

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

M-60

IN RE:)
JOHN PATRICK SPANN)
) BANKRUPTCY NO. 05-60579
)
Debtor)

MEMORANDUM OPINION
AND
ORDER

A Status Conference was held April 20, 2005 on the Motion for Stay Relief filed by Catherine Saly (“Saly”) on February 22, 2005. This Motion prays that this Court terminate the §362 Automatic Stay to permit Saly to prosecute certain State Court proceedings

Debtor appears by Attorney Bergerson.

Saly appears by Attorney Donald Rice.

Gaston’s Towing appears by Attorney Babcock.

Trustee appears by Attorney Hoham.

The Chapter 13 Debtor, John Patrick Spann (“Debtor”) filed his Chapter 13 Petition on February 16, 2005. On February 22, 2005, the Debtor filed his Adversary Complaint versus Saly and Gaston’s Towing under Adversary Proceeding No. 05-6028 seeking turnover by Saly and Gaston’s Towing of a certain 2004 Audi motor vehicle, VIN WAULT68E64A124214 (“Motor Vehicle”).

Prior to the filing of the Debtor’s Petition, the Porter Superior Court in Cause No. 64D05-0411-PL-10119, Saly v. Spann (“State Court Action”) entered an Order on December 8, 2004 that the Debtor sign over title to said Motor Vehicle to Saly. This Order

appears to be an interlocutory Order, as further proceedings were scheduled thereon relating to a contempt citation and a sale motion, but were stayed by the filing of the Debtor's Chapter 13 Petition. Thus, an issue has been presented to this Court as to whether said Motor Vehicle is an asset of the Debtor's estate as of the Petition date pursuant to 11 U.S.C. §541, whereby the Debtor may obtain a turnover judgment versus Saly and Gaston's Towing in Adversary Proceeding No. 05-6028 pursuant to 11 U.S.C. §542.

Under the Rooker-Feldman doctrine, this Court has no subject-matter jurisdiction to exercise appellate review over State Court decisions such as the Order of the Porter County Superior Court dated December 8, 2004. See, Garry v. Geils, 82 F.3d 1362, 1364-65 (7th Cir. 1996).

The Court having heard the arguments of the parties, and having examined the record, hereby exercises its discretion and sua sponte abstains pursuant to 28 U.S.C. §1334(c)(1) from deciding the issue of who is the legal or equitable owner of said Motor Vehicle in Adversary Proceeding No. 05-6028¹. See Carver v. Carver, 954 F.2d 1573, 1579 (11th Cir. 1992) (a bankruptcy court may sua sponte abstain under 28 U.S.C. §1334(c)(1)). The Seventh Circuit in the case of Matter of Chicago, Milwaukee, St. Paul & Pacific Rail Co., 6 F.3d 1184, 1189 (7th Cir. 1993), set out the factors the Court should consider in determining whether it should exercise discretionary abstention under 28 U.S.C.

¹ 28 U.S.C. §1334(c)(1) states as follows:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

§1334(c)(1). There the court stated:

Section 1334(c)(1) is somewhat oblique in delineating the criteria that would support a discretionary decision to abstain. See Pan Am, 950 F.2d at 845. The statute speaks only in the most general terms of the “interest of justice,” the “interest of comity,” and “respect for State law.” However, discretionary abstention under section 1334(c)(1) is “informed by principles developed under the judicial abstention doctrines, and courts have usually looked to these well-developed notions of judicial abstention when applying section 1334(c)(1).” Pan Am, 950 F.2d at 945; see also Baumgart v. Fairchild Aircraft Corp., 981 F.2d 824, 833 (5th Cir.), cert. denied, — U.S. —, 113 S.Ct. 2963, 125 L.Ed.2d 663 (1993); In re Eastport Assoc., 935 F.2d at 1078-79 & n. 7.

To provide more concrete guidance to courts considering section 1334(c)(1) abstention, the Ninth Circuit has identified the following relevant factors:

- (1) the effect or lack thereof on the efficient administration of the estate if the court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. §1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted “core” proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court’s] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of non-debtor parties

In re Eastport Assoc., 935 F.2d at 1075-76 (quoting In re Tucson Estates Inc., 912 F.2d 1162, 1167 (9th Cir. 1990)). Courts should apply these factors flexibly, for their relevance and importance will vary with the particular circumstances of each case, and no one factor is necessarily determinative. At the same time, because section 1334(c)(1) is concerned with comity and respect for state law, whether a case involves unsettled issues of state law is always significant. See Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 483, 60 S.Ct. 628, 630, 84 L.Ed. 876 (1940); Pan Am, 950 F.2d at 846;

see also In re L & S Indus., Inc., 989 F.2d 929, 935 (7th Cir. 1993) (“Under bankruptcy law the presence of a state law issue is not enough to warrant permissive abstention, but it nevertheless is a significant consideration.”); In re United Sec. & Communications, Inc., 93 B.R. 945, 960 (Bankr. S.D. Ohio 1988); H.R.Rep. No. 595, 95th Cong., 1st Sess 51 (1977), reprinted in, 1978 U.S.C.C.A.N. 5963, 6012.

Id. 6 F.3d at 1189 (footnote omitted). See also Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th Cir. 1995) (power of federal court to relinquish jurisdiction not dependent on statute).

The §362(a) automatic stay is hereby modified, rather than vacated, to the full extent necessary for the Debtor and Saly to litigate on the merits all aspects of the related State Court Action still presently pending between the parties in the Porter Superior Court under Cause No. 64D05-0411-PL-10119, Saly v. Spann.

The Court hereby stays all further proceedings presently pending in this Court as to Adversary Proceeding No. 05-6028, and when a final nonappealable judgment is entered by the State Court, this Court shall thereafter give claim preclusive or res judicata effect as to any such judgment in deciding the above Adversary Proceeding and further proceedings as to said Adversary Proceeding shall be scheduled upon further notice. See Selmon v. Portsmouth Drive Condominium Assoc., 89 F.3d 406, 409-10 (7th Cir. 1996) (a stay, not a dismissal, is the appropriate procedure mechanism for a federal court to employ in deferring to a parallel state court proceeding under the Colorado River Doctrine); There to Care, Inc. v. Commissioner of the Indiana Dept. of Revenue, 19 F.3d 1165, 1167 (7th Cir. 1994) (when a federal court abstains, it should send the whole case to the state court, returning to the subject only if the final disposition in that court leaves an open federal issue, and then only

to the extent principles of preclusion permit successive litigation).

SO ORDERED.

Dated: April 21, 2005

Distribution:

Debtor

Attorney Bergerson

Attorney D. Rice

Attorney Babcock

Trustee, U.S. Trustee

Movant

Rev. 10/08/02

Jeff Jandt

JUDGE, U. S. BANKRUPTCY COURT