

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-33249

KNOXVILLE ATHLETIC CORPORATION  
f/k/a BIKE ATHLETIC COMPANY

Debtor

SUNRISE HOSIERY OF GEORGIA, INC.

Plaintiff

v.

Adv. Proc. No. 04-3195

RUSSELL CORPORATION  
BIKE ATHLETIC COMPANY

Defendants

**MEMORANDUM ON PLAINTIFF'S MOTIONS TO DISMISS PARTY  
DEFENDANT AND MOTION TO REMAND FOR LACK OF  
JURISDICTION OR IN THE ALTERNATIVE, FOR ABSTENTION**

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**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

This adversary proceeding is before the court upon the Complaint filed by the Plaintiff on May 17, 2004, requesting a judgment against the Defendants Russell Corporation and Bike Athletic Company, Inc. (Debtor)<sup>1</sup> for breach of contract, intentional interference with business relations, false representations, improper use of confidential information, negligent breach of duty, and breach of fiduciary duty. The Complaint, originally filed in the Circuit Court for DeKalb County, Alabama, with a jury demand, was removed to the United States Bankruptcy Court for the Northern District of Alabama on June 21, 2004, and transferred to this court on August 17, 2004.

Presently before the court are the following motions filed by the Plaintiff: (1) the Motion to Dismiss Party Defendant (Motion to Dismiss) filed on July 21, 2004, requesting dismissal of the Complaint against the Debtor, as it was filed in violation of the automatic stay; and (2) the Plaintiff's Motion to Remand for Lack of Jurisdiction or in the Alternative, for Abstention (Motion for Remand) filed on July 30, 2004.

## I

The Debtor filed the Voluntary Petition commencing its Chapter 11 bankruptcy case on June 20, 2002.<sup>2</sup> On December 10, 2002, the Debtor filed a Motion to Approve Sale of Assets Free and Clear of Liens and Bidding Protections in Connection with the Sale of Assets;

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<sup>1</sup> Pursuant to the Order Granting Motion to Amend Caption of Case entered on February 26, 2003, the Debtor's name has changed to Knoxville Athletic Corporation.

<sup>2</sup> In its resolution of the present motions, the court takes judicial notice of undisputed facts that have occurred in connection with, and that are of record in, the Debtor's bankruptcy case file. See FED. R. EVID. 201.

Establishing Procedures with Respect to the Consensual Assumption and Assignment of Related Executory Contracts and Unexpired Leases and Approving the Form and Manner of Notice of Sale and Related Relief (Sale Motion). In connection with the Sale Motion, the Debtor filed a Motion to Assume and Assign Executory Contracts and Unexpired Leases on January 15, 2003. On January 29, 2003, the Debtor conducted an auction at which Russell Corporation was the highest bidder. Pursuant thereto, on January 30, 2003, the court entered the Order Approving Sale of Assets Pursuant to Sections 105, 362 and 363 of the Bankruptcy Code and Approving Assumption and Assignment of Certain Executory Contracts Pursuant to Section 365 of the Bankruptcy Code (Sale Order). Pursuant to the Sale Order, the court approved the sale of a majority of the Debtor's assets to Russell Corporation free and clear of liens and incorporated therein an Asset Purchase Agreement executed by Russell Corporation and the Debtor on January 30, 2003. Liabilities and obligations of the Debtor not expressly identified in the Sale Order and Asset Purchase Agreement were not assumed by Russell Corporation, and any leases or contracts not assumed were deemed rejected.

The Plaintiff filed the Complaint giving rise to this adversary proceeding in the Circuit Court for DeKalb County, Alabama, and it was assigned civil action number CV-04-183 (Lawsuit). The underlying basis for the Lawsuit is a License Agreement entered into between the Plaintiff and Infinity Sports & Leisure Group and Infinity Sports, Inc., on November 11, 1997, to manufacture and sell socks with the Debtor's logo.<sup>3</sup> The Plaintiff avers that, pursuant

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<sup>3</sup> The Complaint references the License Agreement as Exhibit A; however, it is not attached to the Complaint. Furthermore, the Plaintiff does not explain in the Complaint the Debtor's ties to Infinity Sports & Leisure Group and Infinity Sports, Inc.

to the License Agreement, it manufactured and sold socks to United Merchandising Corporation, doing business as Big 5 Sporting Goods in El Segundo, California. The Plaintiff alleges that the License Agreement was to continue in full force and effect as long as it remitted payments under the terms thereunder, and that it performed its obligations under the License Agreement until and including April 8, 2004. The Plaintiff avers that on or about April 8, 2004, it was informed by John Sabol, agent for Russell Corporation, that the License Agreement would no longer be honored by both Defendants, despite representations to the contrary made throughout 2003 and continuing into 2004.<sup>4</sup>

The Debtor did not list the License Agreement with the Plaintiff in its Statements and Schedules filed on July 22, 2002, nor did it list any such agreement with Infinity Sports & Leisure Group or Infinity Sports, Inc. Likewise, the License Agreement is not included among the assumed contracts set forth in the Sale Order and Asset Purchase Agreement between the Debtor and Russell Corporation, within the Notice of Executory Contracts and Unexpired Leases Assumed and Assigned to Russell Corporation filed by the Debtor on February 14, 2003, or within the Notice of Rejection of Executory Contract or Unexpired Lease filed by the Debtor on April 15, 2003. Nevertheless, the Plaintiff alleges that Russell Corporation, as purchaser of the Debtor's assets, was the successor-in-interest to the License Agreement, has recognized the License Agreement, and has accepted benefits thereunder. Therefore, the Plaintiff avers that Russell Corporation breached the License Agreement, intentionally interfered with the Plaintiff's long-standing business relationship with Big 5 Sporting Goods,

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<sup>4</sup> When the Lawsuit was originally filed, the Plaintiff held the mistaken belief that Russell Corporation had acquired the Debtor in its entirety to operate as a division of Russell Corporation.

made false representations regarding the continuation of the License Agreement, obtained and improperly used confidential information while suppressing its intention to “take over” Big 5 Sporting Goods, negligently breached duties owed to the Plaintiff, wantonly injured the Plaintiff, breached fiduciary duties owed to the Plaintiff, and that it is, therefore, entitled to compensatory and punitive damages in an unspecified amount.<sup>5</sup>

On June 21, 2004, Russell Corporation filed a Notice of Removal from the Circuit Court for DeKalb County, Alabama, to the United States Bankruptcy Court for the Northern District of Alabama, and the Lawsuit was assigned Adversary Proceeding No. 04-40264. On that same date, Russell Corporation additionally filed the Answer of Defendant Russell Corporation, as well as a Motion to Transfer Venue to the United States Bankruptcy Court for the Eastern District of Tennessee. The Plaintiff opposed the change in venue; however, on August 17, 2004, the United States Bankruptcy Court for the Northern District of Alabama entered an Order on Motion to Transfer, directing the transfer of the adversary proceeding to this court. The Motion to Dismiss and Motion for Remand are presently before the court.

Russell Corporation opposes the Motion for Remand, arguing that the bankruptcy court is the proper court to adjudicate the Lawsuit because it is related to the Debtor’s bankruptcy case, and the outcome will affect the administration of the bankruptcy case. Russell Corporation argues that because the License Agreement was not included within the

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<sup>5</sup> These identical claims are also asserted against the Debtor. Given the automatic stay violation that accompanied the filing of the Complaint against the Debtor and the Plaintiff’s Motion to Dismiss grounded upon the stay violation, the court chooses to address the averments set forth in the Complaint only as they pertain to Russell Corporation.

assets that it purchased from the Debtor pursuant to the Sale Order and Asset Purchase Agreement, it did not assume any of the Debtor's outstanding obligations and/or liabilities to the Plaintiff. Russell Corporation further avers that the bankruptcy court alone has the inherent jurisdiction to interpret its Sale Order, and because the Plaintiff's Lawsuit constitutes a collateral attack thereon, the bankruptcy court is the proper court to determine if Russell Corporation was required to perform under the terms of the License Agreement with the Plaintiff. The Debtor has not responded to either of the Plaintiff's Motions.

## II

The Plaintiff first seeks to dismiss the Debtor as a Defendant to the Lawsuit because it was filed in violation of the automatic stay provisions of 11 U.S.C.A. § 362, which provides, in material part:

(a) Except as provided in subsection (b) of this section,<sup>[6]</sup> a petition filed under section 301 . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C.A. § 362(a)(1) (West 1993 & Supp. 2004).

The purpose of the automatic stay is to provide debtors with “a breathing spell,” see *In re Printup*, 264 B.R. 169, 173 (Bankr. E.D. Tenn. 2001), and therefore, “§ 362(a)(1)

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<sup>6</sup> None of the exceptions set forth in subsection (b) apply in this instance.

imposes an affirmative duty [upon creditors] to discontinue post-petition collection actions.” *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9<sup>th</sup> Cir. 2002). “The stay provisions of section 362 are automatic and self-operating and those who have knowledge of the pendency of a bankruptcy action and stay are bound to honor the stay unless and until it is properly lifted.” *NLT Computer Servs. Corp. v. Capital Computer Sys., Inc.*, 755 F.2d 1253, 1258 (6<sup>th</sup> Cir. 1985). Actions taken in violation of the automatic stay are “invalid and voidable and shall be voided absent limited equitable circumstances.” *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6<sup>th</sup> Cir. 1993).

As stated in the Motion to Dismiss, the Plaintiff is cognizant that it violated the automatic stay when it filed the Lawsuit against the Debtor on May 17, 2004, which is clearly post-petition. Accordingly, the Plaintiff seeks to dismiss the Debtor as a party Defendant to cease violation of the automatic stay, without addressing any other issues with respect to the Debtor. Because the filing of the Lawsuit violated the stay, which is voidable under Sixth Circuit jurisprudence, the court believes that the Motion to Dismiss is well-taken, and accordingly, it will be granted. The Debtor shall be dismissed, without prejudice, as a party Defendant to the Lawsuit.

### III

Russell Corporation removed the Lawsuit from the Circuit Court for DeKalb County, Alabama pursuant to 28 U.S.C.A. § 1452, which states:

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory



power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision not to remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C.A. § 1452 (West 1994); *see also* FED. R. BANKR. P. 9027 (governing removal).

Jurisdiction over bankruptcy matters is exclusive to the federal courts pursuant to 28

U.S.C.A. § 1334, which provides, as follows:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) 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.

(2) Upon timely motion of a party in a proceeding 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, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection (other than a decision not to abstain in a proceeding described in subsection (c) (2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United

States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

28 U.S.C.A. § 1334 (West 1993 & Supp. 2004). This limited subject matter jurisdiction may not be waived, and it may be raised at any time. *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6<sup>th</sup> Cir. 1992); *Robinson v. Mich. Consol. Gas Co., Inc.*, 918 F.2d 579, 582 (6<sup>th</sup> Cir. 1990); *Matuscak v. United States Bankr. Ct. Clerk (In re Rini)*, 782 F.2d 603, 608 (6<sup>th</sup> Cir. 1986) (“It is well established that parties cannot somehow waive jurisdictional objections, nor can they consent to the jurisdiction of a court when that court lacks jurisdiction over the subject matter of their dispute.”). The party alleging federal court jurisdiction bears the burden of proof. *Kmart Creditor Trust v. Conaway (In re Kmart Corp.)*, 307 B.R. 586, 590 (Bankr. E.D. Mich. 2004).

Section 1334 is supplemented by 28 U.S.C.A. § 157 (West 1993 & Supp. 2004), allowing bankruptcy courts to hear “core proceedings,” which encompass all actions arising under title 11 and/or arising in a case under title 11. Included among those proceedings designated “core” are “matters concerning the administration of the estate,” 28 U.S.C.A. § 157(b)(2)(A), and “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims,” 28 U.S.C.A. § 157(b)(2)(O), both of which Russell Corporation argues are implicated. Simply stated, core proceedings “invoke[] a

substantive right created by federal bankruptcy law or one which could not exist outside of the bankruptcy.” *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6<sup>th</sup> Cir. 1992). Cases “under title 11” refer to the actual bankruptcy cases “commenced in a federal district court or bankruptcy court with the filing of a petition [initiating the bankruptcy].” *Robinson*, 918 F.2d at 583. “Arising in” and “arising under” actions include matters “that arise only in bankruptcy cases” such as adversary proceedings and contested matters concerning issues contained in or provided for by the Bankruptcy Code. *Dally v. Bank One, Chicago, N.A. (In re Dally)*, 202 B.R. 724, 727 (Bankr. N.D. Ill. 1996).

Section 157(c) also allows the bankruptcy court to hear non-core proceedings that are nevertheless “related to” bankruptcy proceedings. Matters are “related to” a bankruptcy case if “the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Robinson*, 918 F.2d at 583 (quoting *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir. 1984)). A court may exercise “related to” jurisdiction if there is “some nexus between the action and the debtor’s bankruptcy case[.]” *Beneficial Nat’l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998), or “if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” *Robinson*, 918 F.2d at 583 (quoting *Pacor*, 743 F.2d at 994). The court’s “related to” jurisdiction is “‘comprehensive’ but not ‘limitless.’ It does extend to suits between non-debtor parties, but

only if the action has ‘an effect on the bankruptcy estate.’” *Best Reception Systems*, 220 B.R. at 944 (quoting *Celotex Corp. v. Edwards*, 115 S. Ct. 1493, 1498 n.5 (1995)).

If the requirements of § 1334(c) (2) are met, the bankruptcy court must abstain from hearing a proceeding. The Sixth Circuit simplified those requirements as follows:

[F]or mandatory abstention to apply to a particular proceeding, there must be a timely motion by a party to that proceeding, and the proceeding must: (1) be based on a state law claim or cause of action; (2) lack a federal jurisdictional basis absent the bankruptcy; (3) be commenced in a state forum of appropriate jurisdiction; (4) be capable of timely adjudication; and (5) be a non-core proceeding.

*Lindsey v. Dow Chem. Co. (In re Dow Corning Corp.)*, 113 F.3d 565, 570 (6<sup>th</sup> Cir. 1997). The decision whether to abstain is a core proceeding pursuant to § 157(b) (2) (A). *Best Reception Systems*, 220 B.R. at 941.

Here, the Plaintiff timely filed the Motion for Remand, asking the court to remand or, in the alternative, to abstain from hearing the Lawsuit. In support of its Motion for Remand, the Plaintiff argues that the claims asserted against Russell Corporation and the Debtor are all based upon state law, did not arise in or under the Debtor’s bankruptcy case, are not related to the Debtor’s bankruptcy case, and are not core proceedings. Furthermore, the Plaintiff avers that but for the Debtor’s bankruptcy case, there would be no federal subject matter jurisdiction. On the other side, Russell Corporation argues that the adjudication of these issues will affect the Debtor’s bankruptcy estate because, if it is held to have breached the License Agreement, it would have grounds to rescind the sale of the Debtor’s assets. Additionally, Russell Corporation argues that allowing the state court to determine these

issues could have far-reaching effects upon administration of many bankruptcy estates, the potential sales of assets, and could “erode the ability of trustees and debtors to sell estate assets under the authority of the court.”

The Plaintiff's Lawsuit is based upon the following: (1) breach of contract; (2) intentional interference with business relations; (3) fraud; (4) suppression; (5) negligence; (6) wantonness; and (7) breach of fiduciary duty. Each of these causes of action is governed exclusively by state law. Additionally, there is no dispute that the Lawsuit originated in the Circuit Court for DeKalb County, Alabama, and that the Plaintiff demanded a jury trial. None of the parties contest the jurisdiction and venue of the Circuit Court for DeKalb County, Alabama, and there is nothing to indicate that the Circuit Court for DeKalb County, Alabama is not capable of timely adjudicating this Lawsuit. Accordingly, the primary issues as to abstention are whether this adversary proceeding is non-core and whether there would be federal subject matter jurisdiction absent the bankruptcy case.

The court finds that none of the issues raised in the Lawsuit are core proceedings. The Lawsuit itself is not a bankruptcy case arising under title 11, nor is it a proceeding arising in title 11. The issues addressed in the Lawsuit clearly exist outside the scope of the Debtor's bankruptcy case, and the adjudication of these issues by the bankruptcy court, or a determination in any party's favor, will not affect the bankruptcy estate. None of these causes of action are bankruptcy-related, much less core proceedings, but instead, are entirely governed by Alabama statutory and common law. Additionally, as already decided by the court, the Debtor will be dismissed and will no longer be a party Defendant to the Lawsuit.

Russell Corporation argues that because the Plaintiff's Lawsuit alleges breach of contract as to the License Agreement, the court's Sale Order is being attacked, thereby affecting the bankruptcy estate and resulting in a core proceeding. This argument fails to recognize, however, that the Lawsuit does not hinge on whether the License Agreement was assumed or rejected pursuant to the Sale Order. The Plaintiff's Lawsuit focuses upon acts and representations occurring after the entry of the Sale Order on January 30, 2003, but it does not challenge the validity of that Order. While Russell Corporation may rely upon the Sale Order regarding the Debtor's rejection of contracts not expressly assumed and assigned, any representations made or actions taken by Russell Corporation after that date are not governed by the Sale Order. Additionally, with the exception of the count for breach of contract, the averments in the Plaintiff's Complaint only remotely relate to the License Agreement, and instead, focus upon Russell Corporation's post-sale actions with and representations to the Plaintiff. Those acts fall outside the scope of the Sale Order and the bankruptcy court's jurisdiction and do not transform the Plaintiff's issues with representations made by Russell Corporation into core proceedings. And, as previously discussed, the License Agreement was not listed in the Debtor's Statements and Schedules, was not included in the Sale Order and Asset Purchase Agreement, and was not listed within the notices of assumed and rejected contracts filed by the Debtor.

Furthermore, absent the Debtor's bankruptcy case, there is no federal subject matter jurisdiction. Generally, federal courts have subject matter jurisdiction over only two types of civil proceedings, those involving federal questions and those involving a diversity of

citizenship. See 28 U.S.C.A. §§ 1331 (West 1993) and 1332 (West 1993 & Supp. 2004). Federal question jurisdiction involves causes of action arising under the Constitution and the United States Code. Diversity of citizenship jurisdiction requires the parties to be from different states and/or countries, plus the amount in controversy must exceed \$75,000.00. Here, because all of the issues addressed in the Lawsuit are state law claims, there is no federal question jurisdiction under § 1331. Additionally, even though the Plaintiff and Russell Corporation are citizens of different states, there is no diversity of citizenship jurisdiction because the Complaint does not allege an amount in controversy exceeding \$75,000.00.<sup>7</sup>

In summary, the court, for the reasons stated above, will abstain from hearing this adversary proceeding.

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<sup>7</sup> Even if the mandatory abstention provisions of § 1334(c)(2) were not implicated, the court has the discretion pursuant to 11 U.S.C.A. § 1334(c)(1) to abstain from either core or non-core proceedings. *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 232 (2d Cir. 2002) (“Permissive abstention . . . under 28 U.S.C. § 1334(c)(1) is left to the bankruptcy court’s discretion.”). The following factors are relevant with regards to permissive abstention:

- (1) the effect or lack thereof on the efficient administration of the estate if a 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.

*Best Reception Systems*, 220 B.R. at 953. Had the court so elected, it could have just as readily abstained from hearing this adversary proceeding under the discretionary abstention provisions of § 1334(c)(1).

#### IV

Having exercised its authority to abstain, the court also determines that this action should be remanded back to the Circuit Court for DeKalb County, Alabama. Remand of a removed proceeding is governed by § 1452(b), and may be raised sua sponte for any equitable ground or at the request of a party. See 11 U.S.C.A. § 1452(b); *Best Reception Systems*, 220 B.R. at 958. “The same considerations that are relevant to the issue of abstention also bear upon the issue of remand[, and] where the facts before the court mandate or compel abstention, equitable grounds for remand exist under § 1452(b) and remand of the proceeding to state court is favored.” *Best Reception Systems*, 220 B.R. at 958; see also *Smith Mech. Contractors, Inc. v. Premier Hotel Dev. Group (In re Premier Hotel Dev. Group)*, 270 B.R. 243, 258 (Bankr. E.D. Tenn. 2001) (“The presence of factors suggesting discretionary abstention pursuant to 1334(c)(1) and factors requiring mandatory abstention under 1334(c)(2) provides ample equitable grounds for remand of the lawsuit to state court.”).

The Plaintiff has requested remand, and all equitable factors weigh in favor of remand. As previously discussed, the Plaintiff’s Lawsuit is based entirely upon state law issues, and the court does not believe that adjudication of these state law issues will affect the administration of the Debtor’s bankruptcy case. Additionally, the Debtor has been dismissed as a party Defendant to the Lawsuit. Finally, and most importantly, the federal courts do not have jurisdiction over the Lawsuit, which could not be before this court absent the Debtor’s



bankruptcy case. For these reasons, the court finds that equitable grounds exist to remand the Plaintiff's Lawsuit to the Circuit Court for DeKalb County, Alabama.<sup>8</sup>

FILED: October 7, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

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<sup>8</sup> The court reminds the Plaintiff that “[e]ven where the court has abstained pursuant to § 1334(c), the stay granted under § 362 must be modified in order to allow the resolution of claims other than in the court with jurisdiction over the bankruptcy.” *Pursifull v. Eakin*, 814 F.2d 1501, 1504-05 (10<sup>th</sup> Cir. 1987). In other words, if the Debtor is to be added as a party Defendant to the Lawsuit, the Plaintiff first must obtain relief from the stay pursuant to 11 U.S.C.A. § 362(d) (West 1993 & Supp. 2004).

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-33249

KNOXVILLE ATHLETIC CORPORATION  
f/k/a BIKE ATHLETIC COMPANY

Debtor

SUNRISE HOSIERY OF GEORGIA, INC.

Plaintiff

v.

Adv. Proc. No. 04-3195

RUSSELL CORPORATION  
BIKE ATHLETIC COMPANY

Defendants

**ORDER**

For the reasons set forth in the Memorandum on Plaintiff's Motions to Dismiss Party Defendant and Motion to Remand for Lack of Jurisdiction or in the Alternative, for Abstention filed this date, the court directs the following:

1. The Motion to Dismiss Party Defendant filed by the Plaintiff on July 23, 2004, is GRANTED. The Complaint filed by the Plaintiff on May 17, 2004, is DISMISSED, without prejudice, as to the Defendant Bike Athletic Company.
2. The Plaintiff's Motion to Remand for Lack of Jurisdiction or in the Alternative, for Abstention is GRANTED.

3. The court abstains from hearing this adversary proceeding pursuant to 28 U.S.C.A. § 1334(c) (2) (West 1993).

4. The claims asserted by the Plaintiff in its Complaint filed May 17, 2004, in the Circuit Court for DeKalb County, Alabama, as Case No. CV-04-183, are REMANDED to the Alabama state court for the resolution of all issues.

5. The clerk shall serve a copy of this Order and the accompanying Memorandum on the Circuit Court for DeKalb County, Alabama, Post Office Box 681 149, Fort Payne, Alabama 35968.

SO ORDERED.

ENTER: October 7, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE