

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: MONDAY

DATE: MARCH 30, 2020

CALENDAR: 1:30 P.M. SACRAMENTO ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [14-25201](#)-A-7 **IN RE: RAM GOPAL**
[19-2013](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
1-17-2019 [[1](#)]

GOPAL ET AL V. LANYADOO ET AL
JOHN SARGETIS/ATTY. FOR PL.

No Ruling

2. [14-25201](#)-A-7 **IN RE: RAM GOPAL**
[19-2013](#) [WF-1](#)

MOTION FOR REMAND
3-2-2020 [[46](#)]

GOPAL ET AL V. LANYADOO ET AL
DANIEL FOSTER/ATTY. FOR MV.

Tentative Ruling

Motion: Motion to Remand

Notice: LBR 9014-1(f)(1); no written opposition filed

Disposition: Granted

Order: Civil minute order

Defendants Lanyadoo and Michael Trujillo move to remand this adversary to state court. 28 U.S.C. § 1452(b). Plaintiff Ram Gopal and Ravinder Kaur oppose the motion.

FACTS

Ram Gopal and Ravinder Kaur (collectively "Gopal & Kaur") allege they entered into a commercial lease agreement on or about July 1, 2005 with Lanyadoo and Michael Trujillo (collectively "Lanyadoo and Trujillo") for property located at 1013 2nd Street/200 J Street in Sacramento, California. (Foster Decl., ¶ 9.) Since July 1, 2005, The plaintiffs have operated a restaurant business at that location. (Foster Decl., ¶ 10.)

On October 16, 2014, the Gopal and Kaur sued the Lanyadoo and Trujillo defendants in Sacramento County Superior Court, Case No. 34-2014-00170267, alleging that the defendants committed numerous acts designed to force Gopal and Kaur to force them to vacate the commercial space. The Complaint in the state court action includes causes of action for breach of contract, negligent nuisance, constructive eviction, intentional infliction of emotional distress, and intentional breach of the covenant of quiet use and enjoyment. (Foster Decl., ¶ 7.).

On May 16, 2014, Ram Gopal filed a voluntary Chapter 7 petition. Though the acts of which Gopal and Kaur pre-date his bankruptcy,

Gopal did not list those causes of action on Schedule B of his petition. The Chapter 7 bankruptcy closed on August 29, 2014.

On November 28, 2018, the bankruptcy case reopened upon the Chapter 7 Trustee discovering the claims arising from the state court action. (Declaration of Daniel J. Foster, ¶ 2.). This adversary proceeding commenced on January 17, 2019, when the Trustee filed to remove the state court action pursuant to 28 U.S.C. § 1452(a).

Prior to removal in 2019, the parties engaged in extensive pretrial work in the state court. That included: motions for leave to amend the complaint; motions to compel written discovery; motions to expunge lis pendens; a motion to permit discovery of Defendants' financial condition; and motions for summary judgment. (Foster Decl., ¶ 16.). The parties have also engaged in significant written discovery, including interrogatories and requests for production of documents.

PROCEDURE

On December 17, 2019, the Trustee filed a motion to approve the sale and assignment of the bankruptcy estate's interest in the debtor plaintiff Gopal's claims to Gopal. (Foster Decl., ¶ 7.). That sale will be refunded by the litigation itself; Gopal has promised to pay the trustee the first \$30,000 recovered from Lanyadoo and Trujillo. On January 17, 2020, the court granted the Trustee's motion and authorized him to sell and assign the claims to the plaintiffs. The Trustee has a lien and security interest in the first \$30,000 of any gross recoveries received by the plaintiffs from the state court action. (Foster Decl., ¶ 8.)

On March 2, 2020, the defendants filed this motion to remand the case back to state court, stating there are several equitable grounds for remand under 28 U.S.C. § 1452(b).

JURISDICTION

Bankruptcy courts have jurisdiction over all civil proceedings arising under title 11, or arising in or related to cases under title 11. 28 U.S.C. § 1334(b).

LAW

The court to which a civil claim or cause of action is removed "may remand such claim or cause of action on any equitable ground." 28 U.S.C. § 1452(b).

Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground. *In re Enron Corp.* 296 B.R. 505, 508 (C.D. Cal. 2003). Ninth Circuit case law has "imported" the factors governing discretionary abstention to guide the court in determining whether there is "any equitable ground" for remand. P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy*, Governing Law, Jurisdiction

and Venue, Bankruptcy Court Jurisdiction ¶ 1:952 (Rutter Group December 2019).

These factors include: 1) the extent to which state law issues predominate over bankruptcy issues; 2) the presence of a related proceeding commenced in state court or other non-bankruptcy proceeding; 3) the jurisdictional basis, if any, other than 28 USC § 1334; 4) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; 5) the existence of a right to a jury trial; 6) the possibility of prejudice to other parties in the action. *Id.* (citing *Federal Home Loan Bank of Chicago v. Banc of America Secur. LLC* 448 B.R. 517, 525 (C.D. Cal. 2011); *In re Enron Corp* at 508-509, fn. 2; *Williams v. Shell Oil Co.* 169 B.R. 684, 692-693 (S.D. Cal. 1994); *Western Helicopters, Inc. v. Hiller Aviation, Inc.* 97 B.R. 1, 6. (E.D. Cal. 1988))

28 U.S.C. § 1452(b) does not impose a time limit for motions to remand. Federal Rule of Bankruptcy Procedure 9027(d), which governs the procedures for remands under section 1452(b), is also silent with respect to a deadline to file a motion to remand. At most, an unreasonable delay in making such a motion may count as a single factor weighing against remand when the court is reviewing the equitable grounds for deciding whether to remand. *In re Hotel Mt. Lassen*, 207 B.R. 935, 939 (E.D. Cal. 1997).

DISCUSSION

Timeliness

The law does not impose a deadline on a motion to remand. 28 U.S.C. 1452(b); Fed. Rule Bankr. Proc. 9027(d). Nor does the court find reason to reject the motion due to unreasonable delay. The motion to remand was filed approximately 14 months after the case was removed to this court. While such a motion could, and probably should, have been presented sooner, given the trustee's direct involvement in the case during that period of time the court cannot say the motion is untimely.

Equitable Factors

The facts reveal several sufficient equitable grounds for remand.

Plaintiff's Claims Based Entirely on State Law

Because both the plaintiffs' and the defendants' claims sound entirely in state law, e.g. breach of contract, this factor weights in favor of remand.

Remoteness from the Bankruptcy Case

The court has the discretion to remand a case because the connection to bankruptcy was attenuated and state law issues predominate. *Fed. Home Loan Bank of Chicago v. Banc of Am. Sec. LLC* at 525.

All claims in Plaintiff's original State Court Complaint are state law claims. The Complaint is also less related to the bankruptcy case, now that the parties have settled on the claims so that the Trustee will remain involved only with respect to the first \$30,000 that the plaintiffs may recover from their state court action.

The court finds the state court action's connection to the debtor's bankruptcy remote and attenuated.

Defendant's Rights to Jury Trial Impaired

"If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties." 28 USC 157(e).

Here, the plaintiffs made no commitment to keep the case in state court as opposed to transferring the case to the California bankruptcy court. Defendant's right to a jury trial is a standalone reason to grant equitable remand. See *FHLB of Seattle v. Deutsche Bank Secs., Inc.*, 736 F.Supp.2d at 1290-91 ("Courts have granted equitable remand solely on the basis of a party's entitlement to a jury trial when that party's action was not a "core proceeding." ").

Prejudice to the Defendants

This matter has been extensively litigated in state court for four years prior to removal in 2019. The parties had expended significant time and resources litigating the matter in state court.

This court concludes that having to relitigate the issues from the state court action will result in the defendants incurring additional, unnecessary costs from duplicating their prior efforts.

For the reasons set forth above, the court will grant the motion for remand.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Lanyadoo and Michael Trujillo's motion for remand has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The case is remanded to state court to allow the movant to pursue through judgment the pending state-court litigation described in the motion.

3. [16-10015](#)-A-9 **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**
[17-1077](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT FOR: 1) DISALLOWANCE OF
CLAIM; 2) DISALLOWANCE OF CLAIM; 3) INVALIDATION OF SECURITY
INTEREST; AND 4) INVALIDATION OF SECURITY INTEREST
8-15-2017 [[1](#)]

SOUTHERN INYO HEALTHCARE
DISTRICT V. OPTUM BANK, INC.
ASHLEY MCDOW/ATTY. FOR PL.

No Ruling

4. [16-10015](#)-A-9 **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**
[17-1077](#) [FWP-9](#)

MOTION TO RE-OPEN DISCOVERY DEADLINES TO ALLOW LIMITED
DISCOVERY O.S.T.
3-16-2020 [[238](#)]

SOUTHERN INYO HEALTHCARE
DISTRICT V. OPTUM BANK, INC.
GERALD SIMS/ATTY. FOR MV.

No Ruling

5. [16-10015](#)-A-9 **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**
[18-1031](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-30-2018 [[1](#)]

SOUTHERN INYO HEALTHCARE
DISTRICT V. HEALTHCARE
JEFFREY SHINBROT/ATTY. FOR PL.

No Ruling

6. [16-10015](#)-A-9 **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**
[18-1031](#) [JSS-1](#)

CONTINUED MOTION FOR PRELIMINARY INJUNCTION
11-1-2018 [[29](#)]

SOUTHERN INYO HEALTHCARE
DISTRICT V. HEALTHCARE
JEFFREY SHINBROT/ATTY. FOR MV.

No Ruling

7. [18-27920](#)-A-7 **IN RE: GREEN BELT CARRIERS**
[19-2107](#) [MHK-1](#)

CONTINUED MOTION TO COMPEL
2-24-2020 [[21](#)]

SMITH V. SILVA ET AL
ANTHONY ASEBEDO/ATTY. FOR MV.

No Ruling

8. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[10-2117](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
8-6-2010 [[25](#)]

SHARP ET AL V. INTERNAL
REVENUE SERVICE ET AL
GREGORY NUTI/ATTY. FOR PL.

Final Ruling

The status conference is continued to July 13, 2020, at 1:30 p.m.
Not later than 14 days prior to the continued status conference the
parties shall file a joint status report if the adversary proceeding
has not been dismissed.

9. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[11-2340](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-4-2011 [[1](#)]

BANK OF MONTREAL V. COLLINS ET
AL
TODD DRESSEL/ATTY. FOR PL.

Final Ruling

The status conference is continued to July 13, 2020, at 1:30 p.m.
Not later than 14 days prior to the continued status conference the
parties shall file a joint status report if the adversary proceeding
has not been dismissed.