

All of the defendants except Ed Tolliver² filed demurrers in state court to the plaintiff's motion for judgment, and oral argument on the motions was set for January 10, 2002. The parties then became aware that Tolliver had filed for bankruptcy protection in the Eastern District of Tennessee. Pursuant to the automatic stay issued by the bankruptcy court, the parties canceled all pending state court proceedings.

On February 11, 2002, the plaintiff removed the state court action to this court. Thereafter, all defendants, except Tolliver, timely filed motions for this court to abstain from hearing the action and to remand it to state court. The plaintiff responded to these motions by filing a "Memorandum in Support of Removal and Request for Remand to the United States Bankruptcy Court," to which he appended a "Motion for Relief from the Automatic Stay" that he had filed in bankruptcy court in Tennessee. The motions have been briefed and argued and are ripe for decision.

The district courts are granted jurisdiction over cases "arising under . . . or arising in or related to cases" involving the bankruptcy code. 28 U.S.C.A. § 1334(b) (West 1993). If such jurisdiction exists, a party may remove a state court action to the district where the action is pending. *See* 28 U.S.C.A. § 1452(a) (West 1994).

Although removal is proper under these circumstances, the district court's ability to retain jurisdiction is limited. Section 1334 contains both mandatory and permissive

² Tolliver has not appeared in this court, nor did he appear in the state court.

abstention clauses, which in proper circumstances require or allow the district court, respectively, to abstain from hearing the case. *See* 28 U.S.C.A. § 1334(c)(1) & (2) (West 1993). If abstention is proper, the court may remand the case to state court. *See* 28 U.S.C.A. § 1452(b) (West 1994).

According to the mandatory provision, the court must abstain when six factors are met:

(1) [t]he party must have filed a motion to abstain, (2) [t]he proceeding must be based on a state law claim, (3) [t]he proceeding must be non-core, (4) [n]o basis for federal court jurisdiction can exist other than § 1334, (5) [a]n action must be commenced in state court; and (6) [t]he state court action can be timely adjudicated.

Caperton v. A.T. Massey Coal Co., 270 B.R. 654, 656 (S.D. W.Va. 2001).

The plaintiff concedes that all factors except the last are met in this case. As to that factor, he contends that the court should determine from the debtor's viewpoint whether this case can be timely adjudicated in state court. To facilitate the court's determination of this factor, the plaintiff proposes that this case be "remanded" to the bankruptcy court.

I find that the plaintiff's arguments are unavailing and that the statute requires that this case be remanded to state court. It is apparent that the Circuit Court of Washington County can timely adjudicate this case. In the first place, no court may hear the present case until the bankruptcy court in Tennessee grants relief from the

automatic stay. In addition, the defendants have represented to the court that the state court could timely adjudicate this matter and the plaintiff has offered no evidence to the contrary. As proof of the defendant's position, the record shows that the state court scheduled oral argument on the dispositive motions in this case five months ago and was only prevented from adjudicating those motions by the stay.

Because the mandatory abstention factors are met, I find that this court is required to abstain from hearing this case and I will remand the action to the Circuit Court of Washington County, Virginia.³

An appropriate order of remand will be entered.

DATED: May 14, 2002

United States District Judge

³ I will also deny the plaintiff's request to "remand" the case to the bankruptcy court, as this request has no basis in law.