

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
CLASSIC COMMUNICATIONS, INC.,)	Case Nos. 01-11257 (PJW)
et al.,)	through 01-11272 (PJW)
Debtors.)	
_____)
)	Jointly Administered
)	
CLASSIC COMMUNICATIONS, INC.,)	
et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Adv. Proc. No. 02-1391
)	
ECHOSTAR COMMUNICATIONS)	
CORPORATION d/b/a DISH NETWORK,)	
)	
Defendant.)	

MEMORANDUM OPINION

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Dated: May 30, 2003

WALSH, J.

This opinion is with respect to defendant EchoStar Communication Corporation's ("EchoStar") motion to dismiss the above captioned adversary proceeding on the grounds of lack of subject matter jurisdiction (Doc. # 24). Classic Communications, Inc. ("Debtor") filed its adversary complaint alleging seven causes of action, including a claim that EchoStar violated 11 U.S.C. § 362(a)'s automatic stay provision by improperly pursuing Debtor's cable television subscribers. Debtor asserts that the Court has jurisdiction over the remaining causes of action because they are related to the bankruptcy case. See Doc. # 46 at 8-9. EchoStar contends that this Court lacks subject matter jurisdiction because Debtor's subscribers are not property of the estate. Absent an attempt to control the property of the estate, EchoStar asserts that there was no violation of the automatic stay. According to EchoStar's pleadings, Debtor's other causes of action are not related to the bankruptcy case and should be addressed by another court of competent jurisdiction. For the reasons set forth below, I will deny EchoStar's motion to dismiss for lack of subject matter jurisdiction.

BACKGROUND

Debtor filed its Chapter 11 petition on November 13,

2001, and continues to operate its cable television business as a debtor-in-possession. Prior to the bankruptcy, Debtor provided cable television service to 352,596 subscribers in non-metropolitan markets in Texas, Kansas, Oklahoma, Nebraska, Missouri, Arkansas, Louisiana, Colorado, Ohio and New Mexico. See Doc. # 46 at 3. On January 14, 2002, Debtor instituted this adversary proceeding and also filed a motion for a temporary restraining order.

The complaint alleges that beginning in December 2001, EchoStar violated the automatic stay by soliciting Debtor's subscribers and urging them switch to satellite service because of Debtor's financial situation.¹ Debtor requests that the Court find EchoStar in violation of the automatic stay and provide relief for civil contempt, tortious interference with contract, tortious interference with prospective business relations, publication of injurious falsehood, defamation by slander and unfair competition.

On January 16, 2002, the Court granted, in part, Debtor's motion for a TRO. See Doc. # 16. Upon EchoStar's

¹ Focusing on Debtor's financial condition, EchoStar allegedly told customers that because of the bankruptcy filing, "[Debtor] will shortly go out of business, be unable to continue to provide service to its clients, and/or that [EchoStar] has been authorized by [Debtor] to offer [Debtor]'s subscribers uninterrupted programming service." See Doc. # 46 at 4.

termination of its solicitation efforts, Debtor withdrew its preliminary injunction request. See Doc. # 46 at n.1. EchoStar asserts that its solicitation of Debtor's subscribers does not violate the automatic stay because those subscribers are not property of the estate. See Doc. # 24 at 4-5.

DISCUSSION

Under 28 U.S.C. § 1334, district courts are granted "original and exclusive jurisdiction of all cases under title 11" (the Bankruptcy Code). See 28 U.S.C. § 1334(a). A district court may also exercise original, non-exclusive jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." See 28 U.S.C. § 1334(b). The United States Court of Appeals for the Third Circuit defines "related to" jurisdiction in the following terms:

A proceeding is related to a case under title 11 if it 'could conceivably have any effect on the estate being administered in bankruptcy' such that 'it is possible that [the] proceeding may impact on the debtor's rights, liabilities, options, or freedom of action or the handling and administration of the bankrupt estate.'

Copelin v. Spirco, Inc., 182 F.3d 174, 179 (3d Cir. 1999).

EchoStar asserts that this Court lacks jurisdiction to hear Debtor's causes of action because: (1) EchoStar's

solicitation did not violate the automatic stay and (2) Debtor's other claims are not "related to" the bankruptcy case. EchoStar relies heavily on Golden Distributors, Ltd. v. Reiss (In re Golden Distributors, Ltd.), 122 B.R. 15 (Bankr. S.D.N.Y. 1990) for the proposition that customers are not property of the estate and therefore, solicitation of these customers does not violate the automatic stay. See Golden, 122 B.R. at 21. EchoStar argues this is especially true when the solicitor did not misappropriate Debtor's confidential information and Debtor's customers were not in an exclusive relationship, or otherwise required to remain, with the Debtor.

In Golden, three former employees signed separation agreements that contained a noncompete clause. Shortly after termination, the former employees violated their noncompete clauses by soliciting the debtor's current customers. The debtor sought to enjoin the employees and argued that solicitation of the debtor's current customers was actually an attempt to exercise control over, and obtain possession of, property of the estate. The bankruptcy court rejected the debtor's argument and concluded that the solicitation did not rise to a level of impermissible control over property of the estate. The court noted that the former employees relied solely on public sources of information to solicit the debtor's

customers and were participating in the same activities any other competing salesperson could engage in. See id. at 20. The court did not rule on any breach of contract cause of action but simply concluded that the former employees actions did not violate the automatic stay because the employees did not exercise control over any property of the estate. See id. at 21.

Although EchoStar urges the Court to adopt Golden's reasoning, I need only to address the Third Circuit's Copelin holding. A bankruptcy court may exercise jurisdiction over claims "related to" the bankruptcy case if those claims could conceivably impact the estate's administration. Debtor's non-bankruptcy law causes of action, if successful, could significantly impact Debtor's rights, options and ability to administer the estate. Of importance in this case is the fact that not only did EchoStar's solicitation conduct occur after Debtor's bankruptcy filing, its conduct was premised on the bankruptcy filing. Regardless of whether Debtor's customers are property of the estate, EchoStar's conduct provides a sufficient basis for Debtor's non-bankruptcy causes of action to be pursued in this Court on a "related to" basis.

CONCLUSION

For the reasons set forth above, EchoStar's motion to

dismiss for lack of subject matter jurisdiction is denied.

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ORDER

For the reasons set forth in the Court's Memorandum Opinion of this date, EchoStar Communication Corporation's motion to dismiss this adversary proceeding for lack of subject matter jurisdiction (Doc. # 24) is **DENIED**.

Peter J. Walsh
United States Bankruptcy Judge

Dated: May 30, 2003