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

Joseph E. Carlin — Civil Action

v.

H. Robert Jacobs, et al. — No. 01-2350

ORDER

AND NOW, this 17th day of September, 2001, upon consideration of Plaintiff's Motion to Dismiss and Remand or to Abstain and Remand, or to Withdraw Reference and Dismiss and Remand or Abstain and Remand (Docket #7), Defendants' response thereto (Docket #9), and following oral argument on September 14, 2001, said Motion is GRANTED and the case is remanded to state court for the following reasons.

In 1999, Mr. Carlin filed a state law defamation lawsuit in the Court of Common Pleas of Philadelphia County against defendants Graphic News, Inc. ("GNI") and H. Robert Jacobs.[1] In May of 2001, after a period of discovery and as the case was set to be scheduled for trial, GNI filed for bankruptcy under title 11 and filed a notice of removal to the Eastern

[1] GNI publishes "The Kensington Guide", a community newspaper in Philadelphia, and Mr. Jacobs serves as the newspaper's editor.

District of Pennsylvania. Mr. Carlin then filed a timely motion for this court to abstain from hearing the case pursuant to 28 U.S.C. § 1334(c)(2), or to equitably remand the case pursuant to 28 U.S.C. § 1442(b).

As a threshold matter, the Court finds that Mr. Carlin's defamation cause of action is related to a case under title 11. Civil proceedings are related to bankruptcy proceedings if, "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984). The resolution of Mr. Carlin's defamation claim could conceivably result in an additional claim against the bankrupt's estate, and is therefore related to the bankruptcy proceeding.

The Court also finds that this is a "non-core" proceeding. The legal issues raised by Mr. Carlin's defamation case have little in common with the bankruptcy proceedings. As a personal injury defamation tort claim, the cause of action is not among the core bankruptcy proceedings enumerated by 28 U.S.C. § 157(2). Moreover, Mr. Carlin's defamation proceeding does not invoke a substantive right provided by title 11, nor is it a proceeding that by its nature could arise only in the context of

a bankruptcy case. Halper v. Halper, 164 F.3d 830, 836 (3d Cir. 1999).

Under 28 U.S.C. § 1452(b), a district court may remand a removed state law cause of action "on any equitable ground.'' Courts have broad discretion in determining whether to remand such cases. Shubert v. Roche Holding, No. Civ. A. 01-2023, 2001 WL 884720, *1 (E.D. Pa., Aug. 3, 2001); In re Grace Cmty., Inc., 262 B.R. 625, 629 (Bankr. E.D. Pa. 2001). In determining whether to grant equitable remand, courts have been guided by a seven-factor test.[2] The Court finds that the balance of factors favors equitable remand in this case.

This cause of action, involving a single count of state law defamation, is one where state law predominates. Moreover, the claim involves a jury demand, which "seems to prevent adjudication in a bankruptcy court." Shubert, 2001 WL 884720, at

[2] The factors are: (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 parties. See, e.g., Schubert, 2001 WL 884720, at *1-2; In re Grace, 262 B.R. at 629, n.6 (citing cases).

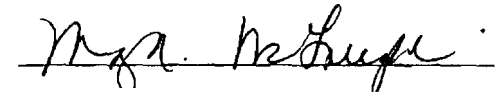
*3 (citations omitted). Because another court proceeding will be necessitated to hear Mr. Carlin's claim, remanding the case will have little effect on the efficient administration of the bankruptcy estate. Id.

Concerns of comity also support equitable remand. Following Mr. Carlin's filing of this defamation claim in 1999, the state court presided over discovery and other pre-trial issues, and at the time of removal the case was set to be scheduled for trial. The "doctrine of comity teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation have had an opportunity to pass upon the matter." Lambert v. Blackwell, 134 F.3d 506, 514 n.18 (3d Cir. 1997), cert. denied 121 S.Ct. 1353 (2001) (citations omitted). This case invokes these concerns. In addition, the Court finds that the defamation claims are not centrally related to the bankruptcy proceeding, and the defendants will not be unduly prejudiced by remand to state court.

Because equitable remand is proper under 28 U.S.C. § 1452(b), the Court declines to reach the issue of mandatory

abstention pursuant to 28 U.S.C. § 1334(c)(2). The Court notes, however, that all of the necessary factors counseling mandatory remand seem to be present in this case. See e.g., McCormick v. Kochar, 1999 WL 1051776, *1 (E.D.Pa. Nov. 19, 1999) (outlining factors). Although courts in this Circuit have granted mandatory abstention in removal cases such as this, the Court recognizes that there is some amount of controversy about whether mandatory abstention pursuant to § 1334(c)(2) requires a parallel suit to be pending in state court – a requirement that might not be met in a removal case. See Shubert, 2001 WL 884720, at *1 n.3 (describing nature of controversy and declining to address its merits). Because equitable remand pursuant to § 1442(b) properly disposes of this case, the Court will join the Shubert court in declining to weigh in "on either side of this particular abstention debate." Id.

BY THE COURT:



MARY A. McLAUGHLIN, J.