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FILED & ENTERED

MAR 05 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY penning DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CHANGES MADE BY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
NNN 1818 MARKET STREET 16, LLC, a
Delaware limited liability company,
Debtor.

Lead Case No. 2:15-bk-10111-TD

Chapter 11

Jointly Administered With:

Case No. 2:15-bk-10317-TD
Case No. 2:15-bk-10121-TD

In re
NNN 1818 MARKET STREET 21, LLC, a
Delaware limited liability company,
Debtor.

Adversary Proc. No. 2:15-ap-01011-TD

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
ORDER REMANDING PROCEEDING
(INCLUDING ALL CLAIMS AND
CAUSES OF ACTION THEREIN) TO
STATE COURT**

In re
NNN 1818 MARKET STREET 37, LLC, a
Delaware limited liability company,
Debtor.

DAYMARK PROPERTIES REALTY, INC.
f/k/a NNN PROPERTIES, INC.,

Date: February 25, 2015
Time: 2:00 p.m.

Plaintiff,
v.

Courtroom 1345
Honorable Thomas B. Donovan

NNN 1818 MARKET STREET 16, LLC, a
Delaware limited liability company; NNN
1818 MARKET STREET 21, LLC, a
Delaware limited liability company; NNN
1818 MARKET STREET 37, LLC, a
Delaware limited liability company; GABOR
CSUPO, an individual; DANIEL PATRICK
O'KEEFE, individually and as trustee of the
O'KEEFE FAMILY TRUST dated February
27, 1997; JOHN RAY, an individual,

Defendants.

1 On January 16, 2015, this Court entered its Order to Show Cause re: Remand (Removed
2 Proceeding) and Notice of Status Conference ("OSC"). The OSC invited parties to file
3 memoranda addressing whether this removed proceeding (the "Removed Action") together with
4 two other removed proceedings (the "Other Central District Removed Actions," defined below)
5 should be remanded. On February 4, 2015, Daymark Properties, Realty, Inc. ("Daymark") filed a
6 memorandum in support of remand [Docket No. 8], and on February 11, 2015, the debtors filed a
7 memorandum in opposition [Docket No. 9]. A status conference on the OSC was held on
8 February 25, 2015, at 2:00 P.M., at which time the Court considered whether to remand the
9 Removed Action under 28 U.S.C. §1452(b).

10 Also on February 25, 2015, at the same time, this Court heard Daymark's Motion to
11 Dismiss the Debtors' chapter 11 cases under section 1112(b) of the Bankruptcy Code.

12 In reaching its decision to remand, the Court has considered the record in the jointly
13 administered chapter 11 cases of NNN 16, NNN 21, and NNN 37, all as defined below, including
14 the motion to dismiss and all papers and argument offered in support of and opposition to
15 dismissal, and the papers and argument offered in support of and opposition to remand of the
16 Removed Action, as well as the papers and argument submitted in connection with the order to
17 show cause entered in the two other proceedings that one or more of the debtors removed to this
18 Court. Based on that record, for the reasons set forth on the record at the hearing and as set forth
19 below, the Court finds and concludes that there are substantial and compelling equitable grounds
20 for remand of the Removed Action under 28 U.S.C. § 1452(b).

21 In accordance with Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a)(1), the Court makes
22 its findings of fact and states its conclusions of law as follows.

23 **I. Findings of Fact**

24 The following facts are substantially undisputed.

25 1. On December 30, 2014 Daymark Properties Realty, Inc. filed a complaint in the
26 Superior Court of the State of California County of Orange, commencing the action styled
27 *Daymark Properties Realty, Inc. v. NNN 1818 Market Street 16, LLC, et al.*, Orange County
28 Superior Court Case No. 30-2014-00763758-CU-PA-CGC (the "State-Court Action"). The

1 complaint names as defendants Daniel P. O'Keefe and Doris C. O'Keefe, individually and as
2 trustees of the O'Keefe Family Trust dated February 27, 1997, John Ray, Gabor Csupo, NNN 1818
3 Market Street 16, LLC (the debtor in Case No. 15-bk-10111) ("NNN 16"), NNN 1818 Market
4 Street 21, LLC (the debtor in Case No. 15-bk-10317) ("NNN 21"), and NNN 1818 Market
5 Street 37, LLC (the debtor in Case No. 15-bk-10121) ("NNN 37", and together with NNN 16 and
6 NNN 21, the "Jointly Administered Debtors").

7 2. In the State-Court Action, Daymark does not assert any claims or causes of action
8 that expressly refer to federal law. All alleged claims or cause of action arise under state law. The
9 State-Court Action includes claims or causes of action asserted by Daymark against the Jointly
10 Administered Debtors in these cases, and against O'Keefe, Ray, and Csupo, none of whom is a
11 debtor in a case under the Bankruptcy Code.

12 3. The State Court Action is one to confirm an Arbitration Award made by American
13 Arbitration Association ("AAA") Commercial Arbitrator Howard Harrison in AAA case No. 01
14 14 0000 9940. On December 17, 2014, Arbitrator Harrison issued his "Final Phase 1 Award"
15 containing his decision pertaining to Daymark's exercise of an Option at issue between Daymark
16 and the Debtors, and addressing other matters raised in connection with Daymark's enforcement
17 of an Option Agreement between the parties. As of the Jointly Administered Debtors'
18 commencement of their respective chapter 11 cases, no response by any of the defendants to the
19 State Court Action had been filed. Phase 2 of the Arbitration was set for hearing on January 5,
20 2015.

21 4. NNN 16 filed its chapter 11 petition on January 5, 2015; NNN 21 and NNN
22 37 filed their chapter 11 petitions on January 6, 2015.

23 5. Shortly after the commencement of the chapter 11 cases, one or more of the
24 Debtors filed notices of removal in the bankruptcy court of various pending state-court litigation
25 and filed the corresponding papers in the relevant state courts to effect the removal of the litigation
26 and all claims and causes of action therein:

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1 a. *Daymark Properties Realty, Inc. v. NNN 1818 Market Street 16, LLC, et al.*,
2 Orange County Superior Court Case No. 30-2014-00763758-CU-PA-CGC; filed as Adv. Pro.
3 No. 2:15-ap-01011-TD;

4 b. *NNN 1818 Market Street 1, LLC, et. al. v. Daniel P. O'Keefe and Doris C.*
5 *O'Keefe, individually and as Trustees of the O'Keefe Family Trust dated February 27, 1997, et*
6 *al.*, Los Angeles County Superior Court Case No. BC559541; filed as Adv. Pro. No. 2:15-ap-
7 01012-TD;

8 c. *NNN 1818 Market Street 16, LLC, et al. v. Daymark Properties Realty, Inc.,*
9 *et al.*, Orange County Superior Court Case No. 30-2014-00722965-CU-BC-CJC; filed as Adv.
10 Pro. No. 2:15-ap-01013-TD; and,

11 d. *NNN 1818 Market Street 13, LLC ,et al., v. Daymark Realty Advisors, Inc.,*
12 *et al.*, San Diego Superior Court Case No. 37-2014-00040421-CU-FR-CTL, filed in the United
13 States Bankruptcy Court for the Southern District of California as Adv. Pro. No. 15-90017-PB.

14 As noted previously, item a is the "Removed Action." Items b and c are the "Other
15 Central District Removed Actions."

16 6. In the Notice of Removal of the Removed Action filed in this Court, NNN 16
17 asserted that all the claims and causes of action therein are core. And to the extent that they are not
18 core, NNN 16 (with the consent of the other two debtors) expressly consented to the entry of final
19 orders and judgments by the bankruptcy court.

20 7. Daymark denies that the Removed Action is core. Among other things, Daymark
21 asserted that the Removed Action includes claims or causes of action **by** non-debtors (Daymark)
22 **against** non-debtors (O'Keefe, Ray, and Csupo). Daymark did not consent to the entry of final
23 orders or judgment by this Court.

24 8. To the extent that any of the forgoing findings of fact is more appropriately
25 construed as a conclusion of law, it shall be deemed and construed as such.

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1 **II. Conclusions of Law**

2 1. The district court has jurisdiction over these chapter 11 cases and proceedings
3 under 28 U.S.C. § 1334, and this Court has authority to hear these cases and proceedings under 28
4 U.S.C. § 157 and General Order 13-05 of the United States District Court for the Central District
5 of California filed July 1, 2013. Without regard to whether the Removed Action or claims or
6 causes of action therein are "core" or whether this Court may enter final orders or judgments with
7 respect to any of those matters, the question whether to remand the Removed Action under 28
8 U.S.C. § 1452(b) is "core," and this Court may enter a final order or judgment with respect to that
9 question.¹

10 2. Under Ninth Circuit law, removal statutes must be strictly construed. *California v.*
11 *Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004); *Salveson v. Western States Bankcard Ass'n*, 731
12 F.2d 1423, 1426 (9th Cir. 1984). There is a "strong presumption" against removal jurisdiction,
13 and the removing party (here, the debtors) always has the burden of establishing that removal is
14 proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

15 3. In evaluating whether there are equitable grounds for remand under 28 U.S.C.
16 § 1452(b), this Court does not need to determine whether any particular claim or cause of action is
17 or is not core. Some of the claims or causes of action might be or become core proceedings. Others
18 of the claims or causes of action are indubitably noncore, involving as they do claims or causes of
19 action arising under state law asserted by non-debtors (Daymark) against other non-debtors
20 (O'Keefe, Ray, and Csupo).

21 4. In their memorandum in opposition to remand, the Jointly Administered Debtors
22 assert that the rejection of the so-called "Option Agreement" in accordance with their recently
23 filed motion to reject will somehow make remand unnecessary and that this Court will be best
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25 ¹ In *Stern v. Marshall*, 546 U.S. ___, 131 S.Ct. 2594 (2011), the Supreme Court held that there is
26 a small class of proceedings that may be "core" under the statute, 28 U.S.C. § 157, but with
27 respect to which a bankruptcy judge nevertheless may not, consistent with the Constitution,
28 enter a final order or judgment. That fine distinction is not relevant here, and in this document
the terms "core proceedings" and "proceedings as to which a bankruptcy judge may enter final
orders or judgments" are used interchangeably.

1 situated to resolve claims with respect to the Option Agreement. The Jointly Administered
2 Debtors also assert that the Removed Action should be stayed, but of course, the action against the
3 debtors, at least, is subject to the automatic stay irrespective of the court in which the action is
4 pending. The automatic-stay question does not suggest anything one way or the other about
5 remand and does not suggest anything about the court in which the claims against O'Keefe, Ray,
6 and Csupo, nondebtors not protected by the automatic stay, should proceed.

7 5. The cases list various factors that the court should consider in deciding whether to
8 remand an action. Under *Hopkins v. Plant Insulation Co.*, 349 B.R. 805, 813 (N.D. Cal. 2006)
9 (citing *Williams v. Shell Oil Co.*, 169 B.R. 684, 692–93 (S.D. Cal. 1994)), this Court should
10 consider the following seven factors in determining whether equity favors remand:

- 11 (1) the effect of the action on the administration of the bankruptcy estate;
- 12 (2) the extent to which issues of state law predominate;
- 13 (3) the difficulty of applicable state law;
- 14 (4) comity;
- 15 (5) the relatedness of the action to the bankruptcy case;
- 16 (6) any jury trial right; and
- 17 (7) prejudice to plaintiffs from removal.

18 6. With respect to factor 2, state-law issues predominate entirely: there are no
19 questions of substantive federal law. Other than under 28 U.S.C. § 1334, there is no basis for
20 federal jurisdiction over the Removed Action. There is no federal-question jurisdiction under
21 28 U.S.C. § 1331 and no diversity jurisdiction under 28 U.S.C. § 1332. The Jointly Administered
22 Debtors have not suggested any other basis for federal jurisdiction. Although this Court is of
23 course competent to consider state-law issues, viz. factor 3, the Removed Action seeks
24 confirmation of an arbitration award already rendered as between Daymark and the Jointly
25 Administered Debtors. In addition, factor 4, comity, or deference to other courts (such as the
26 Superior Court of California or the AAA), strongly suggests that remand is appropriate. The
27 Removed Action is evidence of blatant forum shopping, and provides compelling equitable
28 grounds to remand the Removed Action.

1 7. Factors 1 and 5 consider the connections between the Removed Action and the
2 chapter 11 cases. To be sure, on a trivial or tautological basis, the disposition of the Removed
3 Action "affects" the administration of the chapter 11 cases, as does almost every action plausibly
4 "related to" the cases. But the Removed Action does not affect the day-to-day administration of
5 the cases. The mere fact that the disposition of the Removed Action might affect in some way, for
6 example, the ultimate prospects of reorganization is not, without more, a reason to retain these
7 cases. This is especially so when consideration is taken of those aspects of the Removed Action
8 that are, as noted elsewhere, by nondebtors against nondebtors.

9 8. Similarly, from a merely mechanistic perspective, there is some logical
10 "relatedness" between the Removed Action and the chapter 11 cases generally.

11 9. Ultimately, however, it is factor 7, prejudice to the non-debtor plaintiff (Daymark)
12 and the Court's conclusion that the chapter 11 cases constitutes an impermissible use of the
13 Bankruptcy Code and removal of the Removed Action is evidence of blatant forum shopping,
14 prejudicial to Daymark that provides the compelling equitable grounds to remand the Removed
15 Action.

16 10. In sum, there is no reason, compelling or otherwise, that this Court, or the district
17 court, should be burdened by these matters as to which the state court has full jurisdiction and with
18 respect to which litigation is already pending. The equitable grounds for remand under 28 U.S.C.
19 § 1452(b) are compelling.

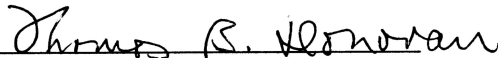
20 11. In a separate set of findings of fact and conclusions of law filed on the docket for
21 the jointly administered chapter 11 cases, this Court explains its decision to dismiss the cases
22 under section 1112(b) for cause, specifically, for not having been filed in good faith. That lack of
23 good faith provides additional equitable grounds for remand under 28 U.S.C. § 1452(b).
24 Likewise, the concerns reflected in this Court's decisions to remand the Other Central District
25 Removed Actions underscore that remand is appropriate for this Removed Action. Nevertheless,
26 without regard to the dismissal or the Court's view regarding the Jointly Administered Debtors'
27 lack of good faith in commencing the chapter 11 cases or the removal or remand of the Other
28 Central District Removed Actions, there are ample sufficient and independent equitable grounds to

1 remand this Removed Action and all claims and causes of action therein, looking at the facts and
2 circumstances of this Removed Action in isolation.

3 13. If any of the conclusions of law above is more appropriately considered a finding
4 of fact, it shall be considered and treated as a finding of fact.

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23 Date: March 5, 2015


Thomas B. Donovan
United States Bankruptcy Judge