

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GEM COMMERCIAL ASSOCIATES, LP :
v. : NO. 3:03CV0682 (SRU)
THE TJX COMPANIES, INC. :

RULING AND ORDER

The TJX Companies, Inc. (“TJX”) moves to refer this action to the Bankruptcy Court for the District of Connecticut or to extend its time to respond to the Complaint in this action for so long as the automatic stay of section 362(a) of the United States Bankruptcy Code, 11 U.S.C. § 362(a), remains in force in the bankruptcy case of TJX’s indemnitor, Ames Department Stores, Inc. (“Ames”). Gem Associates (“Gem”) moves to remand the case to state court on equitable grounds. For the following reasons, TJX’s motion to refer the case to bankruptcy court is GRANTED and Gem’s motion to remand the case to state court is DENIED.

STATEMENT OF FACTS

In September 1987, Gem entered into a lease with Zayre Corporation, now known as TJX, for rental property located in Newington, Connecticut. Under an Acquisition Agreement dated September 15, 1988, Ames purchased substantially all of the assets and business of the Zayre Stores Division of TJX. Under the terms of the Acquisition Agreement, Ames agreed to assume all liabilities, obligations, claims, costs, and expenses arising from the ownership, possession, use or operation of the assets or the business of the Zayre Stores Division. Ames further agreed to indemnify TJX against, and hold TJX

harmless from, any loss, liability, claim, damage, or expense suffered or incurred by TJX to the extent arising from any of the liabilities and obligations assumed by Ames. The lease for the Newington rental property is part of the assets and falls within the scope of the business purchased by Ames from TJX under the terms of the Acquisition Agreement.

On April 25, 1990, Ames initiated voluntary proceedings under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy Court for the Southern District of New York (“First Ames Bankruptcy Action”). Under the Third Amended and Restated Joint Plan of Reorganization, the indemnification obligations of Ames to TJX survived the reorganization. The Reorganization Plan further provided that the “Reorganized Ames shall have the obligation to indemnify and reimburse TJX” in respect of claims against TJX pursuant to the original Acquisition Agreement. Thus, under the Acquisition Agreement and the Reorganization Plan, Ames had an obligation to indemnify TJX with respect to any liability arising out of, or incurred by reason of, the lease on the Newington rental property.

On August 20, 2001, Ames initiated voluntary proceedings under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy Court for the Southern District of New York (“Ames Bankruptcy Action”). Pursuant to 11 U.S.C. § 362, any litigation against Ames outside of the United States Bankruptcy Court for the Southern District of New York is automatically stayed during the pendency of the bankruptcy proceedings.

In March 2003, Gem initiated this action against TJX in the Superior Court Housing Session of New Britain, New Britain, Connecticut. On April 14, 2003, TJX removed the action to the Federal District Court for the District of Connecticut, pursuant to 28 U.S.C. § 1334(b), which provides for federal court jurisdiction over “civil proceedings ... arising in or related to cases under title 11.” 28

U.S.C. § 1334(b).

DISCUSSION

Federal law provides that “[e]ach 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). Any matters so delegated are to be decided by the bankruptcy court in the first instance, subject to appellate review by the district court for the judicial district in which the bankruptcy court sits. See 28 U.S.C. § 158.

Under section 1334(b) of Title 28, “the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). Under section 1334(b), the scope of the district court’s federal bankruptcy jurisdiction is broad and “covers virtually all litigation in which a debtor or the estate could be expected to have an interest, and vests the court with complete or pervasive jurisdiction over all matters having a relationship with or a significant bearing on the bankruptcy case.” Bond Street Associates, Ltd. v. Ames Dept. Stores, 174 B.R. 28, 32 (S.D.N.Y. 1994) (quoting In re Funding Sys. Asset Management Corp., 72 B.R. 595, 597 (Bankr. W.D. Pa. 1987).

In the Second Circuit, “[t]he test for determining whether litigation has a significant connection with a pending bankruptcy proceeding is whether its outcome might have any ‘conceivable effect’ on the bankrupt estate. If that question is answered affirmatively, the litigation falls within the ‘related to’ jurisdiction of the bankruptcy court.” In re Cuyahoga Equipment Corp., 980 F. 2d 110, 114 (2d Cir. 1992).

Here, Ames, under the Acquisition Agreement and the Reorganization Plan, had an obligation to indemnify TJX with respect to any and all liability that might be imposed on TJX by reason of Gem’s

claim under the lease. In Pacor, Inc. v. Higgins, 743 F. 2d 984 (3d Cir. 1984), overruled on other grounds, Things Remembered, Inc. v. Petrarca, 516 U.S. 124 (1995), the Third Circuit considered the “related to” language of section 1334(b) in a case where the defendant, a non-debtor, intended to seek indemnity from a debtor in bankruptcy who was not a party to the lawsuit. See Pacor, 743 F. 2d at 994-96. The Third Circuit held that, because the debtor in question had not agreed to indemnify the non-debtor defendant, a judgment in the lawsuit would not give rise to automatic liability on the part of the debtor’s estate and thus, the action was not “related to” the debtor’s bankruptcy case. Id.

Reasoning from the Third Circuit’s holding in Pacor, where, as here, the non-party debtor has a contractual obligation that would “automatically result in indemnification liability against [the debtor],” the plaintiff’s claim against the non-debtor defendant is “related to” the debtor’s bankruptcy case, and is thus, within the scope of section 1334(b). Id.; see also In re Ames Department Stores, 190 B.R. 157 (S.D.N.Y. 1995); Bond Street Assocs., Ltd. v. Ames Department Stores, Inc., 174 B.R. 28 (S.D.N.Y. 1994); Dunkirk Ltd. P’ship v. TJX Companies, Inc., 139 B.R. 643 (N.D. Ohio 1992) (all holding that, due to Ames’ contractual obligation to indemnify TJX, suits against TJX over guarantees on Ames leases were “related to” to Ames bankruptcy proceedings, pursuant to 28 U.S.C. § 1334(b)).

Gem does not dispute that jurisdiction under section 1334(b) is appropriate here, but asks that this court exercise its power to remand or abstain on equitable grounds. Under Title 28, section 1452(b) and section 1334(c)(1), the factors to be considered by this court in determining whether to remand or to abstain are identical. Some of the factors the court must consider include: 1) the effect or lack thereof on an efficient administration of the estate if a court recommends abstention or remand; 2) the extent to which state law issues predominate over bankruptcy issues; 3) comity; 4) prejudice to a

party involuntarily removed from state court; 5) the jurisdictional basis, if any, other than 28 U.S.C. Section 1334; and 6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case. In re Drexel Burnham Lambert Group, Inc. 130 B.R. 405 (S.D.N.Y. 1991).

Here, these equitable factors do not weigh in favor of remand or abstention. There is no indication that the referral of this action to bankruptcy court will impede the efficient administration of the estate, nor is there any indication the issues of state law unduly predominate over bankruptcy concerns. The nature of Ames' indemnification obligations to TJX ensure that this case's relation to Ames' bankruptcy proceedings is neither tenuous nor remote.

Even if this court were inclined to remand or abstain – which it is not – an independent basis of federal jurisdiction exists. Although its removal petition was brought under the auspices of section 1334(b), TJX also could have removed the case pursuant to diversity jurisdiction under 28 U.S.C. § 1332. Under section 1332, the district court has original jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – citizens of different states.” 28 U.S.C. § 1332. Here, the amount in controversy is \$227,626.60 – well in excess of the requirement for jurisdiction under section 1332. Compl. at ¶ 7. Gem is a limited liability partnership established under the laws of Connecticut, with its principal place of business in Connecticut. TJX is incorporated under Delaware law and maintains its principal place of business in Massachusetts. There appears to be complete diversity between the parties and the amount in controversy exceeds \$75,000. Accordingly, section 1332 is also an appropriate basis for federal court subject matter jurisdiction.

To the extent that there are two concurrent bases for federal subject matter jurisdiction, remand is appropriate only if it is warranted as to both bases for federal subject matter jurisdiction. Here, Gem

moves for remand under section 1452(b), which governs whether cases removed under section 1334(b) may be remanded to state court. In order to successfully remand the case, Gem must make a factual showing sufficient to justify remand under section 1452(b)¹, as well as demonstrate that remand is appropriate under 28 U.S.C. § 1441, which governs whether cases removed under 28 U.S.C. §§ 1332 may be remanded to state court. Here, there is no jurisdictional defect that would warrant remand under section 1441. Accordingly, Gem's motion for abstention or remand fails.

CONCLUSION

TJX's motion to refer the case to the Bankruptcy Court for the District of Connecticut is GRANTED. Gen's motion to abstain or remand the case to state court is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut this _____ day of June 2003.

Stefan R. Underhill
United States District Judge

¹ As previously stated, Gem's rationale for remand under section 1452(b) or abstention under section 1334(c)(1) is not persuasive. Even if subject matter jurisdiction were not available under section 1332, this court would not be inclined to remand the case to state court based on the equitable concerns outlined by Gem.