UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	CHAPTER 11
	:	(Jointly Administered)
FANSTEEL, INC., *et al.*,[1]	:	
	:	Case No. 02-10109 (KJC)
	:	(D.I. 2370, 2374)
Debtors	:	

OPINION[2]

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE

Presently before the Court is the Motion of Fansteel, Inc. (the "Debtors" or "Fansteel") for an Order Reopening Bankruptcy Cases Pursuant to 11 U.S.C. §§ 105(a) and 350(b) and Federal Rule of Bankruptcy Procedure 5010 to Interpret and Enforce Confirmation Orders and the Second

[1] The Debtors who filed chapter 11 petitions in the 2002 chapter 11 bankruptcy case were: Fansteel, Inc., Fansteel Holdings, Inc., Custom Technologies Corp., Escast, Inc., Wellman Dynamics Corp., Washington Mfg. Co., Phoenix Aerospace Corp., American Sintered Technologies, Inc., and Fansteel Schultz Products, Inc.

[2] This Opinion constitutes the findings of fact and conclusions of law required by Fed. R. Bankr. P 7052. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L). The objecting parties contend that the Court does not have subject matter jurisdiction to reopen the case for the purpose of interpreting and enforcing certain provisions of previously issued orders. I disagree. *See Travelers Indem. Co. v. Bailey,* 557 U.S. 137, 151, 129 S.Ct. 2195, 174 L.Ed.2d 99 ("[T]he only question left is whether the Bankruptcy Court had subject-matter jurisdiction to enter the Clarifying Order. The answer here is easy: ... the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders."). *See also In re Lazy Days' RV Ctr. Inc.*, 724 F.3d 418, 423 (3d Cir. 2013).

Further, the Final Confirmation Order (incorporating the First Confirmation Order) provides that the Court retain jurisdiction in accordance with Article XI of the Second Amended Plan. (See First Confirmation Order.) Article XI of the Second Amended Plan, titled "Retention of Jurisdiction," provides that the Court will retain jurisdiction over, among other things, "all matters arising under or...relating to" the Debtors' Chapter 11 Cases or the Second Amended Plan, including, but not limited to (i) entering "such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all...instruments...and other agreements or documents created in connection" with the Second Amended Plan or the Final Confirmation Order; and (ii) hearing and determining disputes arising in connection with the interpretation, implementation, consummation, or enforcement of this Plan, including disputes arising under agreements, documents, or instruments executed in connection with this Plan. (Second Amended Plan, Art. XI.).

Amended Plan (D.I. 2370) (the "Motion to Reopen") and the Objection to the Motion to Reopen Chapter 11 Case to Interpret and Enforce Confirmation Orders and the Second Amended Plan Filed by Fansteel (D.I. 2374) (the "Objection") filed by the United States on behalf of the Nuclear Regulatory Commission ("NRC") and the Oklahoma Department of Environmental Quality ("ODEQ"). The parties have agreed that the Court may issue a ruling on the merits of the submissions without a hearing. For the reasons set forth below, I will not reopen the bankruptcy case.

BACKGROUND

Between 1957 and 1989, Fansteel operated a special metals plant in Muskogee, Oklahoma ("Muskogee Site"). The Muskogee Site was comprised of three parcels of real property totaling 89.74 acres: (i) a 10.36 acre parcel; (ii) a 42.09 acre parcel; and (iii) a 37.29 acre parcel. The Fansteel process concentrated naturally occurring uranium and thorium in various ores. Consequently, Fansteel became subject to Atomic Energy Commission ("AEC") regulations in 1967 and required an AEC/Nuclear Regulatory Commission ("NRC") license to operate its plant thereafter.

A. The Delaware Bankruptcy Case

On January 15, 2002, the Debtors commenced chapter 11 cases in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Case"). On December 23, 2003, then U.S. District Court Judge Farnan entered an order confirming the Second Amended Plan (the "Final Confirmation Order").[3]

[3] The Delaware Bankruptcy Case was originally assigned to the Honorable Joseph J. Farnan, who administered the case, and has since retired. Judge Farnan was assigned the filing during a time when, due to the heavy case load in this district, district judges were administering some of the chapter 11 cases. As a result, when the Motion to Reopen was filed on behalf of the Debtors, the case was re-assigned to my docket.

The parties to the Delaware Bankruptcy Case reached a settlement agreement that was incorporated into the Second Amended Plan. Under the agreement and Second Amended Plan, Fansteel created a subsidiary, FMRI, as a "special purpose vehicle to fulfill all obligations mandated by the NRC License and the Amended Decommissioning Plan, as modified or supplemented by amendment of the NRC License."[4]

On December 4, 2003, pursuant to Section 184 of the Atomic Energy Act of 1954, 42 U.S.C. § 2234, and 10 C.F.R. Part 40, the NRC approved Fansteel's application to transfer the NRC Materials License for the Muskogee Site from Fansteel to FMRI contingent on financial and other assurances to be provided by Fansteel.

The NRC License requires that "[r]emediation and decommissioning activities at the Muskogee facility shall be performed in accordance with the decommissioning plan and supplemental correspondence by letter dated January 24, 2003, and supplemented by letters dated May 8, and July 24, 2003." The NRC License also requires that the licensee must "remediate the [Muskogee] Site to residual radioactive levels..." In the decommissioning plan and supplemental correspondence, Fansteel and FMRI committed to a phased cleanup and schedule.

Pursuant to the Second Amended Plan, on or before the effective date, the real property comprising the Muskogee Site was to be transferred to FMRI. According to the Plan, "[f]rom and after the date of such transfer" FMRI would hold title to the Muskogee Site.[5]

On February 24, 2004, Fansteel executed a special warranty deed that transferred the 10.36 acre parcel at the Muskogee Site from Fansteel to FMRI. The Delaware Bankruptcy case was closed in 2010.

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[4] Second Amended Plan, Article IV.E.4(a).
[5] Second Amended Plan, Article IV.4.(b).

B. The Iowa Bankruptcy Case

Fansteel commenced a new chapter 11 case in the United States Bankruptcy Court for the Southern District of Iowa (the "Iowa Bankruptcy Case") on September 16, 2016 (Case No. 16-01823-als11).

On February 10, 2017, Fansteel filed an Amended Schedule A, identifying itself as the owner of the real property located at #10 Tantalum Place, Muskogee, Oklahoma, consisting of 42.09 acres, as well as the property consisting of 37.29 acres at the Muskogee Site.

On March 28, 2017, the United States Bankruptcy Court for the District of Iowa approved a Stipulation and Consent Order Regarding Continued Use of Cash Collateral and Issues Related to Long Term Environmental Liability in which the court approved, for a limited period, the use of cash collateral in the amount of $40,000 per month for operation and maintenance at the Muskogee Site to protect public health and safety.

On April 6, 2017, Fansteel, the NRC, and ODEQ (the "Settling Parties") filed a settlement agreement, in which Fansteel agreed that (1) Fansteel was responsible for decommissioning and remediating the Muskogee Site; (2) Fansteel was the owner of the Muskogee Site, including the 80 contaminated acres; (3) Fansteel's obligations to decommission and remediate the Muskogee Site are not claims under the Bankruptcy Code and would not be discharged by a plan of reorganization in the Iowa Bankruptcy proceeding.[6]

[6] The settlement agreement states, in part that: (b) "Fansteel is the current record owner of 79.38 acres of the real property located a Ten Tantalum Place, Muskogee, Oklahoma, also known as the Muskogee Site. FMRI is the current record owner of 10.46 acres of the real property located at the same address. As the current owner of contaminated real property, Fansteel has liability under applicable environmental law to remediate the Muskogee Site that continues beyond bankruptcy. Neither Fansteel's First Plan of Reorganization (the "Fansteel I Plan") nor the Debtors' Second Amended Plan of Reorganization dated March 6, 2017, will discharge that liability. Fansteel shall retain ownership, and shall not seek to transfer or change the ownership, of that property to FMRI or any other entity."

On June 1, 2017, Fansteel filed an Amended Withdrawal of Amended Schedule A, effective as of February 10, 2017, deleting the real property located at #10 Tantalum Place, Muskogee, Oklahoma, consisting of 42.09 acres, as well as the property consisting of 37.29 acres at the Muskogee Site.

On June 3, 2017, the United States of America, on behalf of NRC and ODEQ, filed an adversary proceeding in the Iowa Bankruptcy Court (Adv. Pro. No. 17-30034-als) seeking, *inter alia*, a temporary restraining order enjoining Fansteel from transferring or conveying any real property to FMRI. On June 5, 2017, the Iowa Bankruptcy Court granted the temporary restraining order, but stated that its order did not "preclude any party from seeking a ruling from the Delaware Bankruptcy Court as to an interpretation of Exhibit A attached to the Special Warranty Deed and the legal description contained therein."[7]

On June 21, 2017, the Iowa Bankruptcy Court approved Fansteel's application to retain Delaware counsel to seek to reopen the Delaware Bankruptcy Case and request an interpretation from the Delaware Bankruptcy Court of its Final Confirmation Order. On June 30, 2017, Fansteel filed the Motion to Reopen in this Court.

On July 6, 2017, the parties in the Iowa Adversary Proceeding entered into a Stipulation and Consent Order Enjoining Fansteel from Transferring Real Property "until the pending Delaware Motion is fully and finally decided by the Delaware Bankruptcy Court (if it has jurisdiction and agrees to reopen the case) or the matter is fully and finally decided by another court with jurisdiction."[8] At hearings held on June 5 and 16, 2017, the Iowa Bankruptcy Court

[7] Iowa Adv. Pro. 17-30034-als D.I. 3.
[8] Iowa Adv. Pro. 17-30034-also D.I. 10-1.

stated that it recognized that the Delaware Court may not be the appropriate jurisdiction for resolving the property ownership issue.[9]

On July 7, 2017, the Iowa Bankruptcy Court approved the Stipulation and Consent Order subject to the condition that "[n]othing in the parties' stipulation shall be construed as preventing this Court from taking further appropriate action related to the injunctive relief granted or requested or any other issues involving this adversary proceeding."[10]

Fansteel requests entry of an order reopening these chapter 11 cases for the purpose of interpreting and enforcing the Second Amended Plan, the First Confirmation Order, and the Final Confirmation Order. Specifically, Fansteel seeks to have the Court answer the following questions:

1. Did the Second Amended Plan and Final Confirmation Order intend for the Muskogee Facility to be transferred in its entirety from Fansteel to FMRI so that Fansteel could emerge from bankruptcy not owning the property and not having any obligations for the environmental obligations of that property?

2. Would Fansteel's intended correction to the Special Warranty Deed, stating that the entire Muskogee Facility was to be transferred to FMRI, be consistent with the intent of the Second Amended Plan and the Final Confirmation Order?

3. Would Fansteel's intended correction to the Special Warranty Deed be consistent with paragraph 40 of the First Confirmation Order, which states in relevant part "in the event of an inconsistent [*sic*] between the Plan and any other agreement, instrument, or document intended to implement the provisions of the Plan, the provisions of the Plan shall govern...?"

In short, the Debtors contend that a scrivener's error in a January 23, 2004 deed failed to include the 42.09 acre and the 37.29 acre parcels in the transfer of the Muskogee Site to FMRI; instead, the deed listed only the 10.36 acre parcel. In dispute is whether Fansteel effectuated a transfer of the other 79.38 acres of the contaminated real property located at the Muskogee Site.

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[9] *See* Exhibit 14 (Tr. at 174-175, June 5, 2017); Exhibit 15 (Tr. at 36-39, June 16, 2017).
[10] Iowa Adv. Pro. 17-30034-als D.I. 11.

The Objection asserts that, pursuant to a Quit Claim Deed from Tantalum Defense Corporation to Fansteel Metallurgical Corporation dated January 1, 1959, and as shown by the Geographical Information Service ("GIS") overlays, Fansteel continues to be the owner of the contaminated real property at the Muskogee Site. The government argues that "correction" of the deed to effect transfer of the remaining property to FMRI, an insolvent entity, would effectively permit Fansteel to abandon property without fulfilling financial, decommissioning and remediation obligations.

STANDARD

Bankruptcy Code Section 350(b) provides that the court may reopen a bankruptcy case "to administer assets, to accord relief to the debtor, or for other cause."[11] However, as the United States Court of Appeals for the Third Circuit has indicated, the "[f]ederal courts have no jurisdiction to render advisory opinions. Put another way, they 'may not decide questions that cannot affect the rights of litigants in the case before them or give opinions advising what the law would be upon a hypothetical state of facts.'"[12] "The burden of demonstrating circumstances sufficient to justify the reopening is placed upon the moving party."[13]

In exercising its discretion to reopen a bankruptcy case, the court "'should consider whether similar proceedings are already pending . . . as well as make a determination as to which

[11] 11 U.S.C. § 350(b).

[12] *In re Lazy Days' RV Ctr. Inc.*, 724 F.3d 418, 421 (3d Cir. 2013) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)); *In re Martin's Aquarium, Inc.*, 98 Fed. Appx. 911, 913 (3d Cir. 2004) (creditors' desire for opinion regarding the effect of bankruptcy court's order approving settlement stipulation, which could then be submitted to the state courts, was not a proper basis to reopen proceedings in bankruptcy court).

[13] *In re Canoe Mfg. Co, Inc.*, 466 B.R. 251, 261 (Bankr. E.D. Penn. 2012).

forum . . . is most appropriate to adjudicate the issues raised by a motion to reopen.'"[14] Retention of jurisdiction provisions will be given effect, assuming there is bankruptcy court jurisdiction."[15] But neither the bankruptcy court nor the parties can create jurisdiction where it does not exist.[16]

DISCUSSION

Under 11 U.S.C. § 350(b), a bankruptcy court may reopen a closed case to administer assets, to accord relief to the debtor, or for other cause. The Third Circuit Court of Appeals has interpreted § 350(b) "to give 'bankruptcy courts ... broad discretion to reopen cases after an estate has been administered."[17]

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[14] *Lazy Days' RV Ctr.*, 724 F.3d at 423 (quoting *In re Zinchiak*, 406 F.3d 214, 225 (3d Cir. 2005)); *In re Apex Oil Co., Inc.*, 406 F.3d 538, 542 (8th Cir. 2005) (denial of Chapter 11 debtor's motion to reopen bankruptcy case in bankruptcy court was warranted since homeowners could obtain relief in alternative state court forum); *In re PlusFunds Group Inc.*, No. 06-10402 (JLG), 2015 WL 1842224, at *7 (Bankr. S.D.N.Y. Apr. 21, 2015) ("cause" did not exist to reopen Chapter 11 case to permit trustee to seek court authorization for extension of trust's term to allow it to continue prosecuting litigation that was pending in state court); *In re Mohorne*, 404 B.R. 571, 576-577 (Bankr. S.D. Fla. 2009) (bankruptcy court denied a motion to reconsider an order denying reopening of chapter 13 case that had been closed years earlier, given that debtor had filed another Chapter 13 case, which was still pending and in which issues that debtor sought to raise could be raised). *See also Clausell v. 87-10 51st Avenue Owners Corp.*, 2014 WL 5591064, at *3 (E.D.N.Y. Nov. 3, 2014) (the bankruptcy case would not be reopened since the bankruptcy court correctly determined that the creditor could attempt to collect his allowed claim through a New York state court proceeding); *In re Johnson,* 2014 WL 3051209, at *3-4 (Bankr. D. Neb. July 3, 2014) (finding no reason to reopen the case since the debtor's request to determine the dischargeability of the debt would not affect the administration of the bankruptcy estate and could be resolved by a state court judge).

[15] *In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3d Cir. 2004) (accounting malpractice claims asserted by litigation trust established under debtors' confirmed Chapter 11 plan did not come within the post-confirmation "related to" jurisdiction of bankruptcy court, holding:

> [T]he jurisdiction of the non-Article III bankruptcy courts is limited after confirmation of a plan. But where there is a close nexus to the bankruptcy plan or proceeding, as when a matter affects the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement, retention of post-confirmation bankruptcy court jurisdiction is normally appropriate.

Id. at 168-69).

[16] *Id.*

[17] *Lazy Days' RV Center,* 724 F.3d at 422–23 (quoting *In re Zinchiak,* 406 F.3d 214, 223 (3d Cir. 2005)). *See also Matter of Case,* 937 F.2d 1014, 1018 (5th Cir. 1991) ("This discretion depends upon the circumstances of the individual case and accords with the equitable nature of all bankruptcy court proceedings.").

When a former debtor seeks to reopen a case, the court should consider a variety of non-exclusive factors, including: (i) the length of time the case has been closed; (ii) whether a non-bankruptcy forum has the ability to determine the dispute to be posed by the debtor were the case reopened; (iii) whether prior litigation in bankruptcy court implicitly determined that the state court would be the appropriate forum to determine the rights, post-bankruptcy, of the parties; (iv) whether any parties would be prejudiced were the case reopened or not reopened; (v) the extent of the benefit which the debtor seeks to achieve by reopening; and (vi) whether it is clear at the outset that the debtor would not be entitled to any relief if the case were reopened (*i.e.,* whether reopening the case would be futile).[18] The court may deny a motion to reopen when no clear benefit is shown to the debtor's estate or the creditors.[19]

First, the Debtors' Second Amended Plan was confirmed on December 23, 2003, nearly fourteen years ago.[20] Seven years have passed since the Debtors' bankruptcy case was closed. Courts have denied reopening cases when the amount of time since the case had been closed is far less than seven years.[21]

Although this Court has jurisdiction to enforce its confirmation orders, that jurisdiction is not exclusive.[22] The second factor contemplates whether a non-bankruptcy forum has the ability

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[18] *In re Antonious*, 373 B.R. 400, 405 –06 (Bankr. E.D. Pa. 2007) (citations omitted).

[19] *Id.* (citing *In re Nelson,* 100 B.R. 905, 907 (Bankr. N. D. Ohio 1989)).

[20] D.I. 1790.

[21] *See In re Otto*, 311 B.R. 43, 45 (Bankr. E.D. Pa. 2004) ("Given that their bankruptcy case was closed almost two years ago, given that they failed to commence a dischargeability proceeding in this court while the case was open, given that a reasonable—albeit not identical—alternative forum exists in the Tax Court, and given the congressional decision to provide non-bankruptcy fora concurrent jurisdiction over this dischargeability issue, denial of this motion is appropriate."). *See also In re Factor*, 243 F. App'x 680, 682 (3d Cir. 2007) (affirming the decision of the bankruptcy court not to reopen a case that had been closed two months prior).

[22] *In re Continental Airlines, Inc.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999); 28 U.S.C. § 1334(b). *See also Conseco, Inc. v. Schwartz (In re Conseco, Inc.),* 330 B.R. 673, 680–81 (Bankr. N.D. Ill. 2005) ("A debtor confronted by a creditor seeking to collect on a debt in a possible violation of the discharge injunction may either 'assert the discharge as an affirmative defense ... in state court' or 'bring an Adversary Complaint in bankruptcy court to enforce the statutory injunction under § 524(a)(2) of the Code.'").

to determine the dispute to be posed by the debtor were the case reopened. Certainly, any court of competent jurisdiction, bankruptcy or otherwise, is capable of adjudicating these issues. The topic at issue here does not implicate complicated issues. Clearly, the Iowa Bankruptcy Court, in which an open chapter 11 case is already pending, can proficiently interpret the Debtors' Second Amended Plan, Final Confirmation Order or anything else necessary to determine whether relief should be granted. A state court of competent jurisdiction would be equally as capable.

Further, I have reviewed the transcript of the December 23, 2003 confirmation hearing, which reflects that confirmation of the Second Amended Plan was uncontested and that the proposed Confirmation Order was submitted to Judge Farnan without opposition. I had no involvement in the Delaware Bankruptcy Case; therefore, I would not be more capable in interpreting orders issued by another judge than the Iowa Bankruptcy Court or a state court.

Accordingly, it is clear that the Debtors have a reasonable alternative forum in which to raise the questions presented. Therefore, the circumstances weigh heavily in favor of denying the Motion to Reopen.

CONCLUSION

For the reasons set forth herein, the Motion to Reopen will be denied. An appropriate order follows.

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY COURT

DATED: August 28, 2017