

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

M-60

IN RE:)
SIRAJUDDIN SYED KHAJA)
) BANKRUPTCY NO. 09-25126
)
Debtor)

MEMORANDUM OPINION
AND
ORDER

A Prehearing Conference was held June 8, 2010 on the Objection to Claim Number 7 of Farzana Khan ("Claimant") filed by the Debtor ("Objectant") on April 25, 2010, ("Contested Matter").

Claimant appears by Attorney Boncela.

Debtor appears by Attorney Galanos.

Trustee appears by Attorney Hoham.

The legal and factual issues raised by the parties as to the above contested matter are the extent, if any, that the Debtor is obligated to the Claimant based on Paragraph No. 12 of the Order on Remanded Issues Ordered on August 25, 2009 by the Lake Superior Court Room Three Domestic Relations Division in In re The Marriage of: Farzana Khan Petitioner and Sirajuddin Khaja Respondant, Cause No. 45003-0612-DR-1305 and pursuant to the Opinion of the Court of Appeals of Indiana, Khaja v Kahn, 902 N. E2nd 857 Ind. App. 2007).

The Court having the arguments of the parties as the above contested matters are heard the arguments of the parties, and having examined the record, hereby exercises its

discretion and sua sponte abstains pursuant to 28 U.S.C. §1334(c)(1) from deciding the above Contested Matter¹. See Carver v. Carver, 954 F.2d 1573, 1579 (11th Cir. 1992) (a bankruptcy court may sua sponte abstain under 28 U.S.C. §1334(c)(1)). The Seventh Circuit in the case of Matter of Chicago, Milwaukee, St. Paul & Pacific Rail Co., 6 F.3d 1184, 1189 (7th Cir. 1993), set out the factors the Court should consider in determining whether it should exercise discretionary abstention under 28 U.S.C. §1334(c)(1). There the court stated:

Section 1334(c)(1) is somewhat oblique in delineating the criteria that would support a discretionary decision to abstain. See Pan Am, 950 F.2d at 845. The statute speaks only in the most general terms of the “interest of justice,” the “interest of comity,” and “respect for State law.” However, discretionary abstention under section 1334(c)(1) is “informed by principles developed under the judicial abstention doctrines, and courts have usually looked to these well-developed notions of judicial abstention when applying section 1334(c)(1).” Pan Am, 950 F.2d at 945; see also Baumgart v. Fairchild Aircraft Corp., 981 F.2d 824, 833 (5th Cir.), cert. denied, — U.S. —, 113 S.Ct. 2963, 125 L.Ed.2d 663 (1993); In re Eastport Assoc., 935 F.2d at 1078-79 & n. 7.

To provide more concrete guidance to courts considering section 1334(c)(1) abstention, the Ninth Circuit has identified the following relevant factors:

(1) the effect or lack thereof on the efficient administration of the estate if the court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. §1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted “core” proceeding, (8) the feasibility of severing state

¹ 28 U.S.C. §1334(c)(1) states as follows:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

In re Eastport Assoc., 935 F.2d at 1075-76 (quoting In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990)). Courts should apply these factors flexibly, for their relevance and importance will vary with the particular circumstances of each case, and no one factor is necessarily determinative. At the same time, because section 1334(c)(1) is concerned with comity and respect for state law, whether a case involves unsettled issues of state law is always significant. See Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 483, 60 S.Ct. 628, 630, 84 L.Ed. 876 (1940); Pan Am, 950 F.2d at 846; see also In re L & S Indus., Inc., 989 F.2d 929, 935 (7th Cir. 1993) ("Under bankruptcy law the presence of a state law issue is not enough to warrant permissive abstention, but it nevertheless is a significant consideration."); In re United Sec. & Communications, Inc., 93 B.R. 945, 960 (Bankr. S.D. Ohio 1988); H.R.Rep. No. 595, 95th Cong., 1st Sess. 51 (1977), reprinted in, 1978 U.S.C.C.A.N. 5963, 6012.

Id. 6 F.3d at 1189 (footnote omitted). See also Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th Cir. 1995) (power of federal court to relinquish jurisdiction not dependent on statute).

The Court decides that the relevant factors to be applied by this Court pursuant to the Seventh Circuit in Matter of Chicago, Milwaukee, St. Paul, and Pacific Rail Co., Supra, as to when this Court should abstain as a matter of discretion are present in that State Law issues predominate over Bankruptcy issues and the presence of a related proceeding in the Lake Superior Court. Accordingly, the §362(a) automatic stay is hereby modified, rather than vacated, to the full extent necessary for the Claimant and the Debtor to litigate on the merits all aspects of the above contested matter which is related to the State Court Action still presently pending between the parties in the Lake Superior Court under Cause

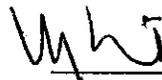
No. 45D03-0612-DR-1305.

The Court hereby stays all further proceedings pending in this Court as to the above Contested Matter presently pending in this Court, and when a final nonappealable judgment is entered by the State Court relating thereto, this Court shall thereafter give claim preclusive or res judicata effect as to any such judgment in deciding the above Contested Matter, and further proceedings as to said Contested Matter shall be scheduled upon further notice. See Selmon v. Portsmouth Drive Condominium Assoc., 89 F.3d 406, 409-10 (7th Cir. 1996) (a stay, not a dismissal, is the appropriate procedure mechanism for a federal court to employ in deferring to a parallel state court proceeding under the Colorado River Doctrine); There to Care, Inc. v. Commissioner of the Indiana Dept. of Revenue, 19 F.3d 1165, 1167 (7th Cir. 1994) (when a federal court abstains, it should send the whole case to the state court, returning to the subject only if the final disposition in that court leaves an open federal issue, and then only to the extent principles of preclusion permit successive litigation).

In the event the Claimant should be prevailing party as to any judgment entered by the State Court, the automatic stay shall remain in effect, and the Claimant shall not commence any proceedings to enforce the same without further leave of this Court.

SO ORDERED.

Dated: June 9, 2010



JUDGE, U.S. BANKRUPTCY COURT

Distribution:
Debtor, Attorney for Debtor
Trustee, U.S. Trustee
Attorney for Claimant

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