

281 B.R. 94
United States Bankruptcy Court,
S.D. Alabama.

In re The TAYLOR AGENCY, INC., Alleged Debtor.
1—Iron Commercial Premium, Plaintiff,

v.

The Taylor Agency, Inc.; Appeal Insurance
Agency, Inc.; Lloyds, London; [Clarendon
National Insurance Company Inc.](#), Defendants.

Bankruptcy No. 00–12425.

Adversary No. 00–1167.

CIV.A. CV 00–127–C.

June 14, 2001.

Synopsis

Lawsuit was filed in the Alabama Circuit Court, Choctaw County, to recover for debtor's and other defendants' alleged breach of contract, fraud, negligence, conversion, conspiracy and fraudulent suppression. Following removal to bankruptcy court, plaintiff moved to remand or, in alternative, for permissive abstention. The Bankruptcy Court, [William S. Shulman, J.](#), held that: (1) remand was warranted in light, inter alia, of pure state law nature of claims; and (2) in alternative, court would exercise its discretion to abstain from hearing removed claims.

Motion granted.

West Headnotes (12)

[1] **Removal of Cases** 🔑 Hearing and scope of inquiry

On motion to remand, initial issue for court is whether it has subject matter jurisdiction over the removed action. [28 U.S.C.A. § 1452\(b\)](#).

[2] **Bankruptcy** 🔑 Removal from state courts
Bankruptcy 🔑 Creation of estate; time

Bankruptcy estate was created, of kind required to support removal of action under bankruptcy removal statute, when petitioners filed involuntary proceeding, even before company that was the subject of petition was adjudicated bankrupt. Bankr.Code, [11 U.S.C.A. § 541\(a\)](#); [28 U.S.C.A. § 1452](#).

[3] **Bankruptcy** 🔑 Proceedings for Removal or Remand

To determine whether it could exercise subject matter jurisdiction over removed action, bankruptcy court did not have to examine each of possible bases for it to exercise jurisdiction, but only had to determine whether it could exercise at least “related to” jurisdiction. [28 U.S.C.A. § 1334](#).

[4] **Bankruptcy** 🔑 Related proceedings

Proceeding is proceeding over which bankruptcy court can exercise “related to” jurisdiction if outcome of proceeding could conceivably have an effect on estate being administered in bankruptcy. [28 U.S.C.A. § 1334](#).

3 Cases that cite this headnote

[5] **Bankruptcy** 🔑 Related proceedings

Proceeding need not necessarily be against debtor or against debtor's property in order to come within “related to” jurisdiction of bankruptcy court. [28 U.S.C.A. § 1334](#).

1 Cases that cite this headnote

[6] **Bankruptcy** 🔑 Related proceedings

Proceeding is proceeding over which bankruptcy court can exercise “related to” jurisdiction if its outcome could alter debtor's rights, liabilities, options or freedom of action (either positively or negatively) and which in any way impacts upon handling and administration of bankruptcy estate. [28 U.S.C.A. § 1334](#).

3 Cases that cite this headnote

[7] Bankruptcy Claims or proceedings against estate or debtor; relief from stay

Removed state court lawsuit, which had been filed against debtor and other defendants for their alleged breach of contract, fraud, negligence, conversion, conspiracy, and fraudulent suppression, was proceeding over which bankruptcy court could exercise at least “related to” jurisdiction, as favorable ruling for plaintiff upon such state law claims would give rise to significant claim against bankruptcy estate.  28 U.S.C.A. § 1334.

2 Cases that cite this headnote

[8] Bankruptcy Remand to state court

Factors which bankruptcy courts will consider when deciding whether to remand a removed state court lawsuit are as follows: (1) forum non conveniens; (2) importance of trying entire action in same court; (3) extent to which state law dominates; (4) state court's familiarity with state law; (5) existence of right to jury trial; (6) judicial economy; (7) comity; (8) prejudice to involuntarily removed party; (9) action's degree of relatedness to main bankruptcy case; (10) possibility of inconsistent results; and (11) effect of bifurcating claims of parties. 28 U.S.C.A. § 1452(b).

2 Cases that cite this headnote

[9] Bankruptcy Remand to state court

Removed state court lawsuit, which had been filed against debtor and other defendants for their alleged breach of contract, fraud, negligence, conversion, conspiracy, and fraudulent suppression, would be remanded to state court, where all of claims presented were pure state law claims that did not require expertise of bankruptcy judge, one defendant had demanded jury trial, and state court could efficiently liquidate claims while bankruptcy case proceeded. 28 U.S.C.A. § 1452(b).

[10] Removal of Cases Grounds for Remand

Permissive abstention is alternative ground, apart from remand under removal statute, for returning removed state court action to state court.  28 U.S.C.A. § 1334(c)(1).

[11] Federal Courts Bankruptcy

Factors that bankruptcy courts consider in deciding whether permissive abstention is warranted are as follows: (1) effect of abstention on efficient administration of bankruptcy estate; (2) extent to which state law issues predominate; (3) difficulty or unsettled nature of applicable law; (4) presence of related proceeding commenced in nonbankruptcy forum; (5) basis for jurisdiction, if any, apart from debtor's bankruptcy filing; (6) degree of relatedness or remoteness of proceeding to main bankruptcy case; (7) feasibility of severing state law claims from core bankruptcy matters; (8) burden on bankruptcy court's docket; (9) likelihood of forum-shopping by one of parties; (10) existence of right to jury trial; and (11) presence in proceeding of nondebtor parties.  28 U.S.C.A. § 1334(c)(1).

[12] Bankruptcy Remand to state court**Federal Courts** Bankruptcy

Bankruptcy court would exercise its discretion to abstain from hearing removed state court lawsuit, which had been filed against debtor and other defendants for their alleged breach of contract, fraud, negligence, conversion, conspiracy, and fraudulent suppression, and case would be remanded on that basis, where lawsuit involved purely state law claims that could be adjudicated in state court without interfering with or delaying administration of bankruptcy case, where there was no basis for bankruptcy court to exercise jurisdiction apart from debtor's bankruptcy, and where defendants appeared to be engaged in forum-shopping.  28 U.S.C.A. § 1334(c)(1).

Attorneys and Law Firms

*96 William L. Utsey, Butler, AL, J. Jefferson Utsey, for 1–Iron Commercial Premium.

C. Michael Smith, Mobile, AL, for Patricia Lynn Taylor.

Robert W. Bradford, Montgomery, AL, for Clarendon National Insurance Company, Inc.

Ronnie E. Keahey, Grove Hill, AL, Robert F. Northcutt, Montgomery, AL, for Certain Underwriters at Lloyd's, London, and TBI.

Laura C. Nettles, Birmingham, AL, for Appeal Insurance Agency.

Wallace H. Lindsey, Butler, AL, for Patricia Lynn Taylor and the Taylor Agency, Inc.

on Alabama law. It alleges that the Taylor Agency sold insurance policies to various individuals and businesses, and obtained financing from 1–Iron to pay the premiums. 1–Iron charges that Taylor Agency misappropriated the funds for its own use rather than paying the insurance premiums. As a result, several insurance policies were either canceled or never issued. Taylor Agency also is alleged to have obtained financing for premiums from several premium finance companies for the same policy, and to have kept the funds from the duplicative financing. The alleged activities of Taylor Agency and Lynn Taylor generated approximately forty other state court law suits.¹

On June 22, 2000, non-party creditors filed an involuntary petition for bankruptcy against Taylor Agency and its principal, Lynn Taylor. On August 9, 2000, Clarendon, a defendant in the action, removed the state court action to this Court.² 1–Iron filed a motion to remand the action on September 1, 2000. This Court held a hearing on the involuntary petition in October 2000, and took the matter under submission.

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

WILLIAM S. SHULMAN, Bankruptcy Judge.

This matter came before the Court on the Plaintiff's motion to remand this proceeding the Circuit Court of Choctaw County, Alabama. This Court has jurisdiction to hear the motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Order of Reference of the District Court. After due consideration of the pleadings, briefs, exhibits and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

On or about June 6, 2000, 1–Iron Commercial Premium (hereinafter “1–Iron”) filed a lawsuit in the Circuit Court of Choctaw County, Alabama against Clarendon *97 National Insurance Company, Inc. (hereinafter “Clarendon”), Appeal Insurance Agency, Inc. (hereinafter “Appeal”), Lloyds, London (hereinafter “Lloyds”) and The Taylor Agency, Inc. (hereinafter “Taylor Agency”). The complaint made allegations of breach of contract, fraud, negligence, conversion, conspiracy, and fraudulent suppression, all based

CONCLUSIONS OF LAW

[1] [2] [3] [4] [5] [6] [7] In all decisions regarding a motion to remand, the initial issue before the Court is whether it has subject matter jurisdiction over the removed action.³ Section 1334 of Title 28 of the United States Code lists four areas of jurisdiction bankruptcy courts: 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. 28 U.S.C. § 1334; *Wood v. Wood (In re Wood)*, 825 F.2d 90 (5th Cir.1987). It is not necessary to determine which of the four categories applies to a particular action; it is only necessary to determine whether a matter is at least “related to” the bankruptcy. *Wood*, 825 F.2d at 93.⁴ The Eleventh Circuit has adopted the following standard for “related to” jurisdiction:

The usual articulation of the test for determining whether a civil proceeding *98 is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.

The proceeding need not necessarily be against the debtor or against the debtor's property. 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 bankruptcy estate.

 *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910

F.2d 784, 788 (11th Cir.1990) (quoting  *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir.1984)). If the Plaintiff prevails in its action, it would have a significant claim on the assets of the bankruptcy estate. Therefore, the Court finds that the state court action is at least related to the

bankruptcy proceeding within the meaning of  28 U.S.C. § 1334, and that this Court has subject matter jurisdiction over the proceeding.

[8] Section 1452(b) of the Title 28 of the United States Code allows a court to remand a removed action on any equitable ground. Courts generally consider the following factors when applying 28 U.S.C. § 1452(b): 1) forum non conveniens; 2) the importance of trying the entire action in the same court; 3) the extent to which state law dominates; 4) the state court's familiarity with state law; 5) the existence of a right to a jury trial; 6) judicial economy; 7) comity; 8) prejudice to the involuntarily removed party; 9) the degree of relatedness of the action to the main bankruptcy case; 10) the possibility of inconsistent results; and 11) the effect of bifurcating claims of the parties. *Hatcher v. Lloyd's of London*, 204 B.R. 227, 233 (M.D.Ala.1997) (citing  *Traylor v. First Family Financial Services, Inc.*, 192 B.R. 255, 258 (M.D.Ala.1995)).

[9] The Court will focus on the factors that are relevant to the present case. The third and fourth factors dealing with the predominance of state law are particularly significant in 1-Iron's action. The complaint in the state court action contains counts of breach of contract, fraud, negligence, conversion, conspiracy and fraudulent conversion. The responding Defendants may also assert claims of indemnity, according to their briefs. All the claims are based on Alabama state law, and are the type of claims that a state court judge hears on a daily basis. There are no issues that require the expertise of a bankruptcy court. Clearly, these factors weigh heavily in favor of remanding the action to state court.

Judicial economy and comity are also significant to the Court's decision to remand this action to state court. As already noted, the case concerns only state law issues that are the province of the state court judges. The Defendants assert that this Court is the only court that can consolidate

the pending actions against the Taylor Agency to avoid duplication of discovery efforts. The state court undoubtedly has established procedures for dealing with multiple actions among the same defendants and plaintiffs. The task of managing documents and discovery for this action and approximately 40 other such actions would be an undue burden on this Court and its staff, which is geared for matters and procedures related to enforcement of the Bankruptcy Code. Finally, this Court has much regard for the state court's experience with the state law issues raised in 1-Iron's complaint. While this Court is familiar with state law questions raised in 1-Iron's complaint, the state court has the advantage of dealing with these issues on a more regular basis.

1-Iron's right to a jury trial and any prejudice to 1-Iron as the nonremoving *99 party are also crucial to the present case. 1-Iron requested a jury trial in the state court. While Clarendon and the Lloyd's creditors have consented to a jury trial in this Court, this Court does not have authority from the District Court to conduct a jury trial. The matter would have to be referred to the District Court. 1-Iron filed the state court action expecting a state court trial. The Court has no evidence regarding when 1-Iron could expect to get to trial in state court as opposed to federal court. Considering the volume of civil cases in the District Court, 1-Iron could be prejudiced by a delay in getting its case to trial. 1-Iron will also be burdened with the expense of traveling to Mobile for trial.

The degree of relatedness of this action to the bankruptcy proceeding is another factor which points to remand. The state court action represents a potential claim against the assets of the bankruptcy estate. The removing parties argue at length about the necessity for the bankruptcy court to hear the state court actions and administer the multiple claims against the most substantial asset in this case, an error and omission policy held by the Debtor. While the bankruptcy court has the exclusive right to administer assets, it is not the only court capable of efficiently determining the Debtor's liability. The state court can liquidate 1-Iron's claim while the bankruptcy proceeding continues in this Court. It is foreseeable that the bankruptcy estate may have to remain open until the state court actions are completed; however, the administrative delay would occur regardless of the forum. The delay does not outweigh the previous factors which indicate that remand is proper. After considering all of the relevant factors in the instant case, the Court concludes that 1-Iron's motion to remand is due to be granted.

[10] [11] 1–Iron also maintains that this Court should abstain from hearing this proceeding under 28 U.S.C. § 1334(c)(1). Permissive abstention is an alternative ground for returning this action to state court. The doctrine allows a bankruptcy court to abstain from hearing a proceeding arising under title 11, or arising in or related to cases under title 11, when it is in the interest of justice, or in the interest of comity. As with remand, there are several factors that courts consider under the permissive abstention doctrine:

- 1) the effect of abstention on the efficient administration of the bankruptcy estate;
- 2) the extent to which state law issues predominate;
- 3) the difficulty or unsettled nature of the applicable law;
- 4) the presence of a related proceeding commenced in state court or other non-bankruptcy courts;
- 5) the basis of bankruptcy jurisdiction, 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 feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 8) the burden on the bankruptcy court's docket;
- 9) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- 10) the existence of a right to a jury trial; and
- 11) the presence in the proceeding of non-debtor parties.

In re Norrell, 198 B.R. 987, 995–996 (Bankr.N.D.Ala.1996) (Citations omitted).

*100 [12] As previously discussed, allowing the action to proceed in state court will not unduly delay the administration of this bankruptcy estate. Since 1–Iron's action deals solely with state law issues of contract, negligence, conversion and fraud, it can be easily decided by the state court. If 1–Iron prevails, it can then participate in the administration and distribution of the bankruptcy estate. The only basis for this Court's jurisdiction over this matter is 28 U.S.C. § 1334. Scheduling discovery matters and a jury trial (assuming all parties agreed) could be a burden on this Court's docket or that of the District Court. There is every indication that the Defendants are forum shopping, in light of the fact that the state court action involving solely state law issues was removed to the bankruptcy court even before the Debtors were adjudicated. Finally, 1–Iron's right to a jury trial and the limitations of the bankruptcy court previously have been discussed. Based on the foregoing, the Court finds that permissive abstention is applicable to the present case as an alternative grounds for remand, and that the state court action should be remanded to the Circuit Court of Choctaw County, Alabama. It is hereby

ORDERED that the Plaintiff's motion to remand this proceeding the Circuit Court of Choctaw County, Alabama is GRANTED, and the Clerk of the Bankruptcy Court is DIRECTED to take all steps necessary to effectuate this remand.

All Citations

281 B.R. 94

Footnotes

- 1 1–Iron is a plaintiff on some of the state court actions, and a defendant in others. Taylor Agency is a defendant in all of the lawsuits.
- 2 The majority of the other forty lawsuits have also been removed to this Court or to the United States District Court for the Southern District of Alabama (hereinafter “the District Court”).

- 3 The movant asserted that this Court had no jurisdiction over the state court action because the Debtor had not been adjudicated as bankrupt at the time that the action was removed. As the respondents point out, a bankruptcy estate is created when the petitioners filed the involuntary proceeding.  [11 U.S.C. § 541\(a\)](#).
- 4 Both parties make argument as to whether the removed case is a “core” or “non-core” proceeding under  [28 U.S.C. § 157\(b\)\(2\)](#). Both categories of cases are subject to remand or abstention. The issue of “core” versus “non-core” relates the bankruptcy court's authority.  [In re Norrell](#), 198 B.R. 987, 994 n. 5 (Bankr.N.D.Ala.1996); see also  [In re Royal](#), 197 B.R. 341, 347–48 (Bankr.N.D.Ala.1996), (“Designation of a proceeding as ‘core’ relates to whether it is due to be heard in an Article III court rather than in an Article I court and has no relevance to the issue of whether or not subject matter jurisdiction exists in the federal court.”)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.