UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
Weldon Stump & Co., Inc.	)	
	)	Case No. 05-32505
Debtor(s)	)	
	)	

DECISION AND ORDER

This cause comes before the Court after a Hearing on the Proposed Stipulated Order for Surcharge under 11 U.S.C. § 506(c). Pending before the Court on this matter were competing Memoranda wherein this overall issue was raised: the jurisdictional authority of this Court to appoint the Trustee, John Graham, as a winding-up partner in the partnership adjudicated in state court to constitute the legal business relationship between that of Yoder Machinery Sales Company and the Debtor. After reviewing the memoranda submitted by the Parties, and after considering the arguments raised by the Parties at the Hearing held in this matter, this Court, as stated at the conclusion of the Hearing, declines jurisdiction over the assets of the Partnership. As such, the Court finds it appropriate to abstain from adjudicating the matter as to which party should be named as the winding-up partner. In brief, the reasons for this decision are set forth below:

Title 28, section 1334 confers jurisdiction upon this Court to hear "all cases under title 11" as well as those matters " arising under title 11, or arising in or related to cases under title 11." With regards to the latter two types of proceeding, however, – those "arising in or related to" – the Court's grant of jurisdictional authority is tempered by the doctrine of abstention. In arguing against abstention in this matter, Huntington National Bank cited the Court to those five factors set forth by the Sixth Circuit Court of Appeals in the case of *In re Dow Corning Corp.*, 86 F.3d 482, 497 (6th Cir. 1996). However, under § 1334, there exist two types of abstention doctrines: (1) discretionary abstention under § 1334(c)(1); and (2) mandatory abstention under § 1334(c)(2). And with respect to those factors cited to by Huntington in *In re Dow Corning Corp.*, their applicability is limited to

mandatory abstention. Therefore, even if such factors go against abstention in this case, discretionary abstention is still a viable alternative.

Discretionary abstention under § 1334(c)(1) is broadly defined and is statutorily deemed to be appropriate whenever it is done "in the interest of justice, or in the interest of comity with State courts or respect for State law." Although not an exclusive list, factors relevant in such an analysis may 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 nonbankruptcy court, (3) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (4) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, and (5) 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. *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 6 F.3d 1184 (7th Cir. 1993). In this matter, the cumulative weight of the following considerations cause all of these factors to be present.

First, it is the rule that where, as here, a partner is a debtor, but the partnership is not, only the debtor's interest in the partnership becomes property of the estate, the partnership property itself does not. *In re Olszewski*, 124 B.R. 743 (Bankr. S.D. Ohio 1991); *In re Gunter*, 179 B.R. 74, 26 (Bankr. S.D. Ohio 1995); *In re Fulton*, 43 B.R. 273 (Bankr. M.D. Tenn. 1984). And to this end, Ohio law indicates that jurisdiction over the partnership and its *res*, as opposed to only jurisdiction over just a single partner, is needed for authority to appoint a winding-up partner – O.R.C. § 1775.36 provides that "[a]ny partner, his legal representative, or his assignee, upon cause shown, may obtain winding up *by the court*." (emphasis added). In turn, "court" as used in this statute is limited, by definition, to those "having jurisdiction[.]" O.R.C. § 1775.01(A).

Thus, while not holding that jurisdiction is, as a matter of law, absolutely lacking on the matter of appointing a winding-up partner, *see McGraw v. Allen (In re Bell & Beckwith)*, 64 B.R.

620, 631 (Bankr. N.D.Ohio 1986), such jurisdiction falls, at most, under the "related to" category as set forth in § 1334(b). For this purpose, "related to" jurisdiction differs from those other types of jurisdictional grants under § 1334 in that it encompasses matters that, were it not for the bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others. *In re Xonics*, 813 F.2d 127, 131 (7th Cir.1987). Hence, this Court's interest in appointing a winding-up partner is nothing more than periphery, with a couple of additional considerations showing that the state court's interest in this matter greatly outweighs the need to have the bankruptcy court adjudicate the matter.

First, from the perspective of the state court, those matters related to the partnership, and the Debtor's interest therein, have to a great extent already been adjudicated in that forum, with no barriers existing at the present time in having matters related to the winding-up of the partnership continuing to be heard in that forum. *See, e.g.*, *Huntington Natl. Bank v. Weldon F. Stump & Co., Inc.*, 160 Ohio App.3d 14, 825 N.E.2d 1134 (6th Dist. 2005). Second, from this Court's perspective, the whole posture of this case, – with the Trustee very early seeking authority to surcharge under 11 U.S.C. § 506(c) – raises serious doubts as to the possibility of any, or at least any meaningful distribution to unsecured creditors.

Admittedly, matters related to the winding-up of the partnership may be able to be heard more expeditiously in this Court. But, convenience, judicial economy and other similar concerns, while taken into consideration in matters of abstention, cannot stand on their own, and thus do not trump the weight of those other considerations, just mentioned, which fall in favor of abstaining under 28 U.S.C. § 1334(c)(1). *See In re Dow Corning Corp.*, 86 F.3d at 489.

According, for these reasons, it is

ORDERED that, pursuant to 28 U.S.C. § 1334(c)(1), the Court hereby abstains from hearing those matters related to the appointment of a party to wind-up the affairs of the partnership in which the Debtor has a partnership interest.

Dated:

Richard L. Speer
United States
Bankruptcy Judge