

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LJM2 CO-INVESTMENT, L.P.,)
a Delaware Limited Partnership,)
)
Plaintiff)
)
v.)
)
LJM2 CAPITAL MANAGEMENT, L.P.,)
a Delaware Limited Partnership,)
)
Defendant)
)
v.)
)
PARTNERSHIP SERVICES, LLC, *et al.*,)
Third-Party Defendants)
_____)

C.A. No. 02-1498 GMS

MEMORANDUM AND ORDER

I. INTRODUCTION

The above-captioned case was removed from the Court of Chancery of the State of Delaware in and for New Castle County to this court on September 30, 2002. Presently before the court is a motion by the plaintiff, LJM2 Co-Investment, L.P. (“LJM2”), and the third-party defendant, Partnership Services, LLC (“Partnership Services”), for remand to the Chancery Court. In addition, the defendant, LJM2 Capital Management, L.P. (“Capital Management”), moves to transfer the case pursuant to 28 U.S.C. § 1404(a). For the reasons that follow, the court will grant the motion to remand and deny the motion to transfer.

II. BACKGROUND

LJM2 and Capital Management are Delaware limited partnerships. Capital Management was the general partner of LJM2 from LJM2’s inception until January 4, 2002, and is currently a “special

limited partner” of that entity. In this action, LJM2 alleges that Capital Management failed to fulfill its obligations as general partner pursuant to the partnership agreement by, *inter alia*, making improper investments, failing to make required capital contributions, and engaging in improper acts of self-dealing. Accordingly, the plaintiff asserts claims for breach of contract, breach of the duty of loyalty, breach of the implied covenant of good faith and fair dealing, conversion, unjust enrichment, and for an accounting.

Capital Management has filed a counterclaim against LJM2, and third party claims against the new general partner of LJM2, Partnership Services, and other limited partners of LJM2. Capital Management seeks damages, declaratory relief, and an accounting for breach of contract and unjust enrichment.

This case was instituted by LJM2 in the Court of Chancery on May 7, 2002. The Chancery Court previously has entertained related matters involving LJM2 and Capital Management. In March of 2002, the court held that LJM2 had properly removed Capital Management as General Partner of LJM2, and in August of the same year, the court, following a trial, dismissed Capital Management’s request for an inspection of LJM2’s books and records.

In August 2002, Michael Kopper, the sole managing member and owner of Capital Management, pled guilty in the United States District Court for the Southern District of Texas to activities regarding certain Enron-related companies. Pursuant to Kopper’s cooperation agreement with the Enron Task Force of the United States Department of Justice, he agreed not to contest the forfeiture of certain funds in a Charles Schwab account which represented substitute assets for criminally derived property. On the same day that the District Court for the Southern District of Texas entered Kopper’s guilty plea, it also issued a Preliminary Order of Forfeiture and Restraining

Order regarding the Charles Schwab account.

In August of 2002, LJM2 moved the Chancery Court in Delaware for a temporary restraining order regarding the Charles Schwab funds. The request was granted.

On September 25, 2002, LJM2 filed a title 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Texas.

On September 30, 2002, Capital Management removed LJM2's state court action to this court pursuant to 28 U.S.C. § 1441(a). Capital Management now moves to transfer the case to the United States District Court for the Southern District of Texas.

By contrast, LJM2 and Partnership Services seek a remand of the case to the Chancery Court or, in the alternative, a transfer to the United States District Court for the Northern District of Texas, where LJM2's bankruptcy proceeding is pending.

III. DISCUSSION

A. Motion to Remand

LJM2 moves to have this case remanded to the Chancery Court. The plaintiff contends that removal to federal court was improper because the case is non-core to the bankruptcy proceeding and purely a state-law-based action properly before the Chancery Court. Accordingly, LJM2 asserts that the court must abstain from hearing this action, or, alternatively, may invoke discretionary abstention. In either case, the plaintiff argues, remand would be the appropriate result. The court will address the applicability of mandatory abstention, discretionary abstention, and equitable remand in turn.

1. Mandatory Abstention

Federal subject matter jurisdiction is provided by 28 U.S.C. § 1334(b) for civil proceedings

“arising in or related to” bankruptcy cases. Subsection (c)(2) of the same section, however, instructs the district court to abstain from hearing such a case when certain conditions are met. The statute reads:

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.

28 U.S.C. § 1334(c)(2). In other words, the statute requires six criteria for mandatory abstention to apply: 1) a timely motion to abstain; 2) a state-law-based claim or cause of action; 3) such action has already been commenced in state court; 4) the action can be timely adjudicated in that state court; 5) there is no independent basis for federal jurisdiction absent bankruptcy; and 6) the matter before the court is non-core. *In re Trans World Airlines, Inc.*, 278 B.R. 42, 50 (Bankr. D. Del. 2002). The court agrees with the plaintiff that each of these criteria is met in this case.¹

First, the motion to abstain was timely. Capital Management removed the case to this court on September 30, 2002. LJM2 and Partnership Services filed the instant motion to remand on October 29, 2002, less than one month after the removal. This is certainly timely, particularly because the court has not yet conducted any proceedings in this action.

Second, the case involves only state-law-based claims. All of the claims asserted by LJM2 against Capital Management, as well as Capital Management’s counterclaims and third-party claims,

¹ Capital Management appears to concede that the first three criteria are met in this case. *See, e.g.*, Defendant LJM2 Capital Management, L.P.’s Combined Answering Brief (D.I. 25) at 9 (“The last three of the six factors cannot be met here.”). Nevertheless, in the interests of clarity and comprehensiveness, the court addresses each criteria.

are founded entirely on state law.

Third, this case was commenced in a state court of appropriate jurisdiction. As already noted, this proceeding was filed in the Chancery Court in May of 2002. No party has offered a challenge to that court's jurisdiction over these claims, and the court has found no grounds for such an objection.

Fourth, the Chancery Court can timely adjudicate the action; there is no evidence whatsoever to the contrary. Indeed, as noted above, the Chancery Court already has fully adjudicated two related cases involving these parties. Capital Management's objections that the state court is not intimately familiar with the parties or claims at issue, as LJM2 and Partnership Services contend, and that the parties' prior proceedings before the Chancery Court were narrow in scope, are irrelevant. Section 1334(c)(2) does not require that the state court be intimately familiar with the parties or claims, or even that it be more familiar with these elements than the federal court to which the case was removed. The statute requires merely that the state court can timely adjudicate the action. *See, e.g., Trans World Airlines*, 278 B.R. at 51 (“[T]he issue under § 1334(c)(2) is not whether the action would be *more quickly* adjudicated in this Court than in the state court, but rather, whether the action can be *timely adjudicated* in the state court.”) (emphasis in original). There is no valid suggestion that the Chancery Court of Delaware cannot do so in this case.

Also contrary to Capital Management's insistence, the Chancery Court's ability to timely adjudicate the case is not “complicated” by the existence of a forfeiture action pending in the United States District Court for the Southern District of Texas regarding the Schwab account. The forfeiture action is a separate and distinct proceeding from the present one; there are no claims in this action with respect to the Schwab account or the forfeited property. To the extent any legal

issues regarding the forfeiture action were to arise during the state court's management of the present claims, the court is confident that the Chancery Court would adjudicate them in an able and timely manner.

Fifth, there is no independent basis for federal jurisdiction absent bankruptcy. Capital Management urges the court to construe this case as a claim to the Schwab account that is the subject of the forfeiture action in the Southern District of Texas. Pursuant to the Preliminary Order issued by that court, any claims to the Schwab account funds must be brought in the Southern District of Texas pursuant to 21 U.S.C. § 853(k) and (n). Thus, Capital Management argues, LJM2's claims must be brought in federal court, providing an independent basis for federal jurisdiction.

The court cannot agree. This is not a forfeiture proceeding pursuant to § 1335, nor are the state claims at issue governed by 21 U.S.C. § 853. These statutes certainly would be relevant in a separate action in which LJM2 or other parties claim an interest in the forfeited Schwab account funds. They are not applicable, however, to the present action in which LJM2 asserts breach of contract and other state law claims relating to, among other things, management fees that Capital Management received from LJM2. Furthermore, Capital Management's attempted removal on the basis that this action is a penalty or forfeiture action would be untimely. Thus, because there is no diversity of citizenship² or other independent basis for federal subject matter jurisdiction, the fifth requirement for mandatory abstention is met.

Sixth, the present action is not a core proceeding. The characterization of proceedings as

² Capital Management is a Delaware limited partnership whose General Partner is a Delaware limited liability company; LJM2 and all but one of the named limited partners are also Delaware entities. Thus, federal jurisdiction pursuant to 28 U.S.C. § 1331 does not exist.

core or non-core is guided by the examples provided in 28 U.S.C. § 157(b)(2). “[A] proceeding is core under [28 U.S.C.] section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.” *In re Guild & Gallery Plus, Inc.*, 72 F.3d 1171, 1178 (3d Cir. 1996) (quoting *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 267 (3d Cir. 1991)). “If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding; it may be related to the bankruptcy because of its potential effect, but under section 157(c)(1) it is an “otherwise related” or non-core proceeding.” *Id.* (quoting *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)).

This action does not involve any substantive rights provided by the Bankruptcy Code. None of the examples of core proceedings provided by § 157 is present in the instant action. Nor could any of the claims arise only in a bankruptcy case. Indeed, this action was pending for several months before LJM2 filed its bankruptcy petition. Clearly, this action is non-core.

Because all of the criteria for mandatory abstention are present in this case, the court shall abstain from hearing it. In the alternative, the court invokes discretionary abstention and equitable remand.

2. Discretionary Abstention

Under certain circumstances, a district court may decline to hear a case that is “related to” a bankruptcy proceeding. 28 U.S.C. § 1334(c)(1) (“[A] district court in the interest of justice, or in the interest of comity with State courts or respect for State law, [may] abstain[] from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.”). When determining whether discretionary abstention is appropriate, courts consider the following factors:

1. The effect or lack thereof on the efficient administration of the [bankruptcy] estate if the court recommends abstention;
2. The extent to which state law issues predominate over bankruptcy issues;
3. The difficulty or unsettled nature of the applicable state law;
4. The presence of a related proceeding commenced in state court or other nonbankruptcy court;
5. The jurisdictional basis, if any, other than 28 U.S.C. § 1344;
6. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
7. The substance rather than 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 on the 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; and
12. The presence in the proceeding of nondebtor parties.

Indian River Homes v. Wilmington Trust Co., 1993 U.S. Dist. LEXIS 2521, at *7-8 (D. Del. 1993).

Because the court has found that mandatory abstention is warranted, it will not engage in a prolonged analysis of these twelve factors. The court finds, however, that most of these factors point to an exercise of discretionary abstention in this case. For example, as discussed already, state law issues certainly predominate over bankruptcy issues; there is no jurisdictional basis for the case other than 28 U.S.C. § 1334; and the substance of the proceeding is non-core.

3. Equitable Remand

As a final ground for abstention and remand in this case, the court notes that it may remand a removed action “on any equitable ground.” 28 U.S.C. § 1452(b); *see also Gorse v. Long Neck, Ltd.*, 107 B.R. 479, 482 (D. Del. 1989) (“[A] case removed to district court can be remanded to state court on any equitable ground.”).

Equitable grounds for remand include, but are not limited to: (1) *forum non conveniens*; (2) a holding that, if the civil action has been bifurcated by removal, the entire action should be tried in the same court; (3) a holding that a state court is better able to respond to questions involving state law; (4) expertise of the particular court; (5) duplicative and uneconomic effort of judicial resources in two forums; (6) prejudice to the involuntarily removed parties; (7) comity considerations; and (8) a lessened possibility of an inconsistent result.

Gorse, 107 B.R. at 482. The court may also consider the plaintiff's choice of forum as between state and federal courts. *Lone Star Industries, Inc. v. Liberty Mut. Ins.*, 131 B.R. 269, 273 (D. Del. 1991).

As discussed earlier, the Chancery Court has heard evidence and issued orders in two prior proceedings involving many of the same parties and facts present in this case. Indeed, some of the issues are so related that there have been *res judicata* and collateral estoppel challenges raised regarding the propriety of the present counterclaims. The Chancery Court, being familiar with the prior claims, is better suited to entertain these sorts of challenges. This is particularly true because the same judge, Vice Chancellor Jacobs, presided over each of the prior proceedings in that court. By contrast, there has been no proceeding or other action in this case before this court; thus, the court is less familiar with the parties, claims, procedural history, prior legal arguments, and pertinent facts. *See, e.g., Fort James Corp. v. Beck*, 2003 WL 345350 (granting remand to Court of Chancery); *cf. Indian River Homes, Inc. v. Young, Conaway, Stargatt & Taylor*, 1991 WL 171267 (D. Del. 1991), at *3 (declining to remand because a "substantially related" case had been pending before the court for two years). Given the Chancery Court's familiarity with this case, needless inefficiency would result from a denial of the motion to remand. In addition, the court is mindful of the plaintiff's valid choice of state court as its forum. Finally, the court notes that Capital Management itself has previously initiated an action against LJM2 in the Chancery Court. It can hardly be heard now to complain that the Chancery Court is inconvenient or otherwise ill-suited to

hear the present, related claims. The court finds that remand to the Court of Chancery is appropriate.

B. Motion to Transfer

Because the court has found that abstention and remand are warranted in this case, Capital Management's motion to transfer is denied as moot.

IV. CONCLUSION

For the aforementioned reasons, IT IS HEREBY ORDERED that:

1. The plaintiff's and third-party defendant's Motion for Remand to the Court of Chancery of the State of Delaware (D.I. 16) is GRANTED.
2. The defendant's Motion to Transfer to the Southern District of Texas (D.I. 7) is DENIED.

Dated: February 24, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE