

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE CRACKED EGG, LLC,

CIVIL DIVISION

Plaintiff,

2:20-cv-01434

v.

COUNTY OF ALLEGHENY, a political
subdivision of the Commonwealth of
Pennsylvania and the ALLEGHENY
COUNTY HEALTH DEPARTMENT,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO REFER CASE
TO BANKRUPTCY COURT**

Defendants Allegheny County and the Allegheny County Health Department ("ACHD")
file this RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO REFER CASE TO BANKRUPTCY COURT on
the following grounds:

Younger Abstention and the State Court Matter

1. Defendants incorporate the *Younger* Abstention argument set forth in its BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT as if fully set forth herein.
2. If this Court should abstain from hearing the instant matter under *Younger*, then Plaintiff's Motion to refer this matter to Bankruptcy Court is moot.
3. Furthermore, assuming *Younger* Abstention applies to this matter, under [28 U.S.C. § 1334\(c\)\(2\)](#), even if a bankruptcy court has subject-matter jurisdiction, it must abstain from hearing an adversary proceeding when the following six factors are present: (i) a timely motion is made; (ii) the proceeding is based on a state-law claim or cause of action; (iii) the

claim or cause of action is “related to” a case under title 11, but does not “arise under” title 11 and does not “arise in” a case under title 11; (iv) federal courts would not have jurisdiction over the claim but for its relation to a bankruptcy case; (v) an action “is commenced” in a state forum of appropriate jurisdiction; and (vi) the action can be “timely adjudicated” in a state forum of appropriate jurisdiction. [Stoe v. Flaherty, 436 F.3d 209, 213 \(3d Cir. 2006\)](#). All of these factors are satisfied in the State Court Matter filed by the Allegheny County through the ACHD.

This Matter is Not Related to Case Under Title 11

4. Bankruptcy jurisdiction extends to four types of title 11 matters:
 - (1) cases “under” title 11;
 - (2) proceedings “arising under” title 11;
 - (3) proceedings “arising in” a case under title 11; and
 - (4) proceedings “related to” a case under title 11.

[Stoe v. Flaherty, 436 F.3d 209, 216 \(3d Cir. 2006\)](#).

5. Plaintiff argues that this matter is “related to”¹ a case under title 11 because the outcome of Plaintiff’s claims in this case will affect and determine the ability of Plaintiff to continue operating its business.

6. The

¹ Plaintiff’s claim that “this case is related to the Adversary Proceeding” at Adv. Pro. No. 20-02166-JAD does not satisfy the “related” to a case under title 11 requirement. The jurisdiction of the Bankruptcy Court in that matter has been challenged by the Allegheny County Health Department and the issue is currently being litigated.

7. “Related to” jurisdiction exists if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” [Stoe, 436F.3d at 216](#).

8. An action is 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. [Pacor, Inc. v. Higgins, 743 F.2d 984, 994 \(3d Cir. 1984\)](#), *overruled on other grounds by* [Things Remembered, Inc. v. Petrarca, 516 U.S. 124 \(1995\)](#).

9. It is Plaintiff's burden to show that this present action challenging the State's COVID-19 Mitigation Measures regarding face coverings and occupancy limits are related to bankruptcy. It has only proffered the following in its Motion:

¶10. In the present case, the outcome of Plaintiff's claims in this case will affect and determine the ability of Plaintiff to continue operating its business. This is due to the nature of the Defendants' actions, which not only affect the financial health of the Plaintiff, but also its ability to operating as an ongoing business generally.

¶11. Plaintiff's ability to continue its business operation is necessary to effectuate a feasible bankruptcy reorganization.

¶12. Additionally, this case is related to the Adversary Proceeding as it seeks to invalidate certain orders of the Commonwealth of Pennsylvania as unconstitutional, which orders form the basis of Allegheny County's injunction action.

10. These statements are vague and conclusory. Moreover, what Plaintiff is asking for in this matter is for this Court to invalidate the State's COVID-19 Mitigation Orders. This would have an impact on the entire Commonwealth of Pennsylvania. By this logic, every case filed in Pennsylvania challenging the State's COVID-19 Mitigation Orders would be related to

Plaintiff's Bankruptcy proceeding. Plaintiff has not sufficiently shown how this Matter relates to the Bankruptcy proceeding.

The Claims at Issue are Not "Core" Claims

11. Permissible claims fall into two categories: "core" claims that arise under the Bankruptcy Code, and "related to" claims which in some material way relate back to a bankruptcy claim. *See* 28 U.S.C.A. § 157; 28 U.S.C. § 1334.

12. Plaintiff's Federal Complaint filed in the Court alleges only federal Constitutional claims brought through 42 U.S.C. § 1983.

13. By their very nature, the Constitutional claims cannot be "core" claims. This is because it cannot be said that "the Bankruptcy Code creates the cause of action or provides the substantive right invoked" (and thus that they "arise under" Chapter 11), or that they "have no existence outside the bankruptcy" (and thus "arise in" the bankruptcy). [Stoe v. Flaherty, 436 F.3d 209, 216 \(3d Cir. 2006\)](#). To the contrary, Plaintiff's claims arise under the Constitution.

14. If a proceeding is non-core, the bankruptcy court cannot enter final judgment on the claim and "must propose findings of fact and conclusions of law. Then, the district court must review the proceeding *de novo* and enter final judgment." *Exec. Benefits Ins. Agency, 134 S. Ct. at 2172*. Consequently, this Court will have to review and enter the final judgment in this matter.

WHEREFORE, for these reasons Defendants respectfully request that the Court deny Plaintiff's Motion to Refer this matter to Bankruptcy Court.

Respectfully submitted,

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