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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-17-1268-KuTaS
	)	
ANITA HOLCOMB,	)	Bk. No. 2:11-bk-56326-BB
	)	
Debtor.	)	Adv. No. 2:17-ap-01283-BB
	)	
ANITA HOLCOMB,	)	
	)	
Appellant,	)	
v.	)	<b>MEMORANDUM*</b>
	)	
ROBERT ALTAGEN,	)	
	)	
Appellee.	)	

Argued and Submitted on March 22, 2018  
at Pasadena, California

Filed - April 25, 2018

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Appearances: Blake Joseph Lindemann of Lindemann Law Group PLC  
argued for appellant Anita Holcomb; James D.  
Hepworth of Nemecek & Cole argued for appellee  
Robert Altagen.

Before: KURTZ, TAYLOR, and SPRAKER, Bankruptcy Judges.

\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 **I. INTRODUCTION**

2 After her surplus bankruptcy estate was fully administered  
3 and closed Anita Holcomb (Debtor) filed a state court complaint  
4 against her former chapter 7<sup>1</sup> bankruptcy attorney, Robert  
5 Altagen (Altagen), alleging claims for malpractice. The state  
6 court dismissed the action for lack of subject matter  
7 jurisdiction because Debtor had failed to seek leave from the  
8 bankruptcy court before suing Altagen. Debtor later sought  
9 leave from the bankruptcy court which the court denied on the  
10 basis that it had jurisdiction over the matter. The bankruptcy  
11 court reopened Debtor's bankruptcy case; and Debtor filed an  
12 adversary proceeding against Altagen. Altagen moved to dismiss  
13 the complaint under Civil Rule 12(b)(6). Taking judicial notice  
14 of its prior rulings in the bankruptcy case, the court granted  
15 Altagen's motion and dismissed Debtor's complaint with  
16 prejudice. Debtor appeals from this ruling.

17 For the reasons discussed below, we vacate the bankruptcy  
18 court's order dismissing Debtor's adversary complaint with  
19 prejudice and remand with instructions to dismiss the adversary  
20 proceeding without prejudice for lack of subject matter  
21 jurisdiction.

22 **II. FACTS**

23 Debtor filed a chapter 11 petition in 2011 with the  
24 assistance of Altagen for the purpose of preventing the

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26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,  
28 Rule references are to the Federal Rules of Bankruptcy Procedure,  
and Civil Rule references are to the Federal Rules of Civil  
Procedure.

1 foreclosure of her home (Property). The bankruptcy court  
2 approved Altagen's employment as Debtor's chapter 11 counsel.

3 Debtor had no income and the substantial equity in the  
4 Property represented her "retirement." Her plan of  
5 reorganization was to remodel the home, employ a broker to  
6 market and sell the Property, pay off her creditors, and then  
7 reap the benefits of a surplus due to increasing values in the  
8 real estate market. About a year after the filing, Debtor's  
9 plan had still not been confirmed.

10 The bankruptcy court converted Debtor's case to one under  
11 chapter 7, and Edward M. Wolkowitz was appointed the chapter 7  
12 trustee (Trustee). Debtor executed a retainer agreement with  
13 Altagen to represent her in the converted chapter 7. Debtor  
14 then adopted a "scorched-earth" strategy aimed at saving the  
15 Property from liquidation by Trustee.

16 **A. The Sale Of The Property**

17 With bankruptcy court approval, Trustee employed a real  
18 estate broker to market the Property for sale. Debtor refused  
19 to allow Trustee or his professionals access to the Property.  
20 Trustee filed a motion requiring Debtor to, among other things,  
21 turn over the Property and remove her exempt property from the  
22 premises. In June 2013, the bankruptcy court entered an order  
23 granting Trustee's motion, in part, which allowed Debtor to  
24 remain in the Property until Trustee opened a sale escrow for  
25 the Property (June Order). The June Order provided that Debtor  
26 was to vacate the Property no later than 5:00 p.m. on the second  
27 business day after Trustee informed Debtor's counsel in writing,  
28 including e-mail, that Trustee had opened a sale escrow for the

1 Property. The bankruptcy court also ordered Debtor to cooperate  
2 with Trustee.

3 Cooperate she did not. Debtor filed an amended Schedule A,  
4 showing that from the time her chapter 11 petition was filed  
5 until the time her case was converted, the Property increased in  
6 value from \$1.3 million to approximately \$3 million. On  
7 numerous occasions she sought to enjoin the sale and remove  
8 Trustee and his professionals due to their alleged misconduct  
9 and gross undervaluation of the Property. She also refused to  
10 vacate the Property after escrow was opened. After Trustee  
11 obtained a writ of possession, Debtor sought to enjoin him from  
12 executing on it.

13 Debtor also filed several motions to dismiss her bankruptcy  
14 case. In August 2013, Debtor filed a pro se motion to  
15 voluntarily dismiss her bankruptcy case. There, Debtor  
16 disclosed that she had obtained refinancing for the Property for  
17 an amount sufficient to cover the secured debt and  
18 administrative costs of her bankruptcy proceeding. Attached to  
19 her motion as Exhibit "A" was an email purporting to evidence  
20 refinancing of the Property was forthcoming. But such evidence  
21 it was not; it was not an approval, but a communication stating  
22 information that must be provided by Debtor for an application  
23 process to begin.

24 In November 2013, Trustee filed a motion to sell the  
25 Property by auction (Motion to Sell). Debtor objected to the  
26 motion, and this time Altagen, on behalf of Debtor, filed an  
27 emergency motion to dismiss her case. Again, Debtor represented  
28 that she had obtained pre-approval for a refinancing loan in the

1 amount of \$1.2 million. She also asserted that all existing  
2 liens on the Property would be paid in full and monies would be  
3 held in escrow to pay any and all fees or amounts that the  
4 bankruptcy court ordered to be paid upon dismissal of her case.  
5 Finally, Debtor contended that dismissal was in the best  
6 interests of her creditors. Debtor also submitted a pre-  
7 approval certificate dated November 25, 2013, from 1st Point  
8 Lending, Inc., which was signed by Alex Nelson, a broker/loan  
9 officer.

10 Altagen re-filed the emergency motion to dismiss on  
11 December 2, 2013 (December 2013 MTD) because an incorrect event  
12 code was used for docketing the motion. On the same date,  
13 Altagen filed the declaration of Mr. Nelson. Mr. Nelson  
14 declared that he was the owner of 1st Point Lending, Inc. and  
15 that he had a lender who agreed to fund a \$1.2 million loan to  
16 Debtor which was pending at Greater LA Escrow Inc., bearing  
17 Escrow No. 4128-MB. Mr. Nelson also stated that he spoke to  
18 Greater LA Escrow Inc., which indicated that the money was  
19 available to fund the loan subject to bankruptcy court approval.  
20 Attached to his declaration was proof of funding in the form of  
21 a statement from Charles Schwab in the name of an individual  
22 lender.

23 On December 4, 2013, the bankruptcy court held a hearing on  
24 the Motion to Sell and Debtor's December 2013 MTD. Altagen  
25 appeared and stated that he was apprised of the refinancing for  
26 Debtor's Property and spoke to Mr. Nelson about the loan. He  
27 told the court that the escrow was about to close and that there  
28 was a one year interest reserve built into the loan. Still, the

1 court had concerns:

2 THE COURT: Un-huh. And then what happens?

3 MR. ALTAGEN: If the loan is not paid off within one  
4 year, they would have all the rights that they would  
have, I assume as any other lender would.

5 THE COURT: How is she going to pay interest payments  
6 in a year? From what I understand, she's not --

7 MR. ALTAGEN: The money is built into the loan.

8 THE COURT: No. I get that. But that's for a year.  
9 Then what happens? I mean, I'm saying, isn't she  
going to be back in bankruptcy then or is she going to  
be losing the property again at that point? How is  
she going to service the debt?

10 MR. ALTAGEN: your Honor, I'm not a fortune teller. I  
11 don't know what's going to happen in a year. But her  
12 intention would be to market the property in a proper  
13 way as the owner of a piece of real estate that's been  
approved and allowed to be sold in the normal course  
of selling real estate. That's her objective. That's  
her goal. That's what she's been trying to do, as the  
14 Court so ably, aptly pointed out, since November of  
2011. Okay.

15 THE COURT: . . . I mean, she's pretty much said  
16 repeatedly that she didn't have any source of income.  
17 I don't have any reason to think that's going to  
change. I mean, maybe it will. I hope it will. But  
18 she's been telling us that this is the money she's  
going to live on. You know. Whatever she gets out of  
19 this property is what she's going to live on for the  
rest of, you know, her natural life.

20 So I wouldn't be able to do this, to confirm this if  
21 this were -- if this were in Chapter 11 if this were a  
plan because I don't think it's feasible. So it's at  
22 best a band-aid that kicks this can down the road  
. . . . So I'm going to deny the motion to dismiss.

23 Over Debtor's objection, the bankruptcy court allowed  
24 Trustee to proceed with the sale of the Property by auction at  
25 the hearing. The Property sold for \$1.85 million to the highest  
26 bidder, and the bankruptcy court entered an order approving the  
27 sale (Sale Order).

28

1 **B. Debtor's Appeal Of The Sale Order And Request For A Stay**  
2 **Pending Appeal**

3 Acting pro se, Debtor filed a notice of appeal of the Sale  
4 Order in the United States District Court for the Central  
5 District of California.

6 Debtor also filed in the bankruptcy court a pro se motion  
7 to stay the Sale Order pending appeal (Motion For Stay). Debtor  
8 again reiterated that her primary goal was to retain the  
9 Property. Attached as Exhibit "A" was a commitment letter from  
10 Mr. Nelson. Debtor stated that the lender would be taking a  
11 first trust deed on the Property, all existing liens on the  
12 Property would be paid in full, and monies would be held to pay  
13 the fees for Debtor's attorney and other amounts that the court  
14 approved. Also attached was proof of funding in the form of a  
15 statement from Charles Schwab bearing the name of the individual  
16 lender.

17 The bankruptcy court denied her motion for a stay pending  
18 appeal finding that she would not prevail on the merits (Stay  
19 Order). The order provides in relevant part:

20 Debtor's only basis for the Motion is her contention  
21 that she will be able to borrow \$1.2 [million] to  
22 refinance her property; however, the debtor has never  
23 presented any admissible evidence showing that a  
24 lender has agreed to lend this amount or any other  
25 amount.

26 As the Court explained on the record at the time of  
27 hearing on the debtor's last motion to dismiss the  
28 above bankruptcy case, even if the debtor were able to  
borrow \$1.2 million, the debtor has repeatedly  
represented on the record in open court that she has  
no income and no ability to make debt service payments  
on the loan (which is why the alleged loan included a  
year's reserve for interest payments). Therefore, the  
debtor's need for liquidation or reorganization would  
not be resolved by the proffered financing. It would

1 merely (further) delay the inevitable.

2 Debtor later requested and obtained dismissal of her appeal  
3 of the Sale Order because the sale closed on December 12, 2013.

4 **C. The Bankruptcy Case Is Closed**

5 After paying administrative costs and secured and unsecured  
6 creditors, Trustee paid surplus funds to Debtor in the amount of  
7 \$594,779, which included her \$175,000 homestead exemption.  
8 Debtor obtained her § 727 discharge, and her bankruptcy case was  
9 closed.

10 **D. The State Court Malpractice Action Against Altagen**

11 A year after the closing of her bankruptcy case, Debtor  
12 filed a state court lawsuit against Altagen for malpractice,  
13 alleging that he failed to (1) timely secure the needed  
14 paperwork to stop the bankruptcy court's ordered sale of the  
15 Property; (2) properly advise the bankruptcy court that Debtor  
16 had obtained appropriate financing to forestall the sale of her  
17 home; and (3) advise the bankruptcy court as to the value of her  
18 home. Debtor alleged that as a result of Altagen's negligence,  
19 her home was sold at a price far below market value resulting in  
20 damages between \$1.5 to \$2.5 million.

21 Altagen filed a motion for judgment on the pleadings  
22 seeking to dismiss the state court action for lack of  
23 jurisdiction. Altagen alleged that Debtor had not sought leave  
24 from the bankruptcy court to file the state court action as  
25 required under the Barton Doctrine.<sup>2</sup> The state court granted

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27 <sup>2</sup> In Blixseth v. Brown, 470 B.R. 562, 565 (D. Mont. 2012),  
the court explained the Barton Doctrine as follows:

28 (continued...)

1 Altagen's motion for judgment on the pleadings on the ground  
2 that the bankruptcy court had exclusive jurisdiction over  
3 Debtor's legal malpractice claim against Altagen. Debtor sought  
4 to reopen her bankruptcy case and filed a motion seeking leave  
5 to pursue the state court action. Meanwhile, the state court  
6 dismissed the matter. Debtor did not appeal the state court's  
7 ruling.

8 The bankruptcy court later denied Debtor's motion for leave  
9 to sue Altagen in the state court. During the hearing, Debtor's  
10 counsel argued that the Barton Doctrine did not apply to Altagen  
11 because he was Debtor's attorney in her chapter 7 case and thus  
12 not appointed by the court. Counsel further argued that the  
13 creditors had been satisfied, the chapter 7 trustee's duties  
14 were over, and Debtor was the sole beneficiary of the  
15 malpractice action. Therefore, he asserted, the matter should  
16 proceed in state court.

17 In its ruling, the bankruptcy court agreed that the  
18 malpractice action did not affect the bankruptcy estate but  
19 found that it did affect the administration of the bankruptcy  
20 system. The court noted that Altagen had been appointed as

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21 <sup>2</sup>(...continued)

22 The Barton Doctrine is derived from the United States  
23 Supreme Court's decision in Barton v. Barbour, 104 U.S.  
24 126 (1881). It requires a party to 'first obtain leave  
25 of the bankruptcy court before it initiates an action  
26 in another forum against a bankruptcy trustee or other  
27 officer appointed by the bankruptcy court for acts done  
28 in the officer's official capacity.' Jeffrey v. Fort  
James Corp., 421 F.3d 963, 970 (9th Cir. 2005)  
(discussing Barton). If the Bankruptcy Court has not  
granted leave, then other courts do not have subject  
matter jurisdiction. Id. at 971.

1 chapter 11 debtor-in-possession counsel and continued as  
2 Debtor's attorney when the case was converted. The court found  
3 that whether or not the Barton Doctrine applied, it was  
4 appropriate for the court to police how attorneys behaved in  
5 front of it. The court denied Debtor's motion for leave and  
6 found that Debtor's claims for malpractice were properly brought  
7 in the bankruptcy court.

8 The court granted Debtor's motion to reopen her bankruptcy  
9 case.

10 **E. The Adversary Complaint**

11 On May 26, 2017, Debtor filed an adversary complaint  
12 against Altagen alleging California state law claims for  
13 fraudulent concealment, fraudulent misrepresentation, and  
14 constructive fraud in connection with Altagen's representation  
15 of Debtor in her converted chapter 7 bankruptcy case. Debtor  
16 alleged the state law fraud claims because the statute of  
17 limitations had run on her malpractice claims.

18 Debtor alleged that Altagen had concealed from the  
19 bankruptcy court the fact that Debtor had secured refinancing of  
20 her residence. She further asserted Altagen concealed from her  
21 that Trustee's counsel had agreed to continue the auction of the  
22 Property so that counsel could review the documentation relating  
23 to the refinance loan. Finally, Debtor complained that Altagen  
24 had not filed the declaration of Mr. Nelson who verified the  
25 financing, although Altagen had filed it. Debtor contended that  
26 her residence would not have been sold at the court-ordered  
27 auction if all the information regarding her refinancing loan  
28 had been given to the bankruptcy court. Debtor requested

1 compensatory damages in a sum of not less than \$2.5 million and  
2 punitive damages in an amount to be determined.

3 In August 2017, Altagen moved to dismiss the complaint  
4 under Civil Rule 12(b)(6), contending that the allegations of  
5 fraud and concealment were contradicted by facts of which the  
6 bankruptcy court could take judicial notice. The bankruptcy  
7 court stated in the Stay Order that the refinancing loan would  
8 not have changed the court's decision to approve the sale  
9 because Debtor had no ability to service the debt. As a result,  
10 Altagen alleged that nothing he was accused of doing caused  
11 Debtor any damage.

12 At the hearing on Altagen's motion to dismiss the  
13 complaint, the bankruptcy court took judicial notice of its  
14 ruling in the Stay Order and then read from its tentative  
15 ruling:

16 The text of the order made clear that the result would  
17 not have been different if Defendant had told the  
18 Court any of the things that Plaintiff claims he  
19 should have told the Court or provided any of the  
20 documents that Plaintiff alleges should have been  
21 provided to the Court. The Debtor had no ability to  
22 service any debt on the property and could not afford  
23 to retain the property. The only way to resolve  
24 Debtor's financial problems was to have the property  
25 sold. Any proposed financing would have merely kicked  
26 the can down the road, and Debtor would have lost her  
27 property once the interest reserve had been exhausted.  
28 The Trustee's willingness to agree to a postponement  
[of the auction] would not have changed this result.

24 According to the bankruptcy court, the liquidation of the  
25 Property was inevitable. The bankruptcy court granted Altagen's  
26 motion and dismissed Debtor's adversary complaint with  
27 prejudice. Debtor filed a timely notice of appeal.

1 **III. JURISDICTION**

2 We have jurisdiction under 28 U.S.C. § 158. We discuss the  
3 bankruptcy court's jurisdiction below.

4 **IV. ISSUE**

5 Whether the bankruptcy court had subject matter  
6 jurisdiction over this adversary proceeding.

7 **V. STANDARD OF REVIEW**

8 We review the bankruptcy court's jurisdiction over Debtor's  
9 adversary complaint de novo. Harris v. Wittman (In re Harris),  
10 590 F.3d 730, 736 (9th Cir. 2009).

11 **VI. DISCUSSION**

12 **A. Bankruptcy Court Jurisdiction**

13 We may raise the question of subject matter jurisdiction  
14 sua sponte at any time during the pendency of the action, even  
15 on appeal and when not raised by the parties. See Snell v.  
16 Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002).

17 A bankruptcy court's subject matter jurisdiction is  
18 established by statute. Under 28 U.S.C. § 1334(b), a bankruptcy  
19 court has jurisdiction over "all civil proceedings arising under  
20 title 11, or arising in or related to cases under title 11."

21 "Arising under title 11" describes those proceedings that  
22 involve a cause of action created or determined by a statutory  
23 provision in the bankruptcy code. In re Harris, 590 F.3d at  
24 737. "Proceedings 'arising in' a bankruptcy are generally  
25 referred to as 'core' proceedings, and essentially are  
26 proceedings that would not exist outside of bankruptcy. . . ."  
27 Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189,  
28 1193 (9th Cir. 2005); see also Battleground Plaza, LLC v. Ray

1 (In re Ray), 624 F.3d 1124, 1131 (9th Cir. 2010). A  
2 nonexhaustive list of core proceedings is set out in 28 U.S.C.  
3 § 157, which includes "matters concerning the administration of  
4 the estate." 28 U.S.C. § 157(b) (2) (A).

5 The bankruptcy court also has jurisdiction over "those  
6 proceedings that are 'related to' a bankruptcy case." In re  
7 Pegasus Gold Corp., 394 F.3d at 1193.

8 [T]he test is whether . . . the outcome of the  
9 proceeding could conceivably have any effect on the  
10 estate being administered in bankruptcy. Thus, the  
11 proceeding need not necessarily be against the debtor  
12 or against the debtor's property. An action is  
13 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.

14 Id. (quoting Fietz v. Great W. Savings (In re Fietz), 852 F.2d  
15 455, 457 (9th Cir. 1988) (adopting the "Pacor test" derived from  
16 Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)). The  
17 United States Supreme Court endorsed Pacor's conceivability  
18 standard with the caveats that "related to" jurisdiction "cannot  
19 be limitless," and that the critical component of the Pacor test  
20 is that "bankruptcy courts have no jurisdiction over proceedings  
21 that have no effect on the estate of the debtor." Celotex Corp.  
22 v. Edwards, 514 U.S. 300, 308 & n. 6 (1995).

23 We consider whether the bankruptcy court properly exercised  
24 its jurisdiction over this proceeding under one of these three  
25 categories.

## 26 **B. Analysis**

27 It is indisputable that this adversary proceeding, which  
28 contains postpetition claims for state law fraud/malpractice

1 against Altagen acting in his capacity as Debtor's chapter 7  
2 attorney, does not arise under Title 11. The claims alleged do  
3 not depend upon a substantive provision of bankruptcy law. In  
4 re Ray, 624 F.3d at 1130.

5 Nor do the allegations constitute any of the core  
6 jurisdiction matters listed in 28 U.S.C. § 157(b) which "arise  
7 in" a case under Title 11 and essentially are proceedings that  
8 would not exist outside of bankruptcy. In re Pegasus Gold  
9 Corp., 394 F.3d at 1193; In re Ray, 624 F.3d at 1131. The Ninth  
10 Circuit has held that some claims for professional malpractice  
11 based on services rendered in a bankruptcy case may be  
12 considered core proceedings because they arose during the  
13 administration of a bankruptcy case. Schultze v. Chandler, 765  
14 F.3d 945 (9th Cir. 2014). In Schultze, members of an unsecured  
15 creditors' committee sued their court-appointed attorney for  
16 committing legal malpractice while representing them in a debtor  
17 business's bankruptcy proceeding. Id. at 947. The Ninth  
18 Circuit stated that "[w]here a post-petition claim was brought  
19 against a court-appointed professional, we have held the suit to  
20 be a core proceeding," because

21 '[a] sine qua non in restructuring the debtor-creditor  
22 relationship is the court's ability to police the  
23 fiduciaries, whether trustees or debtors-in-possession  
24 and other court-appointed professionals, who are  
25 responsible for managing the debtor's estate in the  
26 best interest of creditors. The bankruptcy court must  
27 be able to assure itself and the creditors who rely on  
28 the process that court-approved managers of the  
debtor's estate are performing their work,  
conscientiously and cost-effectively. Bankruptcy Code  
provisions describe the basis for compensation,  
appointment and removal of court-appointed  
professionals, their conflict-of-interest standards,  
and the duties they must perform. See generally §§  
321, 322, 324, 326-331.'

1 Id. at 949 (quoting Southmark Corp. v. Coopers & Lybrand (In re  
2 Southmark Corp.), 163 F.3d 925, 931-32 (5th Cir. 1999)).

3 The court noted that (1) the attorney's employment was  
4 approved by the bankruptcy court under § 1103, (2) his  
5 compensation was approved by the bankruptcy court under § 328,  
6 330, and 331, (3) his duties pertained solely to the  
7 administration of the bankruptcy estate, and (4) the claim  
8 asserted by the plaintiffs was based solely on acts that  
9 occurred in the administration of the estate. In the end, the  
10 court found that "this particular legal malpractice claim is  
11 inseparable from the bankruptcy case" and thus "falls easily  
12 within the definition of a core proceeding." Id.

13 Debtor's claims against Altagen do not fall within the  
14 scope of Schultze. Although Debtor's claims would not exist  
15 without the bankruptcy case insofar as her claims against  
16 Altagen concern his handling of her bankruptcy case, it is not  
17 an "administrative" matter peculiar to the bankruptcy context  
18 involving, for instance, a court-appointed attorney such as in  
19 Schultze. Debtor's allegations against Altagen pertain solely  
20 to his representation as her chapter 7 private attorney. As  
21 such, Altagen's duties and representation of Debtor did not  
22 involve the administration of the bankruptcy estate as that was  
23 the chapter 7 trustee's role. Accordingly, Debtor's claims  
24 against Altagen do not impact the handling and administration of  
25 her estate and thus are easily separable from the bankruptcy  
26 case.

27 In short, Debtor's relationship with Altagen is governed by  
28 the same state-law rules of professional conduct regardless of

1 whether Altagen represented Debtor in a bankruptcy case or some  
2 state real estate matter. Therefore, her claims exist outside  
3 of bankruptcy and could be (and were) brought in the state  
4 court. The claims alleged against Altagen do not fall within  
5 "arising in" jurisdiction.

6 The claims also do not fall within the "related to"  
7 category for noncore proceedings. Debtor's fraud/malpractice  
8 claims against Altagen could not have any conceivable effect on  
9 her estate. The claims belong to Debtor personally and are not  
10 property of her estate, creditors have been paid in full, debtor  
11 received her discharge, and the chapter 7 estate has been fully  
12 administered and closed. Regardless of whether Debtor is  
13 successful or not with her claims against Altagen, her estate  
14 would receive no assets. No administration would occur and no  
15 distributions would be made. In the end, the critical component  
16 of the Pacor test is not met here: "bankruptcy courts have no  
17 jurisdiction over proceedings that have no effect on the estate  
18 of the debtor." Celotex Corp., 514 U.S. at 300, 308 & n. 6.  
19 Accordingly, the bankruptcy court lacked subject matter  
20 jurisdiction over the underlying adversary proceeding.

## 21 **VII. CONCLUSION**

22 For the reasons stated, we vacate the bankruptcy court's  
23 order dismissing Debtor's adversary complaint with prejudice  
24 and remand with instructions to dismiss this adversary  
25 proceeding without prejudice based on lack of subject matter  
26 jurisdiction.