

In the United States Bankruptcy Court
for the Northern District of Iowa

BOCKES BROTHERS FARMS, INC.
Debtors.

Bankruptcy No. 93-60881KW
Chapter 11

EILEEN L. HAGER
Plaintiff

Adversary No. 93-6127KW

vs.

BOCKES BROTHERS FARMS, INC.
Defendants.

ORDER RE: OBJECTION TO REMOVAL OF STATE COURT ACTION

This matter came on for hearing before the undersigned on August 13, 1993 on Objection to Removal of State Court Action by Plaintiff Eileen L. Hager and for status conference. Plaintiff was represented by attorney Curtis A. Ward. Debtor Bockes Brothers Farms, Inc. was represented by attorney Dan Childers. Attorney Thomas G. McCuskey appeared on behalf of the Unsecured Creditors Committee.

STATEMENT OF THE CASE

Debtor has filed a Notice of Removal of Plaintiff Eileen Hager's state court action. In her action, Hager seeks to recover possession of real estate sold on contract to Bockes Brothers Farms, Inc. through Iowa Code ch. 646 eviction proceedings. On July 26, 1993, this Court ruled on Hager's Motion Requesting Relief from Automatic Stay, declaring that the subject real estate is not property of the estate because Hager had completed forfeiture proceedings prior to commencement of the bankruptcy case. Thus, the stay was lifted to allow Hager to proceed with her eviction action. On July 15, 1993, Debtor filed the Notice of Removal of State Court Action. Judge Melloy referred the action from the U.S. District Court to this Court.

Debtor's amended answer to Hager's petition asserts several affirmative defenses. It asserts that the forfeiture was not valid on various grounds. Debtor also claims that, even if a valid forfeiture occurred, it should be set aside by the Court as a fraudulent transfer under 11 U.S.C. 548(a)(2)(A).

Hager filed an "Objection to Removal" asserting that she will be prejudiced by removal and that Debtor seeks removal for the purpose of delay. Under 28 U.S.C. 1452(a), removal is automatically effected by filing an application to remove. In re Warren, 125 B.R. 128, 130 (E.D. Pa. 1991). The Court will thus treat Hager's objection to removal as a motion to remand under 1452(b) or to abstain under 28 U.S.C. 1334(c). The ultimate issue is whether Hager's lawsuit should be remanded to state court or be retained by this Court.

CONCLUSIONS OF LAW

In considering whether to remand an action to state court, this Court must first determine whether the matter is a core or related proceeding. In re Chapman, 132 B.R. 153, 156 (Bankr. N.D. Ill. 1991). The bankruptcy court has jurisdiction over core proceedings "arising under" Title 11. 28 U.S.C. 157(a), 157(b), 1334(b). A non-exhaustive list of types of core proceedings is found at 28 U.S.C. 157(b)(2)(A)-(O). The bankruptcy court also has jurisdiction over non-core "related"

proceedings, but does not have authority to enter a final order in those matters without the parties' consent. 28 U.S.C. 157(c); In re Roberg, No. L92-00776W, Adv. No. 92-6263LW, slip op. at 3 (Bankr. N.D. Iowa April 16, 1993). A proceeding is "related to" a bankruptcy case if "the outcome could conceivably have any effect on the estate being administered in bankruptcy." In re Titan Energy, Inc., 837 F.2d 325, 330 (8th Cir. 1988).

Under 1452(a), an action may be removed to bankruptcy court if that court has "core" or "related" jurisdiction. In re Fulda Indep. Co-op, 130 B.R. 967, 972 (Bankr. D. Minn. 1991). Sec. 1452(b) allows that the court may remand a removed action "on any equitable ground." Id. If grounds for abstention under 28 U.S.C. 1334(c) are present, remand is appropriate. Warren, 125 B.R. at 131.

Mandatory abstention pursuant to 1334(c)(2) is appropriate only if a timely motion has been made and the matter is not a core proceeding. Warren, 125 B.R. at 131 (listing six requirements for mandatory abstention); see also In re Weinberg, 153 B.R. 286, 292 (Bankr. D.S.D. 1993). Discretionary abstention under 1334(c)(1) allows the Court to abstain in the interests of justice or in the interest of comity or out of respect for state law. In re Chapman, 132 B.R. 153, 157 (Bankr. N.D. Ill. 1991) (listing 11 factors courts weigh regarding discretionary abstention). In considering discretionary abstention, courts look at, among other factors, the effect on efficient administration of the estate, the extent state law issues predominate over bankruptcy issues, the unsettled nature of applicable state law, the degree of relatedness to the main bankruptcy case, feasibility of severing state law claims from core bankruptcy matters and burden on the court's docket. Id. at 157-58.

There are numerous other factors which courts may consider in determining whether there are equitable grounds for remand under 1452(b). In re Southern Technical College, Inc., 144 B.R. 421, 422 (Bankr. E.D. Ark. 1992); Chapman, 132 B.R. at 158. These factors include, among others:

- (1) duplicative or uneconomical effort or judicial resources in two forums; (2) prejudice to the involuntarily removed parties; (3) forum non conveniens; (4) a holding that a state court is better able to respond to a suit involving questions of state law; (5) comity considerations; (6) lessened possibility of inconsistent result; and (7) the expertise of the court in which the matter was pending originally.

Chapman, 132 B.R. at 158.

This Court has jurisdiction over Hager's eviction action as a related proceeding because, although the real estate does not constitute property of the estate, resolution of the action could conceivably have an effect on the bankruptcy estate. Titan Energy, 837 F.2d at 329. If Debtor is evicted, it would need to acquire new premises for its corporate headquarters. If Debtor is not evicted, the expense of finding new quarters and moving would be avoided to the benefit of the bankruptcy estate.

As to Debtor's affirmative defense challenging the validity of the underlying forfeiture proceedings, this Court has "core" jurisdiction. The bankruptcy court has core jurisdiction where resolution of the action will determine whether the debtor has an interest in property which will become property of the estate. In re Ascher, 128 B.R. 639, 644 (Bankr. N.D. Ill. 1991). Debtor also asserts that the forfeiture constitutes a 548 fraudulent preference. See In re Veretto, 131 B.R. 732, 737 (Bankr. D.N.M. 1991) (holding that a forfeiture of an equity interest under a real estate contract can constitute a transfer). This Court has core jurisdiction over actions concerning fraudulent transfers under 28 U.S.C. 157(b)(2)(H).

After applying the previously listed factors to Hager's action and Debtor's affirmative defenses, this Court concludes that remand and abstention are not appropriate. This is so despite any claim by Hager that Debtor's position is without merit or that Debtor is highly unlikely to prevail in its asserted defenses. Ascher, 128 B.R. at 643. In reaching questions of jurisdiction and abstention, the Court's analysis does not reach the merits. Id.

The record does not disclose any peculiar or unsettled state law issues which would be best left to state court. The bankruptcy court, as a court of equity, is as qualified to determine the validity of Hager's forfeiture proceedings as the state court would be. See Skubal v. Meeker, 279 N.W.2d 23, 26 (Iowa 1979) (in Iowa, a court sitting in equity does have jurisdiction to cancel a forfeiture). Retaining the action in bankruptcy court would not appear to jeopardize any jury trial right. The right to jury trial does not exist in equity proceedings. The record does not disclose whether Hager has made a

jury demand in her Chapter 646 eviction action.

Hager's "related" eviction proceeding is entangled with Debtor's "core" defenses to the extent that severance of the state law claims from core bankruptcy matters is not feasible. Eviction based on the forfeiture is directly related to recovery of the property as a fraudulent preference. No nondebtor parties are involved.

Hager asserts that retaining the action in this court would prejudice her by causing delay. This is not evident from the record. Hager filed her action in Grundy County District Court on February 12, 1993. The action was stayed by the automatic stay from May 19, 1993 until July 26, 1993, at which time it was already removed to this Court by Debtor. The Court has not been informed whether trial scheduling deadlines were set during the three months the case was active in state court. There is no evidence in the record that the state court would try the action more quickly than this court could or that prejudicial delay would result from retention of the action by this Court.

Mandatory abstention is not applicable because the action includes core proceedings and because Hager has not made a timely motion under 28 U.S.C. 1334(c)(2). Discretionary abstention in the interests of justice or comity or respect for state law is not called for in this situation. The equities in the circumstances favor retention of Hager's action in bankruptcy court in order that her state law claims may be heard and decided at the same time as Debtor's core bankruptcy matters.

WHEREFORE, the Court concludes that abstention and remand of Hager's state court action are not appropriate.

FURTHER, the Court has jurisdiction over Hager's state court action and should retain it as an adversary proceeding in bankruptcy court.

FURTHER, Hager's Objection to Removal is DENIED.

FURTHER, Scheduling Conference is hereby set in this matter for the 8th day of October, 1993 at 9:45 A.M. by telephonic hearing. **ATTORNEY FOR PLAINTIFF IS TO INITIATE THE TELEPHONE CALL.** Parties should be ready and available to accept said call. The telephone number for Judge Kilburg's chambers is **(319) 365-9507**. **NOTE: THIS HEARING WILL BE TAPED ON ELECTRONIC RECORD EQUIPMENT.**

SO ORDERED this 7th day of September, 1993

Paul J. Kilburg, Judge
U.S. Bankruptcy Court