

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 09-15314 )  
)  
INDIANA TROOPERS ASSOCIATION, INC. )  
)  
Debtor )  
)  
)  
INDIANA TROOPERS ASSOCIATION, INC. )  
)  
Plaintiff )  
)  
vs. ) PROC. NO. 09-1214  
)  
)  
CAMPAIGN RESOURCES, INC. )  
JAK PRODUCTIONS, INC. )  
)  
Defendants )

## **DECISION AND ORDER DENYING MOTION TO REMAND OR ABSTAIN**

At Fort Wayne, Indiana, on March 24, 2010.

The debtor removed this action, which it had originally filed in the Allen Superior Court, shortly after it filed a petition for relief under Chapter 11 in this court. At the time of removal, the claims being asserted in the action involved the debtor's claims for damages against Campaign Resources and JAK Properties, based on a variety of theories including breach of contract, and Campaign Resources' counter-claim and request for injunctive relief, arising out of the same contract. Since the removal, Campaign Resources filed an unsecured claim in the bankruptcy proceeding for slightly more than \$775,000. It has also filed a motion to remand this proceeding back to the State Court or for this court to abstain from hearing it. That motion has been fully

briefed by all parties<sup>1</sup> and is now before the court for a decision.

All parties agree that the bankruptcy court has jurisdiction over this proceeding pursuant to § 1334(b). 28 U.S.C. § 1334(b). At an absolute minimum, this proceeding is “related to” a case under title 11. See, Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d 746, 749 (7th Cir. 1989) ((quoting In re Xonics, Inc., 813 F.2d 127, 131 (7th Cir. 1987) (A proceeding is related to a case under title 11 only when “it affects the amount of property available for distribution or the allocation of property among creditors.”)). See also, Matter of FedPak Systems, Inc., 80 F.3d 207 (7th Cir. 1996); Zerand-Bernal Group, Inc. v. Cox, 23 F.3d 159 (7th Cir. 1994). While the parties may disagree as to whether it constitutes a core or non-core proceeding, that designation does not affect the existence of the court’s subject matter jurisdiction. Rather, it affects how the court exercises that jurisdiction. See, Fort Wayne Telsat, Inc. v. Simon, 403 B.R. 590, 593 n.1 (Bankr. N.D. Ind. 2009); In re Cary Metal Products, Inc., 152 B.R. 927, 935 (Bankr. N.D. Ill. 1993). In core proceedings the bankruptcy court may make findings of fact, conclusions of law, and issue a final judgment or order, 28 U.S.C. § 157(b), while in non-core proceedings, absent the parties’ consent, it must issue proposed findings of fact and conclusions of law which may be reviewed de novo on appeal. 28 U.S.C. § 157(c).

Once a matter has been removed to the bankruptcy court it may be remanded “on any equitable ground.” 28 U.S.C. § 1452(b). A motion to remand a removed action is addressed to the court’s discretion. See, Matter of U.S. Brass Corp., 110 F.3d 1261, 1265-66 (7th Cir. 1997). Exercising that discretion can involve consideration of a variety of factors, Allen County Bank &

---

<sup>1</sup>Although JAK Properties has not filed such a motion, it joined in Campaign Resources’ reply to the debtor’s arguments and, in doing so, indicated that it also joined in Campaign Resources’ original motion. See, Reply to Objection filed Jan. 19, 2010.

Trust Co. v. Valvmatic International Corp., 51 B.R. 578, 582 (N.D. Ind. 1985), which, depending on the circumstances, may differ from case to case and time to time. See, Matter of Chicago, Milwaukee, St. Paul & Pacific R. Co., 6 F.3d 1184, 1189 (factors for discretionary abstention should be applied “flexibly, for their relevance and importance will vary with the particular circumstances of each case, and no one factor is necessarily determinative”). In this instance, the movants advance four arguments to justify remanding the matter to the Allen Superior Court.

Movants’ first argument is that the matter had been pending in the state court since February, 2009, and it would be a waste of judicial resources, or a duplicative and uneconomical use of judicial resources, for the court to take it up now. To the extent the movants are concerned about this court’s wasted or unnecessary effort to get up to speed in this proceeding, it appreciates that concern, but feels that it is overblown. The matter is not overly complex and to the extent the court must devote its time to “getting up to speed” that has already been done in connection with what has been accomplished thus far. So, in one sense, remand itself might involve a waste of judicial resources because sending this proceeding back to the Allen Superior Court will deprive this court of the opportunity to utilize what it has learned.

A much more important consideration is the question of whether there will be a duplication or uneconomical use of judicial resources if this matter is not remanded to the state court. The answer to that question is no. There is no reason to believe that the amount of time and effort either court would be required to devote to this matter will be any different based upon where it pends.<sup>2</sup>

---

<sup>2</sup>Actually there may be some reason to believe that this court might offer the most economical use of judicial resources because of its greater familiarity with bankruptcy law; thus, it may be in a better position to assess the impact of proceedings in the debtor’s bankruptcy case on the issues presented here.

This is not a situation in which removal involves only some of the claims and some of the parties in the state court action. See, In re Brateman Bros., Inc., 135 B.R. 853, 854-55 (Bankr. N.D. Ind. 1991). All of the pending claims asserted by or against all of the parties have been removed to this court, leaving nothing behind. As a result, this is not a situation where different courts will have responsibility for different aspects of a larger dispute, which would require both of them to hear much the same testimony, from the same witnesses, with regard to the same events. One proceeding, in one court, is all that will be required.<sup>3</sup> Consequently, further proceedings will not involve any type of duplication of judicial (or other) resources.

Movants' second argument is that the action presents issues that arise entirely under state law and that the state court is well-equipped to handle them. Both points are true, but not dispositive. This court handles state law issues all the time – every claim a creditor presents against a debtor or a bankruptcy estate is founded upon non-bankruptcy law, the bankruptcy court is merely the forum in which that claim is adjudicated – and this court is equally well-equipped to handle them. The issues presented are not novel and do not consist of any unsettled issues of law. Furthermore, to the extent that events in the underlying bankruptcy case may have an impact upon this proceeding – such as the effect of rejection of the contract between the debtor and Campaign Resources on the claims being asserted – this court may be in a better position to deal with them.

Movants' third argument is that retaining this matter would delay the administration of the bankruptcy estate, but the court does not see why that would be so. Admittedly, resolution of the issues presented here may have a significant impact upon the debtor's bankruptcy proceeding, which

---

<sup>3</sup>This eliminates the possibility that the decisions of the two courts would produce an inconsistent result. See, In re CRD Sales & Leasing, Inc., 231 B.R. 214, 221 (Bankr. D. Vt. 1999).

suggests that they should be resolved in the court capable of doing so most expeditiously, but there is no evidence that is the state court. See e.g., In re Refco, Inc. Securities Litigation, 628 F. Supp. 2d 432, 445-46 (S.D. N.Y. 2008); In re Asousa Partnership, 264 B.R. 376, 389 (Bankr. E.D. Pa. 2001); In re Burgess, 51 B.R. 300, 302 (Bankr. S.D. Ohio 1985) (“naked assertion that the matter can be timely adjudicated in the state court” insufficient to satisfy burden). While the state court did preside over various proceedings prior to removal, at the time this action was removed it was still in the discovery phase; the court had not scheduled a final pretrial conference, a deadline for the submission of a pretrial order, or a trial. See, Allen County Bank & Trust Co., 51 B.R. at 582 (case was ready and set for trial before the state court). Since removal to this court, the parties have agreed to undertake mediation, a litigation schedule has been put in place, under which discovery is to be completed by May 13, 2010, and a joint pretrial order is to be filed by June 13, 2010; if the parties stick to those deadlines, the court would expect to be able to try the matter no later than early September. There is no evidence that the state court would be able to do so any more expeditiously. See, Burgess, 51 B.R. at 302. Furthermore, this court is in a better position than the state court to integrate or coordinate the events in both proceedings. All this leads the court to conclude that the bankruptcy court, rather than the state court, is the best forum to ensure that this litigation does not delay the administration of the bankruptcy estate.

Movants’ next argument is that retaining the matter will greatly prejudice it, yet, other than arguments concerning enforcement of orders which had been issued by the state court prior to removal, the only prejudice that it points to seems to arise out of its perception that the state court can more quickly dispose of this matter than this court can, and that does not seem to be correct. To the extent movant contends that prior orders of the state court should be enforced by this court, it

need only ask and the court will schedule proceedings to consider the matter. But, movant has not done so.

In addition, or as an alternative, to remand, the court has also been asked to abstain from deciding the issues presented in this case. In a very real sense that is remand under a different guise because the court could not abstain from deciding the issues presented here and simultaneously decline to remand it to the state court. That would result in nothing other than the case languishing on this court's docket. Abstention is more appropriately considered when there are two proceedings, before two separate courts, both involving substantially the same issues; not in connection with deciding which of two courts, should administer a single proceeding. See, In re Duval County Ranch Co., 167 B.R. 848, 849 (Bankr. S.D. Tex. 1994) ("If this Court were to abstain, nothing would happen because there is only one lawsuit."). Nonetheless, this observation may be little more than a technical argument and, given the discretionary nature of a decision to remand, the court considers movants' arguments for abstention as additional arguments in favor of remand. This is particularly appropriate since movant argues that 28 U.S.C. § 1334(c)(2) requires this court to abstain from hearing this proceeding. It somewhat anomalous to think that the court could, in the exercise of its discretion, retain an action that had been removed from another court, and yet that it would be required to abstain, if, instead of removal, someone had simply initiated an independent proceeding that duplicated one already pending elsewhere. Accordingly, the court approaches the issue from the standpoint that, if it would be required to abstain from a particular proceeding, such a conclusion would justify a remand. Here, however, mandatory abstention is not required.

There are three requirements for mandatory abstention. 11 U.S.C. § 1334(c)(2). First, there must be no basis for federal jurisdiction other than the "related to" jurisdiction of § 1334(b). Second,

an action must have been commenced in state court and, third, the state court must be able to timely adjudicate that proceeding.<sup>4</sup> Of these three requirements only one has been fully satisfied; one may have been and one definitely has not been satisfied.

The only one of the three requirements for mandatory abstention that has definitely been satisfied is the second, that a case have been commenced in state court. Whether or not the first requirement has been satisfied – the only basis for federal jurisdiction is the “related to” jurisdiction of 1334(b) – depends upon how broadly one views the issue. To the extent we are dealing with the debtor’s claims against JAK Properties, that is true. It is not so true, however, when we consider the claims being asserted between the debtor and Campaign Resources. The debtor’s claim against Campaign Resources may appear to satisfy the jurisdictional requirements for abstention; yet, Campaign Resources is also asserting a claim against the debtor, and has filed a proof of claim in the underlying bankruptcy. That takes this dispute out of the exclusively “related to” prong of bankruptcy jurisdiction and also grounds it in the “arising in” jurisdiction of 1334(b). 1 Collier on Bankruptcy ¶ 3.01[3][c] (16th ed.). See also, 28 U.S.C. § 157(b)(2)(B),(C) (core proceedings include the allowance or disallowance of claims against the estate and counter-claims by the estate against the person filing claims). Furthermore, some of the issues presented in the case seem to involve questions over the ownership of particular assets and that may implicate the court’s exclusive jurisdiction of § 1334(e).

The court need not ponder the jurisdictional issues any further because the third requirement

---

<sup>4</sup>Movants argue for a fourth consideration: the matter must be a non-core proceeding. Section 1334(c)(2) does not specifically contain that requirement. It is, however, inherent in the requirement that the matter be “related to a case under title 11.” Issues “arising under title 11” or “arising in a case under title 11” are all core proceedings. See, 28 U.S.C. § 157(b)(2).

– that the action can be timely adjudicated in state court – has not been satisfied. The court has been given no information concerning the state court’s docket or how quickly this matter would be able to proceed to trial there. As noted earlier, this is not a situation in which the case had already been set for trial when the bankruptcy had been filed and bankruptcy presents the possibility of disrupting already established schedules. The matter was still in the trial preparation/discovery phase and was not ready to go to trial. As the proponent of mandatory abstention, it was movants’ responsibility to prove the state court’s ability to timely adjudicate this dispute and it has failed to do so. In re Refco, Inc. Securities Litigation, 628 F. Supp. 2d 432, 445-46 (S.D. N.Y. 2008); In re Asousa Partnership, 264 B.R. 376, 389 (Bankr. E.D. Pa. 2001); In re Burgess, 51 B.R. 300, 302 (Bankr. S.D. Ohio 1985).

Without a basis for mandatory abstention, this court is left with the discretionary choice as to whether to remand it back to state court, or use discretionary abstention which would amount to much the same thing. Whether viewed from the lens of remand or discretionary abstention there is not a sufficient basis upon which to do so. Defendants’ motion to remand or abstain is, therefore, DENIED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court