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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:	)	Bankruptcy Case
	)	No. 98-3-4290-SDM
	)	Chapter 7
PATRICIA A. McCOLM,	)	
	)	
Debtor.	)	
_____	)	
PATRICIA A. McCOLM,	)	Adv. Proc. No. 99-3-066-TC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>MEMORANDUM RE</b>
WALT DISNEY CORPORATION;	)	<b><u>MOTIONS TO DISMISS</u></b>
AMERICAN BROADCASTING COMPANY, INC.,	)	
JOHN STOSSEL; STEVEN THEOHARIS;	)	
DAVID GREENBAUM; RICHARD NELSON;	)	
GREG SPENCER; BANK OF AMERICA;	)	
FIREMAN'S FUND INSURANCE COMPANY,	)	
and DOES 1-50,	)	
	)	
Defendants.	)	
_____	)	

Defendants Gregg S. Spencer, Bank of America, N.T.&S.A., and Fireman's Funds Insurance Company filed motions to dismiss the above-entitled action on the basis of failure to state a claim upon which relief can be granted. The motions were set for

1 hearing on August 6, 1999. The motions were properly served and  
2 filed 28 days before that hearing date pursuant to Bankruptcy  
3 Local Rule 7007-1(a). On July 23, 1999, Plaintiff filed an ex  
4 parte motion to continue the August 6, 1999 hearing. The court  
5 returned the moving papers, stating that the court declined to  
6 consider the motion on an ex parte basis. Plaintiff's opposition  
7 to the motions was due on July 23, 1999 per Bankruptcy Local  
8 Rule 7007-1(b). Plaintiff had filed no written opposition as  
9 of August 4, 1999. On August 5, 1999, the court cancelled the  
10 August 6, 1999 hearing, and stated its intention to dismiss the  
11 action for lack of subject-matter jurisdiction.

12

13 **FACTS**

14 Plaintiff filed a petition under chapter 11 of the Bankruptcy  
15 Code on August 28, 1998. Plaintiff's chapter 11 case was  
16 converted to one under chapter 7 on January 27, 1999. Plaintiff  
17 filed the above-entitled action (the Action) in this court on  
18 February 11, 1999. On April 22, 1999, Plaintiff filed an amended  
19 Schedule C in her bankruptcy case, claiming the Action exempt.  
20 Neither the chapter 7 trustee nor any other party in interest  
21 filed an objection to that claim of exemption, and the time for  
22 objecting has expired under Fed. R. Bankr. P. 4003(b).

23

24 **DISCUSSION**

25 Federal courts are courts of limited jurisdiction. They have  
26 a duty to examine their own subject-matter jurisdiction, whether  
27 or not that issue is raised by a party. A federal court may

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1 dismiss an action on its own motion where subject-matter  
2 jurisdiction is lacking. See 13 Wright, Miller & Cooper,  
3 Federal Practice and Procedure 2d § 3522 (1984).

4 The subject-matter jurisdiction of the Bankruptcy Courts  
5 is defined in 28 U.S.C. § 1334(b): "Notwithstanding any Act of  
6 Congress that confers exclusive jurisdiction on a court or courts  
7 other than the district courts, the district courts shall have  
8 original but not exclusive jurisdiction of all civil proceedings  
9 arising under title 11, or arising in or related to cases under  
10 title 11."

11 This court lacks jurisdiction over the Action under each of  
12 the three prongs of section 1334(b). First, the complaint does  
13 not allege a cause of action "arising in" the bankruptcy case,  
14 because the acts alleged in the complaint occurred in 1997, before  
15 Plaintiff filed her bankruptcy case. Second, the claims asserted  
16 do not "arise under" title 11. The complaint contains no refer-  
17 ence to title 11, nor can any of the acts alleged be construed  
18 to give rise to a claim created by title 11. Third, the claims  
19 asserted in the complaint are not "related to" the bankruptcy  
20 case. A claim is related to a bankruptcy case if it conceivably  
21 could have an effect on the bankruptcy estate. See In re Fietz,  
22 852 F.2d 455, 457 (9th Cir. 1988). Plaintiff has claimed the  
23 Action exempt, and no timely objection was filed to that claim  
24 of exemption. Thus, any recovery on the action would benefit  
25 Plaintiff rather than the bankruptcy estate, and the Action is  
26 therefore not related to the bankruptcy case under Fietz.

1 I determine that it is appropriate to dismiss the Action  
2 sua sponte. Although the Defendants' present motions sought  
3 dismissal only for failure to state a claim upon which relief  
4 can be granted, several defendants in Adversary Proceeding  
5 No. 99-3-104-TC brought motions to dismiss that action for lack  
6 of subject-matter jurisdiction. Those motions were also scheduled  
7 for hearing on August 6, 1999 and sought dismissal on exactly the  
8 same grounds upon which the court finds a lack of subject-matter  
9 jurisdiction over the present action. Plaintiff failed to file  
10 any response to those motions. I thus determine that Plaintiff  
11 has had an adequate opportunity to be heard regarding the question  
12 of subject-matter jurisdiction, and that the instant action should  
13 be dismissed without further hearing.

14

15 **CONCLUSION**

16 The Action is dismissed without prejudice as to all claims  
17 against all Defendants for lack of subject-matter jurisdiction.

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22 Dated: \_\_\_\_\_

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Thomas E. Carlson  
United States Bankruptcy Judge

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