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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 91-15555
)
WESTERN RESERVE MANUFACTURING) Adversary Proceeding No. 96-1320
CO., INC.,)
) Chapter 11
Debtor.)
) Judge Pat E. Morgenstern-Clarren
)
)
MARY LOU NIELSEN,)
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
)
WESTERN RESERVE MANUFACTURING)
COMPANY, INC.,)
)
Defendant.)

This matter is before the Court on Plaintiff's Motion to Remand or, in the alternative, for Mandatory or Permissive Abstention, and Defendant's Objection to that motion. (Adv. Pro. Docket 25, 27, 28, 30). For the reasons stated below, the Motion is granted to the extent that it seeks remand to state court based on lack of subject matter jurisdiction and, alternatively, permissive abstention.

FACTS

On October 9, 1991, Debtor, Western Reserve Manufacturing Co., Inc. ("Debtor"), filed a petition under Chapter 11 of the United States Bankruptcy Code. Debtor continued to operate its business for a period of time, after which it determined to liquidate its assets rather than to

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reorganize. Debtor then filed a Motion for Approval of Asset Purchase Agreement in which it sought permission to enter into an agreement to sell its assets to AMPCO Metal Incorporated and AMPCO Metal Manufacturing, Inc. (collectively "AMPCO") (Bankruptcy Case #91-15555, Docket 143; Joint Pretrial Statement, Adv. Pro. Docket 20). On December 22, 1992, after notice and a hearing, Judge William J. O'Neill, the bankruptcy judge then responsible for this case, entered an Order (the "Order") authorizing the sale of substantially all of Debtor's assets (the "Assets") to AMPCO. (Bankruptcy Case #91-15555, Docket 152; Joint Pretrial Statement). The sale closed in January 1993. At the time of the closing, AMPCO entered into a lease agreement with the owners of the real property on which the Assets were located (the "Premises"). Mary Lou Nielsen now owns the Premises and is AMPCO's landlord. (Joint Pretrial Statement). The plan was confirmed by an order entered on March 3, 1994. (Bankruptcy Case #91-15555, Docket 243).

On August 26, 1996, Mary Lou Nielsen filed a Complaint against Western Reserve Manufacturing Company, Inc. ("WRM") in the Lorain County Court of Common Pleas (the "State Court Action"). Despite the similarity of names, WRM is not the Debtor and did not exist as a legal entity when the Order was entered. (Joint Pretrial Statement). Ms. Nielsen alleges in that suit that WRM is wrongfully taking property belonging to her from the Premises (the "Property"). WRM's Answer generally denies Ms. Nielsen's claim. (Adv. Pro. Docket 2). The Lorain County Court of Common Pleas issued a Temporary Restraining Order shortly after the case was filed. A preliminary injunction hearing was scheduled, but WRM removed the State Court Action to this Court before it took place. (Adv. Pro. Docket 9).

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DISCUSSION

I. INTRODUCTION

WRM removed the State Court Action to this Court under 28 U.S.C. §§ 1334, 1441 and 1452. Ms. Nielsen seeks to remand the lawsuit to state court either under (1) 28 U.S.C. § 1447(c) on the ground that this Court lacks subject matter jurisdiction because the suit does not arise under or in Debtor's bankruptcy case, nor is it related to that case; or (2) 28 U.S.C. § 1452(b) because equity favors remand. WRM resists remand, contending that jurisdiction exists because adjudication of the dispute will have an effect on Debtor's estate and it involves enforcement of a bankruptcy court order. Alternatively, in the event that jurisdiction exists, Ms. Nielsen's position is that this Court either must or should abstain from exercising that jurisdiction under 28 U.S.C. § 1334(c), a request which WRM opposes. The parties' arguments are set out in greater detail below.

II. MOTION TO REMAND

A claim related to a bankruptcy case may be removed from state court to district court if the federal court has subject matter jurisdiction under 28 U.S.C. § 1334. 28 U.S.C. § 1452(a). Section § 1334(b) confers upon the district court "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." That jurisdiction is, in turn, referred to the bankruptcy court by 28 U.S.C. § 157(a) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. The parties agree that the issue raised here is whether the State Court Action is "related to" the Chapter 11 case. (Motion to Remand, p. 3; Objection of Defendant to Motion to Remand, p. 8). A proceeding is related to a case under title 11 if "the outcome of that proceeding could

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conceivably have any effect on the estate being administered in bankruptcy.” *In re Dow Corning Corp.*, 86 F.3d 482, 489 (6th Cir. 1996), *quoting with approval, Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). More specifically, a matter is related to a bankruptcy case “if the outcome could alter the debtor’s rights, liabilities, options or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.” *Id.* Despite this broad jurisdictional grant, “situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement.” *In re Dow Corning Corp.* at 489, *quoting Robinson v. Michigan Consol. Gas Co., Inc.*, 918 F.2d 579, 584 (6th Cir. 1990). Suits between third parties which have an impact on the bankruptcy estate may come within the “related to” jurisdiction. *Celotex Corp. v. Edwards*, ___ U.S. ___, 115 S.Ct. 1493 (1995). However, “[t]he fact that property was once owned by a bankrupt does not supply federal jurisdiction of all future disputes concerning the property.” *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 789 (11th Cir. 1990).

As noted, WRM argues that jurisdiction exists because adjudication (1) will have an effect on the bankruptcy estate; and (2) involves enforcement of a bankruptcy court order. WRM states:

Although Nielsen’s position is not clear from her pleadings, her claim to ownership of the Assets could only arise under two alternate scenarios: (a) if Nielsen is arguing that the Assets were never sold to Ampco, then either (i) the assets were and remain property of the Debtor’s estate, or (ii) the assets were not property of the Debtor’s estate at the time of the sale, except that Nielsen had notice of the proposed sale under section 363 of the Bankruptcy Code of “all assets used or useful in the [Debtor’s] business” free and clear of all interests and, having failed to object to preserve her interest, Nielsen cannot now circumvent the Sale Order, or (b) if Nielsen is arguing that her ownership of the Assets

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arises by virtue of the Lease provision on alterations and improvements then she concedes the Assets were sold to Ampco and it is her burden to establish conclusively that the Assets were alterations or improvements to the Lorain Premises approved by Nielsen in writing, otherwise the Sale Order must be enforced.

(Objection of Defendant to Motion to Remand, p. 8). Ms. Nielsen counters that resolution will not affect the estate because this is a state law dispute between two non-debtors over Property that does not belong to Debtor. She argues further that the presence of a federal court order in the chain of title is insufficient to create "related to" jurisdiction.

WRM has not demonstrated that the State Court Action will have the required effect on the bankruptcy case. The suit is between two parties, neither of whom is the Debtor and neither of whom is a creditor of the estate. Resolution of the State Court Action will not increase or decrease the amount of funds available for distribution to Debtor's creditors. Nor will the outcome add to or subtract from claims against the estate. If the Property at issue was once property of the estate (as WRM claims), it ceased being so when it was sold to AMPCO in 1992. Additionally, while ownership of the Property may not be clear as among AMPCO, WRM and Ms. Nielsen, it is clear that Debtor is not making any claim to the Property. In sum, despite WRM's somewhat convoluted description of what may happen in the State Court Action, it does not appear that Debtor's estate has any discernable stake in the outcome of this lawsuit. Resolution of that suit will not, therefore, have an effect on the administration of the bankruptcy case.

The fact that the Property in dispute between WRM and Ms. Nielsen was allegedly sold out of a bankruptcy case pursuant to a bankruptcy court Order does not change that conclusion.

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WRM cites to *In re Xonics*, 813 F.2d 127 (7th Cir. 1987), solely for the proposition that courts may enforce their own orders. (Objection of Defendant to Motion to Remand, p. 9). While that is no doubt true, the issue here is not whether this Court can enforce its Order. The Order, in essence, called for the sale of certain Assets to WRM in exchange for payments to Debtor. The Assets were transferred out of Debtor's estate and the funds were paid in; there is, therefore, no issue relating to enforcement of the Order vis-a-vis Debtor's estate. The court Order does not, therefore, create the "related to" connection that would establish bankruptcy court jurisdiction over this adversary proceeding. In the absence of jurisdiction, the Motion to Remand under 28 U.S.C. § 1447(c) will be granted.¹

II. MOTION FOR PERMISSIVE ABSTENTION

Alternatively, even if jurisdiction exists, Ms. Nielsen asks the Court to choose to abstain from the exercise of jurisdiction under 28 U.S.C. § 1334(c)(1). That section provides:

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.

The abstention provisions are intended to balance the broad grant of bankruptcy jurisdiction. This statutory framework is designed to prevent federal jurisdiction from becoming overextended. *In re Dow Corning Corp.* "Congress wisely chose a broad jurisdictional grant and a broad abstention doctrine over a narrower jurisdictional grant so that the district court

¹ Ms. Nielsen also cites to § 1452(b) as a ground for remand. (Motion to Remand, p. 5, fn. 2). That section permits remand on "any equitable ground". Ms. Nielsen, however, briefs her equitable argument under 28 U.S.C. § 1334(c)(1) and so the Court will analyze the equitable considerations under the latter statute.

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could determine in each individual case whether hearing it would promote or impair efficient and fair adjudication of bankruptcy cases.” *In re Salem Mortgage Co.*, 783 F.2d 626, 635 (6th Cir. 1986). A decision to abstain from exercising jurisdiction should, however, be the exception rather than the rule. *Moses H. Cone Mem. Hosp. v. Mercury Construction Corp.*, 460 U.S. 1, 14 (1983), *quoting with approval*, *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813 (1976).

In determining whether to abstain from exercising jurisdiction, courts are guided by the interest of justice, comity with state courts, and respect for state law. Factors which are relevant to permissive abstention in the bankruptcy context include:

- (1) the effect or lack of effect of abstention on the efficient administration of the estate;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable state law;
- (4) the existence of a proceeding commenced in state court;
- (5) the degree of relatedness to the bankruptcy case;
- (6) the burden on the bankruptcy court’s docket;
- (7) the existence of a right to a jury trial;
- (8) the presence in the proceeding of nondebtor parties;
- (9) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (10) 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;
- (11) the substance rather than the form of a core proceeding;
- (12) the likelihood that commencement of the proceeding in bankruptcy court involves forum shopping; and
- (13) any other unusual or significant factor.

In re Hughes-Bechtol, Inc., 141 B.R. 946 (Bankr. S.D. Ohio 1992); *In re Republic Reader’s Service, Inc.*, 81 B.R. 422 (Bankr. S.D. Tex. 1987).

WRM contends that the equities favor retaining jurisdiction because the Court has previously considered many of the relevant facts; there is a possibility of piecemeal litigation if

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the state court determines that the Property is part of Debtor's estate; the main bankruptcy case was filed before the State Court Action; federal bankruptcy law is the source of law for the decision; and Ms. Nielsen is an "insider" within the meaning of 11 U.S.C. § 101(31) based on her relationship to Debtor's founder and president. In opposition, Ms. Nielsen argues that she did not personally invoke bankruptcy jurisdiction; WRM has inadequately supported its contention that a state court decision might result in inconsistent orders; and the State Court Action is governed by state law.

Even if this Court has "related to" jurisdiction over this adversary proceeding, the equities favor a permissive remand of this lawsuit to state court. This Court has not previously considered any issues with respect to whether WRM or Ms. Nielsen has superior rights to the Property. While the main bankruptcy case was, of course, filed before the State Court Action, the state court obtained jurisdiction over this particular dispute before the bankruptcy court did. That state court has conducted at least a preliminary examination of the facts through the motion for a temporary restraining order. Although WRM argues that bankruptcy law will be the source of any decision in this matter, it has not identified any specific bankruptcy law issues that must be resolved. To the contrary, a review of the Complaint indicates that state law issues, while not complicated, will predominate over any bankruptcy considerations. Both of the parties are non-debtors and Debtor does not make any claim to the Property in dispute. The only jurisdictional basis suggested is 28 U.S.C. § 1334. Finally, abstention will advance the efficient administration of the bankruptcy case because that case is winding down and is approaching the point where it will be administratively closed. WRM's argument about the possibility of piecemeal litigation is not fully developed and does not overcome the factors favoring remand.

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Based on these considerations, the interest of justice warrants declining to exercise jurisdiction over this lawsuit, if jurisdiction exists, and permitting the state court to resolve this dispute. In the alternative, therefore, the Motion for Permissive Abstention will be granted.

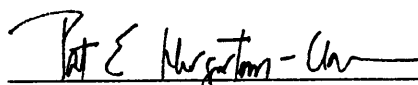
III. MOTION FOR MANDATORY ABSTENTION

In light of the disposition of the Motion to Remand and the Motion for Permissive Abstention it is not necessary to address the remaining argument made by Ms. Nielsen that mandatory abstention under 28 U.S.C. § 1334(c)(2) applies to this case.

IV. CONCLUSION

That portion of Ms. Nielsen's motion requesting remand under 28 U.S.C. § 1447(c) and permissive abstention under 28 U.S.C. § 1334(c)(1) is granted and the objection of WRM to it is overruled. The balance of the Motion is moot. A separate order in accordance with this Memorandum of Opinion will be entered.

Date: 6 March 1997



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Ellen Brooks, Esq.
Stephen Williger, Esq.

By: Joyce L. Gordon, Secretary

Date: 3/6/97

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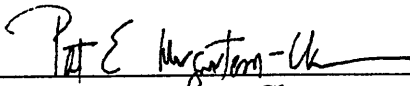
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CO., INC.,)
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) Judge Pat E. Morgenstern-Clarren
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MARY LOU NIELSEN,)
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Plaintiff,)
)
v.) **ORDER**
)
WESTERN RESERVE MANUFACTURING)
COMPANY, INC.,)
)
Defendant.)

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Remand under 28 U.S.C.

§ 1447(c) and for Abstention under 28 U.S.C. § 1334(c)(1) is granted. This case is remanded to
the Court of Common Pleas, Lorain County, Ohio.

Date: 6 March 1997


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Ellen Brooks, Esq.
Stephen Williger, Esq.

By: Joyce L. Gordon, Secretary

Date: 3/6/97