

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: -

ADVERSARY PROCEEDING NO: 09-90001

ORDER OF REMAND TO STATE COURT

The relief set forth on the following pages, for a total of 7 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
08/10/2009



Entered: 08/11/2009

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re,

Daniel R. Stevenson, II and
Jill C. Stevenson,

Debtor(s).

Jacquelin S. Bennett,
Genevive S. Felder,
Kathleen S. Turner,
Jacquelin S. Bennett and Kathleen S. Turner as
Co-Personal Representatives of the Estate of
Jacquelin K. Stevenson, and
James K. King,

Plaintiff(s),

v.

Thomas C. Stevenson, III,
Daniel R. Stevenson, II,
Fabtech, Inc.,
Laurentide, Inc.,
Easy Tray, LLC,
Carolina Fresh Cut, LLC,
Carolina Fresh Cut, LLC, d/b/a Toogoodoo
Farms, and
Toogoodoo Farms of the Carolinas,

Defendant(s).

C/A No. 09-10586
(pending in Bankr. W.D.N.C.)

Adv. Pro. No. 09-90001-DD

Chapter 7

**ORDER OF REMAND TO STATE
COURT**

THIS MATTER comes before the Court on Motion to Remand filed by Jacquelin S. Bennett, *et al.* (“Plaintiffs”) in response to the Notice of Removal filed by Thomas C. Stevenson, *et al.* (“Defendants”). Having reviewed the pleadings and considered the arguments of counsel, this Court has determined that the case should be remanded to state court. In support of this determination, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Daniel R. Stevenson, II (“Debtor” or “Dan Stevenson”), Thomas C. Stevenson III (“Tom Stevenson”), Jacquelin S. Bennet, Genevive S. Felder, Kathleen S. Turner, and their brother James K. King are all beneficiaries of certain trusts established by their parents. The will of Thomas C. Stevenson, Jr. created the Jacquelin K. Stevenson Marital Trust (“Marital Trust”) and the Residual Trust (“Q-TIP Trust,” and together with the Marital Trust, the “Trusts”), and designated his wife, Mrs. Jacquelin Stevenson, as the sole lifetime beneficiary of both trusts. The Thomas C. Stevenson, Jr. Will also gave Mrs. Stevenson a general power of appointment over the Marital Trust. It also provided that his children, Jacquelin Bennet, Genevive Felder, Kathleen Turner, Dan Stevenson, and Tom Stevenson, would become the beneficiaries of the Q-TIP Trust upon Mrs. Stevenson’s death. Mrs. Stevenson’s will provided that Jacquelin Bennett, Genevive Felder, Kathleen Turner, James King, Dan Stevenson, and Tom Stevenson, would succeed to the Marital Trust upon her death. Mrs. Stevenson died on September 17, 2007.

Plaintiffs allege that beginning in 1999 Don Stevenson and Tom Stevenson, who were co-trustees of the Trusts, made numerous withdrawals from the Trusts and from the account of Mrs. Stevenson. These withdrawals were allegedly made without the knowledge or consent of the Plaintiffs, in breach of the co-trustees’ fiduciary duties. A civil action, Case No. 2008-CP-10-0806 filed in the Court of Common Pleas, County of Charleston, State of South Carolina (“Trust Litigation”), was initiated against Defendants. James King also initiated a civil action that bears the same case number and is included in the Trust Litigation.

Plaintiffs allege that Defendant Tom Stevenson made twenty-two withdrawals from the Trusts totaling \$1,150,000. Only ten of the alleged withdrawals are accompanied by any sort of written documentation and only two of those notes were contemporaneous with the money being withdrawn. Tom Stevenson did not pay back any significant sum until the Plaintiffs retained counsel and suit was brought against him.

Plaintiffs further allege that Defendant/Debtor Dan Stevenson committed serious breaches of trust. Plaintiffs' allege Debtor made no fewer than two-hundred and nine (209) withdrawals totaling at least \$3,827,000 from the Trusts over a period of eight years. To date Debtor has not repaid any of this money.

On January 22, 2008, Plaintiffs filed a complaint alleging causes of action for breach of trust, breach of fiduciary duty, negligence/negligence *per se*, fraud, civil conspiracy, negligent misrepresentation, conversion, and amalgamation of interests. Additionally, the Plaintiffs seek to recover from certain entities owned by Debtor and certain entities owned by Tom Stevenson on veil piercing grounds. No federal causes of action have been asserted and the Defendants have set forth no affirmative defense involving a federal question or otherwise invoking federal jurisdiction.

Tom Stevenson asserts cross-claims in the Trust Litigation for indemnification and contribution against Dan Stevenson because his alleged actions as co-trustee have exposed Tom Stevenson to joint and several liability. Tom Stevenson also asserts Counterclaims against Plaintiffs Jacqueline S. Bennett and Kathleen S. Turner for negligence as co-personal representatives of the Estate of Jacquelin K. Stevenson, against Plaintiffs Jacqueline S. Bennett, Kathleen S. Turner, and Genevive S. Felder for breach of trust as co-

trustees of the Trusts, and against Plaintiff Kathleen S. Turner as attorney-in-fact for Jacquelin K. Stevenson.

The Trust Litigation was commenced in the Court of Common Pleas for Charleston County, South Carolina over one year ago and is up for trial. An order was entered June 3, 2009 denying all pretrial motions. On May 20, 2009, the Debtor and his wife filed a petition under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina. Debtor's schedules identify over \$9,000,000 in assets, including real estate which is unencumbered, a residual interest in his mother's estate valued at \$8,000,000, inherited furniture valued at \$100,000, and a cause of action against certain professionals related to the Trusts. Debtor lists numerous consumer debts on his schedules of liabilities.

On June 4, 2009, Tom Stevenson removed the Trust Litigation to this Court pursuant to 28 U.S.C. §§ 1452 and 1334 and Fed. R. Bankr. P. 9027. Plaintiffs objected to the removal and moved to remand the case. On July 27, 2009, the Bankruptcy Court for the Western District of North Carolina entered an order granting Plaintiffs relief from stay to resume the Trust Litigation through pretrial, trial and to judgment. No collection of any judgment against assets of the Debtor is permitted without further order by the Bankruptcy Court for the Western District of North Carolina.

CONCLUSIONS OF LAW

Plaintiffs contend that there are equitable grounds for remanding this case to state court consistent with 28 U.S.C. § 1452(b)¹ and case law. Tom Stevenson argues that this

¹ 28 U.S.C. § 1452 provides:

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by

Court should not remand the action to State Court stating that his rights as a creditor of Dan Stevenson are best protected in Bankruptcy Court.

When considering equitable remand, bankruptcy courts generally “consider judicial economy, comity, respect for state court capabilities, and the effect on administration of the estate.” *Corley v. Salinas (In re Salinas)*, 353 B.R. 124, 128 (Bankr. D.S.C. 2006) (quoting *In re Olympia Holding Corp.*, 215 B.R. 254, 256 (Bankr. M.D. Fla. 1997)).

Resolution of the Trust litigation does not negatively impact the administration of Debtor’s bankruptcy estate in the Western District of North Carolina. The presiding judge in the bankruptcy court for the Western District of North Carolina has determined that the Trust Litigation should go forward. A determination of liability and damages will help that court better analyze and distribute the assets of the bankruptcy estate of Debtor and his spouse. That bankruptcy court’s order makes it clear that no effort to collect against Debtor’s assets will proceed without permission from that court. This factor indicates remand.

The Trust Litigation involves only issues of state law. Where litigation sounds in state domestic relations and probate law the call to remand is especially strong. The state court can easily address Debtor’s liability for alleged breach of trust, fiduciary duties, and related matters while issues regarding collection, the administration of the bankruptcy estate, and dischargeability will be addressed by the bankruptcy court at a later time. There will be little or no duplication of effort by the courts in this regard. This leaves state law matters to the state courts. This factor indicates remand.

¹ continued) appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title by the Supreme Court of the United States under section 1254 of this title.

It was not the Debtor who sought removal of this litigation and the Debtor has not appeared to argue against remand. While the removal statute allows any party to remove litigation, neither the Debtor nor the chapter 7 trustee have appeared to support Tom Stevenson's argument that the administration of the bankruptcy estate will be hampered by remand. Tom Stevenson's contention that his rights as a creditor are better protected in Bankruptcy Court is not sufficient to change the balance of the equitable factors that favor remand.

IT IS THEREFORE ORDERED that the Court remands the Trust Litigation to the Charleston County Court of Common Pleas pursuant to 28 U.S.C. § 1452(b).

AND IT IS SO ORDERED.

Columbia, South Carolina
August 10, 2009