

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

February 27, 2025 at 11:00 a.m.

1. 24-00203 -E-0 24-2195	WINDSOR TERRACE HEALTHCARE, LLC	CONTINUED MOTION FOR REMAND 11-8-24 [10]
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**RICHARD HOLBEN, AS HEIR-AT-LAW
AND SUCCESSOR-IN-INTEREST OF
DAVID HOLBEN DECEASED ET AL v.
WINDSOR EL CAMINO CARE CENTER, LLC et al.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Defendants, Plaintiff, and Office of the United States Trustee on November 8, 2024. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Remand has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Remand is granted.

The Motion to Remand has been filed by Plaintiff-Creditor Richard Holben and James Holben, as heirs at law and successors-in-interest of David Holben, Deceased (“Movant”) pursuant to 28 U.S.C. §§ 1334, 1447, 1452 and Bankruptcy Rule 9014. Movant asserts as grounds for remand:

1. Pursuant to 28 U.S.C. § 157(b)(2)(B) and (b)(5), personal injury and wrongful death tort claims are specifically deemed “noncore” and cannot be tried by the bankruptcy court. Mot. 4:5-8.

2. Even if the bankruptcy court were not barred from hearing the case by § 157(b)(5), it cannot conduct a jury trial absent the express consent of all parties under § 157(e). The Plaintiffs, understandably, will not consent to a jury trial in the Bankruptcy Court. Mot. at 4:9-11.
3. Jurisdiction under section 1334 is properly refused by this Court. Section 1334(b) provides that the district courts have “original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.” However, section 1334(c)(1) provides that “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.” Mot. at 4:20-27.
4. Finally, the matter is properly remanded on the equities pursuant to 28 U.S.C. § 1452(b). Mot. at 6:4-10.

Debtor-Defendant Windsor Terrace Healthcare, LLC, et al., has not filed an Opposition.

However, the Parties have filed a series of stipulations with the court that extend the hearing date out further. The most recent Stipulation at Docket 19 explains that the Parties are finalizing an underlying settlement that would render this case and motion moot. Stip. at 2:18-21, Docket 19.

A review of the Docket in the Windsor Terrace Healthcare, LLC et al., Bankr. C.D. Cal. 23-11200, lead case for the jointly administered Windsor relate Chapter 11 Cases, the Stipulation was filed on January 14, 2025, and the order approving the Stipulation was entered on January 24, 2025. Bankr. C.D. Cal. 23-11200; Dckts. 1726 and 1764, respectively.

Under the terms of the Stipulation, within five days of the court approving the Stipulation, the Plaintiffs shall dismiss the Debtor-Defendant from this lawsuit. *Id.*; Stipulation, ¶ 2; Dckt. 1726. The Stipulation further provides that “has no collateral estoppel or other effect in the Lawsuit as to the remaining parties or non-debtor individuals and entities that may be added as Defendants in the Lawsuit.” *Id.*; ¶ 3.

Thus, while the Debtor-Defendant is being dismissed, the litigation of the State Law causes of action will be litigated against all of the non-debtor Defendants.

In light of there being a Stipulation to dismiss the Debtor-Defendant from this lawsuit, this Motion appears to be one for which the Parties are consenting on the record to grant this Motion to Remand. There is no Debtor-Defendant that remains for which the removal was made.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Remand filed by Plaintiff-Creditor Richard Holben and James Holben, as heirs at law and successors-in-interest of David Holben, Deceased (“Movant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Remand is granted, and the case shall proceed in the Superior Court of California, County of Sacramento, immediately.