

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM and DOLORES McCORMICK,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 99-5045
	:	
GUPREET S. KOCHAR,	:	
	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

NOVEMBER 19, 1999

Presently before the Court is Defendant's Motion to Remand Plaintiffs' personal injury case to the Court of Common Pleas of Delaware County, PA, the court from which Plaintiffs removed their case to this Court. For the reasons which follow, Defendant's Motion is granted.

I. FACTS.

Plaintiffs filed a personal injury motor vehicle accident suit on August 25, 1994 in the Court of Common Pleas of Delaware County, PA. The case was listed for trial on July 12, 1999. At a Pretrial Conference on that date, Plaintiffs advised the court of their intent to file a Bankruptcy proceeding that same day and requested a continuance of the trial. The court granted a continuance and Plaintiffs were directed to report the status of the matter to the court. Plaintiffs filed their Notice of Removal to this Court on October 12, 1999 pursuant to 28

U.S.C. section 1334. In an October 16, 1999 letter to the state court, Plaintiffs' counsel advised that "after some discussion with the Trustee, it was felt the petition for removal to the federal court would be appropriate." (Def.'s Mot. for Remand, Ex. D.) Defendant subsequently filed his Motion to Remand pursuant to 28 U.S.C. section 1334(c) and/or 28 U.S.C. section 1452(b).

II. STANDARD.

Three methods exist in the Federal Rules of Civil Procedure for a federal court to decline to exercise jurisdiction over actions properly removed under the grant of jurisdiction of 1334(b). The first method, found at 28 U.S.C. section 1334(c)(1), provides for permissive or discretionary abstention, allowing a district court to abstain in the interests of comity or out of respect for state law. 28 U.S.C. § 1334(c)(1)(1999). The second method provides for mandatory abstention when the district court determines that the action "is outside the removal jurisdiction granted to the federal courts by Congress" and remands the case back to state court. 28 U.S.C. § 1334(c)(2) (1999). The third provision allowing abstention is 28 U.S.C. section 1452(b), which grants the district court authority to "remand such claim or cause of action on any equitable ground." 28 U.S.C. § 1452(b)(1999).

III. DISCUSSION.

A. Mandatory Abstention.

Defendant moves for remand seeking mandatory abstention of this Court under 28 U.S.C. section 1334(c)(2). 28 U.S.C. § 1334(c)(2)(1999). Mandatory abstention by courts is appropriate pursuant to section 1334(c)(2) when the following requirements are met:

(1) a timely motion is made; (2) the proceeding is based upon a state law claim or a state law cause of action; (3) the proceeding is related to a case under Title 11; (4) the proceeding does not arise under Title 11; (5) the action could not have been commenced in a federal court absent jurisdiction under 28 U.S.C. § 1334; and (6) an action is commenced, and can be timely adjudicated, in a state forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2)(1999); In re Donington, Karcher, Salmond, Ronan & Rainone, P.A., 194 B.R. 750, 756 (D.N.J. 1996)(citing In re Warren, 125 B.R. 128, 131 (E.D. Pa. 1991)). This case satisfies the first, second, fifth and sixth factors required for mandatory abstention. Defendant's Motion for Remand is timely and the proceeding is based solely upon a state law claim. Diversity of citizenship does not exist, no federal question has been presented, and absent the jurisdictional grant of 28 U.S.C. section 1334, this Court would lack subject matter jurisdiction over the entire matter. Plaintiff filed the action in Pennsylvania state court, and the removing Plaintiffs have demonstrated no reason why the action cannot be "timely

adjudicated" in that court. In re Donington, 194 B.R. at 757. Plaintiffs have merely argued that they are uncertain where the case would be placed on the state court trial list if the case is remanded. (Pls.' Mem. in Supp. of Reply to Mot. for Remand at 2.) This prospective reason does not demonstrate that the case cannot be timely adjudicated in the state court.

"In order to qualify for mandatory abstention, the action must be 'related to a case under [T]itle 11 but not arising under [T]itle 11 or arising in a case under [T]itle 11.'" In re Donington, 194 B.R. at 757 (quoting 28 U.S.C. § 1334(c)(2)). This action does not arise in a case under Title 11. This Court's inquiry must therefore focus upon whether this case is "related to" Plaintiffs' bankruptcy case, or "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Id. (citation omitted). In the instant case, Plaintiffs concede that "[t]he present action is clearly a related case [to the Bankruptcy matter] as described under section 1334." (Pls.' Mem. in Supp. of Reply to Mot. for Remand at 2.) Thus, this case satisfies the six requirements for mandatory abstention.

B. Equitable Remand and Permissive Abstention.

Defendant argues that the principles of equitable remand and permissive abstention also apply to this case. This Court will examine whether permissive abstention is appropriate.

Permissive abstention is permitted "on any equitable ground." 28 U.S.C. § 1452(b)(1999). Factors to be considered by the Court in deciding whether to abstain and remand under these provisions include:

(1) the effect on the efficient administration of the bankruptcy estate; (2) the extent to which issues of state law predominate; (3) the difficulty or unsettled nature of the applicable state law; (4) comity; (5) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (6) the existence of a right to a jury trial; and (7) prejudice to the involuntarily removed defendants.

In re Donington, 194 B.R. at 760 (citing Balcor/Morristown Ltd. Partnership v. Vector Whippany Assoc., 181 B.R. 781, 793 (D.N.J. 1995); Port Auth. v. CCI-Bowers, Inc., No. CIV.A.91-5681(CSF), 1992 WL 164441, at *3 (D.N.J. June 15, 1992)).

Equitable remand of this case is appropriate. This litigation involves a tort claim which arose prior to the Chapter 11 filing, the resolution of which will "neither significantly hinder nor materially advance the efficient administration of the bankruptcy estate." Id. (quoting Port Auth., 1992 WL 164441, at *4). As previously stated, this case is based entirely on state law issues. Additionally, there is no diversity of citizenship between the parties and absent "related to" bankruptcy jurisdiction under 28 U.S.C. section 1334, the court lacks subject matter jurisdiction. The state court is better suited to

determine resolution of this case under Pennsylvania tort law. Thus, this Court will refrain from hearing this matter and remand is appropriate based on the doctrines of permissive abstention and equitable remand.

IV. CONCLUSION.

Pursuant to the doctrines of mandatory abstention, permissive abstention and equitable remand, Defendant's Motion to Remand is granted and Plaintiffs' case is remanded to the Court of Common Pleas of Delaware County, PA.

An appropriate Order follows.

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Defendant.	:	

ORDER

AND NOW, this 19th day of November, 1999, upon consideration of Defendant's Motion to Remand and Plaintiffs' Reply thereto, it is ORDERED and DECREED that Defendant's Motion is GRANTED and Plaintiffs' case is hereby REMANDED to the Court of Common Pleas of Delaware County, PA. The Clerk of Court is ORDERED to mark this file CLOSED.

BY THE COURT:

Robert F. Kelly, J.