

UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION  
FILED

JUN 10 1996

JED G. WEINTRAUB  
CLERK OF COURT  
WESTERN DISTRICT OF TENN

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE

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IN RE:

MID-AMERICA DISTRIBUTION  
CENTERS, INC.,

Case No. 95-27460-B  
Involuntary Chapter 7

Debtor.

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DANIEL STRIAR, As Trustee For The  
1325 Warford Realty Trust,

Plaintiff,

v.

Adversary Proceeding  
No. 96-0129

MID-AMERICA DISTRIBUTION  
CENTERS, INC. and SUNBEAM CORP.,

Defendants.

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SUNBEAM-OSTER HOUSEWARES, INC.,

Plaintiff,

Adversary Proceeding  
No. 96-0130

v.

DANIEL STRIAR, As Trustee For The  
1325 Warford Realty Trust and MID-AMERICA  
DISTRIBUTION CENTERS, INC.,

Defendants.

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MEMORANDUM OPINION REGARDING MOTION  
OF DANIEL STRIAR TO ABSTAIN OR REMAND

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At issue in this consolidated proceeding is whether the controversy may be heard and determined by this Court or whether it calls for remand to the appropriate state court or for either mandatory or discretionary abstention by this Court. The following contains findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

### THE FACTS

The record reflects that this chapter 7 was commenced with an involuntary petition filed against Mid-America Distribution Centers, Inc. (“debtor”) on July 20, 1995, by three creditors, Grady W. Jones Co. of Memphis, Inc.; Union Realty Co., Ltd.; and the law firm of Less, Getz and Lipman, which had served as debtor’s counsel in Chancery Court litigation that preceded the bankruptcy filing.’ This movant supported a motion for abstention in the case or for dismissal of the involuntary petition, and this Court denied that motion, at the same time granting an order for relief against the involuntary debtor.

For purposes of the present contested motion, the relationship between the parties began in 1981 when Sunbeam-Oster Housewares Corporation (“Sunbeam”) entered into a Net Lease Agreement (“Net Lease”) to lease the premises known as 1325 Warford Street, Memphis, Tennessee from ECLA Enterprises, Inc., predecessor in interest to Daniel Striar, Trustee for the 1325 Warford Realty Trust (“Lessor”). The term of the Net Lease was for a period of ten years from April 1, 1981 through March 31, 1991. Ex. A to the Inter-pleader Complaint, Adv. Pro. No. 96-0130.

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<sup>1</sup> This is the second involuntary petition filed against the debtor. The first, case number 94-30827-D, was dismissed by Bankruptcy Judge **Bernice** B. Donald, and the appeal of that Order was dismissed by Chief Judge Julia Smith Gibbons, United States District Court.

On July 1, 1985, Sunbeam and Mid-America Distribution Centers, Inc. ("debtor") entered into a Lease Assumption and Assignment Agreement ("Assignment") pursuant to which Sunbeam assigned to the debtor all of Sunbeam's "rights, benefits, liabilities, duties and obligations under the underlying [Net] Lease as though [debtor] were the 'Lessee.'" Lease Assumption and Assignment Agreement, p. 1, Ex. B to the Interpleader Complaint. At that time, the debtor was in the business of providing receiving, storage, packaging and shipping services. These parties also entered into a Handling Agreement ("Handling Agreement") on July 1, 1985, wherein the debtor agreed to provide receiving, storage, packaging and shipping services for Sunbeam at the 1325 **Warford** location in exchange for payment by Sunbeam. The term of the Handling Agreement was July 1, 1985 to March 31, 1991. Ex. D to the Inter-pleader Complaint. In addition, on the same date, the parties executed a Sublease ("Sublease") pursuant to which Sunbeam leased back a portion of the premises from the debtor for an agreed upon price of \$ . 1133 per square foot per month plus prorated utility charges, taxes and insurance premiums. Ex. C to Interpleader Complaint. However, under the Net Lease executed between Sunbeam and the Lessor, Sunbeam remained jointly liable with the debtor for the duties and obligations under the Net Lease.

As noted above, the terms of the Net Lease, Assignment, Handling Agreement, and Sublease were to expire on March 31, 1991. It is uncontroverted, however, that both the debtor and Sunbeam were holdover tenants, and the debtor occupied the premises through January 31, 1992. According to the Lessor, Sunbeam continued to pay all rents and property taxes due the debtor under the terms of the Sublease. Further, according to the Lessor, the debtor failed to remit rent payments to the Lessor, failed to pay the City of Memphis property taxes due for 1990 and 1991, and failed to

maintain the premises in accordance with the Net Lease and Sublease, thus allowing the property to fall into significant disrepair.

As a result of these alleged defaults, the Lessor made demand upon Sunbeam for the payment of **all** rent, taxes, and maintenance expense. The demand was not met and on October 7, 1991, the Lessor filed a cause of action in Shelby County Chancery Court<sup>2</sup> against the debtor and Sunbeam alleging that both had breached the terms of the Net Lease by failing to pay rent and taxes when due and by failing to maintain the premises.

Sunbeam answered the complaint and denied any liability to Lessor for any lease payments that it had paid to the debtor but which had not been submitted to Lessor. In addition, Sunbeam filed a cross-claim against the debtor wherein it alleged that it had assigned all of its obligations and duties under the Net Lease to the debtor and asserted an indemnity claim to the extent that the Lessor obtained any judgment against Sunbeam. The debtor filed an answer to the complaint also denying liability to the Lessor and filed a cross-claim against Sunbeam seeking indemnification for any judgment the Lessor might obtain against the debtor. Sunbeam and the debtor denied liability to each other.

On February 14, 1992, Sunbeam filed a motion in Chancery Court to deposit funds in that Court and to be discharged of any further liability as to said funds. According to the motion, Sunbeam conceded that it owed rents for its holdover tenancy period but did not know whether the money should be paid to the Lessor or to the debtor. On March 2, 1992, the Chancery Court entered an order directing Sunbeam to deposit **\$64,945.75** with the Court and relieving Sunbeam of any

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<sup>2</sup>Chancery Court No. 100655- 1.

further liability as to said funds in that proceeding. On March 19, 1992, Sunbeam was dismissed from this suit.

Meanwhile, on January 21, 1992, Sunbeam filed a separate complaint for inter-pleader in the Chancery Court against the Lessor and the Debtor.<sup>3</sup> In this complaint, Sunbeam alleged that the debtor had made demands for payment of \$94,619.17 for services performed under its Handling Agreement and the Lessor had made demands for payment of past and future rents. Sunbeam offered in the complaint to interplead \$94,619.17, the amount alleged to be due under the Handling Agreement, with the Chancery Court. After an order allowing the deposit of \$89,512.90 Sunbeam was dismissed from this inter-pleader litigation, and this suit was subsequently consolidated in the Chancery Court with the prior action commenced by the Lessor.

On July 7, 1994, the Lessor filed a motion for summary judgment in the Chancery Court consolidated action contending that the debtor had breached the Net Lease and that the Lessor was entitled to the interplead funds as a matter of law. The hearing on the motion for summary judgment was postponed when, on July 20, 1995, the involuntary bankruptcy petition was filed against the debtor. An order for relief was entered on November 13, 1995, and the chapter 7 trustee filed a Notice of Removal of the Chancery Court proceeding to this Court on February 7, 1996. The movant lessor filed a timely motion to abstain or remand on March 27, 1996.

## DISCUSSION

According to the Lessor, these adversary proceedings qualify for mandatory or discretionary abstention and for remand to the Chancery Court.

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<sup>3</sup> This matter was assigned case number 100976- 1.

Mandatory abstention is addressed in 28 U.S.C. § 1334(c)(2), which provides that this Court shall abstain from hearing a proceeding, notwithstanding proper jurisdiction: (1) upon a timely motion by a party to the proceeding; (2) where the proceeding is **noncore**; (3) where there is no federal jurisdiction absent the bankruptcy filing; and (4) if an action has been commenced and can be timely adjudicated in a state forum of appropriate jurisdiction.

There is no dispute here that this motion was filed timely, that there is no federal jurisdiction absent the bankruptcy filing, and that an action has been commenced and can be timely adjudicated in a state forum of appropriate jurisdiction. However, whether the proceeding is core or **noncore** is disputed. Mandatory abstention applies only to **noncore**, but related, proceedings. *S.G. Phillips Constructors v. Burlington (In Re S.G. Phillips Constructors)*, 45 F. 3d 702, 708 (2d Cir. 1995). It is admitted that at a minimum these are related proceedings because the outcome will have an effect on this bankruptcy estate. *See, e.g., Lindsey v. Orient, et al. (In re Dow Corning Corp.)*, 81 F. 3d 635, 642 (6th Cir. 1996).

It is well settled that the Bankruptcy Court has core jurisdiction to determine the debtor's interest in property. *Luring v. Administrator, Ohio Pub. Employees Deferred Compensation Program (In re Petrey)*, 116 B.R. 95, 97 (Bankr. S.D. Ohio 1991) (*citing* 11 U.S.C. § 541, 28 U.S.C. § 157(b)(2)(E)). This is true even though such a determination turns on state law. *Knopfler v. Schraiber (In re Schraiber)*, 97 B.R. 937,940 (Bankr. N.D. Ill. 1989). Moreover, the Bankruptcy Court, by reference from the District Court, has exclusive jurisdiction over property of the estate under 28 U.S.C. § 1334(e).

On the face of the **pleadings** removed from the Chancery Court, Sunbeam interplead a portion of the funds as owing under the Handling Agreement rather than the Sublease. Thus, at least for

purposes of deciding the abstention issues it would appear that the debtor has a colorable claim to a portion of those funds. The debtor's claim to those funds, whether ultimately valid or not, is property of this bankruptcy estate. Given that the ultimate issue in this controversy is what, if any, interest the debtor has in the interplead funds pursuant to the Handling Agreement and Sublease, this Court concludes that mandatory abstention is not required. At least to the extent of determination of whether there is any property of this estate, there is a core issue.

The issue next becomes whether the proceedings call for discretionary abstention by this Court or remand to the state court. Discretionary abstention allows the Court to abstain from hearing a proceeding "arising under title 11 or arising in or related to a case under title 11" 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). Similarly, a claim or cause of action that has been removed to this Court may be remanded "on any equitable ground." 28 U.S.C. § 1425(b).

Among the factors weighed by courts in determining whether discretionary abstention is appropriate are:

- (1) the effect or lack thereof on efficient administration of the estate;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (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 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 the 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; and
- (11) the presence of nondebtor parties.

*Citicorp Sav. of Ill. v. Chapman (In re Chapman)*, 132 B.R. 153, 157-158 (Bankr. N.D. Ill. 1991).

As noted above, the substance of these removed proceedings is the determination of the extent and nature of the debtor's interest in the interplead funds. Such a determination is essential to administration of the bankruptcy estate. If the debtor has no interest in these funds, this may be a **nonasset** bankruptcy case. The claims and cross-claims asserted in these proceedings for damages do present state law issues, but upon a determination of the nature and extent of the debtor's interest in the funds, these claims may become claims asserted against property of the estate that are subject to the administration by the case trustee and for distribution under the priority scheme of the Bankruptcy Code. 11 U.S.C. § 726. Accordingly, the property of the bankruptcy estate issue predominates over the state law issues. Severing the state law issues from this Court's determination of the debtor's property interest in the funds is not feasible, and the state law issues are the type that are heard and decided routinely by Bankruptcy Courts. Moreover, this Court's docket will not be unduly burdened by retention of this proceeding.

The Lessor asserts that this removal of these proceedings involves forum shopping because the Lessor's motion for summary judgment was set for hearing shortly after the involuntary petition was filed in this Court. However, the Chancery Court litigation had been pending for approximately three years before the summary judgment motion was filed. Upon the entry of the order for relief the chapter 7 trustee became an essential party to the Chancery Court litigation, and either that Court or this one would hear the trustee's response to the summary judgment motion. This Court may not assume that the Lessor's motion for summary judgment necessarily would have been granted, and absent summary judgment, litigation of any factual issues is required. The nondebtor party involved here is the same party involved in the Chancery Court action and its claims can be adjudicated in these proceedings just as efficiently in the Bankruptcy Court as in the Chancery Court, perhaps even more so, given that the status of the bankruptcy trustee and asset distribution priorities of the Bankruptcy Code could affect the nondebtor parties' claims after a determination is made of the debtor's interest in the fund. Therefore, discretionary abstention is not appropriate for these proceedings.

Turning next to the issue of remand, it is generally held that the equitable considerations relevant under 28 U.S.C. § 1452(b) and § 1334(c)(1) essentially are identical. *Chapman*, 132 B.R. at 158. Thus, the above discussion of discretionary abstention also applies to the Lessor's motion for remand.

In addition, the following factors ordinarily are considered on a motion for remand:

- (1) duplicative and uneconomical effort of judicial resources in two forums;
- (2) prejudice to the involuntary removed parties;
- (3) forum non conveniens;

- (4) a holding that a state court is better able to respond to a suit involving questions of state law;
- (5) comity considerations;
- (6) lessened possibility of an inconsistent result; and
- (7) the expertise of the court in which the matter was pending originally.

*Id.*

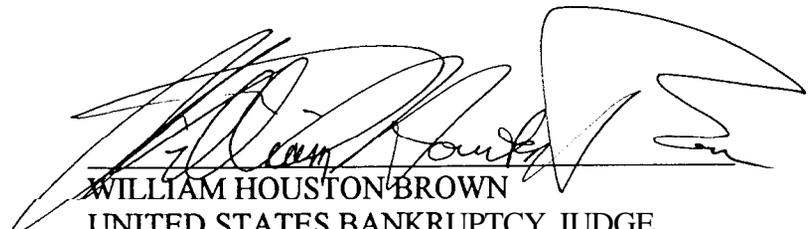
While the removed proceedings have been pending in the Chancery Court since 1991, it appears that presentation of the primary issue, that is, determination of the extent and validity of the parties' claims to the interplead funds, has not commenced; thus, while the Chancery Court has presided over and disposed of many preliminary questions, it does not appear that determination of the ultimate issue in this forum would be a duplicative effort of the Chancery Court's judicial resources.

The Lessor concedes in its Memorandum in support of the motion for remand that there is no prejudice by the removal. Moreover, because the parties and counsel are located in Memphis, Shelby County, Tennessee, there is no forum *non conveniens* issue.

As discussed above, the intervention of the bankruptcy petition interjects questions of bankruptcy law that may predominate, assuming the existence of property of the estate. Accordingly, notwithstanding the state court's expertise, remand to the state court is not appropriate. The Court will retain jurisdiction over these proceedings at least through the summary judgment phase. If, for example, the Lessor prevails on summary judgment and there is no property of this estate, this Court would not need to hear factual disputes over damages arising from lease defaults. If on the other hand, there is a factual dispute over allocation of the funds between the Lease damages and Handling

damages, this Court may be required to hear the entire factual proof. Of course, to some extent, the proof may establish that the Lessor is an unsecured creditor, merely holding a claim in this estate, in which event this Court may need to determine the allowance of the Lessor's claim. These and other issues will be identified after the Court hears the summary judgment motion.

A separate Order consistent with the above findings of fact and conclusions of law shall be entered.



WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

DATED: June 10, 1996

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Mailed on 6-10-96 to:

Debtor, debtor's attorney, and trustee.

Above listed PARTIES

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