

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: BRIAN PATRICK BOOTH,

Debtor.

No. 24-10544-j13

FC MARKETPLACE, LLC, d/b/a
FUNDING CIRCLE,

Plaintiff,

v.

Adversary No. 24-1025-j

AUTODOC, LLC, and
BRIAN PATRICK BOOTH, individually,

Defendants.

**MEMORANDUM OPINION AND ORDER REMANDING
ADVERSARY PROCEEDING TO STATE COURT**

Defendant Brian Patrick Booth initiated this adversary proceeding by filing a Notice of Removal to the United States Bankruptcy Court ([Doc. 1](#)) to remove an action styled *FC MarketPlace, d/b/a Funding Circle v. AutoDoc, Ltd. Co. and Brian Patrick Booth*, Case No. D-132-CV-2024-00015 (the “State Court Action”), filed in the First Judicial District Court, State of New Mexico, County of Los Alamos (the “State Court”). FC MarketPlace, LLC, d/b/a Funding Circle (“FCM”) filed FC MarketPlace, LLC’s Motion to Abstain and Remand to State Court (“Motion to Remand” – [Doc. 6](#)) requesting this Court to abstain and remand the State Court Action to the State Court. Defendant Brian Patrick Booth, opposes the Motion to Remand. *See* Debtor’s Response to FC MarketPlace, LLC’s Motion to Abstain and Remand to State Court (“Response” – [Doc. 10](#)). FCM filed a reply. *See* Reply of FC Marketplace, LLC ([Doc. 11](#)). For

the reasons explained below the Court will grant the Motion to Remand and remand this removed action to the State Court.

BACKGROUND

The State Court Action has two Defendants: Brian Patrick Booth and AutoDoc, Ltd. Co. (“AutoDoc”). See [Doc. 2](#) (copy of complaint and other documents filed in the State Court Action). In the State Court Action, FCM asserted claims against Mr. Booth and AutoDoc under state law. The claims asserted against AutoDoc arise from its alleged breach of a business loan agreement with FCM; the claims asserted against Mr. Booth are based on his alleged breach of his personal guaranty of AutoDoc’s indebtedness to FCM. *Id.*

Mr. Booth filed a voluntary petition under chapter 13 of the Bankruptcy Code on May 29, 2024. See Case No. 24-10544-j13. The filing of Mr. Booth’s bankruptcy case stayed all further action against Mr. Booth in the State Court Action by operation of the automatic stay under [11 U.S.C. § 362](#). FCM subsequently obtained a default judgment solely against AutoDoc in the State Court Action. FCM filed a proof of claim in Mr. Booth’s bankruptcy case in the amount of \$107,490 as a nonpriority unsecured claim. See Case No. 24-10544-j13; Claim 12-1. FCM’s proof of claim filed in Mr. Booth’s bankruptcy case, and its claim against Mr. Booth asserted in the State Court Action, are both based on an alleged breach of the same personal guaranty of AutoDoc’s indebtedness to FMC. The Court confirmed Mr. Booth’s chapter 13 plan by an order entered October 22, 2024. See Case No. 24-10554-j13 – [Doc. 36](#).

DISCUSSION

FCM asserts that Mr. Booth improperly removed the State Court Action to this Court and requests the Court to abstain under the mandatory abstention provision found in [28 U.S.C.](#)

§ 1334(c)(2). Alternatively, FCM requests the Court to exercise its discretion to abstain under the permissive abstention statute, 28 U.S.C. § 1334(c)(1). FCM also requests remand to the State Court under 28 U.S.C. § 1452(b) based on equitable grounds. Mr. Booth opposes abstention and remand, arguing that remand would impose obligations on Mr. Booth if FCM were to pursue collection remedies against AutoDoc because Mr. Booth is the President and CEO of AutoDoc. Mr. Booth contends that remand of this adversary proceeding to the State Court would serve no purpose because FCM has agreed that it will not pursue any relief against Mr. Booth in the State Court Action¹ and has filed a proof of claim in Mr. Booth's bankruptcy case which can be adjudicated through the claims objection process.

Mandatory Abstention

Section 1334(c) of title 28 governs abstention in bankruptcy cases. FCM first argues that the Court is required to abstain and remand under 28 U.S.C. § 1334(c)(2). Under 28 U.S.C. § 1334(c)(2), the Court is required to abstain if the proceeding is:

based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section . . . if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2).

Abstention under this section is called mandatory abstention. Mandatory abstention applies to proceedings based on non-core claims. *In re George Love Farming, LLC*, 438 B.R.

¹ See Motion to Remand (Doc. 6), p. 2 (“FCM is not continuing or pursuing any claims against the Debtor [Mr. Booth] in the State Court Case. In accordance with Section 362 of the Bankruptcy Code, any and all pending claims and causes of action against the Debtor in the State Court Case were stayed and FCM ceased any and all collection attempts against the Debtor and his individual assets upon notice of the bankruptcy filing. No litigation is currently pending in the State Court Case against the Debtor or assets of the Debtor and FCM is not pursuing any claim or cause of action against the Debtor outside of the Bankruptcy Court.”).

354, n. 42 (10th Cir. BAP 2010) (unpublished), *aff'd sub nom. In re George Love Farming, LC*, 420 F. App'x 788 (10th Cir. 2011); *In re Telluride Income Growth, LP*, 364 B.R. 390, 398 (10th Cir. BAP 2007). Mandatory abstention does not apply with respect to FMC's claim against Mr. Booth because that claim is not a non-core claim. The same claim FMC asserted against Mr. Booth in the State Court Action has now been asserted against Mr. Booth by the filing of FMC's proof of claim in Mr. Booth's bankruptcy case. Adjudication of FMC's claim asserted in its proof of claim is a core proceeding. *See* 28 U.S.C. § 157(a)(2)(B) (core proceedings include "allowance or disallowance of claims against the estate"). Consequently, mandatory abstention is inapplicable to FMC's claim against Mr. Booth based on his personal guaranty of AutoDoc's indebtedness to FMC.

Mandatory abstention may apply with respect to FMC's claim against AutoDoc. That claim is a non-core claim over which the bankruptcy court has "related to" jurisdiction. *See* 28 U.S.C. § 1334(b). In general, non-core claims over which the bankruptcy court has "related to" jurisdiction are civil claims that do not arise in the bankruptcy case or under a provision of the Bankruptcy Code but whose outcome may have a "conceivable effect" on the bankruptcy case. *See, e.g., In re Fundamental Long Term Care, Inc.*, 873 F.3d 1325, 1336 (11th Cir. 2017), *In re W.R. Grace & Co.*, 591 F.3d 164, 171 (3d Cir. 2009); *Emigrant Bus. Credit Corp. v. Hanratty (In re Ebury St. Cap., LLC)*, No. 24-10499, 2024 WL 4656314, at *4 (Bankr. S.D.N.Y. Nov. 1, 2024). FMC's claim against AutoDoc did not arise in the bankruptcy case or under a provision of the Bankruptcy Code, but its outcome could have a conceivable effect on Mr. Booth's bankruptcy case. Mr. Booth guaranteed AutoDoc's indebtedness to FMC. Payment by AutoDoc to FMC would reduce the amount of Mr. Booth's indebtedness to FMC. Further, Mr. Booth

argues that FMC's pursuit of collection remedies against AutoDoc could impact his ability to complete his plan payments under his confirmed chapter 13 plan.

This raises the question whether mandatory abstention may apply to non-core claims if the removed proceeding asserts both core and non-core claims over which the bankruptcy court has jurisdiction. *See Bank of Tescott v. Boucek (In re Boucek)*, No. 18-40249, 2018 WL 9597158, at *6 (Bankr. D. Kan. July 31, 2018); *In re HNRC Dissolution Co.*, [585 B.R. 837, 844-46](#) (6th Cir. BAP 2018), *aff'd*, [761 F. App'x 553](#) (6th Cir. 2019). The Court need not decide that question because, as set forth below, the Court will remand this adversary proceeding based on permissive abstention and the equitable remand provision found in [28 U.S.C. § 1452\(b\)](#).

Equitable Remand and Permissive Abstention

In the alternative, FMC argues that the Court should permissively abstain under [28 U.S.C. § 1334\(c\)\(1\)](#) and remand under [28 U.S.C. § 1452\(b\)](#). The Court agrees.

Section 1452(b) of Title 28 provides that the court to which a claim or cause of action is removed "may remand such claim or cause of action on any equitable ground." [28 U.S.C. § 1452\(b\)](#). Remand under § 1452(b) is known as equitable remand. Section 1334(c)(1) of Title 28 provides that the Court may abstain from hearing a proceeding arising under title 11 or arising in or related to a case under title 11 that is based on a state law claim or cause of action "in the interest of justice, or in the interest of comity with State courts or respect for State law." [28 U.S.C. § 1334\(c\)\(1\)](#). Abstention under [28 U.S.C. § 1334\(c\)\(1\)](#) is known as permissive abstention. Permissive abstention applies with respect to both core and non-core claims. *Telluride Income*, [364 B.R. at 398](#). If the Court abstains from hearing a removed proceeding, it ordinarily would also remand.

The factors considered in deciding whether to equitably remand under 28 U.S.C. § 1452(b) include many of the same factors used to determine whether to permissively abstain under 28 U.S.C. § 1334(c)(1). See *BGFI GP I LLC v. Prieto (In re WP Realty Acquisition III LLC)*, 626 B.R. 154, 162 (Bankr. S.D.N.Y. 2021) (equitable remand factors are substantially similar to the permissive abstention factors); *Lain v. Watt (In re Dune Energy, Inc.)*, 575 B.R. 716, 731 (Bankr. W.D. Tex. 2017) (“[T]he same factors are usually weighted to determine if permissive abstention or equitable remand is warranted.”); *Lennar Corp. v. Briarwood Cap. LLC*, 430 B.R. 253, 267 (Bankr. S.D. Fla. 2010). Those factors include:

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

Alarid v. Pacheco (In re Pacheco), 616 B.R. 126, 133-34 (Bankr. D.N.M. 2020) (citing *Commercial Fin. Servs. Inc. v. Bartmann (In re Commercial Fin. Servs., Inc.)*, 251 B.R. 414, 429 (Bankr. N.D. Okla. 2000) and quoting *Personette v. Midgard Corp. (In re Midgard Corp.)*, 204 B.R. 764, 778-79 (10th Cir. BAP 1997)).

Additional factors often considered in the context of equitable remand include comity with state courts, prejudice to the involuntarily removed parties, and the potential for duplicative use of judicial resources. See, e.g., *CAMOFI Master LDC v. U.S. Coal Corp.*, 527 B.R. 138, 143 (Bankr. S.D.N.Y. 2015); *Kerusa Co. v. W10Z/515 Real Estate Ltd. P'ship*, No. 04 CIV. 708

(GEL), 2004 WL 1048239, at *3 (S.D.N.Y. May 7, 2004); *Blackacre Bridge Cap. LLC v. Korff* (*In re River Ctr. Holdings, LLC*), [288 B.R. 59, 68](#) (Bankr. S.D.N.Y. 2003).

Several of these factors weigh in favor of remand. The State Court Action was commenced prior to the filing of Mr. Booth's bankruptcy case and raises solely state law claims. AutoDoc is a non-debtor co-defendant. FCM has already obtained a default judgment against the non-debtor co-defendant in the State Court Action.

In addition, remanding this adversary proceeding to State Court will not adversely affect the efficient administration of the related bankruptcy case. If the State Court Action is remanded, the automatic stay will continue to apply to FCM's claim against Mr. Booth unless and until this Court modifies the stay with respect to the claim. And because FCM has filed a proof of claim in Mr. Booth's bankruptcy case, this Court can adjudicate the claim through the claims objection process if an objection to the claim is filed.

Mr. Booth asserts that remand would serve no purpose because FCM has already obtained a default judgment against AutoDoc. But once remanded, FCM could pursue efforts against AutoDoc in the State Court to collect the amount due under the judgment. If the State Court Case were to remain before this Court, FCM still would be entitled to seek orders from this Court to enforce the State Court judgment. Pursuit of collection efforts in this Court would place an unnecessary burden on this Court. FCM obtained the default judgment in the State Court Action, and the State Court is the appropriate place for FCM to pursue collection remedies against AutoDoc, a non-debtor co-defendant.

Mr. Booth also contends that remand would impose obligations on him if relief were granted to FCM in the State Court Action against AutoDoc. But those same obligations (whatever they may be) would continue to burden Mr. Booth even if the Court were to deny

remand. In that event, FCM could pursue collections remedies in the removed action instead of in State Court. Because AutoDoc has not filed for bankruptcy, the automatic stay would not protect AutoDoc in proceedings before this Court. The automatic stay under [11 U.S.C. § 362\(a\)](#) does not apply to non-debtors. *See Otoe Cnty. Nat'l Bank v. W & P Trucking, Inc.*, [754 F.2d 881, 883](#) (10th Cir. 1985) (“Section 362(a) automatically stays proceedings against the debtor only and not co-debtors.”). Nor does the co-debtor stay under [11 U.S.C. § 1301\(a\)](#) apply to non-debtor artificial entities in which the debtor is the principal. *See Saleh v. Bank of America, N.A. (In re Saleh)*, [427 B.R. 415, 420](#) (Bankr. S.D. Ohio 2010) (Section § 1301 “cannot be read to extend the protections of the co-debtor stay to corporations and other non-individuals or non-consumer debts”).² Absent a third-party injunction or an express extension of the automatic stay to protect AutoDoc, FCM may pursue collection efforts against AutoDoc regardless of whether the State Court Action remains before this Court or is remanded to the State Court.³

Based on the foregoing, permissive abstention under [28 U.S.C. § 1334\(c\)\(1\)](#) and remand under [28 U.S.C. § 1452\(b\)](#) best serves the interests of justice and respects state law and the comity of the State Court. Equitable remand is therefore appropriate.

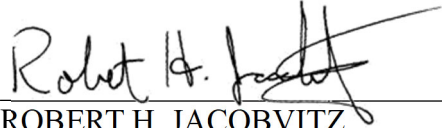
² *See also In re Teclaw*, [653 B.R. 170, 176](#) (Bankr. E.D. Wis. 2023) (“Because the express terms of § 1301 cabin the scope of a nonparty stay in a Chapter 13 case, this Court cannot use its equitable powers under § 105(a) to extend the automatic stay of § 362 to the debtor’s LLCs.”); *In re McCormick*, [381 B.R. 594, 598](#) (Bankr. S.D.N.Y. 2008) (the co-debtor stay does not extend to protect a limited liability company).

³ The Court expresses no opinion regarding whether Mr. Booth has any grounds to seek an extension of the stay or a third-party injunction.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Remand is GRANTED.

This adversary proceeding is hereby remanded to the State Court pursuant to 28 U.S.C.

§ 1452(b).


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: December 12, 2024

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