

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

EDWARD LUCERO,

Plaintiff,

v.

Adversary No. 20-1013-j

RICHARD L. LUCERO and
BOY SCOUTS OF AMERICA,

Defendants.

**ORDER REMANDING CLAIMS
AGAINST RICHARD LUCERO ONLY TO STATE COURT**

Plaintiff Edward Lucero requests this Court to remand the claims against Defendant Richard L. Lucero to state court.¹ In his response, Defendant Richard Lucero does not object to remand. Richard Lucero simply requests the Court to delay ruling on the Motion for Remand until after a Consent Order issued in the Boy Scouts of America chapter 11 case expires on May 18, 2020 [now June 8, 2020].² Defendant Boy Scouts of America (“BSA”) did not object or otherwise respond to the Motion for Remand. For the reasons explained below, the Court will grant the Motion to Remand and remand only the claims against Richard Lucero to state court.

BACKGROUND AND PROCEDURAL HISTORY

Defendant BSA filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on February 18, 2020 as Case No. 20-10343. Before the bankruptcy filing, Plaintiff Edward Lucero filed a complaint against BSA

¹ See Motion of Edward Lucero to Remand Claims Against Richard Lucero to State Court (“Motion for Remand”) – Docket No. 9.

² See Defendant Richard Lucero’s Response to Motion of Edward Lucero to Remand Claims against Richard Lucero to State Court [[Doc.9](#)] – Docket 12. Plaintiff also filed a reply brief. See Reply of Edward Lucero to Richard Lucero’s Response to Motion to Remand Claims – Docket No. 14. See also *infra* note 3.

and Richard Lucero in the Second Judicial District Court, State of New Mexico, County of Bernalillo as Case No. D-202-CV-2019-055558 (the “State Court Action”) asserting personal injury tort claims arising from alleged abuse.

BSA removed the State Court Action to this Court on February 18, 2020, initiating this adversary proceeding. In BSA’s bankruptcy case, the bankruptcy court entered a consent order enjoining the prosecution of claims against “BSA Related Parties” in certain pending actions. *See* Consent Order Pursuant to § 105(a) and 362 Granting BSA’s Motion for a Preliminary Injunction (“Consent Order”) – Docket No. 11, Exhibit A. Defendant Richard Lucero is not one of the “BSA Related Parties” covered by the Consent Order. *Id.* Consequently, the Consent Order does not stay prosecution of claims against Richard Lucero. The stay imposed by the Consent Order, initially set to last through 11:59 p.m., prevailing Eastern time on May 18, 2020, was extended by stipulation through June 8, 2020.³

BSA and Delaware BSA, LLC also filed a motion in the United States District Court for the District of Delaware seeking to transfer venue of all pending personal injury abuse actions asserted against the BSA and Delaware BSA, LLC nationwide, including the claims asserted against BSA in the State Court Action, to that court in an effort to centralize the claims brought against them in a single forum (the “Nationwide Transfer Motion”).⁴

Following a status conference before this Court held March 16, 2020, this Court entered an Order Staying Adversary Proceeding which stayed this adversary proceeding pending the

³ *See* United States Bankruptcy Court, District of Delaware, Adversary Proceeding No. 20-50527 (LSS) – Docket No. 71. The Court takes judicial notice of the documents filed in Adversary Proceeding No. 20-50527 (LSS) filed in connection with BSA’s bankruptcy case. *See* Fed. R. Evid. 201(b)(2) and (c); *see also* *Smith v. Citimortgage, Inc. (In re Smith)*, Adv. No. 11-05136, 2012 WL 1123049, at *1 (Bankr. W.D. Tex. Apr. 3, 2012) (“As a general matter, courts may take judicial notice of documents filed in another court, though merely to establish that such documents have been filed, or to establish the existence of litigation.”).

⁴ The Court takes judicial notice of the documents filed in D. Del. Case No. 1:2-mc-00078-RGA.

outcome of the Nationwide Transfer Motion, but excepted from the stay the filing of a motion to remand claims against Defendant Richard Lucero or a motion for expedited discovery from Defendant Richard Lucero.⁵ See Docket No. 7. The United States District Court for the District of Delaware has not yet ruled on the Nationwide Transfer Motion.

DISCUSSION

As a threshold matter, the Court will consider Richard Lucero's request, in his response to the Motion to Remand, that the Court delay ruling on the Motion to Remand until after May 18, 2020. The only reasons Richard Lucero gives for the Court to wait to rule are (a) the Consent Order "stays any further proceedings in this action through and including May 18, 2020 against Boy Scouts of America, as well as other certain Defendants," and (b) "Boy Scouts of America is an essential party which is predicated on the allegations in the complaint tying Mr. [Richard] Lucero to the Boy Scouts." Response to Motion to Remand, Docket No. 12, ¶¶1, 2. The Court is not persuaded by Richard Lucero's reasoning.

Plaintiff's claims against BSA are not stayed by the Consent Order. Rather, Plaintiff's claims against BSA asserted in the State Court Action are stayed by virtue of the automatic stay imposed by 11 U.S.C. § 362(a) upon BSA's bankruptcy filing. Plaintiff's claims against Richard Lucero are not stayed, whether by 11 U.S.C. § 362(a)⁶ or by the Consent Order.⁷ Therefore, the expiration of the Consent Order has no bearing on Plaintiff's prosecution of claims against either Richard Lucero or BSA.

⁵ Plaintiff filed a motion for expedited discovery (Docket No. 20), which the Court granted by separate order (Docket No. 18).

⁶ *Agrawal v. Ogden*, 753 F. App'x 644, 648 (10th Cir. 2018) ("[Section] 362(a) automatically stays proceedings against the debtor only . . .") (quoting *Otoe Cnty. Nat'l Bank v. W & P Trucking, Inc.*, 754 F.2d 881, 883 (10th Cir. 1985)); *In re Expert South Tulsa, LLC*, 506 B.R. 298, 302 (Bankr. D. Kan. 2011) ("Generally, the stay applies only to the debtor and not to non-debtor co-defendants.").

⁷ Defendant Richard Lucero is not one of the "BSA Related Parties" against whom claims are stayed under the terms of the Consent Order. See Consent Order, Docket No. 11, Exhibit A.

Furthermore, the pending Nationwide Transfer Motion is not an impediment to this Court determining the Motion for Remand.⁸ If the Nationwide Transfer Motion is granted, this Court will transfer the remaining claims against BSA as directed by the United States District Court for the District of Delaware. Plaintiff's claims against Richard Lucero can be tried in state court independently from the claims asserted against the BSA even though the allegations against Defendant Richard Lucero tie Mr. Lucero to the BSA.

After considering the Motion to Remand on its merits, the Court has determined that remand of Plaintiff's claims against Defendant Richard Lucero is appropriate. Plaintiff seeks to remand the claims against Defendant Richard Lucero only. Remand of matters related to bankruptcy cases is governed by 28 U.S.C. § 1452(b), which provides, in relevant part:

The court to which such claim or cause of action is removed may remand such claim or cause of action on an equitable ground.

28 U.S.C. § 1452(b).

It is permissible to remand only a portion of an action, such as claims against only one defendant in a multi-defendant action. *Id.*; *cf. Alarid v. Pacheco (In re Pacheco)*, Adv. No. 19-1066-j, 2020 WL 738973, at *2 (Bankr. D.N.M. Feb. 13, 2020) (“A litigant may remove one, but not all, claims asserted in a state court action.”). A bankruptcy court may remand a previously removed case to state court pursuant to the remand statute. *In re Telluride Income Growth, L.P.*, 364 B.R. 390, 399 (10th Cir. BAP 2007). The bankruptcy remand statute does not fix a time limit for filing a motion seeking equitable remand. *See* 28 U.S.C. § 1452(b); *Topfer v. Topfer (In re*

⁸ *Cf. Raven II Holdings v. Quest Title Co. (In re W.S.F.-World Sports Fans, LLC)*, 367 B.R. 786, 791 (Bankr. D.N.M. 2007) (“When a proceeding has been removed to the bankruptcy court, and the party who removed the proceeding seeks to transfer venue while the opposing party seeks abstention and remand, the Court should first consider whether to abstain and remand before addressing the request to change venue.”); *Ni Fuel Co., Inc. v. Jackson*, 257 B.R. 600, 611 (N.D. Okla. 2000) (concluding that “the remand issue should be decided before the issues relating to transfer.”); *Frelin v. Oakwood Homes Corp.*, 292 B.R. 369, 380 (Bankr. E.D. Ark. 2003) (deciding whether remand is required before determining whether venue is proper in a different bankruptcy court).

Topfer), 587 B.R. 622, 628 (Bankr. M.D. Pa. 2018) (“[N]o specific deadline for filing a motion to remand is included in 28 U.S.C. § 1452(a)”). The Motion for Remand was filed thirty-six days after BSA removed the State Court Action to this Court and while the adversary proceeding was subject to this Court’s Order Staying Adversary Proceeding. The Court concludes that Plaintiff timely filed the Motion for Remand.

Equitable remand “favor[s] comity and the resolution of state law questions by state courts.” *In re Scanware, Inc.*, 411 B.R. 889, 897 (Bankr. S.D. Ga. 2009), *aff’d sub nom. Rayonier Wood Prod., L.L.C. v. ScanWare, Inc.*, 420 B.R. 915 (S.D. Ga. 2009). When ruling on a request for equitable remand, the Court considers the same factors used to determine whether permissive abstention is appropriate under 28 U.S.C. § 1334(c)(1).⁹ *See Gregory Ranch v. Lyman (In re Gregory Rock House Ranch, LLC)*, 339 B.R. 249, 252 (Bankr. D.N.M. 2006) (“In determining whether it is appropriate to remand a removed proceeding, it is proper for the Court to consider the standards applicable to abstention.”) (citation omitted); *Oakwood Acceptance Corp. v. Tsinigini (In re Oakwood Acceptance Corp.)*, 308 B.R. 81, 87 (Bankr. D.N.M. 2004) (“The standards used to determine whether equitable remand is warranted under § 1452(b) are virtually identical to those used to determine whether discretionary abstention is merited under § 1334(c)(1).”) (citations omitted); *see also Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 775 (10th Cir. BAP 1997) (“If abstention is required under 1334(c)(2), a court may remand the proceeding to state court under 28 U.S.C. § 1452(b)”). Factors relevant to permissive abstention include:

- (1) the effect that abstention would have on the efficient administration of bankruptcy estate;

⁹ Plaintiff asserts that remand is warranted based on the factors required for mandatory abstention under 28 U.S.C. § 1332(c)(2). Because the court will grant the Motion for Remand based on the permissive abstention factors, it is unnecessary for the Court to consider whether mandatory abstention applies. Defendant Richard Lucero did not address any of the mandatory or permissive abstention factors in objecting to the Motion to Remand.

- (2) the extent to which state law issues predominate;
- (3) the difficulty or unsettled nature of applicable state law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the federal jurisdictional basis of the proceeding;
- (6) the degree of relatedness of the proceeding to the main bankruptcy case;
- (7) the substance of asserted “core” proceeding;
- (8) the feasibility of severing the state law claims;
- (9) the burden the proceeding places on the bankruptcy court’s docket;
- (10) the likelihood that commencement of the proceeding in bankruptcy court involves forum shopping by one of parties;
- (11) the existence of a right to jury trial; and
- (12) the presence of nondebtor parties in the proceeding.
- (13) the “status of the proceeding in state court prior to . . . remov[al];” and
- (14) the “status of the proceeding in the bankruptcy court.”¹⁰

Commercial Fin. Servs., Inc. v. Bartmann (In re Commercial Fin. Servs., Inc.), 251 B.R. 414, 429 (Bankr. N.D. Okla. 2000).

Several of these factors support equitable remand. Neither BSA nor Richard Lucero have asserted that the determination of the claims against Richard Lucero by a New Mexico state court will adversely affect the administration of the BSA bankruptcy estate. Plaintiff’s claims against Richard Lucero are based solely on state law. The State Court Action was commenced in state court before the filing of BSA’s bankruptcy case. Richard Lucero is not a debtor in BSA’s bankruptcy case and is not one of the “BSA Related Parties” identified in the Consent Order. The State Court Action is not a “core” proceeding.¹¹ Plaintiff concedes that he will have to assert any claims against BSA as part of the BSA bankruptcy case. It is feasible to sever the claims against Defendant Richard Lucero from the claims against BSA asserted in the State Court Action. The State Court Action was pending for approximately six months before BSA filed its chapter 11

¹⁰*Midgard*, 204 B.R. at 778.

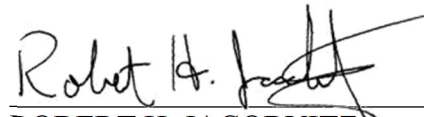
¹¹ “Core” proceedings are proceedings “arising in cases under title 11” and proceedings that “arise under title 11,” and can be characterized as proceedings that involve rights created by bankruptcy law, or proceedings that would only arise within a bankruptcy. 28 U.S.C. § 1334(b); *Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1517 (10th Cir. 1990) (defining “core” proceedings). The State Court Action does not assert any claims dependent on the Bankruptcy Code and does not depend on BSA’s bankruptcy case for its existence.

bankruptcy petition and removed the State Court Action to this Court. These equitable considerations indicate that remand of the claims against Defendant Richard Lucero only is appropriate.

Defendant Richard Lucero contends that BSA is an essential party predicated on the allegations in the complaint that tie Defendant Richard Lucero to BSA, and for that reason, the Court should delay ruling on the Motion for Remand until after the Consent Order Expires. But other than requesting a delay of the Court's ruling, Defendant Richard Lucero does oppose remand. For the reasons stated above, there is no good reason for the Court to delay ruling on the Motion to Remand until after the Consent Order expires.

Finally, Plaintiff asserts that remand of his claims against Richard Lucero will not place an undue burden on BSA because BSA will have to respond to Plaintiff's pending discovery request to BSA regardless of whether the claims against Richard Lucero are remanded. BSA did not object or otherwise respond to the Motion for Remand. Therefore, the Court need not consider any burden on BSA resulting from remand.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Remand is granted. Plaintiff's claims against Richard Lucero, and only those claims, are remanded to the Second Judicial District Court, State of New Mexico, County of Bernalillo.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: May 18, 2020

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