

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

In re:

CARL T. WILLIAMS and  
CINDY MARIE WILLIAMS,

Case No. 04-bk-25742-JKO  
Chapter 7

Debtors.

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CARL T. WILLIAMS,  
Plaintiff,

v.

Adv. Pro. 06-ap-1386-JKO

SLM CORPORATION, d/b/a  
SALLIE MAE, HEMAR INSURANCE  
COMPANY OF AMERICA, and  
ANY UNKNOWN ASSIGNEES,  
Defendants.

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**ORDER DISMISSING ADVERSARY PROCEEDING**

This adversary proceeding came on for consideration by the Court on its own motion and without a hearing on the Complaint filed by Plaintiff Carl T. Williams (the “Debtor”) on April 17, 2006 (CP 1). For the reasons set forth below, the Complaint will be dismissed. The Court lacks jurisdiction because the Debtor’s chapter 7 bankruptcy case was closed April 13, 2005, and there is now no bankruptcy case in or under which this adversary proceeding could arise. Even if the Debtor’s case were reopened, the Debtor had previously filed a substantially identical complaint (Adv. Pro. 05-ap-2364) which was dismissed for failure to prosecute on November 21, 2005. That dismissal operated as an adjudication on the merits which bars the Debtor’s claims here.

### **Bankruptcy court jurisdiction**

Bankruptcy courts were created by Congress under Article I of the Constitution, and their jurisdiction is as established by Congress. Under 28 U.S.C. § 1334, the district courts of the United States have original and exclusive jurisdiction of all cases under title 11, and original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to a case under title 11. Under 28 U.S.C. § 157, district courts may provide that all such cases and proceedings may be referred to the bankruptcy judges for the district. The United States District Court for the Southern District of Florida has entered such an order of general reference.

Section 157 further provides that bankruptcy judges may hear and determine all cases under title 11, and all core proceedings arising under title 11, or arising in a case under title 11. 28 U.S.C. § 157(b)(2)(I) expressly provides that determinations of the dischargeability

of particular debts are core proceedings. In this adversary proceeding, the Debtor seeks a determination that certain debts he arguably owes to the defendants were not excepted from the discharge which he received in his bankruptcy case, Case No. 04-bk-25742, notwithstanding the provisions of 11 U.S.C. § 523(a)(8) relating to the discharge of student loans. Such determinations are clearly “core proceedings” if there is a related bankruptcy case pending.

This adversary proceeding is, by definition, not a bankruptcy “case” within the meaning of 28 U.S.C. § 157; the Debtor’s “case” was Case No. 04-bk-25742. And because that “case” has been closed, this adversary proceeding does not “arise under” title 11, nor does it “arise in a case under” title 11. Put succinctly, there is no bankruptcy case to which this adversary proceeding can attach so that the jurisdiction of the bankruptcy court could be invoked. Absent a pending case in which this adversary proceeding could “arise under” or “arise in,” this Court lacks jurisdiction.<sup>1</sup> *In re Davison*, 186 B.R. 741 (N.D. Fla. 1995).

### **Prior dismissal of substantially similar adversary proceeding**

Ordinarily, the prior closing of the Debtor’s bankruptcy case would not pose an insurmountable obstacle: in the ordinary case, a Debtor seeking a determination that a particular debt was or should have been discharged in a closed case could move to reopen that case and bring the adversary proceeding seeking such a determination within the

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<sup>1</sup>If this adversary proceeding were “related to” a case under Title 11, the result may be different, *In re Morris*, 950 F.2d 1531 (11<sup>th</sup> Cir. 1992).

jurisdictional arms of the reopened case. The Debtor here has not sought to do that, but in the ordinary case he could do so.

Unfortunately for him, in this case the Debtor cannot do so.

The Debtor brought a substantially identical adversary proceeding, Adv. Pro. 05-ap-2364, seeking the same relief against SLM Corporation and Hemar Insurance Company of America, the same defendants named here. That adversary proceeding was dismissed for failure to prosecute on November 21, 2005 (CP 5) and the adversary proceeding was closed on December 19, 2005. Under Federal Rule of Bankruptcy Procedure 7041, applying Federal Rule of Civil Procedure 41(b), the involuntary dismissal of an adversary proceeding for failure to prosecute “operates as an adjudication upon the merits.” Fed.R.Civ.P. 41(b). As such, the dismissal of the prior adversary proceeding constitutes a judicial determination adverse to the Debtor that is binding on this Court under principles of res judicata. *Costello v. United States*, 365 U.S. 265, 286 (1961); *In re Damien*, 35 B.R. 685 (Bankr. S.D. Fla. 1983). The Debtor’s entitlement (or lack thereof) to a determination that his obligations to these defendants were or should be discharged has already been decided on the merits by virtue of the dismissal of Adv. Pro. 05-ap-2364. In the circumstances, the reopening of the Debtor’s case pursuant to a hypothetical motion he might file in the main case would be pointless, as the relief the Debtor seeks here has already been denied to him in the prior adversary proceeding, and both the Debtor and this Court are bound by that result.

Accordingly, it is

ORDERED that this adversary proceeding is hereby DISMISSED with prejudice. The Clerk shall close the file.

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