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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
AVIS RICHELLE COPELIN,
Debtor.
GREAT WESTERN CAPITAL, LLC,
Plaintiff(s).
vs.
AVIS RICHELLE COPELIN, NICKLAUS
SEWARD, et al, DOES 1 TO 10,
INCLUSIVE,
Defendants.

Case No. 2:13-bk-32580-RK
Chapter 11
Adv. No. 2:14-ap-01175-RK
MEMORANDUM DECISION ON MOTION
TO REMAND REMOVED UNLAWFUL
DETAINER CASE TO SUPERIOR
COURT OF CALIFORNIA PURSUANT TO
28 U.S.C. §§ 1447(c) AND 1452(b)

Pending before the court is the motion of plaintiff Great Western Capital, LLC, to remand this removed unlawful detainer action to the Superior Court of California for the County of Los Angeles. Defendant Avis Copelin, the debtor in the underlying bankruptcy case, filed a notice of removal, removing this action from state court to this court, on March 21, 2014. Plaintiff filed its motion to remand the case pursuant to 28 U.S.C. §§ 1447(c) and 1452(b) on April 7, 2014. The motion came on for hearing before the undersigned United States Bankruptcy Judge on April 29, 2014 and May 6, 2014. Appearances were made as noted on the record at the hearings. After the hearings, the

1 parties filed supplemental briefing. Plaintiff filed a supplemental reply to defendant's
2 response to the motion on May 9, 2014, and defendant filed a reply to this pleading on
3 May 13, 2014.

4 Having carefully considered the moving and opposing papers and the arguments
5 of the parties, the court now issues this decision and grants the motion to remand.

6 Plaintiff argues that the action should be remanded pursuant to 28 U.S.C. §
7 1447(c) on grounds that the court lacks subject matter jurisdiction. The court had
8 previously granted the motion of plaintiff for relief from the automatic stay in this
9 bankruptcy case to allow plaintiff to proceed with this unlawful detainer case. Plaintiff
10 was the purchaser of the subject property at a trustee's sale and brought the action in
11 state court for unlawful detainer to assert its rights to possession as the purchaser.
12 Defendant removed the action from state court after the bankruptcy case was converted
13 to Chapter 11, asserting that she still has rights in the property and that the property is
14 needed for effective reorganization. Plaintiff asserts that defendant has no such rights
15 and that this court lacks subject matter jurisdiction over the unlawful detainer action.
16 Defendant asserts that she has such rights and that the court thus has subject matter
17 jurisdiction. The court notes that whether defendant has continuing rights to the property
18 after the trustee's sale and whether subject matter jurisdiction exists is a factual and legal
19 dispute, but that while this dispute may raise evidentiary issues that may require an
20 evidentiary hearing, the court need not resolve this dispute for purposes of the remand
21 motion because the motion can be resolved without deciding this dispute. Because the
22 court grants the remand motion under 28 U.S.C. § 1452(b), the court need not reach the
23 alternative basis for the motion under 28 U.S.C. § 1447(c).

24 Under 28 U.S.C. § 1452(b), the court can remand a removed bankruptcy matter
25 for any equitable reason. The courts in this judicial district have looked to up to fourteen
26 factors in deciding whether to remand a case to state court pursuant to 28 U.S.C. §
27 1452(b). *In re Enron Corp.*, 296 B.R. 505, 508 (Bankr. C.D. Cal. 2003); *Maya, LLC v.*
28 *Cytodyn of New Mexico, Inc. (In re Cytodyn of New Mexico, Inc.)*, 374 B.R. 733, 738

1 (Bankr. C.D. Cal. 2007). The fourteen factors are: (1) the effect or lack thereof on the
2 efficient administration of the estate if the court recommends remand; (2) the extent to
3 which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled
4 nature of the applicable law; (4) the presence of a related proceeding commenced in
5 state court or other non-bankruptcy court; (5) the jurisdictional basis other than 28 U.S.C.
6 § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main
7 bankruptcy case; (7) the substance rather than form of an asserted “core” proceeding; (8)
8 the feasibility of severing state law claims from core bankruptcy matters to allow
9 judgments to be entered in state court with enforcement left to the bankruptcy court; (9)
10 the burden on the bankruptcy court’s docket; (10) the likelihood that the commencement
11 of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11)
12 the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor
13 parties; (13) comity; and (14) the possibility of prejudice to other parties in the action. *Id.*

14 The first factor (efficient administration) weighs in favor of remand because the
15 unlawful detainer action was already litigated to judgment in the state court, defendant
16 had challenged that judgment and sought rehearing in that court regarding the right to
17 possession, and the rights of the parties to possession can be determined by the state
18 court after remand (e.g., on a renewed motion to vacate default).

19 The second factor (predominance of state law issues) weighs in favor of remand
20 because the unlawful detainer action raises only issues of California state law regarding
21 real property rights; specifically, the right to possession under the unlawful detainer
22 remedy of California law after a nonjudicial foreclosure of a deed of trust. Citing *Logan v.*
23 *U.S. Bank National Association*, 722 F.3d 1163 (9th Cir. 2013), defendant argued that
24 having to litigate an unlawful detainer action in state court while her adversary proceeding
25 for wrongful foreclosure in this court would place her at a disadvantage. *Logan* is not
26 applicable to this case because the issue was whether there was a private federal cause
27 of action under the Protecting Tenants at Foreclosure Act (PTFA), which the Ninth
28 Circuit held there was not, but that the tenant could raise PTFA as an affirmative defense

1 in the state court unlawful detainer proceedings. The court is of the view that arguing that
2 litigating the unlawful detainer case is besides the point here because this does not affect
3 the characterization of the case as presenting predominately state law issues, but more
4 importantly, defendant is really seeking some stay of the unlawful detainer action,
5 whether in this court or in the state court, and whether she is entitled to such relief
6 depends on whether she can establish entitlement to preliminary injunctive relief in the
7 adversary proceeding for wrongful foreclosure in this court, which she has not yet shown.

8 The third factor (difficult/unsettled nature of the applicable law) weighs against
9 remand because the unlawful detainer action does not involve difficult or unsettled areas
10 of law.

11 The fourth factor (presence of a related proceeding commenced in state court)
12 weighs in favor of remand because the unlawful detainer was commenced and already
13 litigated to judgment in the state court. The court agrees with the court in *Cytodyn* that
14 this factor is met under these circumstances, though the Ninth Circuit in *Security Farms*
15 *v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers*, 124
16 F.3d 999, 1010 (9th Cir. 1997) had held that the doctrine of abstention does not apply to
17 removed proceedings. The prior pendency of the unlawful detainer action in state court
18 indicates that this factor is met. *Id.*

19 The fifth factor (other jurisdictional basis) weighs in favor of remand because the
20 basis of this court's jurisdiction over the unlawful detainer action is "related to" jurisdiction
21 of 28 U.S.C. § 1334 rather than "arising in" or "arising under" jurisdiction of 28 U.S.C. §
22 1334. Plaintiff's unlawful detainer action is a state law claim not "arising in" or "arising
23 under" this court's bankruptcy jurisdiction, though such claim may be "related to" the
24 bankruptcy case in some way if defendant has rights in the subject property, which may
25 make such property part of the bankruptcy estate under 11 U.S.C. § 541.

26 The sixth factor (relatedness to the main bankruptcy case) weighs in favor of
27 remand because the unlawful detainer action asserts nonbankruptcy state law claims,
28 which are not "core" proceedings within the meaning of 28 U.S.C. § 157(b)(1) and (2).

1 The seventh factor (the substance of an asserted “core” proceeding) weighs in
2 favor of remand because as just stated, the unlawful detainer action asserts
3 nonbankruptcy state law claims, which are not “core” proceedings within the meaning of
4 28 U.S.C. § 157(b)(1) and (2).

5 The eighth factor (feasibility of severing state law claims) weighs in favor of
6 remand because it appears that it would be feasible to sever any state law claims from
7 any core bankruptcy matters to allow judgments to be entered in state court with
8 enforcement left to the bankruptcy court.

9 The ninth factor (the burden on the bankruptcy court’s docket) weighs in favor of
10 remand because the task before the court, hearing the unlawful detainer case, is whether
11 the judgment of the state court for possession applies to defendant and the state court is
12 in a better position to interpret its judgment as to whether it applies to defendant than this
13 court which did not render the previous judgment.

14 The tenth factor (forum shopping) weighs in favor of remand because the court
15 had already granted relief from the automatic stay to allow the plaintiff to litigate the
16 unlawful detainer action in state court and after plaintiff prevailed in that action in state
17 court and obtained a judgment for possession, defendant had this action removed to this
18 court.

19 The eleventh factor (right to jury trial) is a neutral factor since neither party
20 requested a jury trial in this court or in the state court.

21 The twelfth factor (presence of nondebtor parties) weighs in favor of remand
22 because there were other parties to the unlawful detainer action other than plaintiff and
23 defendant.

24 The thirteenth factor (comity) weighs in favor of remand because as stated
25 previously, the task before the court, hearing the unlawful detainer case, is whether the
26 judgment of the state court for possession applies to defendant and the state court is in a
27 better position to interpret its judgment as to whether it applies to defendant than this
28 court which did not render the previous judgment. Defendant argues that the judgment

1 against her was a default judgment and entitled to set aside the judgment for lack of
2 service. Defective service is an issue defendant can raise in state court on remand in a
3 renewed motion to vacate default.

4 The fourteenth factor (possibility of prejudice) is a neutral factor in the court's view.
5 Plaintiff argues that it would be financially prejudiced due to further delay if this court
6 does not remand this action to the state court. However, this factor relates to prejudice
7 to other parties rather than the parties to this litigation and is not a factor here.

8 The court determines that most of the relevant factors for equitable remand under
9 28 U.S.C. § 1452(b) favor remand, and the first, second, fourth, eleventh and thirteenth
10 factors are the ones I give most emphasis here and these factors favor remand.

11 For the foregoing reasons, the court will grant the motion for remand, and this
12 action is to be remanded to the Superior Court of California for the County of Los
13 Angeles. A separate order for remand is being filed and entered concurrently.

14 IT IS SO ORDERED.

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24 Date: June 20, 2014



Robert Kwan
United States Bankruptcy Judge