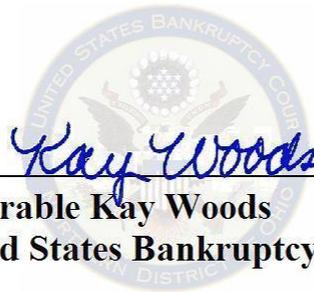


IT IS SO ORDERED.



Dated: June 06, 2007
05:06:02 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DONALD E. MANNING, II and,
JOAN T. MANNING

Debtors.

DON MANNING, II,

Plaintiff,

vs.

CHARLES K. CONNOR, et al.,

Defendants.

O R D E R

NOT INTENDED FOR NATIONAL PUBLICATION

The following order is not intended for national publication and carries limited precedential value. The availability of this opinion by any source other than www.ohnbuscourts.gov is not

the result of direct submission by this Court. The opinion is available through electronic citation at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

On April 16, 2007 ("Petition Date"), Debtors Donald E. Manning, II and Joan T. Manning ("Debtors") voluntarily petitioned for relief pursuant to chapter 13 of title 11 of the United States Code. On April 26, 2007, Debtors filed their schedules (Main Case Doc. # 6). Schedule A (Real Property) lists "house at 7360 St. Rt. 46, Cortland OH. (The "Property") Land Sale to Charles & Sheila Conner but they defaulted on monthly payments and never completed purchase of house, in process of obtaining premises back from land sale tenants." The land sales contract on the Property ("Land Sale Contract") is also listed on Schedule G (Executory Contracts and Unexpired Leases), which lists such contract as "expired." Debtor's chapter 13 plan rejects the Land Sale Contract.

Prior to the Petition Date, on May 1, 2007, Debtors commenced a civil action against defendants Charles K. Connor and Sheila J. Connor ("Defendants") in the Eastern District Court, Trumbull County, Ohio ("Trumbull County Court")(Case No. 07 CVG 125, Judge Rice) ("State Court Action") to recover possession of the Property. On May 17, 2007, Defendants filed Notice of Removal of Civil Action to United States Bankruptcy Court (Adv. Proc. Doc. # 1) ("Notice"), which removed the State Court Action pursuant to 28 U.S.C.

§ 1452(a). (Notice ¶ 5.) Defendants claim that they "have counterclaims against [Debtors] for [Debtors'] material breach of the 'land contract', (sic) claims which can only be asserted in an Adversary Proceeding before this Bankruptcy Court." (Notice ¶ 6.)

On May 25, 2007, Defendants filed Answer, Counterclaims and Third-Party Complaint (Adv. Proc. Doc. # 4.)("Answer" or "Counterclaims") in the instant Adversary Proceeding. The Counterclaims allege breach of contract (Count I), breach of implied warranties (Count II), fraud (Count III), constructive trust (Count IV), declaratory judgment (Count V), reformation of instrument (Count VI), and nondischargeability of claim (Count VII).

For the reasons set forth below and pursuant to 28 U.S.C. §§ 1334(c)(1) and 1452, this Court abstains from hearing this proceeding and remands the action to the Trumbull County Court. "Permissive abstention under § 1334(c)(1) and equitable remand under § 1452 are essentially identical. The court's analysis, therefore, is essentially the same for both types of relief." *Mann v. Waste Management of Ohio, Inc.*, 253 B.R. 211, 215 (N.D. Ohio 2000)(citing *In re Donnington*, 194 B.R. 750, 759-60 (D.N.J. 1996)).

The Court may remand a case to the court from which the case was removed, pursuant to 28 U.S.C. § 1452, which states in its entirety:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

Additionally, § 1334(c)(1) allows the Bankruptcy Court to voluntarily abstain from hearing state law issues. Section 1334(c)(1) states:

Except with respect to a case under chapter 15 of title 11, 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.

At this juncture, Defendants are not listed as creditors on Debtors' schedules and Defendants have not filed a claim in the Debtors' bankruptcy case. Defendants are only listed as parties to the Land Sale Contract, which is rejected in Debtors' chapter 13 plan. Hence, Defendants do not currently claim Debtors owe them a

debt and Debtors do not claim to owe Defendants a debt. Therefore, the State Court Action is the appropriate forum to determine if Debtors owe a debt to Defendants and, if so, the amount of such debt.

Moreover, the State Court Action deals with eviction, which is uniquely a state law cause of action. Actions seeking eviction of tenants are deeply rooted in state law and may require state law enforcement to compel compliance with an order granting eviction. Consequently, eviction actions are best handled by state courts. Furthermore, because all of the Counterclaims (except Count VII, which deals with nondischargeability of debt) are deeply rooted in state contract and/or tort law, such Counterclaims - except Count VII - are best suited to be heard and determined by the Trumbull County Court.

In the interest of justice, comity with state courts and respect for state law, this Court abstains from hearing the instant proceeding pursuant to § 1334(c)(1) and equitably remands the instant Adversary Proceeding to the Trumbull County Court pursuant to § 1452(b). A decision to abstain pursuant to § 1334(c)(1) and a decision to remand a case pursuant to § 1452(b) are not reviewable on appeal. See 28 U.S.C. §§ 1334(d) and 1452(b).

Defendants removed the State Court Action on the basis that only this Court could determine their Counterclaims in an adversary proceeding. With the exception of Count VII, Defendants are

mistaken. Although Defendants are stayed by 11 U.S.C. § 362 from asserting the Counterclaims in the State Court Action, they may seek relief from stay in this Court to assert and pursue such Counterclaims. In addition, Defendants may file a proof of claim, to which Debtors may (or may not) object. Defendants are correct, however, that they are required to file an adversary proceeding to obtain an order of this Court resolving the issue of whether any debt Debtors may owe to Defendants is dischargeable. Defendants have not yet filed a motion for relief from stay, or a proof of claim, so those matters are not before this Court and will be addressed only if Defendants file such documents. This Court recognizes that it has the sole jurisdiction to determine the dischargeability of Debtors' debt to Defendants - if and to the extent such debt may be determined by the Trumbull County Court. As a consequence, this case is remanded, except for Count VII, which Defendants are directed to bring as a separate adversary proceeding if they wish to pursue such cause of action. To the extent Defendants desire to seek to have any debt to be found nondischargeable, Defendants are required to initiate the appropriate adversary proceeding in this Court pursuant to the Bankruptcy Code and Rules.

IT IS SO ORDERED.

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