

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 4, 2014 at 1:30 p.m.

1. [14-29459](#)-E-13 SHRAVAN DEBBAD MOTION FOR RELIEF FROM
 ASW-1 Marc Caraska AUTOMATIC STAY
 10-7-14 [[15](#)]

U.S. BANK, N.A. VS.

Final Ruling: The case having previously been dismissed on October 21, 2014 (Dckt. 29), the Motion is dismissed as moot. The Motion for Relief does not seek to annul the automatic stay, other retroactive relief, or relief pursuant to 11 U.S.C. § 362(d)(4).

The court shall issue a minute 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 for Relief from Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion (for which relief was requested only pursuant to 11 U.S.C. § 362(d)(1) prospectively) is dismissed as moot, the case having been dismissed.

2. [14-28780-E-13](#) CASEY WADE
[14-2292](#) DL-1
STEVENS ET AL V. WADE

MOTION FOR REMAND
10-20-14 [6]

Tentative Ruling: The Motion for Remand was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were required to file a written response or opposition to the motion.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Chapter 13 Trustee, Plaintiff, and Office of the United States Trustee on October 20, 2014. By the court's calculation, 15 days' notice was provided.

The Motion to Remand was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3) and the court's scheduling order issued on October 24, 2014 (Dckt. 9). At the hearing -----
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The Motion to Remand is granted.

Colin and Rana Stevens ("Plaintiffs") filed a Motion to Remand the Adversary Proceeding over an unlawful detainer action to state court. On May 20, 2014, Plaintiffs filed an unlawful detainer suit for failure to pay rent against Casey Wade ("Debtor-Defendant") in Sacramento County Superior Court, Case No. 14UD03681 (the "State Court Action"). On September 2, 2014, following a trial on the state court case, judgment was entered in favor of Plaintiffs against Debtor-Defendant and all other occupants of the premises. On October 8, 2014, Debtor-Defendant filed a Motion for Removal from State Court Action to Federal Bankruptcy Court that initiated the instant adversary proceeding.

MOTION

Plaintiffs assert that they are entitled to remand because the numerous factors courts consider when deciding to remand a case weigh in their favor. These factors are: (1) the effect or lack thereof on the efficient administration of the estate if the court recommends remand; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty

or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court; (5) the jurisdictional basis other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted "core" proceeding; (8) 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; (9) the burden on the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor parties; (13) comity; and (14) the possibility of prejudice to other parties in the action. *Maya, LLC v. Cytodyn of New Mexico, Inc. (In re Cytodyn of New Mexico)*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007).

Plaintiffs asserts that twelve out of the 14 factors weigh in favor of remand and therefore the court should remand the proceeding.

SCHEDULING ORDER

On October 24, 2014, the court issued a scheduling order regarding the motion to remand. Dckt. 9. The court ordered that opposition to the Motion to Remand be filed and served on or before October 27, 2014. The court further ordered that any reply to opposition be filed and served on or before October 31, 2014.

OPPOSITION

To date, no opposition has been filed by the Defendant-Debtor.

APPLICABLE LAW

Pursuant to 28 U.S.C. § 1452(b), when a case is removed, "the court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." The statute gives the bankruptcy court a broad grant of authority to remand a previously removed claim for relief "on any equitable ground." *Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807, 820 (B.A.P. 9th Cir. 2009). This broad grant "subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes." *In re McCarthy*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999).

Courts may consider fourteen factors when determining whether remand under 28 U.S.C. § 1452(b) is proper:

1. the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
2. extent to which state law issues predominate over bankruptcy issues;
3. difficult or unsettled nature of applicable law;
4. presence of related proceeding commenced in state court or other nonbankruptcy proceeding;

5. jurisdictional basis, if any, other than § 1334;
6. degree of relatedness or remoteness of proceeding to main bankruptcy case;
7. the substance rather than the form of an asserted core proceeding;
8. 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;
9. the burden on the bankruptcy court's docket;
10. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
11. the existence of a right to a jury trial;
12. the presence in the proceeding of nondebtor parties;
13. comity; and
14. the possibility of prejudice to other parties in the action.

In re Wood, No. ADV. 10 02731, 2011 WL 7145617, at *8 9 (B.A.P. 9th Cir. Dec. 12, 2011)(citing *Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807, 821 n.18 (B.A.P. 9th Cir. 2009)).

DISCUSSION

Applying the factors to the facts of the instant case, the court finds that remanding the proceeding back to the state courts is proper.

As to the first factor, the court finds that, because the State Court Action has already been litigated fully and judgment issued, there is no negative effect on the efficient administration of the estate since there is not substantive matters that are left for adjudication.

The second factor weighs in favor weighs in favor of remand because the State Court Action deals exclusively with California unlawful detainer law. The underlying State Court Action, while having an impact on the bankruptcy, is solely within the realm of state law.

The third factor is not relevant in the instant case because the underlying State Court Action has already been brought to judgment. Without the need to make a determination on the nature of the applicable law, the third factor does not weigh for or against remanding. While the Plaintiffs states that the third factor weigh against remand, the concern over unsettled area of law is not necessary when the underlying claim has been resolved.

The fourth factor weighs in favor of remand because the State Court Action was already fully adjudicated to judgment. While there is no additional proceedings pending in connection with the State Court Action, the fact that the State Court Action was heard and ruled in state court makes the nexus

between the State Court Action and the state court closer than this court and the State Court Action which appears to be what the factor is attempting to balance.

The fifth factor weighs in favor of remand because the jurisdiction of the court over the State Court Action, as correctly stated by the Plaintiffs, is based on 28 U.S.C. § 1334 "related to" jurisdiction, rather than 28 U.S.C. § 1334 "arising in" or "arising under" jurisdiction. The State Court Action is solely a state law claim arising under state court jurisdiction. This court's jurisdiction arises because the State Court Action is "related to" Defendant-Debtor's bankruptcy. The state court has a more direct connection to the State Court Action's claims than this court because the Defendant-Debtor does not have an interest in the Property and the claim is solely based on state law.

The sixth factor weighs in favor of remand because, as stated supra, the State Court Action is remote to Defendant-Debtor's bankruptcy case because it is solely arising under state law, the Defendant-Debtor does not have an interest in the property, and the State Court Action has already been adjudicated to judgment.

The seventh factor weighs in favor of remand because the State Court Action, which is an unlawful detainer claim, does not fall under the definition of "core proceeding" under 28 U.S.C. § 157(b). This court's jurisdiction over the State Court Action is merely concurrent with the state court's jurisdiction and not exclusive requiring removal. Furthermore, because the Defendant-Debtor does not have a direct interest in the property at issue in the State Court Action, the likelihood of the State Court Action being a "core proceeding" for purposes of 28 U.S.C. § 157 is even further attenuated.

The eighth factor weighs in favor of remand because the State Court Action, having already been brought to judgment, could be enforced by the state court without effecting any bankruptcy core matters in the Defendant-Debtor's case. This conclusion is strengthened by the fact that, outside of the Defendant-Debtor being liable on the State Court Judgment, there is no "core proceeding" arising out of the State Court Action that would require a bifurcation of issues in the State Court Action.

The ninth factor weighs in favor of remand because the State Court Action has already issued judgment in favor of Plaintiffs. In light of the court denying Defendant-Debtor's Motion for Emergency Stay and for Damages (Case No. 14-28780, Dckt. 31 and 33) and finding that there is no stay in place in which the State Court Action could violate, the State Court Action judgment is valid and there would be little for the court to do.

The tenth factor weighs in favor of remand because, as discussed in the court's minute order on Defendant-Debtor's Motion for Emergency Stay and Damages (Case No. 14-28780, Dckt. 31 and 33), the Defendant-Debtor has filed three bankruptcy cases in the past two months (not including the cases filed outside of the past year). The Plaintiffs alleges that the reason why the Defendant-Debtor filed these cases was to stay the State Court Action from reaching judgment. While the court will not rule on the motive, it does appear curious that the removal of the State Court Action did not take place until after judgment was rendered in the State Court Action. Additionally the consecutive filing of three bankruptcy cases in a two month period appears to suggest that the Defendant-Debtor was attempting to hinder the adjudication of

the State Court Action.

The eleventh factor weighs in favor of remand because the issue of jury trial is moot since the State Court Action has been brought to judgment. While the Plaintiffs claim that the state court in the State Court Action specifically found that the right to a jury trial was waived, no copy of the judgment or finding from the state court has been offered as evidence for this court to consider. However, the issue of jury trial is not relevant since the state court issued a judgment on the State Court Action.

The twelfth factor weighs in favor of remand because the State Court Action judgment applies to the Defendant-Debtor and all other occupants of the property. Because the scope of the judgment includes other outside just the Defendant-Debtor, the state court is better situated to enforce the judgment of nondebtors.

The thirteenth factor weighs in favor of remand because the state court which issued the State Court Action judgment would be in a better position to interpret and enforce its own ruling. "The comity doctrine counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction. The doctrine reflects 'a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.'" *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421, 130 S. Ct. 2323, 2330, 176 L. Ed. 2d 1131 (2010) (citing *Fair Assessment*, 454 U.S. 100, 112, 102 S.Ct. 177, 184 (1981)). Therefore, comity requires that the court respect and give deference to the original court in this case, judgment having been rendered in the State Court Action.

Lastly, the fourteenth factor weighs in favor of remand because the State Court Action involves both the Defendant-Debtor and nondebtors. Because there are parties outside the scope of Defendant-Debtor's bankruptcy, these parties may be prejudiced by the State Court Action remaining in this court. Though when proper the court may exercise federal court jurisdiction over such non-debtor and non-creditor parties, there having been a judgment with respect to all parties, it would be prejudicial to attempt to litigate a portion of the state court action with only a portion of a parties.

The court also notes that judicial economy supports remanding the State Court Action to the state court. The state court heard and ruled on the State Court Action exclusively. Removal of a state court action to federal court is not a substitute for a timely appeal and prosecution of that appeal in state court. A judgment was entered in the state court action on September 2, 2014. (Alleged in paragraph 4, Motion to Remand, Dckt. 6.)

It has been alleged by the Defendant-Debtor that such judgment violated the automatic stay in this case. Motion for Emergency Stay, Motion for Damages filed by Defendant-Debtor in bankruptcy case No. 14-28780, Dckt. 25. This court ordered that the Motion for the Emergency Stay and Damages was denied, with the denial without prejudice to the Defendant-Debtor seeking relief pursuant to 11 U.S.C. § 362(d)(4)(B) to impose an automatic stay or for injunctive relief through an adversary proceeding. Bankruptcy Case No. 14-28780; Order, Dckt. 33, and Civil Minutes, Dckt. 31. This court concluded that

no automatic stay went into effect with the Debtor's August 29, 2014 filing of Bankruptcy Case No. 14-28780 and therefore entry of the judgment in the state court action on September 2, 2014, could not be in violation of the automatic stay.

"In the past two months, the Debtor has filed three bankruptcy cases. The Debtor filed a Chapter 13 case on June 28, 2014 (Case No. 14-26696) which was dismissed on July 15, 2014 for failure to timely file documents. The Debtor then filed a Chapter 7 case on August 1, 2014 (Case No. 14-27903) which was dismissed on August 19, 2014 for failure to timely file documents. Finally, Debtor filed the instant Chapter 13 case on August 29, 2014 (Case No. 14-28780). The plain language of 11 U.S.C. § 362(c)(4) states that no automatic stay was in effect at the time of filing the instant Chapter 13 case because the Debtor had 2 pending cases "pending within the previous year but were dismissed.

...
Therefore, pursuant to 11 U.S.C. §362(c)(4)(A), no automatic stay went into effect when the current bankruptcy stay was filed. Congress has statutorily decreed that there is no automatic stay in this case. While the court may, upon proper motion impose a stay pursuant to 11 U.S.C. § 362(c)(4)(B), such relief has not been requested and, based on the evidence presented, such relief is not warranted."

14-28789; Civil Minutes, Dckt. 33.

In effect, the Defendant-Debtor is seeking to have a state court judgment removed to federal court so that the federal trial judge considers and rule on post-trial motions. To remove the case to this court after judgment has been rendered is a waste of judicial economy because this court would need to review all of the pleadings, findings, trial records, and rulings of the state court just to get the same foundational understanding of the State Court Action for trial issues. While for an appeal the federal appellate court would be in a similar position as the state appellate court, ripping a judgment from one appellate system to the other has the taint of forum shopping for improper appellate purposes.

Therefore, the court finds that the majority of factors for equitable remand under 28 U.S.C. § 1452(b) weighs in favor of remand. Accordingly, the court grants Plaintiffs' Motion for Remand, and this removed State Court Action is remanded to the Superior Court of California for the County of Los Angeles.

If proper grounds exist for the court to impose a stay in the Bankruptcy Case no. 14-28789 pursuant to 11 U.S.C. § 362(c)(4)(B) or issue a preliminary injunction in an adversary proceeding, Defendant-Debtor may so seek to appropriately exercise such rights. Such rights, and the impact on the state court proceeding is within the appropriate exercise of the broad grant of federal court jurisdiction through 28 U.S.C. §§ 1334 and 157. However, the post-judgment removal of the unlawful detainer judgment under these facts is not consistent with federal court respect for state judicial proceedings and comity.

The court shall issue an order (not a minute 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 for Remand filed by Colin and Rana Stevens 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 is granted and the state court action *Colin Stevens, et al. v. Wade Casey, et al.*, State Case No. 14UD03681 is remanded to the Superior Court of California for the County of Los Angeles.