

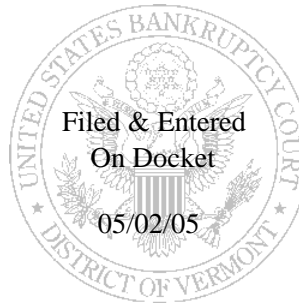
UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

ROME FAMILY CORPORATION,
Debtor.

BANKNORTH N.A.,
Plaintiff/ Counter Defendant,
v.

BERNARD ROME,
Defendant/ Counter Claimant.



Chapter 7 Case
02-11771

Adversary Proceeding
04-1048

Appearances: *S. Stacy Chapman, Esq.*
Weber, Chapman, & Kupferer, Ltd.
Rutland, Vt.
For Plaintiff/Counter Defendant

Jerome F. O'Neill, Esq.
O'Neill, Kellner & Green
Burlington, Vt.
For Defendant/Counter Claimant

MEMORANDUM OF DECISION
DENYING DEFENDANT'S MOTION TO REMAND

Defendant Bernard Rome has filed a motion to remand the above-referenced adversary proceeding to Rutland Superior Court (doc. # 30) (the "Motion to Remand"). Banknorth N.A. ("Banknorth") opposes the Motion to Remand (doc. # 33). John R. Canney, III, in his capacity as Chapter 7 trustee to the estate of Rome Family Corporation (the "Trustee"), also objects to the Motion to Remand (doc. # 34). For the reasons articulated herein, the Court denies the Motion to Remand.

PROCEDURAL BACKGROUND

This complaint was originally filed in Rutland Superior Court on January 7, 2004 (doc. #1) (the "State Action"). In the State Action, Banknorth sought to enforce and collect on the personal guarantees executed by Bernard Rome (the "Defendant" and collectively with Banknorth, the "Parties") in connection with loans Banknorth made to Rome Family Corporation (the "Debtor"). The Defendant is now, and was at all times relevant to this proceeding, the principal and majority shareholder of the Debtor. In connection with these transactions, Banknorth required the Debtor to establish a reserve account. In the State Action, the Defendant asserted a counter-claim asserting, *inter alia*, that Banknorth converted the funds in the reserve account. According to the Defendant, he personally funded the reserve account in the amount of \$750,000 and Banknorth made certain representations to him, individually, upon creation of the reserve account. Specifically, the Defendant contends that Banknorth agreed that if the Debtor met a specific debt-coverage ratio as of a date certain, the reserve account could be closed and the Defendant could withdraw the \$750,000. According to Banknorth, the debt-coverage ratio was not achieved by the designated date.

On December 16, 2002, the Debtor filed a chapter 11 petition (the “Petition Date”); the case was subsequently converted to one under chapter 7. The Debtor listed the reserve account as an asset of the Debtor’s estate. Because the allegations in the State Action involved property of the Debtor’s estate, the State Action was removed to this Court on August 5, 2004 (doc. # 7) and assigned adversary proceeding number 04-1048 (the “Adversary Proceeding.”). Thereafter, the Court entered a scheduling order (doc. # 11) and pursuant to that scheduling order, the Parties proceeded to trial. After one day of evidence, the Parties submitted a stipulation (doc. # 16) (the “Stipulation”) which was approved by order of this Court (doc. # 18). The Stipulation provides that the reserve account is property of the estate because the Debtor owned the account as of the Petition Date. The Stipulation further provided for a separate stipulation between Banknorth and the Trustee that was filed on December 21, 2004 (doc. # 19) (the “Trustee Stipulation”). The Trustee Stipulation declares that Banknorth has a valid and perfected security interest in the reserve account and Banknorth may apply the funds in the reserve account directly to the Debtor’s outstanding Banknorth indebtedness.

On January 19, 2005, after the Stipulation and the Trustee Stipulation were signed by the Parties and approved by the Court, the Defendant amended his counterclaim (doc. # 25). The crux of the Defendant’s counterclaim is that Banknorth breached its obligations to the Defendant personally and misrepresented the status of the debt service ratio, wrongfully depriving the Defendant of the money he deposited with Banknorth to fund the reserve account. The Defendant also argues that the conduct of Banknorth precipitated the Debtor’s bankruptcy filing and therefore, deprived the Defendant of personal financial gains associated with the successful operation of the Debtor.

On February 18, 2005, the Defendant filed the Motion to Remand this proceeding back to state court.

DISCUSSION

A. Subject Matter Jurisdiction and 28 U.S.C. § 1447

The Defendant claims that this Court lacks subject matter jurisdiction over the Adversary Proceeding and should remand the Adversary Proceeding to State Court under 28 U.S.C. § 1447(c).¹ Alternatively, the Defendant argues that he is entitled to have the case remanded pursuant to 28 U.S.C. § 1452(b), which provides an additional basis for remand.² The Defendant claims that “the only jurisdictional hook to bring this matter before this Court was the Reserve Account inasmuch as it was an asset of the Debtor. That jurisdictional connection is gone leaving this Court without a basis to continue to hear the matter.” (doc. # 30, p. 2). As a preliminary matter, this Court must determine whether it has the requisite subject matter jurisdiction over the Adversary Proceeding.

¹ Under this provision, abstention would be mandatory. 28 U.S.C. § 1447(c) provides, in relevant part: “If at any time before final judgment it appears that the District Court lacks subject matter jurisdiction, the case shall be remanded.”

² Under this provision, abstention is discretionary, or permissive. 28 U.S.C. § 1452(b) provides, in relevant part: “The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.”

Subsections 1334(a), (b) and (e) of title 28, United States Code, establish the jurisdiction of the federal district courts over title 11 cases, civil proceedings in title 11 cases, and property of the estate in title 11 cases. The district court “may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a). The bankruptcy judge then has jurisdiction over “all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred [to it by the district court] under subsection (a) of this section, and may enter appropriate orders and judgments...” 28 U.S.C. § 157(b)(1). Section 157(b)(2) sets out a non-exclusive list of “core proceedings.” These proceedings are directly related to a bankruptcy court’s central functions and the essential aspects of bankruptcy case processing, and include, for example, matters concerning the administration of the estate, and the determination of a counterclaim made by a debtor’s estate against a claimant in bankruptcy.

The Second Circuit has held “‘core proceedings’ should be given a broad interpretation that is close to or congruent with constitutional limits.” Mt. McKinley Ins. Co. v. Corning, Inc., 399 F.3d 436, 448 (2d Cir. 2005), and that “[b]ankruptcy courts are not precluded from adjudicating state-law claims [as core proceedings] when such claims are at the heart of the administration of the bankruptcy estate.” Central Vermont Public Service Corp. v. Herbert, 341 F.3d 186, 191 (2d Cir. 2003) (citing, Ben Cooper, Inc. v. Ins. Co. of the State of Pa. (In re Ben Cooper), 896 F.2d 1394, 1399 (2d Cir.), vacated, 498 U.S. 964 (1990), reinstated, 924 F.2d 36 (2d Cir.1991)). A finding that a proceeding is core may be based upon the “nature of the proceeding,” and “the ramifications of the dispute on the administration of the estate.” Central Vermont Public Service Corp., 341 F.3d at 191 (internal citations omitted).

The Defendant contends that judicial economy would be served best by this Court’s granting the Motion to Remand because the Adversary Proceeding involves private matters between the Parties which do not involve the Debtor or bankruptcy estate, the outcome of the Adversary Proceeding will have no economic impact upon the bankruptcy estate, and Banknorth does not assert a claim against the Debtor (doc. # 30, p. 3). This argument is flawed, however, on both legal and factual grounds. The legal issue is the premise that the Adversary Proceeding is not “related to” the case, as that term is used in the jurisdictional context. An action by a creditor against a guarantor of the Debtor’s obligations where the guarantor was an officer, director and shareholder of the debtor, is within the “related to” jurisdiction of this Court. Boco Enterprises, Inc. v. Saastopankkien Keskus-Osake Pankki (In re Boco Enterprises, Inc.), 204 B.R. 407, 410 (S.D. N.Y. 1997). It is flawed factually because the outcome of Banknorth’s action against the Defendant, as guarantor, does affect Banknorth’s status *vis a vis* other creditors, does affect the administration of the estate and is a core proceeding. Id. It is undisputed that Banknorth has the right to collect against the Defendant’s guarantee without first exhausting its rights against the Debtor. This is an essential and determinative fact in the Court’s analysis.

Because of the nature of the guarantee, to the extent Banknorth prevails in this suit and is able to collect part of the subject debt from the guarantor Defendant, Banknorth will have its claim reduced in the bankruptcy case and the Trustee will be able to increase the distribution to other creditors. Thus, there is a dollar-for-dollar benefit to the estate if and to the extent Banknorth is successful in proving its right to judgment in the Adversary Proceeding.

Accordingly, the Court holds that the Adversary Proceeding is a core proceeding, that the Court has subject matter jurisdiction over the Adversary Proceeding and that the Adversary Proceeding does not trigger operation of the mandatory remand provisions of 28 U.S.C. § 1447(c). Thus, the Court must determine whether there is any equitable ground which would warrant remanding the Adversary Proceeding under the permissive remand provisions of 28 U.S.C. § 1452(b).

B. Equitable Remand

Even though this court has jurisdiction over the subject matter of the Adversary Proceeding, the action may, nevertheless, be remanded to the state court for equitable reasons. A bankruptcy court may, in its discretion, remand an action to the state court from which it was removed pursuant to 28 U.S.C. § 1452(b). In re Duval Cty. Ranch Co., 167 B.R. 848, 849 (Bankr. S.D. Tex. 1994). Under § 1452(b), a “court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.” 28 U.S.C. § 1452(b). The equitable considerations that warrant a decision to remand under 28 U.S.C. § 1452(b) 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 party involuntarily removed from state court.

Rednel Tower, Ltd. v. Riverside Nursing Home (In re Riverside Nursing Home), 144 B.R. 951, 956 (S.D. N.Y. 1992); see also, In re Drexel Burnham Lambert Group v. Vigilant Ins., 130 B.R. 405, 407 (S.D.N.Y.1991); River Cement Co. v. Bangert Bros. Const. Co., 852 F.Supp. 25, 27 (D. Colo 1994); In re Finley, 62 B.R. 361, 366 (Bankr.N.D.Ga.1986); Allen County Bank & Trust Co. v. Valvmatic Int’l Corp., 51 B.R. 578 (N.D. Ind. 1985). When applied to the facts of this case, these equitable factors weigh heavily in favor of denying the Motion to Remand.

The remaining issues in the Adversary Proceeding may be tried in this Court promptly. Since the date the Adversary Proceeding was filed, this Court has become familiar with the underlying facts and the guarantees that are at issue. The State Court has not had as much exposure to the case as this Court has. If the Adversary Proceeding were to be remanded to State Court, once an order was entered on the remaining claims,

the Parties would find themselves back before this Court to determine the effect, if any, the order has on the distribution Banknorth will receive on its claims in the Debtor's case. To remand the Adversary Proceeding would likely cause duplicative and inefficient use of scarce judicial resources and pose the risk of inconsistent holdings and decisions. To begin litigation anew would also be costly to the Parties. Although the Adversary Proceeding involves some questions of state law, these questions are clearly defined and do not present novel or difficult questions that require the expertise of state court adjudicators. Further, the issues go to the heart of the administration of the Debtor's estate, which is squarely within the jurisdiction of this Court. Principles of comity also support a denial of the Motion to Remand because bankruptcy issues are intertwined with the state law questions. Upon consent of the Parties, this Court can conduct a jury trial on the remaining issues. Since the Defendant is the principal and majority shareholder of the Debtor, he has a direct stake in the bankruptcy case pending here and can have his rights in that case resolved more expediently if the Adversary Proceeding is also resolved in this Court. The Court finds that the Defendant would not be prejudiced by proceeding in this Court and in fact, would likely benefit, in terms of time and legal fees required, from this Court's knowledge of the case. For all of these reasons, the Court finds that an analysis of the equitable factors weighs against remand under § 1452(b).

CONCLUSION


Based upon the foregoing, the Court finds: (1) that the remaining counterclaim in the Adversary Proceeding constitutes a core proceeding over which this Court has subject matter jurisdiction; (2) that remand is not mandated under 28 U.S.C. § 1447 because the Court has subject matter jurisdiction over the Adversary Proceeding; and (3) the equitable factors do not support remanding the Adversary Proceeding under 28 U.S.C. § 1452.

Therefore, the Court denies the Motion to Remand.

This constitutes the Court's findings of fact and conclusions of law.

SO ORDERED.

May 2, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge