



**ORDERED in the Southern District of Florida on April 08, 2011.**

**Erik P. Kimball, Judge  
United States Bankruptcy Court**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

In re:

MARILYN BUXTON, INDIVIDUALLY,  
and PAUL BUXTON, INDIVIDUALLY,

Debtors.

\_\_\_\_\_  
BUXTON FUNERAL HOME, INC.,

Debtor.  
\_\_\_\_\_

Case No. 08-25571-EPK

Chapter 7

**LEAD CASE**

**SUBSTANTIVELY CONSOLIDATED**

Case No. 08-25572-EPK

**ORDER (A) DENYING MOTION TO ENFORCE SALE ORDER AND FOR  
CIVIL CONTEMPT [ECF 515] AND (B) GRANTING MOTION FOR  
ABSTENTION FROM CONSIDERATION OF CONTESTED MATTER  
REGARDING ENFORCEMENT OF SALE ORDER [ECF 534]**

**THIS MATTER** came before the Court for oral ruling on April 8, 2011 upon the *Motion to Enforce Sale Order and for Civil Contempt* [ECF 515] (the “Motion to Enforce”) and the *Motion for Abstention from Consideration of Contested Matter Regarding Enforcement of Sale*

*Order (D.E. #515)* [ECF 534] (the “Motion for Abstention”). At the oral ruling, the Court stated as follows:

This is the court's ruling on certain matters in the main case, jointly administered case number 08-25571, and in a recently filed adversary proceeding, case number 11-1066. This oral ruling constitutes the courts findings of fact and conclusions of law on the following:

The Motion to Enforce Sale Order and for Civil Contempt, filed in case number 08-25571 at ECF number 515. This motion was filed by Family Heritage Funeral Services LLC, doing business as Buxton Funeral Home and Crematory, and Lake Funeral Services LLC. During this ruling, I will refer to these parties as the movants or the plaintiffs.

The Motion for Abstention from Consideration of Contested Matter Regarding Enforcement of Sale Order filed in case number 08-25571 at ECF number 534. This motion was filed by Marilyn Buxton, Paul Buxton, and Buxton Seawinds Funeral Home and Crematory, LLC. I will refer to Marilyn Buxton and Paul Buxton as the debtors, and I will refer to Buxton Seawinds Funeral Home and Crematory, LLC as Seawinds. I will refer to the debtors and Seawinds, collectively, as the defendants.

The Plaintiffs' Motion for Preliminary Injunction filed by the plaintiffs in adversary proceeding number 11-1066 at ECF number 2.

The Motion for Abstention and Dismissal of Complaint Without Prejudice and Denial Without Prejudice of Motion for Preliminary Injunction filed by the debtors and Seawinds in adversary proceeding number 11-1066 at ECF number 28.

And the Adversary Complaint filed by the plaintiffs commencing adversary proceeding number 11-1066.

On February 10, 2011, I held a preliminary hearing on the motion to enforce sale order and the motion for preliminary injunction. After that hearing, I entered orders directing the parties to file briefs addressing two issues: first, whether and to what extent the court has subject matter jurisdiction over the adversary proceeding and the motion to enforce sale order; and, second, whether the court shall or may abstain from hearing the adversary proceeding, the motion to enforce sale order, or any component thereof. The parties filed briefs in both the main case and in the adversary proceeding and I have considered the briefs.

The motion to enforce sale order and the adversary proceeding have the same primary goal. The plaintiffs purchased substantially all of the business assets of the individual debtors and the corporate debtor Buxton Funeral Home, Inc.

pursuant to an order of this court. The plaintiffs argue that the sale included the exclusive right to the trademark or trade name Buxton Funeral Home. The debtors and their son Matthew Buxton are involved in the operation of the Seawinds funeral home, in the same community as the Buxton Funeral Home, under the name Buxton Seawinds Funeral Home and Crematory. The plaintiffs argue that the debtors, their son Matthew Buxton, and Seawinds are in violation of the sale order as a result of alleged infringement and/or dilution of the trademark or trade name Buxton Funeral Home, unfair competition, and deceptive and unfair trade practices. The plaintiffs seek injunctive relief, damages, and revocation of the individual debtors' discharge.

Prior to filing the documents at issue here, the plaintiffs filed a similar action in the Florida state court. Apparently, the state court action has not progressed as quickly as the plaintiffs would like.

For nearly 30 years, Paul and Marilyn Buxton operated a funeral home in Okeechobee, Florida, through the corporate entity Buxton Funeral Home, Inc. This bankruptcy case began as a voluntary chapter 11 case filed on October 19, 2008. Paul and Marilyn Buxton filed a joint chapter 11 petition commencing case number 08 – 25571. Buxton Funeral Home, Inc. filed a petition commencing case number 08 – 25572. The Buxton Living Trust filed a petition commencing case number 08 – 25573. All three of these cases were jointly administered. On December 11, 2008, this court dismissed the chapter 11 case of Buxton Living Trust. The assets of the trust were thereafter treated as assets of the individual debtors.

Early in the chapter 11 case, the primary secured creditor sought relief from the automatic stay. This relief was denied. The debtors and Buxton Funeral Home, Inc. filed a joint chapter 11 plan and disclosure statement. The court held evidentiary hearings on November 20 and November 24, 2009 to determine, in part, whether to confirm the joint plan. On December 30, 2009, the court denied confirmation of the plan for failure to satisfy various requirements of section 1129 of the Bankruptcy Code, and converted the chapter 11 cases of Paul and Marilyn Buxton and Buxton Funeral Home, Inc. to chapter 7.

Following conversion, Deborah Menotte was appointed the chapter 7 trustee in both cases. On January 8, 2010, the trustee filed a motion for authority to operate the funeral home business, which motion was granted that same day. This motion can be found in the main case at ECF number 317.

On February 1, 2010, the trustee filed a motion for approval of sale procedures and for approval of the sale of all assets associated with operation of the Buxton Funeral Home. On February 10, 2010, this court entered an order setting forth procedures for soliciting bids on and holding an auction of the funeral home assets. This sale procedures order can be found at ECF number 377.

On February 25, 2010, pursuant to the sale procedures order, the court presided over an auction of the assets associated with the operation of the funeral home. Several parties bid at the sale. The successful bidder at the auction sale was Lake Funeral Services LLC, one of the plaintiffs here. The backup bidder was Buxton-Seawinds Funeral Home and Crematory, LLC, one of the defendants here.

On February 26, 2010, the court entered an order approving the sale. This order can be found in the main case at ECF number 384. In the sale order, the court approved the sale of certain assets, defined as the acquired assets, as specified in a form of asset purchase agreement previously approved in the sale procedures order. The form of asset purchase agreement is also incorporated into the sale order.

Paragraph 4 of the sale order provides that the acquired assets are to be sold free and clear of all claims, liens, encumbrances and other interests pursuant to section 363(f) of the bankruptcy code. Paragraph 6 of the sale order provides, among other things, that the assets are to be transferred free of all liabilities other than assumed liabilities as defined in the asset purchase agreement.

Paragraph 7 of the sale order includes an injunction prohibiting parties in interest from pursuing the purchaser for any claims they may hold solely against the debtors. Paragraph 7 includes the following language: "From and after the date of the entry of this Order, no creditor or other party in interest shall take or cause to be taken any action that would interfere with the transfer of the Acquired Assets to the Successful Bidder and/or Back-Up Bidder in accordance with the terms of this Order." This provision prohibits interference with the transfer of the acquired assets to the purchaser. It does not prohibit interference with the use or enjoyment of the acquired assets after closing. This is an important distinction. Paragraph 7 of the sale order is intended to facilitate closing of the sale consistent with the asset purchase agreement. Paragraph 7 does not contain an injunction against post-closing actions relating to the acquired assets.

Paragraph 11 of the sale order provides as follows: "All persons or entities who are presently, or at the time of Closing, will be in possession of any of the Acquired Assets of the Buxton Debtors conveyed to the Successful Bidder and/or Back-Up Bidder hereunder are hereby directed to surrender possession of such Acquired Assets to the Successful Bidder and/or Back-Up Bidder at the Closing." The plaintiffs argue that this provision required the defendants to deliver at closing the trademark or trade name Buxton Funeral Home, that they failed to do so by allegedly using a similar mark or name, and that this court should enforce the sale order by enjoining the defendants' continued use of the name Buxton. A trademark or trade name is an intangible right. One cannot deliver possession of an intangible right. I have seen and entered other sale orders and approved purchase agreements that specifically address the surrender of rights to intangible assets. These provisions sometimes include an injunction against parties other than the purchaser, preventing the use of certain specified intangible rights.

Paragraph 11 contains no such provision. Even if paragraph 11 of the sale order could be stretched to apply to intangible rights, so as to prohibit the use of an intangible right such as a trademark or trade name, the provisions of this paragraph apply only as of the closing. Viewed in the context of the sale order as a whole, this provision does not amount to a prohibition with regard to post-closing activity of any kind.

Paragraph 15 of the sale order provides as follows: "The Trustee is authorized to assign and transfer to the Successful Bidder and/or Back-Up Bidder, all of the Trustee's and/or Buxton Debtor's rights, title and interests (including common law rights) to all of the Buxton Debtors' intangible rights to be assigned and transferred to the Successful Bidder and/or Back-Up Bidder." This provision empowers the trustee to transfer to the buyer whatever intangible rights may have been in the estate and subject to transfer under the asset purchase agreement and applicable law. Paragraph 15 is not a warranty or representation with regard to any such assets by the trustee.

Paragraph 25 of the sale order addresses retention of jurisdiction by the court. It states: "That the Court shall retain exclusive jurisdiction to construe, interpret and enforce the terms of this Order and the Asset Purchase Agreement approved herein and to hear and determine any claims, disputes or other matters arising from or relating to the sale of the Acquired Assets or the disbursement of proceeds from such sale." This retention of jurisdiction focuses on the sale of assets and the disbursement of proceeds. A sale is a transfer that takes place on a particular date. It is not an ongoing transaction. The trustee entered into an asset purchase agreement approved by this court. That asset purchase agreement resulted in a closing. At closing, the subject assets were transferred. The court retained jurisdiction to address disputes arising from or relating to the sale - meaning disputes arising from or relating to the transfer of the subject assets. By this provision, the court did not retain jurisdiction to hear disputes arising from the use or ownership of such assets after the closing of the sale. While the phrase "arising from or relating to" seems expansive out of context, it is limited by the words "to the sale of the Acquired Assets or the disbursement of proceeds." This latter phrase focuses the scope of paragraph 25.

It is possible for this court to retain jurisdiction in an order where the court does not actually have subject matter jurisdiction over the issue at the time the order is entered, and the parties to the action and those in privity may be bound by such a retention of jurisdiction under *res judicata*. The Supreme Court so held, in another context, in *Travelers Indemnity Company against Bailey*. You can find this decision at 129 Supreme Court Reporter 2195. Orders approving bankruptcy sales are often heavily negotiated. Indeed, many asset purchase agreements include a condition that the order be acceptable to the purchaser, and such was the case here. Nevertheless, in light of Supreme Court precedent, I carefully review all retention of jurisdiction provisions in proposed orders tendered to the court. When I entered the sale order here, I did not intend that the retention of

jurisdiction provision encompass a post-closing dispute such as the one at hand. If it did, when does the court's jurisdiction end? What is the difference between exercising jurisdiction over this dispute now and exercising jurisdiction over a similar dispute ten years from now?

Paragraph 25 of the sale order did not retain jurisdiction over this dispute.

The trustee and the purchaser entered into an asset purchase agreement in substantially the form approved in the sale order, with one difference that I will address momentarily.

In the asset purchase agreement the assets to be sold are defined as the acquired assets. The definition of acquired assets is addressed in several places in the asset purchase agreement.

Article I of the asset purchase agreement includes the defined term acquired assets. It states: "Acquired Assets' shall mean the Real Property and all personal property owned by Buxton Funeral utilized in connection with the operation and business of the Funeral Home, including without limitation, all furniture, equipment and vehicles, intellectual property and general intangibles wherever located."

Article I of the asset purchase agreement also includes a definition of excluded assets. It states: "Excluded Assets' shall mean any and all assets which are not being transferred or sold by Seller to Buyer pursuant to this Agreement and shall include any property, real or personal, which is not property of the Buxton Debtors' estates, within the meaning of Section 541 of the Bankruptcy Code, any litigation claims, causes of action (other than warranty claims), including Chapter 5 causes of action, accounts receivable of the Buxton Debtors, including pending insurance claims, and tax refunds."

This is the language included in the form of asset purchase agreement filed at ECF 365, which version of the asset purchase agreement was specifically approved by this court in the sale procedures order, ECF number 377, at paragraph 3. The form of asset purchase agreement actually signed by the trustee and the buyer included an additional phrase at the end of the definition of excluded assets. That phrase reads as follows: "and any other assets not specifically listed on Exhibit A hereto as Acquired Assets as of the Closing." While this phrase was included in the version of the asset purchase agreement filed with the sale procedures motion at ECF 348, it was removed from the version approved by the court for use in connection with this sale. Nevertheless, the trustee and buyer mistakenly used the old version.

Exhibit A to the asset purchase agreement is the real property description for the parcel on which the funeral home is operated. It lists no other assets. The [defendants] have argued that, as a result of the definition of excluded assets in

the signed agreement, the only asset actually sold is the real property. In light of the orders of this court, the notices provided to parties in interest including at ECF 367, and the detail in the asset purchase agreement, it is not reasonable to interpret this provision to limit the Acquired Assets to the real property. It is obvious that the sale was intended to encompass all assets associated with the Buxton Funeral Home.

Section 2.1 of the asset purchase agreement sets forth the basic agreement with regard to transfer of the acquired assets from the bankruptcy estates to the buyer. It includes the following language: "The term 'Acquired Assets' shall mean all of the assets owned by Seller or in which Seller has any rights or interests and used in connection with the operation and business of the Funeral Home or related to the ownership, management or operation of the Funeral Home as of the Closing Date, tangible or intangible, real, personal and mixed, wheresoever situated, and all of Seller's right, title and interest therein and thereto (but excluding the Excluded Assets, as hereinafter defined), including, without limiting the generality of the foregoing, the following:"

The agreement then goes on to list a number of specific assets covered by the agreement, in ten independent sub-paragraphs. Such assets specifically include "any and all general intangibles, intellectual property, website domain names, URLs, trademarks and trademark applications, service marks and service mark applications, logos, copyrights and copyright applications (and all information and technology protected by the copyrights and copyright applications), patents and patent applications (and all information and technology protected by the patents and patent applications), copyrightable materials, designs, trade dress and trade names of, containing or utilizing the corporate name of "Buxton Funeral Home"."

I note that the term "seller" for purposes of the asset purchase agreement is the chapter 7 trustee for all three debtors - that is, Buxton Funeral Home, Inc., Marilyn Buxton, and Paul Buxton.

Section 2.1 refers to the term excluded assets "as hereinafter defined." Section 2.2, which immediately follows, addresses excluded assets. Importantly, it does not include a reference to Exhibit A. This supports my conclusion that the assets purchased were not limited to the real property.

Paragraph 2.4 of the asset purchase agreement is entitled "Sale As Is." The entire paragraph is presented in all caps. I am going to read the whole paragraph as it plays a pivotal role in the court's analysis. It reads as follows:

"2.4 Sale As Is. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT BUYER IS PURCHASING THE ACQUIRED ASSETS "AS IS" AND "WHERE IS," "WITHOUT RECOURSE," AND WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE, AND THAT SELLER IS MAKING NO

REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION, EXISTENCE, LOCATION, OR VALUE OF THE ACQUIRED ASSETS, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES IN, ON, UNDER OR ABOUT THE ACQUIRED ASSETS (INCLUDING THE REAL PROPERTY), OR THE INCOME OR EXPENSES FROM OR OF THE BUSINESS OR THE ACQUIRED ASSETS OR THE OPERATIONS OR RESULTS OF OPERATIONS OR ECONOMIC FORECASTS OR PROJECTIONS CONCERNING EARNINGS OR PROFITS, THE COMPLETION, STATUS OF COMPLETION OR SOUNDNESS OF ANY OF THE IMPROVEMENTS, THE USE RESTRICTIONS AFFECTING THE ACQUIRED ASSETS, THE ENFORCEABILITY OF ANY CONTRACT OR OTHER AGREEMENT OR RIGHT ASSIGNED HEREUNDER, OR THE COMPLIANCE OF THE ACQUIRED ASSETS OR ANY PART THEREOF WITH ANY LAWS, STATUTES, RULES, ORDINANCES, DECREES OR ORDERS APPLICABLE THERETO. WITHOUT LIMITING THE FOREGOING, IT IS UNDERSTOOD AND AGREED THAT SELLER MAKES NO WARRANTY OF HABITABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE."

I point the parties to three phrases in this paragraph. First, the trustee, as seller, makes no representation or warranty as to the existence of any assets to be sold. Second, the trustee makes no representation or warranty as to the use restrictions affecting the acquired assets. Third, the trustee makes no representation or warranty as to the enforceability of any right assigned under the asset purchase agreement. The due diligence burden clearly falls on the buyer. The buyer is on notice that it needs to make sure it knows what it is buying.

In spite of Section 2.4 of the asset purchase agreement, the plaintiffs argue that the trustee represented and/or warranted that the buyer was obtaining rights to the trademark or trade name Buxton Funeral Home. The plaintiffs argue that if the plaintiffs are not successful in their action against the defendants, here or in state court, that the plaintiffs may have a claim back against the trustee. This is the toehold the plaintiffs point to as a source of "related to" jurisdiction before this court.

But there is no such potential claim against the trustee here. Section 2.4 is clear and unambiguous. The buyer should have taken all necessary precautions to ensure that it was obtaining what it expected. The trustee made no representations or warranties with regard to the trademark or trade name - including that any such rights were not subject to restrictions, that any such rights were enforceable, or even that such rights existed. The transaction amounts to a quitclaim. The trustee agreed only to transfer what was described in the asset purchase agreement to the extent that it was property of the estate and subject to transfer. This the trustee did and neither the trustee nor the bankruptcy estate has any further obligation or

duty to the buyer, under the asset purchase agreement, the sale order, or otherwise.

The sale approved by the court closed on or about March 11, 2010.

About ten months after the closing, the plaintiffs filed the documents at issue here. In the meantime, they pursued a similar action in the state court. At the initial hearing on the motion to enforce the sale order and for preliminary injunction, the plaintiffs admitted that they came to the bankruptcy court because the state court was not acting quickly enough.

The plaintiffs argue that the sale included the trademark or trade name Buxton Funeral Home, which they refer to as the Buxton mark, and its associated reputation and goodwill. The plaintiffs allege that the debtors, Matthew Buxton and Seawinds continue to use the Buxton mark to the detriment of the plaintiffs.

Under the Bankruptcy Act, there were serious questions as to whether certain rights, such as [personal name marks], became property of the estate in bankruptcy. Under section 541(a)(1) of the Bankruptcy Code, the estate includes all legal or equitable interests of the debtors in property as of the commencement of the case. Case law is legion in applying this provision broadly. In general any property interest or legal right of the debtors, subject to certain limitations in section 541 not applicable here, becomes property of the estate and subject to the jurisdiction of this court. There is no question that this includes trademarks and trade names to the extent enforceable under non-bankruptcy law.

The individual and corporate debtors had operated a funeral home business in Okeechobee, Florida, under the name Buxton Funeral Home, for nearly three decades. The name Buxton Funeral Home had come to be associated with a particular business enterprise operating over an extended period. The individual and corporate debtors' interest in the name Buxton Funeral Home became property of the estate in their chapter 11 cases and their converted chapter 7 cases.

There are three possibilities with regard to the transfer of the Buxton mark in this case:

1. It was not transferred to the buyer at all.
2. It was transferred to the buyer and the buyer has the right to use the Buxton Mark to the exclusion of the debtors.
3. It was transferred to the buyer subject to the debtors' rights to use their own surname in business.

The case law cited by the debtors does not support the debtors' argument that their consent was necessary to a transfer of the Buxton mark to the buyer. Assuming it

remains good law, an issue I will address shortly, the pre-code case law stands for the proposition that a non-consensual sale could not deprive the debtors of the right to use their own name in business, not that the buyer would thus be prohibited from any use of the name.

As an aside, I note that the Helmbold case, cited by the debtors, was decided on unique facts, including that the plaintiff made false representations with regard to the former debtor. That case is not applicable to the facts presented here.

If the debtors are arguing that the sale approved by the court did not include the good will of the business, a necessity for transfer of a trademark, this argument is quickly negated by a review of the relevant documents. The sale procedures motion and order, the notice approved by this court for distribution to bidders and parties in interest, the sale order, and the asset purchase agreement, all make it abundantly clear that the sale included all aspects of the business - the hard assets, the intangible assets, the contracts, the name. There is no doubt that the sale was intended to encompass the good will of the business. There is no reasonable argument that the sale failed to include the Buxton mark to the extent it was transferable.

The debtors also argue that any right of the trustee to transfer the use of their surname, Buxton, as part of a trademark or trade name was limited. They point to case law stating that a sale in bankruptcy, a so-called involuntary sale, cannot deprive the debtors of the use of their own name in business, even if the debtors' new business is conducted in direct competition with their prior enterprise undertaken by a party who purchased it from the trustee. You can find a discussion of this issue, and cites to relatively ancient case law, in the treatise McCarthy on Trademarks and Unfair Competition at section 18:31. Some of the cases hold that a buyer in an involuntary sale acquires the right to use the debtor's name, but the bankrupt may continue to use his name subject to the usual limitations involving avoidance of confusion. Other cases hold that this rule applies only if the personal name came to denote the skill of a particular person, but that if the name became associated with source or quality it is a full-fledged trademark and the buyer can prohibit the debtor from using that name. Importantly, the old case law does not support the proposition that the buyer cannot obtain any rights in a personal name mark through a bankruptcy sale. The question is only whether that right is exclusive. The authors of this leading treatise, however, question whether there is any good reason to treat a bankrupt different from a person transferring a personal name mark outside an insolvency proceeding.

It is possible that the pre-code case law cited by the debtors was overruled by enactment of section 541(c)(1)(A). That provision states, in pertinent part: "[A]n interest of the debtor in property becomes property of the estate . . . notwithstanding . . . applicable nonbankruptcy law . . . that restricts or conditions transfer of such interest by the debtor." In spite of the enactment of section 541,

treatises addressing so-called involuntary transfers of personal name marks continue to discuss pre-code law. There appears to be no recent case law squarely addressing this issue.

Whether the buyer obtained the exclusive right to use the Buxton mark or whether the buyer's right in the mark is limited by the rights of the debtors, it is not necessary or appropriate for this court to decide.

Under the asset purchase agreement and the sale order, the sale of the subject assets was in the nature of a quitclaim. The trustee made no representations or warranties as to any restrictions affecting the assets sold, the enforceability of any rights transferred, or even the existence of any assets to be sold. The sale closed under the asset purchase agreement. That agreement is fully performed by the trustee. Neither the trustee nor the estate have any further duties under the asset purchase agreement. Whatever property and other rights that became property of the estate and were encompassed by the asset purchase agreement, and that were subject to transfer by the trustee, were transferred to the buyer. The buyer has no claim back against the estate. Now that the sale is closed, it is not necessary or appropriate for this court to determine the extent of the buyer's property right vis-a-vis any third parties. It does not matter that the third parties include the debtors.

Court V of the adversary complaint is for revocation of discharge of Paul and Marilyn Buxton. This is a core matter. The sole basis for this request for relief is that Paul and Marilyn Buxton failed to comply with this court's sale order. But the debtors have no remaining duties under the sale order. Consequently, there is no potential basis for revocation of discharge on this ground, and Count V will be dismissed.

Count VI of the adversary complaint requests enforcement of the sale order. The sale order is fully executed. The sale closed. No party has any continuing obligation under the sale order or the incorporated asset purchase agreement. Count VI will be dismissed.

The motion to enforce sale order requests the same relief as Count VI of the adversary complaint. It will be denied.

Counts I through IV of the adversary complaint request relief relating to alleged use of the Buxton mark by the debtors, their son, and Seawinds. The outer limit of this court's jurisdiction is its "related to" jurisdiction under 28 U.S.C. section 1334(b). In order for this court to have jurisdiction over a particular matter, the outcome of the dispute must have some effect on administration of the estate.

Here, as noted previously, there is no potential claim against the trustee. Counts I through IV are claims that, if successful, benefit only the plaintiffs and burden only the defendants. Whatever the outcome of the disputes addressed in Counts I through IV, there will be no impact on creditors in these cases.

The 11th Circuit's analysis in the Lemco Gypsum case is instructive here. As in Lemco, the disputes here do not involve identification of the property interests remaining in the estate, as no business assets were left behind. Even if the Buxton mark was not sold, the good will of the business was sold with all of the assets used to operate the business. A mark cannot be sold in gross, separate from the good will of the business. The Buxton mark would no longer be a saleable asset of the estate and would have no value. Likewise, as in Lemco, the outcome of the parties' dispute will have no impact on the bankrupts' estates or the allocation of assets among creditors. As the 11th Circuit stated, there is no reason for this court's jurisdiction to linger.

It is true that this court retains jurisdiction to enforce its own orders. Such jurisdiction, however, assumes that there remains something to enforce in the subject order. The sale order here has been fully complied with. In this regard, the present case is similar to Matter of Xonics, a 7th circuit case cited in Lemco Gypsum. The rights of the litigants here will be resolved without reference to this court's sale order. As the 7th circuit noted, jurisdiction does not follow the property. Absent specific provisions in an order of the court, and subject to the court's power to include such provisions, the court's jurisdiction lapses when property leaves the estate. Otherwise, as the 7th circuit wisely pointed out, anyone who could trace his title to a bankrupt could invoke federal jurisdiction to settle disputes affecting that property.

This case is different from cases such as Performance Materials, where Judge Williamson exercised the court's jurisdiction to address a dispute regarding property sold pursuant to court order. In that case, the court's ruling determined what property remained in the estate subject to further administration. Here, as I've noted, if the mark was sold it is no longer property of the estate, and if it was not sold it has no value to the estate. Judge Williamson relied in part on the 2nd circuit's decision, In re: Petrie Retail, where the court ruled core jurisdiction existed to enforce an injunction included in a sale order and a confirmation order. Unlike in Petrie Retail, the sale order here includes no specific prohibition with regard to the actions complained of by the plaintiffs.

This case also differs from that before the 11th Circuit in In re: Ryan. In Ryan, the dispute addressed whether the estate may be subject to a \$60,000 refund claim. In the case here, there is no potential claim against the estate.

In the circumstances of this case, the court does not have jurisdiction over Counts I through IV of the adversary complaint.

It is an open issue whether the jurisdiction of the bankruptcy court may be expanded by use of 28 USC section 1367. It is not necessary for the court to determine whether section 1367 applies here. Because the court will dismiss

Counts V and VI of the adversary complaint, the court lacks any potential supplemental jurisdiction over Counts I through IV under section 1367.

At first blush, it seems important that Mr. and Mrs. Buxton, the debtors, are among the defendants in this action. The assets sold include their business assets. One might ask whether their involvement has any impact on the question of this court's jurisdiction. It is the bankruptcy lawyer's natural reaction to assume that the debtors' alleged personal involvement is material to the decision here. But such is not the case. The code and case law impress no duty on the debtors in the present circumstances that gives this court jurisdiction where it is not otherwise present. There is no reason, in the context of the matters before the court, to treat the debtors differently from any other person.

Even if the court had jurisdiction over some part of the motion to enforce sale or adversary proceeding, this court would abstain from hearing the matters under 28 USC section 1334(c)(2). Courts consider a number of factors in applying this provision. No one factor is controlling and courts have discretion to determine the relative weight afforded each factor. Here, the relevant factors weigh heavily in favor of abstention.

If discretionary abstention is exercised, there will be no effect on the efficient administration of the bankruptcy estates or the recovery of creditors. The sale is closed. There is no potential claim against the trustee. The present actions are remote from the main bankruptcy case.

Non-bankruptcy issues predominate over bankruptcy issues. There is nothing left to enforce under the asset purchase agreement or the sale order. Thus, the revocation of discharge claim and the request to enforce the sale order are both without support. There are no remaining core issues. The remaining matters arise under state law.

There is already a state court action pending, addressing essentially identical claims. This matter can easily continue in state court. The possibility that this court might act more swiftly is not good reason to avoid abstention.

Comity favors abstention. This matter is already lodged in the state court, where it is best addressed.

Seawinds filed a counterclaim against non-debtors Mr. Conway and Okeechobee Funeral Home, LLC, parties not before the court here.

There is no jurisdictional basis for the remaining matters before this court other than 28 USC section 1334.

Hearing these matters here would have a significant impact on the dockets of this court and the district court, both of which are already substantially burdened. The

debtors do not consent to the bankruptcy court resolving the state law issues. There is a jury trial right. This matter would eventually have to go to the district court for trial. There is no good reason to burden this court and the district court in light of the availability of an appropriate state venue where, again, a matter is already pending.

Importantly, the filing of the present motion to enforce sale order and adversary proceeding is obvious forum shopping. When the state court did not act as quickly as the plaintiffs would like, they sought nearly identical relief here.

For all of these reasons, even if this court had jurisdiction over the present disputes, it would abstain from hearing the motion to enforce sale order and the adversary proceeding.

The court will enter orders denying the motion to enforce sale order filed in the main case, and the motion for preliminary injunction filed in the adversary proceeding.

The court will enter orders granting the motions for abstention filed in main case and in adversary proceeding.

The adversary complaint will be dismissed and the adversary proceeding closed. Any pending motions will be denied as moot.

The court will enter orders in the main case and in the adversary proceeding incorporating this oral ruling.

With the Court having considered the record and being otherwise fully advised in the premises, and for the foregoing reasons as stated on the record at the April 8, 2011 hearing, it is

**ORDERED AND ADJUDGED** that:

1. The Motion to Enforce [ECF 515] is DENIED.
2. The Motion for Abstention [ECF 534] is GRANTED.

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Copies Furnished To:

Philip J Landau, Esq.

*Philip J Landau, Esq. is directed to serve a copy of this order on all appropriate parties and to file a certificate of service.*