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Court May Exercise "Related To" Jurisdiction Over Adversary Complaint By A Creditor Against a Third Party

Eighth Circuit Bankruptcy Monitor

Court May Exercise "Related To" Jurisdiction Over Adversary Complaint by a Creditor Against a Third Party; Orders Transfer of Action to State Court Although Action Originally Filed in Federal Court

In *Bushman Custom Farming, LLC v. Stillmunkes (In re Stillmunkes)*, Bankr. N.D. Iowa, 19-01011, d/e 16, April 30, 2020, Judge Thad Collins found the Court had "related to" subject matter jurisdiction under 28 U.S.C. § 157(b)(3) to entertain a non-core adversary proceeding between a creditor and a third party. The Court elected to abstain and ordered the action transferred to an Iowa state court.

Creditor Bushman Custom Farming, LLC commenced an adversary proceeding against chapter 12 debtor Mark J. Stillmunkes and McDermott Oil Company. Bushman asserted state law contract claims arising from "defective oil provided to Bushman during performance of a custom harvesting contract for [Stillmunkes]." Bushman had filed a proof of claim against the estate. No objection to the proof of claim had been made.

Stillmunkes and McDermott argued in motions to dismiss that the Court lacked "related to" jurisdiction or, alternatively, that the Court should abstain under the permissive abstention provision of 28 U.S.C. § 1334(c)(1).

The Court concluded that it had "related to" jurisdiction over the claims against Stillmunkes. The Court found that the outcome of the adversary proceeding "could

change the value of Bushman's allowed claim, even though Debtor has not objected to it and it is small relative to the Stillmunke's overall liabilities," easily satisfying the Eighth Circuit's expansive "conceivable effects" test for "related to" jurisdiction.

The claims against McDermott, on the other hand, required "additional analysis." "The result of a lawsuit between a creditor and a third-party defendant," the Court observed, "does not necessarily affect the bankruptcy estate." But, the "Bushman-McDermott litigation could . . . potentially impact Bushman's claim against Stillmunkes." Referring to a 2008 case from the Bankruptcy Court for the District of Minnesota, the Court found that "related to" jurisdiction existed because Bushman sought "to establish an alternative source of payment for a part of its claim" and, if successful, "reduce the amount of [Bushman's] allowed claim in the bankruptcy administration."

After concluding it had jurisdiction over the claims, the Court elected to abstain from exercising its jurisdiction, holding that comity and the twelve-factor test from *Williams v. Citifinancial Mortgage Co. (In re Williams)*, 256 B.R. 885 (8th Cir. B.A.P. 2001) counseled resolution of the claims by a state court. Interestingly, however, the Court did not dismiss the case. Bushman expressed concern that the applicable statutes of limitation on its claims expired while the motions to dismiss were pending. Recognizing that the purpose behind permissive abstention is to permit determination by state courts, the Court found that dismissal would not be appropriate if Bushman would be "exposed . . . to immediate dismissal on statute of limitation grounds." Thus, instead of dismissing the proceeding, the Court ordered it transferred to a state court.

No party cited any authority permitting the transfer of an action, commenced in federal court, from a federal court to a state court. But that does not mean such authority does not exist. Pennsylvania once had a statute that permitted the transfer of federal cases with non-federal claims to state courts when the federal court loses jurisdiction,[1] and the Third Circuit held that the state statute, coupled with federal courts' inherent authority, permitted transfer of cases from federal to state court. *Weaver v. Marine Bank*, 683 F.2d 744, 746-47 (3d Cir. 1982). Conversely, the First Circuit has held that Maine's savings statute (which is at least facially similar to the Iowa savings statute that potentially could spare Bushman's claims here) does not authorize federal courts to transfer actions to Maine state courts. *Mills v. State of*

Maine, 118 F.3d 37, 51-52 (1st Cir. 1997). *See also*, *Brown v. Pepsi Mid-America Co.*, 2006 WL 2546804 *3 (E.D. Mo. Sept. 1, 2006) (absent enabling state statute, transfer of action from federal to state court not permitted). It will be interesting to see how the ordered transfer is effected and whether the transfer is challenged.

In other news, in *In re Marie King*, Bankr. E.D. Ark., 4:19-bk-16475, d/e 92, Judge Richard D. Taylor held that under applicable Arkansas non-bankruptcy law, a foreclosure sale is not completed until the trustee's deed is recorded. As a consequence, when a purchaser of a chapter 13 debtor's residence at foreclosure failed to record the trustee's deed, the sale had not yet been completed and the debtor could still take advantage of section 1322(c). However, the Court also found cause existed to lift the automatic stay to permit recordation of the trustee's deed.

This blog post was drafted by Ryan Hardy, an attorney in the Spencer Fane LLP St. Louis, MO office. For more information, visit www.spencerfane.com.

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[1] The statute has now been amended to make clear that it is the parties, not the federal court, who must effect the contemplated "transfer." *See McLaughlin v. Arco Polymers, Inc.*, 721 F.2d 426, 430-31 (3d Cir. 1983).