

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

JRD CONTRACTING & LAND
CLEARING, INC.

Case No. 17-03032

Debtor.

CATERPILLAR FINANCIAL SERVICES
CORPORATION,

Plaintiff,

v.

Adversary Case No. 17-00086

JRD CONTRACTING & LAND
CLEARING, INC., et al.,

Defendants and Third Party Plaintiffs,

v.

INTERNATIONAL PAPER COMPANY,
et al.,

Third Party Defendants.

ORDER REMANDING CASE

This case is before the court on the joint motion to remand and/or motion to abstain (doc. 7) filed by JRD Contracting, Inc. (“JRD Contracting”), JRD Contracting & Land Clearing, Inc. (“JRD Land Clearing”), and John R. Dailey, Jr. (“John Dailey”) and the motion for severance and partial remand or abstention (doc. 12) filed by Caterpillar Financial Services Corporation (“Caterpillar”). International Paper Company (“International Paper”), Janet Pridgeon, Joni Harris, and Shawn Blenis (together, “the International Paper Parties”) oppose the motions (doc. 10).

The court has jurisdiction to hear the motions to remand and for abstention pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the district court. The motions are core proceedings pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O). The court has reviewed the

submissions of the parties and also heard the oral argument of counsel. For the reasons discussed below, the court will grant the motions insofar as they seek remand and/or abstention, and will remand this action to the state court.

The procedural posture of the underlying state court case is a little complicated. Caterpillar sued JRD Contracting and John Dailey in the Circuit Court of Wilcox County, Alabama on two loans seeking monetary damages and return of the equipment collateral. John Dailey and JRD Contracting moved the state court to add JRD Land Clearing as a defendant, and JRD Land Clearing was subsequently added. JRD Contracting, JRD Land Clearing, and John Dailey then filed a third party complaint against the International Paper Parties alleging fraud and breach of contract claims related to a contract between JRD Land Clearing and International Paper Company (“the IP contract”). JRD Contracting and JRD Land Clearing thereafter filed Chapter 11 cases in this court (case nos. 17-3034 and 17-3032, respectively). John Dailey has not filed bankruptcy. The International Paper Parties removed the state court action to this court, which removal is the subject of the pending motions. International Paper has also represented that it has a potential contractual claim for attorney’s fees against JRD Land Clearing.

28 U.S.C. § 1452 authorizes remand by the bankruptcy court to the court from which a claim for relief or cause of action has been removed because of bankruptcy “on any equitable ground.”

Factors for the bankruptcy court to consider when weighing remand include:

1. Whether judicial resources will be duplicated;
2. What is the most economical use of judicial resources;
3. What will be the effect of remand on the administration of the bankruptcy estate;
4. Whether questions of state law, which are better addressed by a state court, are involved;
5. Whether considerations of comity exist;

6. The degree of prejudice, if any, to the involuntarily removed parties;
7. Whether the possibility of an inconsistent result is lessened by remand; and
8. The expertise of the court where the action originated.

In re Coleman, 200 B.R. 403, 406 (Bankr. S.D. Ala. 1996); *see also, e.g., In re Taylor Agency, Inc.*, 281 B.R. 94, 98 (Bankr. S.D. Ala. 2001).

In addition to remand, a bankruptcy court may abstain from hearing a removed action. Abstention is either “mandatory” or “permissive” depending on whether the removed action constitutes a “core” proceeding. *See* 28 U.S.C. § 1334(c). Here, the court need not decide whether mandatory abstention is required, because it believes that permissive abstention is appropriate in any event.

Under 28 U.S.C. § 1334(c)(1), abstention is permissive “in the interest of justice” or “in the interest of comity with State courts or respect for State law” The factors for the bankruptcy court to consider in this respect largely overlap with the § 1452 remand factors. *See, e.g., Vision Bank v. Platinum Invs., L.L.C.*, 2011 WL 2144547, at *4 (S.D. Ala. May 11, 2011). Those factors include:

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;
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 Taylor Agency, 281 B.R. at 99.

The court finds that the factors in this case weigh heavily in favor of both remand and abstention under the standards set out above. There is no independent basis for federal jurisdiction. All claims in the case are purely state law claims, which the state court is better equipped to handle. The IP contract apparently contains forum selection and jury waiver provisions, the effect of which the state court is better equipped to decide under state law. Caterpillar's claim against JRD Contracting is currently stayed (and Caterpillar's counsel indicated Caterpillar will probably file a proof of claim in the JRD Contracting bankruptcy as opposed to pursuing that debtor in state court), but Caterpillar's claim(s) against John Dailey on Dailey's guaranty can proceed to conclusion without involvement of the bankruptcy court. International Paper's potential attorney's fees claim against JRD Land Clearing is a contingent, non-liquidated claim that will not be ripe until the end of the state court litigation and can be liquidated in state court, if relief from stay is granted; this potential claim is not sufficient cause to justify retention of the entire case. There are numerous non-debtor parties to the state court litigation (John Dailey, Jr., Janet Pridgeon, Joni Harris, and Shawn Blenis), some or all of whom do not have any relationship with the two pending bankruptcies. While JRD Contracting's and JRD Land Clearing's claims against International Paper are property of

their respective bankruptcy estates, that factor is not sufficient to justify retaining jurisdiction in this court.¹

Accordingly, having carefully considered the factors for both remand and abstention, the court is of the opinion that remand of this action is warranted. If the court is incorrect in this view, an alternative ground for returning this matter to state court exists in the form of permissive abstention.

Therefore it is ordered that:

1. The motions to remand and/or abstain filed by JRD Contracting, Inc., JRD Land Clearing, Inc., and John R. Dailey, Jr. (doc. 7) and Caterpillar Financial Services Corporation (doc. 12) are granted. Caterpillar's motion for severance is denied without prejudice because the court is granting Caterpillar's motion for abstention.

2. This case is remanded to the Circuit Court of Wilcox County, Alabama for further proceedings.

3. Distribution of any funds recovered by debtors JRD Contracting or JRD Land Clearing as a result of their state court lawsuit is subject to further order of this court.

Dated: October 19, 2017


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

¹ However, counsel for the JRD debtors is reminded that the debtors need to file motions to employ counsel and that this court must approve any settlements.