property among the estates' creditors . . . if defendants have asserted their claims against the bankruptcy estates." *Sealink Funding, Ltd.*, 489 B.R. at 45 (quoting *Allstate*, 2011 WL 4965150, at *4). Indeed, "related to" jurisdiction does not exist if the defendant has not asserted or will not assert a claim against the debtor prior to the bar date in the bankruptcy proceedings. *Allstate*, 2011 WL 4965150, at *4 (holding that "related to" jurisdiction was not established where plaintiffs did not file proofs of claim for indemnification by the bar date against the debtor); *cf. Sealink Funding, Ltd.*, 489 B.R. at 45 (compiling cases finding "related to" jurisdiction where indemnification agreements existed *and* proofs of claims were timely filed). In addition, contribution claims arise "when the acts giving rise to the alleged liability were performed." *In re Johns-Manville Corp.*, 57 B.R. 680, 690 (Bankr. S.D.N.Y. 1986).

Here, ARE contends that GMAC and Balboa engaged in a "kickback scheme" to inflate the insurance premiums paid by ARE, and that "[GMAC] and Balboa would be jointly and severally liable" for this alleged conduct. Pl. Supp. Br. 6. However, Balboa has *not* filed a proof of claim against GMAC in the underlying bankruptcy. Moreover, any claim for contribution by Balboa against GMAC arose when the alleged "kickback scheme" began in 2003, *see* First Am. Compl ¶ 43, which is well before the bankruptcy petition was filed in 2012, and before the bar date in November 2012. Further, at no point has Balboa asserted or otherwise indicated that it

would pursue contribution from GMAC or attempted to extend the bar date to do so, and it has no intention to take any such actions in the future. Thus, even if ARE were to prevail on its claims against Balboa, there would be no "conceivable effect" on GMAC's property or its allocation among GMAC's creditors because Balboa has not asserted a contribution or any other claim against GMAC in the bankruptcy. Accordingly, "related to" jurisdiction does not exist over ARE's claims against Balboa.

ARE's arguments to the contrary are unavailing. First, ARE argues that "related to" jurisdiction exists because its claims against Balboa are "intertwined" with those against GMAC and "derive from the same underlying facts." Pl. Supp. Br. 4. But this misstates the standard for "related to" jurisdiction. The standard is not whether ARE's claims against GMAC and Balboa are "intertwined," but rather whether ARE's claims against Balboa could have a "conceivable effect" on the bankruptcy estate or its administration, such as by a potential claim for contribution by Balboa against GMAC -- which does not exist. The mere fact that GMAC's conduct may be at issue does not establish such a "conceivable effect." *See Ludwig & Robinson, PLLC v. Yelverton Law Firm, PLLC (In re Yelverton)*, No. 09-00414, 2011 WL 2413485, at *1 (Bankr. D.D.C. June 10, 2011) (rejecting the contention that "related to jurisdiction exists because [the debtor]'s conduct is at the heart of this proceeding"). Indeed, the cases cited by ARE, Pl. Supp. Br. 4-6, demonstrate this principle, because in those cases the non-debtor defendants had filed, or could file, a proof of claim for indemnification or contribution against the debtor, and the cases did not find "related to" jurisdiction merely because the debtor was involved in some of the alleged misconduct by the non-debtor. *See, e.g.*, *In re WorldCom*, 293 B.R. at 321 (finding "related to" jurisdiction based on contribution claims that had been asserted by the non-debtor defendant in a proof of claim); *In re Dow Corning*, 86 F.3d 482, 494 (6th Cir.

1996) (non-debtor defendants "asserted repeatedly throughout their briefs, motions, and oral arguments that they intend to file claims for contribution and indemnification"); *Allen v. Kuhlman Corp.*, 322 B.R. 280, 282 (S.D. Miss. 2005) (claims for contribution and/or indemnity could still be filed between and among defendants and debtor); *see also ML Media Partners, LP v. Century/ML Cable Venture (In re Adelphia Commc'ns Corp.)*, 285 B.R. 127, 138-40 (Bankr. S.D.N.Y. 2002) (finding "related to" jurisdiction due to contractual clauses regarding joint and several liability, termination of certain of debtor's management rights, and legal fees).

Second, ARE mistakenly contends that "common law contribution claims, unlike claims for indemnification arising out of pre-petition contracts, do not typically arise until the conclusion of litigation against joint tort-feasors." Pl. Supp. Br. 5. As noted, this is incorrect. *See In re Johns-Manville Corp.*, 57 B.R. at 690. The focus in determining whether a contribution claim has arisen is on the debtors' conduct, not on "[p]rocedural and extraneous factors such as the timing of the filing of a summons and complaint by a third party." *Id.* Moreover, "a third party's claim for indemnity and contribution against a debtor arising from a pre-bankruptcy tort is a prepetition claim against the bankruptcy estate." *In re Union Hosp. Ass'n of the Bronx*, 226 B.R. 134, 138 (Bankr. S.D.N.Y. 1998).

Third, ARE tepidly suggests in a footnote unsupported by any authority that if it were to prevail against Balboa in a different forum, such a judgment might be based on factual findings adverse to GMAC and that it is possible the "judgment against Balboa would have res judicata or collateral estoppels [sic] implications for [GMAC] even if the Debtor were not a party to that litigation . . . ." Pl. Supp. Br. 5-6 n.2. However, this Court has held that "whether there is potential collateral estoppel or res judicata . . . [is] not determinative." *Hesselman v. Arthur Andersen, LLP (In re Global Crossing, Ltd. Secs. Litig.)*, No. 02 Civ. 910, 2003 WL 21659360,

at *1 (S.D.N.Y. July 15, 2003) (internal quotation marks omitted). In any event, ARE, not surprisingly, does not attempt to explain how a judgment against Balboa in a case where GMAC was not a party could somehow have a preclusive effect on GMAC. Indeed, such a judgment would not have such a preclusive effect. *See Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 798 (1996) ("A judgment or decree among parties to a lawsuit resolves issues among them, but it does not conclude the rights of strangers to those proceedings.") (citations omitted); *Algie v. RCA Global Commc'ns, Inc.*, 891 F. Supp. 839, 851 (S.D.N.Y. 1994) ("[A] party cannot be bound by a prior adjudication unless he can be said to have participated in the earlier proceeding.") (citations omitted); *Prof'l Home Health Care, Inc. v. Complete Home Health Care, LLC (In re Prof'l Home Health Care, Inc.)*, No. 01-12254 ABC, 2002 WL 1465914, at *4 (Bankr. D. Colo. July 2, 2002) ("In the context of possible liability of multiple parties, including the debtor, based on common issues of fact . . . unless the outcome of the litigation between the nondebtors would *preclude the debtor* by way of res judicata or collateral estoppel in other litigation, the bankruptcy court does not have jurisdiction over the litigation between the nondebtors.") (emphasis added). In sum, "related to" jurisdiction does not exist over ARE's claims against Balboa.

B. The Court Should Not Rely on 28 U.S.C. § 1367 as a Basis for Jurisdiction over ARE's Claims Against Balboa.

Although Plaintiff argues that the Court, pursuant to 28 U.S.C. § 1367, should exercise supplemental jurisdiction over its claims against Balboa, the Court should decline to exercise its discretion to assert jurisdiction over those claims. In the Second Circuit, unlike the majority of other circuits, a bankruptcy court may consider whether supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 over claims that do not satisfy any of the bases for bankruptcy court jurisdiction set forth in 28 U.S.C. § 1334(b). *See In re Lionel Corp.*, 29 F.3d 88, 92 (2d Cir.

1994). Supplemental jurisdiction, in all instances, is "a doctrine of discretion, not of plaintiff's right." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). Although supplemental jurisdiction can exist where a state law claim is "so related to the claims within such original jurisdiction that they form part of the same case or controversy," 28 U.S.C. § 1367(a), "district courts may decline to exercise supplemental jurisdiction over a claim . . . if—

> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

Id. § 1367(c); *Gowan v. HSBC Mortg. Corp. (USA) (In re Dreier LLP)*, No. 08-15051, 2012 WL 4867376 (Bankr. S.D.N.Y. Oct. 12, 2012) (declining to exercise supplemental jurisdiction over counter-claims asserted against non-debtor that raised complex and undecided issues of state law). In deciding whether to exercise supplemental jurisdiction, a federal court should weigh "the values of judicial economy, convenience, fairness, and comity." *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (the "*Cohill* factors"); *see also Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 214 (2d Cir. 2004).

Here, although ARE's claims against Balboa arguably arise from the same case or controversy as certain of ARE's claims against GMAC, this Court should decline to exercise jurisdiction over ARE's claims against Balboa based on section 1367(c) and the *Cohill* factors. Most significantly, ARE's state law tort claims predominate over the only claim arguably implicating bankruptcy law, which is the section 541(d) dispute. Balboa has no stake whatsoever in this issue, and ARE's claims against Balboa do not arise from the same case or controversy as the 541(d) issue, but are all garden variety state law tort claims -- as are most of ARE's claims

against GMAC. While the state tort claims are not inordinately complex, they will certainly "require more judicial resources to adjudicate or are more salient in the case as a whole" than the 541(d) issue. *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 613 F. Supp. 2d 437, 442-43 (S.D.N.Y. 2009) (declining to exercise supplemental jurisdiction where state law claims predominated in product liability litigation) (citation omitted); *see also Burgess v. Omar*, 345 F. Supp. 2d 369, 372 (S.D.N.Y. 2004) (declining to exercise supplemental jurisdiction where state law counterclaims "would overwhelm the claim over which the Court has original jurisdiction").[4]

Notably, ARE's brief essentially asks this Court for the same relief, albeit phrased differently. After contending that this Court has supplemental jurisdiction over its claims against Balboa, ARE then argues that the Court should abstain pursuant to section 1344(c)(1) of the Bankruptcy Code based on twelve factors enumerated in *In re Portrait Corp of America, Inc.*, 406 B.R. 637, 639 (Bankr. S.D.N.Y. 2009).[5] Pl. Supp. Br. 9. In support thereof, ARE asserts that "[a]ll but one of the causes of action turn on state law such that non-bankruptcy law predominates, and the crux of the dispute concerns facts and issues with which the Southern District of Florida has more familiarity than this Court." *Id.* at 10. In so doing, ARE essentially parrots the language of § 1367(c)(2). ARE continues it argument by asserting that proceeding

[4] In addition, to the extent the Court abstains from exercising jurisdiction over ARE's claims against GMAC pursuant to 28 U.S.C. § 1334(c)(1), it should decline to exercise supplemental jurisdiction pursuant to § 1367(c)(3) over any remaining claims against Balboa.

[5] There is significant overlap between the *In re Portrait Corp* factors on the one hand, and § 1367(c) and the *Cohill* factors on the other. *See In re Portrait Corp.*, 406 B.R. at 641-42 (listing as factors including: "(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which [non-bankruptcy] law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable [non-bankruptcy]; . . .(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,. . . (9) the burden of [the bankruptcy court's] docket, . . . and (12) the presence in the proceeding of non-debtor parties") (citation omitted).

elsewhere "would alleviate the burden placed on this Court's time and resources, impacting the efficiency of the administration of the estate" and further concedes that the issues relating to Balboa "are severable from the main bankruptcy case." *Id.*

ARE's arguments for abstention demonstrate why this Court should decline to exercise its discretion to assert supplemental jurisdiction under 28 U.S.C. § 1367(c) over the claims against Balboa. As Plaintiff admits, state law claims predominate in this action, and the claims against Balboa have nothing to do with the one issue that arguably raises bankruptcy-related issues. Moreover, ARE does not contend that the case should be adjudicated in this Court, but is more efficiently handled elsewhere. In these circumstances, the Court should decline to exercise its discretion to find that supplemental jurisdiction exists over ARE's claims against Balboa.

II. ALTHOUGH THE COURT NEED NOT REACH THE ISSUE WITH RESPECT TO ARE'S CLAIMS AGAINST BALBOA, THE COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THOSE CLAIMS PURSUANT TO 28 U.S.C. § 1334(C)(1).

Because subject matter jurisdiction does not exist over ARE's claims against Balboa, the Court need not reach the issue of whether it should abstain from hearing those claims. However, to the extent it does reach the issue, the Court should abstain from exercising jurisdiction over the claims pursuant to 28 U.S.C. § 1334(c)(1). Plaintiff agrees that the Court should abstain from exercising jurisdiction over this adversary proceeding pursuant to this statute, *see* Pl. Supp. Br. 10-11, and GMAC also intends to ask the Court to abstain from hearing this matter. Balboa agrees with these requests, and similarly asks that the Court abstain from exercising jurisdiction over ARE's claims against it pursuant to 28 U.S.C. § 1334(c)(1).

In addition, in the event this Court so abstains pursuant to section 1334(c)(1), the claims against Balboa should be dismissed, and not, as plaintiff suggests, *see* Pl. Supp. Br. 11-12, transferred to the Southern District of Florida pursuant to 28 U.S.C. § 1404(a). "[S]ection

1334(c)(1) is the statutory codification of the judicial abstention doctrine." *Hackeling v. Rael Automatic Sprinkler Co. (In re Luis Elec. Contracting Corp.)*, 165 B.R. 358, 367 (Bankr. E.D.N.Y. 1992) (citing *Coker v. Pan Am. World Airways, Inc. (In re Pan Am. Corp.)*, 950 F.2d 839, 846 (2d Cir. 1991)). By abstaining pursuant to this section, bankruptcy courts are declining to exercise jurisdiction. *See Masterwear Corp. v. Rubin Baum Levin Constant & Friedman (In re Masterwear Corp.)*, 241 B.R. 511, 521 (Bankr. S.D.N.Y. 1999) (explaining that court would "abstain as a matter of discretion in exercising 'related to' jurisdiction"); *Rae v. IRS (In re Rae)*, 436 B.R. 266, 279 (Bankr. D. Conn. 2010); *see also* Black's Law Dictionary (9th ed. 2009) ABSTENTION, 2. ("A federal court's relinquishment of jurisdiction when necessary to avoid needless conflict with a state's administration of its own affairs"). Accordingly, bankruptcy courts, after deciding to abstain under section 1334(c)(1), have dismissed the claims at issue, *see, e.g.*, *In re Masterwear Corp.*, 241 B.R. at 521 (dismissing case after abstaining); *In re TPG Troy, LLC*, --- B.R. ---, 2013 WL 1909022 (Bankr. S.D.N.Y. May 9, 2013) (same), or remanded the claims to state court pursuant to 28 U.S.C. § 1452(b); *see, e.g.*, *Sealink Funding, Ltd.*, 489 B.R. at 46.

Thus, if this Court determines that it will abstain from exercising jurisdiction pursuant to 28 U.S.C. § 1334(c)(1) over ARE's claims against Balboa, it should dismiss those claims for lack of jurisdiction. The Court should not transfer the claims to the Florida district court pursuant to 28 U.S.C. § 1404(a), because "[i]f subject matter jurisdiction is lacking, Section 1404(a) provides no power to do anything with the case except dismiss." 15 Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 3844 (3d ed.); *Levitt v. State of Md. Deposit Ins. Fund Corp.*, 643 F. Supp. 1485, 1489 n.3 (E.D.N.Y. 1986) ("Federal courts must, however, find the existence of subject-matter jurisdiction before they may entertain a motion to transfer.")

(citation omitted).[6]

CONCLUSION

For the foregoing reasons, the Court lacks subject matter jurisdiction over ARE's claim asserted against it in the Amended Adversary Complaint, and this Court should dismiss those claims.

Dated: July 10, 2013
New York, New York

Respectfully submitted,

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[6] ARE's argument that "dismissing without prejudice [rather than transferring the case] would add logistical complexity in Florida by requiring either re-filing or motion practice about amending the prior pleadings," Pl. Supp. Br. 2, is meritless. Even putting aside the fact that ARE does not explain why re-filing or motion practice adds "logistical complexity," as noted a transfer is procedurally improper. And even if it were proper, the Florida district court is in the best position to determine how to proceed with the current case against GMAC, and the claims that ARE has asserted against Balboa here.