

FILED & ENTERED

JAN 31 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

C & M RUSSELL, LLC.

Debtor.

Case No. 2:11-bk-53845-RK

Chapter 7

Adv. No. 2:16-ap-01577-RK

MATTIE BELINDA EVANS, an  
individual, Chief Executive Manager  
as Real Party in Interest for C & M  
RUSSELL, LLC, and Trustee of Mattie B.  
Evans Family Trust,

Plaintiff,

vs.

ALAN G. TIPPIE, an individual, attorney  
for SULMEYERKUPETZ, a professional  
corporation, and DOES 1 through 100,  
inclusive,

Defendants.

MEMORANDUM DECISION AND  
ORDER ON PLAINTIFF'S MOTION TO  
REMAND

This adversary proceeding came on for hearing before the undersigned United  
States Bankruptcy Judge on January 31, 2017 on the motion of Plaintiff Mattie Belinda

1 Evans for remand of the state court action for attorney malpractice and other claims  
2 against Defendants Alan G. Tippie, and SulmeyerKupetz, APC, removed to this court by  
3 Defendants. Plaintiff who is self-represented appeared for herself. David J. Richardson,  
4 of the law firm of SulmeyerKupetz, APC, appeared for Defendants. At the conclusion of  
5 the hearing on January 31, 2017, the court set a further hearing on the matter for  
6 February 21, 2017 at 3:00 p.m.

7 On December 28, 2016, Defendants commenced this adversary proceeding by  
8 filing their notice of removal of the state court action brought by Plaintiff against  
9 Defendants, *Mattie Belinda Evans v. Alan G. Tippie, et al.*, Case No. BC 642079  
10 (Superior Court of California, County of Los Angeles) pursuant to 28 U.S.C. § 1452(a).  
11 Electronic Case Filing No. ("ECF") 1. Attached as Exhibit 1 to the Notice of Removal  
12 was a copy of the state court complaint containing claims for legal malpractice, intentional  
13 and negligent misrepresentation, breach of the implied covenant of good faith and fair  
14 dealing[ ], breach of fiduciary duty, civil conspiracy, racism, fraud and fraudulent  
15 inducement, and intentional and negligent infliction of emotional distress. *Id.* It appears  
16 that most of these claims on their face are common law claims arising under state law.  
17 Plaintiff asserts her claims in her individual capacity as well as the chief executive  
18 manager of C&M Russell, LLC, and Trustee of the Mattie B. Evans Family Trust. The  
19 caption of Plaintiff's state court complaint noted that a related case was the bankruptcy  
20 case underlying this adversary proceeding, *In re C&M Russell, LLC*, No. 2:11-bk-53845-  
21 RK. *Id.*

22 On January 9, 2017, Plaintiff filed and served her motion to remand the removed  
23 action to state court. ECF 5. In support of her motion to remand, Plaintiff argues that the  
24 case should be remanded pursuant to 28 U.S.C. § 1447(c) because federal jurisdiction is  
25 lacking because her claims, particularly the attorney malpractice claim, are based on  
26 state law and Defendant Tippie consented to state court jurisdiction over this case due to  
27 his membership in the State Bar of California and by express agreement in the "Service  
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1 and Employment Agreement” executed by SulmeyerKupetz, APC, and C&M Russell,  
2 LLC, dated October 5, 2011. ECF 5 at 9.

3 Defendants removed the state court action to this court pursuant to 28 U.S.C. §  
4 1452(a), which provides: “A party may remove any claim or cause of action in a civil  
5 action other than a proceeding before the United States Tax Court or a civil action by a  
6 governmental unit to enforce such governmental unit’s police or regulatory power, to the  
7 district court for the district where such civil action is pending, if such district court has  
8 jurisdiction over such claim or cause of action under section 1334 of this title.” *See also*,  
9 *Federal Home Loan Bank of Chicago v. Banc of America Securities LLC*, 448 B.R. 517,  
10 523-525 (C.D. Cal. 2011); *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003).  
11 “Claims related to bankruptcy cases may be removed to federal court under 28 U.S.C. §  
12 1452.” *Federal Home Loan Bank of Chicago v. Banc of America Securities LLC*, 448  
13 B.R. at 523. However, there is a “[s]trong presumption against removal [which] means  
14 the removing party bears the burden of establishing federal jurisdiction and that removal  
15 was proper.” *Id.*, citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992).

16 This bankruptcy court has jurisdiction in general over claims or causes of action  
17 under 11 U.S.C. § 1334 pursuant to a referral from the district court under 28 U.S.C. §  
18 157. “Bankruptcy courts have jurisdiction over all civil proceedings arising under title 11  
19 [of the United States Code, the Bankruptcy Code], or arising in or related to cases under  
20 title 11.” *In re Enron Corp.*, 296 B.R. at 508. “With respect to 28 U.S.C. § 1334(b), the  
21 statutory grant of ‘related to’ jurisdiction is quite broad.” *Federal Home Loan Bank of*  
22 *Chicago v. Banc of America Securities LLC*, 448 B.R. at 523. “Courts in the Ninth Circuit  
23 generally apply the ‘conceivable effect’ test to determine whether an action is related to  
24 bankruptcy.” *Id.*, citing *In re Fietz*, 852 F.2d 455, 457 (9<sup>th</sup> Cir. 1988). The Ninth Circuit in  
25 *In re Fietz* adopted the articulation of the “conceivable effect” test by the Third Circuit in  
26 *Pacor, Inc. v. Higgins*, 743 F.2d 784 (3<sup>rd</sup> Cir. 1984):  
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1 The usual articulation of the test for determining whether a civil proceeding  
2 is related to bankruptcy is whether *the outcome of the proceeding could*  
3 *conceivably have any effect on the estate being administered in*  
4 *bankruptcy*. [citations omitted]. Thus, the proceeding need not be  
5 necessarily be against the debtor or against the debtor or against the  
6 debtor's property. An action is related to bankruptcy if the outcome could  
7 alter the debtor's rights, liabilities, options, or freedom of action (either  
8 positively or negatively) and which in any way impacts upon the handling  
9 and administration of the bankrupt estate.

10 *In re Fietz*, 852 F.2d at 457, *quoting Pacor, Inc. v. Higgins*, 743 F.2d at 994 (emphasis in  
11 original in *Pacor* opinion), *quoted in Federal Home Loan Bank of Chicago v. Banc of*  
12 *America Securities LLC*, 448 B.R. at 523. Given this broad definition of "related to"  
13 jurisdiction, the court determines that bankruptcy court jurisdiction exists because the  
14 claims in Plaintiff's state court complaint arose out of Defendants' acts in their  
15 representation of the debtor-in-possession, C&M Russell, LLC, in the underlying Chapter  
16 11 bankruptcy case before this court, for which the court had supervisory oversight over  
17 Defendants' employment and compensation during the pendency of the bankruptcy case,  
18 and thus, the complained of acts of Defendants alleged in Plaintiff's state court complaint  
19 arose from the handling and administration of the bankrupt estate. Thus, the court  
20 concludes that it has jurisdiction over the removed state court action under "related to"  
21 jurisdiction of 28 U.S.C. § 1334.

22 The court does not reach Defendants' arguments based on "arising in" or "arising  
23 under" jurisdiction because its determination of "related to" jurisdiction is sufficient to  
24 establish subject matter jurisdiction and thus, it is unnecessary to address those  
25 arguments. ECF 12 at 4-6.

26 As to Plaintiff's argument about the applicability of *Gunn v. Minton*, 133 S.Ct. 1059  
27 (2013), arguing that the Supreme Court brought "The End of Legal Malpractice Actions in  
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1 Federal Court”, holding that “there was no federal subject-matter jurisdiction over a legal-  
2 malpractice dispute.” ECF 5 at 5. That is not what the Supreme Court held. Rather, the  
3 Supreme Court held that the Texas Supreme Court erred in holding that the federal  
4 courts had exclusive jurisdiction over a legal malpractice claim arising out of a federal  
5 patent case, and further held that the claim was not subject to “exclusive” jurisdiction of  
6 the federal courts, not that the federal courts had no jurisdiction. 133 S.Ct. at 1065-1069.

7 Having determined that the court has jurisdiction over the matter, the court must  
8 consider in ruling upon Plaintiff’s motion to remand whether it should remand the case on  
9 equitable grounds pursuant to 28 U.S.C. § 1452(b), which provides that a court to which  
10 a claim is removed pursuant to 11 U.S.C. § 1334 “may remand such claim . . . on any  
11 equitable ground.” *Federal Home Loan Bank of Chicago v. Banc of America Securities*  
12 *LLC*, 448 B.R. at 525. “Because the ‘any equitable ground’ standard is not statutorily  
13 defined, case law has imported factors governing discretionary abstention to assist with  
14 the remand decision.” *Id.*, citing *In re Roman Catholic Bishop of San Diego*, 374 B.R.  
15 756, 761 (Bankr. S.D. Cal. 2007). As an aside, the court does not consider mandatory or  
16 permissive abstention because the state court action has been removed to this court and  
17 there is no proceeding to abstain in favor of based on the Ninth Circuit’s decision in  
18 *Security Farms v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen &*  
19 *Helpers*, 124 F.3d 999 (9<sup>th</sup> Cir. 1997). The appropriate remedy to consider is equitable  
20 remand under 28 U.S.C. §1452(b), which employs substantially similar methods of  
21 analysis.

22 “Ninth Circuit courts consider up to fourteen factors in determining whether to  
23 remand a ‘related to’ case on equitable grounds”, which factors include: “(1) the effect or  
24 lack thereof on the efficient administration of the estate if the Court recommends [remand  
25 or] abstention; (2) extent to which state law issues predominate over bankruptcy issues;  
26 (3) difficult or unsettled nature of applicable law; (4) presence of related proceeding  
27 commenced in state court or other non-bankruptcy proceeding; (5) jurisdictional basis, if  
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1 any, other than § 1334; (6) degree of relatedness or remoteness of proceeding to main  
2 bankruptcy case; (7) the substance rather than the form of an asserted core proceeding;  
3 (8) the feasibility of severing state law claims from core bankruptcy matters to allow  
4 judgments to be entered in state court with enforcement left to the bankruptcy court; (9)  
5 the burden on the bankruptcy court's docket; (10) the likelihood that the commencement  
6 of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11)  
7 the existence of a right to a jury trial; (12) the presence in the proceeding of non-debtor  
8 parties; (13) comity; and (14) the possibility of possibility of prejudice to other parties in  
9 the action." *Federal Home Loan Bank of Chicago v. Banc of America Securities LLC*,  
10 448 B.R. at 525, *citing and quoting, In re Enron Corp.*, 296 B.R. at 508 and n. 2.  
11 "Because [28 U.S.C. §] 1452(b) affords 'an unusually broad grant of authority,' any one of  
12 the relevant factors may provide a sufficient basis for equitable remand." *Federal Home*  
13 *Loan Bank of Chicago v. Banc of America Securities LLC*, 448 B.R. at 525, *citing, In re*  
14 *Roman Catholic Bishop of San Diego*, 374 B.R. at 761. Nevertheless, "[w]hile these  
15 factors assist a court's remand decision, they do not control it." *In re Roman Catholic*  
16 *Bishop of San Diego*, 374 B.R. at 762.

17 In considering these factors applicable to the circumstances of this case, the court  
18 determines as follows:

19 Factor (1), the effect or lack thereof on the efficient administration of the estate if  
20 the Court recommends [remand or] abstention, favors removal because the complained  
21 of acts of Defendants arose out of the administration of the bankruptcy estate through  
22 their representation of the bankruptcy estate in the bankruptcy case.

23 Factor (2), extent to which state law issues predominate over bankruptcy issues, is  
24 neutral and does not favor either way because while Plaintiff's claims are state law  
25 claims, the claims relate to conduct of Defendants who were bankruptcy professionals  
26 involved in the administration of the bankruptcy estate in this bankruptcy case under the  
27 supervision of the court.  
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1 Factor (3), difficult or unsettled nature of applicable law, is neutral and does not  
2 favor either way since the applicable law does not appear to be difficult or unsettled.

3 Factor (4), presence of related proceeding commenced in state court or other non-  
4 bankruptcy proceeding, exists and favors remand.

5 Factor (5), jurisdictional basis, if any, other than § 1334, exists and favors remand  
6 since the basis of jurisdiction is only “related to” jurisdiction.

7 Factor (6), degree of relatedness or remoteness of proceeding to main bankruptcy  
8 case, exists and favors removal since the complained of acts of Defendants in Plaintiff’s  
9 claims are directly related to the administration of the bankruptcy estate in the main  
10 bankruptcy case.

11 Factor (7), the substance rather than the form of an asserted core proceeding,  
12 exists and favors removal, because the complained of acts of Defendants in Plaintiff’s  
13 claims relate to their representation of the bankruptcy estate in the bankruptcy case, a  
14 matter concerning the administration of the estate, within the definition of a core  
15 proceeding under 28 U.S.C. § 157(b)(2)(A).

16 Factor (8), the feasibility of severing state law claims from core bankruptcy matters  
17 to allow judgments to be entered in state court with enforcement left to the bankruptcy  
18 court, does not exist and favors removal since it does not appear to be feasible to sever  
19 the claims involving administration of the bankruptcy estate.

20 Factor (9), the burden on the bankruptcy court’s docket, favors removal since the  
21 burden is somewhat minimal since Plaintiff’s claims relate to the professional services of  
22 Defendants performed in the administration of the bankruptcy estate in this bankruptcy  
23 case, which was also the subject of litigation in the fee application process in this  
24 bankruptcy case.

25 Factor (10), the likelihood that the commencement of the proceeding in bankruptcy  
26 court involves forum shopping by one of the parties, is neutral and does not favor either  
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1 way in that the proceeding was not commenced in the bankruptcy court, but in the state  
2 court.

3 Factor (11), the existence of a right to a jury trial, exists and favors remand since  
4 Plaintiff appears to have a right to a jury trial on her claims, though a jury trial could be  
5 conducted here with consent or by the district court without consent.

6 Factor (12), the presence in the proceeding of non-debtor parties, is neutral and  
7 does not favor either way.

8 Factor (13), comity, is neutral and does not favor either way in that while Plaintiff's  
9 claims are based on state law, the claims relate to conduct of Defendants during the  
10 administration of the bankruptcy estate in this bankruptcy case under the court's  
11 supervision.

12 Factor (14), the possibility of prejudice to other parties in the action, is neutral and  
13 does not favor either way.

14 The court's review of the so-called "equitable remand" factors indicates that the  
15 factors are mixed, and while the court is guided by the factors, they are not controlling.

16 The court bases its equitable remand determination here based on the factors that  
17 the complained of acts of Defendants alleged in Plaintiff's claims arose out of  
18 Defendant's professional services performed during the administration of the bankruptcy  
19 estate during the underlying bankruptcy case for which the court is familiar, and thus, the  
20 claims are directly related to the administration of the estate in the bankruptcy case.  
21 Thus, the burden would be greater on the state court to hear these claims rather than this  
22 court, which supervised the bankruptcy case in which the disputed professional services  
23 were performed. Moreover, the court as part of the administration of the bankruptcy  
24 estate in this bankruptcy case reviewed the fee applications of Defendants for the  
25 disputed professional services. The court would have had jurisdiction to hear claims that  
26 the bankruptcy estate would have had for legal malpractice of its professionals, including  
27 Defendants, during the pendency of the bankruptcy case. While comity might favor a  
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1 remand to the state court because state law is involved, the court determines that the  
2 effect of comity is offset by this court's interest in the supervision of matters of  
3 administration of the bankruptcy estate in cases before it, such as this one involving  
4 lawyer services rendered in a case before this court. As to Plaintiff's right to jury trial,  
5 such right can be observed through a jury trial before this court with consent or by the  
6 district court without consent through a referral by this court. As to Plaintiff's contractual  
7 argument that Defendants consented to state court jurisdiction in their retention  
8 agreement, the court notes that the agreement stated: "For any issue arising under our  
9 retention as your counsel in the chapter 11 case, the Bankruptcy Court will have  
10 jurisdiction." ECF 5 at 54. Plaintiff's claims raise issues arising out of Defendant's  
11 retention as counsel for C&M Russell, LLC, in this Chapter 11 case, and thus fall  
12 squarely within this provision for this court's jurisdiction.

13 Accordingly, for the foregoing reasons, the court denies Plaintiff's motion to  
14 remand, and the further hearing on the motion to remand set for February 21, 2017 at  
15 3:00 p.m. is vacated.

16 IT IS SO ORDERED.

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23 Date: January 31, 2017



24 Robert Kwan  
25 United States Bankruptcy Judge  
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