

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

In Re: §
§
RICHARD O. WHEELER, § CASE NO. 04-60171-RLJ-13
§
Debtor §

DANNY WALKER, §
§
Plaintiff §
vs. § ADVERSARY NO. 04-6004
§

RICHARD O. WHEELER, SHEILA G. §
WHEELER, SCOTT WHEELER, JAMES §
N. McMAHON, INDIVIDUALLY AND AS §
TRUSTEE OF THE RICHARD OLIVER §
WHEELER SPECIAL TRUST, CONSUMER §
LOAN PORTFOLIO, INC., AND DOUBLE §
WHEEL RANCH, INC. §
§
Defendants §

MEMORANDUM OPINION

Preliminary Statement

Danny Walker, plaintiff, asks this court to remand this adversary proceeding back to the 96th District Court, Tarrant County, Texas, where the suit originated. Richard Wheeler, one of the defendants and the captioned Chapter 13 debtor before this court, had removed the lawsuit from the Tarrant County district court to this court. Hearing was held July 1, 2004.¹

¹Walker's motion seeks, in the alternative, that venue be transferred to the Dallas Division of the Northern District of Texas. In addition, in the captioned bankruptcy case, Walker filed a motion to dismiss and a motion to transfer the case to the Dallas Division. At the hearing, Walker's counsel announced that he was withdrawing both the motion to dismiss and the motion to transfer. The court considers the motion to transfer venue filed in this adversary as also withdrawn.

This suit is a fraudulent conveyance action initiated by Walker in July, 1999, by Plaintiff's Original Petition filed in the 96th District Court, Tarrant County, Texas, Cause No. 96-179498-99, styled, *Danny Walker, Plaintiff, v. Richard O. Wheeler, Sheila G. Wheeler, Scott Wheeler, James A. McMahon, Individually and as Trustee of the Richard Oliver Wheeler Special Trust, Consumer Loan Portfolio, Inc., and Double Wheel Ranch, Inc., Defendants* (the "Fraudulent Conveyance Action"). Walker alleges that Richard and Sheila Wheeler fraudulently transferred 853 acres of ranch land in Tennyson, Coke County, Texas, commonly referred to as the "Double Wheel Ranch," to an entity named Double Wheel Ranch, Inc. ("DWRI"). The Fraudulent Conveyance Action was filed to aid enforcement of a judgment held by Walker against the Wheelers and the other defendants that resulted from a prior suit, before the same state court, Cause No. 96-147564-03, styled, *Danny Walker v. Modern Fitness Centers, Inc., Compass Investments, Inc., Richard O. Wheeler, Portfolio Consultants, Inc., Western American National Bank, and Cosmopolitan Holdings, Inc.*

The judgment, entered June 15, 1998, awarded Walker the principal sum of \$435,756.15, plus accrued prejudgment interest of \$226,959.79 and punitive damages of \$750,000. The underlying facts, including a prior bankruptcy filing by Richard Wheeler, complicate the question of whether this court should remand this suit.

The conveyance of the 853 acres to DWRI occurred on July 24, 1998. On the same day, Walker recorded an abstract of judgment in Coke County. Scott Wheeler, son of Richard and Sheila Wheeler, another defendant, was allegedly conveyed 100 acres of the 853 acres by warranty deed from DWRI dated September 28, 1998. Walker filed a notice of lis pendens in Coke County

regarding the property on August 5, 1999.

On December 3, 1999, Richard Wheeler filed a Chapter 11 bankruptcy case, Case No. 699-60543-JCA-11, in the San Angelo Division for the Northern District of Texas. On May 3, 2000, the Chapter 11 case was transferred to the Dallas Division, Case No. 00-33158-RCM-11.² On February 26, 2001, the case was converted to Chapter 7. Walker filed a motion for relief from stay, which was granted on November 30, 2001, in accordance with the bankruptcy court's amended memorandum opinion. The court (Judge Robert C. McGuire) found that because of the lis pendens and the abstract of judgment, Walker had a right prior to that of the Chapter 7 trustee in the claims represented by the Fraudulent Conveyance Action, and that, as a result, there was no equity for the bankruptcy estate in the 853 acres. The court therefore granted relief from the stay and directed the trustee to abandon the claims concerning the 853 acres. In addition, Walker successfully prosecuted a dischargeability complaint which resulted in the principal amount of \$120,000 of the judgment being declared nondischargeable. On January 14, 2002, an order of discharge was issued in Wheeler's Chapter 7 case, which is specifically made subject to any orders declaring debts nondischargeable.

On April 1, 2003, Scott Wheeler filed his own Chapter 7 case before this court, Case No. 03-60125-RLJ-7. Scott Wheeler had claimed the 100 acres as his exempt homestead. As previously noted, the 100 acres is alleged to constitute a portion of the 853 acres which the court in the Dallas Division had found, in connection with Richard Wheeler's prior bankruptcy proceeding,

²The Honorable Robert C. McGuire presided over Richard Wheeler's prior bankruptcy case until his retirement. The Honorable Harlin D Hale is currently presiding over Wheeler's "other" case.

was subject to the prior claim of Walker. This court, in Scott Wheeler's bankruptcy case, entered its order lifting stay concerning the 100 acres.

Richard Wheeler filed the present Chapter 13 case on April 26, 2004. From a review of the schedules, Wheeler makes no claim to the 853 acres or to the Fraudulent Conveyance Action. Wheeler's prior Chapter 7 proceeding is still pending before the bankruptcy court in the Dallas Division.

Discussion

As a result of the proceedings in Wheeler's prior bankruptcy case, Walker holds a \$120,000 nondischargeable claim and an interest in, or claim to, the 853 acres that is superior to that of the Chapter 7 trustee; Wheeler, who makes no claim to the 853 acres or to the Fraudulent Conveyance Action, is discharged of all debts save the \$120,000 nondischargeable claim held by Wheeler. Walker contends that this court does not have jurisdiction over this suit because Wheeler makes no claim to the 853 acres and the bankruptcy court has, in the prior bankruptcy case, ruled that Walker's interest in the Fraudulent Conveyance Action is superior to that of the Chapter 7 trustee. Therefore, it is argued, the Fraudulent Conveyance Action can have no impact on Wheeler's present Chapter 13 estate. Walker argues in the alternative that the equities of the case favor remand. In addition to the multiple bankruptcy filings, Walker notes that the Fraudulent Conveyance Action has been pending since 1999, and that it could have been remanded when Scott Wheeler filed bankruptcy in April 2003. Wheeler, on the other hand, submits that the Fraudulent Conveyance Action involves essentially a resolution of Walker's claim in the present Chapter 13 case and thus this court must have jurisdiction. Wheeler submits that the equities favor this court

keeping the case in light of the convoluted pure bankruptcy issues that exist – the multiple filings, the impact of Judge McGuire’s ruling, the nondischargeable claim of Walker coupled with Walker’s interest in the Fraudulent Conveyance Action.

The court is satisfied that it has jurisdiction over this adversary. A bankruptcy court has ‘related to’ jurisdiction over a proceeding if the outcome “could conceivably have any effect on the estate being administered in bankruptcy.” *In re Canion*, 196 F.3d 579, 585 (5th Cir.1999). “Certainty, or even likelihood of such an effect is not a requirement.” *Arnold v. Garlock Inc.*, 278 F.3d 426, 434 (5th Cir. 2001), reh’g denied, 288 F.3d. 234 (2002) (citing *Canion*, 196 F.3d at 587 n.30). The analysis turns on whether the outcome could have *any conceivable effect*. *Canion*, 196 F.3d at 587. It is well-established that, to be ‘related to’ a bankruptcy it is not necessary for the proceeding to be against the debtor or the debtor’s property. *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995). Even a proceeding between nondebtors that may reduce or increase a debtor’s bankruptcy estate is considered a proceeding within the bankruptcy court’s ‘related to’ jurisdiction. *Canion*, 196 F.3d at 586-87.

In this case, Walker holds a claim against Wheeler for \$120,000, the portion of the judgment held to be nondischargeable. Walker also asserts another claim, in the nature of a non-recourse claim, against the 853 acres that may be realized, Walker argues, to the full extent of the judgment. This assumes that the value of the property supports the full amount of the judgment. The recovery would presumably be limited to the value of the property, but not to exceed the amount of the judgment.

This court has, at a minimum, related to jurisdiction for the simple reason that Walker’s

potential recovery of the 853 acres may satisfy the \$120,000 nondischargeable claim, which would have an effect on Wheeler's Chapter 13 estate. *See Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1023 (5th Cir. 1999) (discussing that bankruptcy jurisdiction lies in a proceeding over an asset, "because the [resolution of the] dispute over the asset would have an effect on the estate."). *See also, In re Canion*, 196 F.3d 579, 586-87 (5th Cir. 1999) (holding that the bankruptcy court had 'related to' jurisdiction over a suit brought by a judgment creditor of the debtor against other non-bankrupt individuals, not including the debtor, because the defendants might end up paying at least part of the debtor's judgment, and thus possibly reduce the bankruptcy estate's liabilities); *In re Horn*, 264, B.R. 848, 848-50 (E.D. Tex. 2001) (recognizing the court's 'related to' jurisdiction over a suit regarding a lease for which the debtor was a co-guarantor).

Although the court finds it does hold jurisdiction, the court is of the opinion that the equities of the case dictate remand. Section 1452(b) (Title 28 U.S.C.) provides that a remanded cause of action may be remanded on "any equitable ground." First, it should be noted that although not requested, mandatory abstention under 28 U.S.C. § 1334(c) appears to directly apply in this case.³ Nevertheless, because only equitable remand was requested, the court turns to the circumstances involved in this case. Because of the similarity between permissible abstention and equitable

³ 28 U.S.C. § 1334(c) provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

remand, some courts have evaluated the factors for permissible abstention when evaluating a request under 28 U.S.C. § 1452(b). *See, e.g., Broyles v. U. S. Gypsum Co.*, 266 B.R. 778, 785 (E.D.

Tex. 2001). Such factors include:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) 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;
- (9) the burden of the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Id.

Here, the factors favor remand. First, the court does not believe that continuing this proceeding in Texas state court will materially affect the administration of the estate in this case. If Wheeler wishes to contest the \$120,000 claim, the bankruptcy court will entertain such a dispute. To the extent that Wheeler proposes to pay the claim in his Chapter 13 plan, any effect of the state court proceeding upon the \$120,000 claim can be dealt with under the plan either pre-confirmation or post-confirmation by modification under 11 U.S.C. § 1329(a)(3). *See In re Horn*, 264 B.R. 848, 849-50 (Bankr. E.D. Tex. 2001) (holding that state court action against Chapter 13 debtor

and other nondebtor defendants would be remanded to state court, even though the allowance or disallowance of plaintiff's related claim in bankruptcy court against debtor must be heard by the bankruptcy court; if plaintiff were to collect in state court proceeding, plaintiff's claim against debtor in bankruptcy court could be amended to reflect any such amounts collected or replaced by a claim for contribution by other nondebtor defendants). Second, the substantive rights asserted by the Fraudulent Conveyance Action are governed by Texas state law. As to the third factor, the court does not believe that the applicable law is difficult or unsettled, a factor in favor of denying remand. Fourth, this proceeding was pending in Texas state court for quite some time. Fifth, independent federal jurisdiction is not present in this case. Sixth, while this proceeding may alter the amount of Walker's claim against Richard Wheeler in the main bankruptcy case, the court is not persuaded that this proceeding will inhibit the administration of the other matters in the main bankruptcy case. Because this is merely a 'related to' proceeding, the seventh factor is irrelevant. The eighth factor is also of little relevance. As noted, Richard Wheeler makes no claim to the 853 acres or to the state law Fraudulent Conveyance Action. If, upon prosecution of the suit, Walker receives the 853 acres and such recovery satisfies his \$120,000 claim, Richard Wheeler can, through available procedures, properly recognize the satisfaction of such claim. As to the ninth factor, this proceeding would not place a burden on the bankruptcy court's docket, a factor that weighs in favor of denying remand.

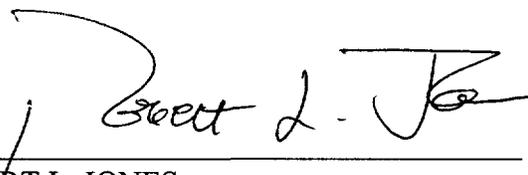
The tenth factor is especially relevant in this case. The circumstances regarding the removal of this case, as well as the filing of the petition in bankruptcy, support an inference that Richard Wheeler is intentionally attempting to forum-shop his way out of the Texas state court where this proceeding is currently pending, or otherwise impose delays in an effort to put-off final judgment in

this proceeding. As to the eleventh factor, the nondebtor defendants in this case may very well be entitled to a jury trial. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) (holding that a person who has not submitted a claim against a bankruptcy estate is entitled to a jury trial when sued by a bankruptcy trustee seeking monetary relief in a fraudulent transfer action). While this court is not opposed to conducting a jury trial, the state court is certainly capable of doing so. Twelfth, the presence of nondebtor parties in this proceeding weighs in favor of granting remand and allowing the parties to litigate this dispute in Texas state court with the applicable Texas venue provisions. Thirteenth, the interests of comity weigh in favor of this court recognizing the ability of the state court to sufficiently dispose of this matter governed by Texas state law. Last, the court perceives no prejudice to any of the parties in this suit, regardless where it is tried.

Conclusion

Upon the foregoing authorities, the court directs that this adversary proceeding be remanded to the 96th District Court of Tarrant County, Texas.

SIGNED July 23, 2004.

A handwritten signature in black ink, appearing to read "Robert L. Jones", written over a horizontal line.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE