

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

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

DONALD A. TANGWALL, Cestui que
Trust of the Butch Family Preservation Trust

Plaintiff

v.

Adv. Proc. No. 02-3164

ROBERT LOOBY, MARK PLOE
and LINDA PLOE, Individually,
Jointly, and Severally

Defendants

**MEMORANDUM ON
MOTION TO REMAND**

APPEARANCES: Donald A. Tangwall
576 Foothills Plaza Drive
Maryville, Tennessee 37801
Plaintiff, *Pro Se*

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

This adversary proceeding was removed from the United States District Court for the Eastern District of Tennessee, Northern Division, pursuant to a Notice of Removal of Action to Bankruptcy Court filed September 23, 2002, by the Defendant, Linda Ploe, pursuant to Rule 9027(a) of the Federal Rules of Bankruptcy Procedure. On October 8, 2002, the Plaintiff, Donald A. Tangwall, "Cestui que Trust of The Butch Family Preservation Trust," filed a Plaintiff's Response to Notice of Removal of District Court Action to Bankruptcy Court (Response). By an Order entered on October 15, 2002, the court directed that the Plaintiff's Response be deemed a Motion for Remand whereby the Plaintiff, pursuant to Rule 9027(d) of the Federal Rules of Bankruptcy Procedure, requested the court to remand the removed action to the district court. The court considered oral argument on the Plaintiff's Motion to Remand on November 21, 2002.

I

The Plaintiff commenced this action in the district court on April 22, 2002, by filing a Complaint for Breach of Trust and RICCO (Complaint). Mark Ploe and Robert Looby, "individually, jointly, and severally," were named Defendants. On August 13, 2002, the Plaintiff filed a First Amended Complaint for Breach of Trust and RICCO (Amended Complaint) and added Linda Ploe, "individually, jointly, and severally," as a third Defendant.¹

The claims asserted by the Plaintiff against the Defendants in the Amended Complaint are summarized generally in the following paragraph:

¹ The twenty-four page Complaint contains fourteen counts designated as Counts I through XIV. The Amended Complaint also contains fourteen counts designated as Counts I through XII, XIV, and XV. The Amended Complaint does not contain Count XIII. The court will deem the Amended Complaint to supersede the Complaint and will therefore consider only those counts set forth in the Amended Complaint.

In Counts I through X, the Plaintiff, as an alleged beneficiary of The Butch Family Preservation Trust (Trust), a trust established under Michigan law, avers various state law claims against the Defendants as follows: "Breach of Trust as to duty of loyalty in failure to defend action against the Trust" (Count I); "Breach of Trust as to Duty of Impartialities [sic] between Beneficiaries" (Count II); "Breach of Trust as to duty to be impartial towards Beneficiaries in settling lawsuit against the Trust brought by Bankruptcy Trustee, Dean Farmer" (Count III); "Breach of Trust as to duty of loyalty to the Trust, failure to hold position as Trustee without conflict of interest" (Count IV); "Breach of Trust as to duty to not delegate their duties as Trustees" (Count V); "breach of trust as to duty to protect Trust property" (Count VI); "Breach of Trust as to duty to provide information to beneficiary, Tangwall" (Count VII); "Breach of Trust as to duty to keep and render accounts separate from income and principal and the right to income" (Count VIII); "Breach of Trust as failure to protect Trust property in not appointing a General Partner of Butch Partners, a Michigan Limited Partnership" (Count IX); and "Breach of Trust as to failure to defend Spendthrift provisions of Trust" (Count X).

The Plaintiff alleges numerous facts in support of his various breach of trust allegations, some of which are alleged to have occurred prior to the commencement of the Plaintiff's bankruptcy case and others of which are alleged to have occurred after the commencement of the bankruptcy case.

The remaining counts of the Amended Complaint assert claims against the Defendants grounded on alleged violations of federal statutes. Specifically, Count XI asserts a claim for

breach of trust as to fraud and racketeering per 18 U.S.C. [§] 1341”; Count XII asserts a claim for breach of trust as to witness tampering of Tangwall per 18 U.S.C. [§] 1512”; Count XIV² asserts a claim for breach [sic] of trust in transporting stolen property worth \$5,000.00 or more across state lines per 18 U.S.C. [§] 2314”; and Count XV asserts a claim for breach of trust as to duty to defend Tangwall’s beneficial interest in the Trust in Bankruptcy Case No. 00-30531, adversary case No. 01-3083 in the Eastern District of Tennessee to prevent entry to default against Tangwall as beneficiary of the Trust.”

II

The court, assuming in the first place the propriety of removing the Plaintiff’s action from the district court to the bankruptcy court pursuant to 28 U.S.C.A. § 1452(a) (West 1994), has determined that this matter should be remanded to the district court for both practical and substantive reasons. To do otherwise, would serve to bog down both the court and the parties in a quagmire of jurisdictional issues.

For example, contrary to representations of the Defendants, the court questions whether any of the Plaintiff’s claims rise to the level of a core proceeding over which the bankruptcy judge can enter a final order or judgment,³ because the Plaintiff’s claims do not appear to present the

² See *supra* n.1.

³ The Defendants, in statements filed on November 20, 2002, pursuant to Rule 9027(a)(3) of the Federal Rules of Bankruptcy Procedure, state that the removed action is a core proceeding. The court disagrees. While it does appear that the Plaintiff’s action includes prepetition claims against the Defendants, e.g., Count I, these claims have all been resolved by the Chapter 7 Trustee pursuant to an Order Approving Settlement Agreement entered in the Plaintiff’s bankruptcy case on August 30, 2002. This Order, at section VIII entitled “General Compromise and Release,” provides:

(continued...)

court with "proceedings arising under title 11" or "proceedings . . . arising in . . . [a] case[] under title 11." 28 U.S.C.A. § 1334(b) (West 1993).⁴

While some of the counts in the Amended Complaint may present the court with "proceedings . . . related to [a] case[] under title 11,"⁵ *id.*, others appear to be unrelated to the

³(...continued)

Also compromised, settled, and dismissed is any and all pre-petition claim or claims that Debtor has alleged or could allege but has not yet filed against Mark Ploe, Linda Ploe, . . . Robert Looby, and their agents, employees, servants, officers, directors, shareholders, accountants, and attorneys (collectively, "Releasees"), and any pre-petition claims the Debtor has or may have against the Releasees, all of which are dismissed with prejudice and are incapable of being asserted again in any other forum.

Additionally, the Plaintiff, on February 7, 2002, filed a document titled "Notice of Settlement in Full with Creditors Mark Ploe and Lynn [sic] Ploe" in his bankruptcy case. Appended to this "Notice" is a copy of a Settlement Agreement and General Release dated January 22, 2002, signed by the Plaintiff and Defendants Mark Ploe and Linda Ploe. This agreement states in material part at paragraphs 7 and 8:

7. TANGWALL, for himself and each of his predecessors, successors, heirs, assigns, executors, administrators, agents, or any other representatives, hereby releases and forever discharges [Mark Ploe and Linda Ploe] individually and in their capacity as Trustees and/or Beneficiaries of the Butch Family Preservation Trust and/or officer, director, or employee of GOODRICH [Manufacturing Company, Inc.] . . . from any and all claims, demands, rights, causes of action, judgments, executions, damages, liabilities, costs or expenses (including attorney fees or court costs) which TANGWALL has or might have, which are known or unknown [sic], which arise directly or indirectly from events or circumstances existing from the beginning of time to the date of entry of a final order in all of the Bankruptcy Trustee's proceedings against any of the parties of this General Release. TANGWALL agrees that this provision is intended as a complete, full and final release of any and all claims TANGWALL may have and that no claims are reserved.

8. This Release is to be read as broadly as possible, so as to preclude any further claims by TANGWALL against [Mark Ploe and Linda Ploe]

Given the Chapter 7 Trustee's settlement of the bankruptcy estate claim against the Defendants Mark Ploe and Linda Ploe and the Plaintiff's release of all claims against these Defendants, the court questions his ability to prosecute any action against these Defendants that might have arisen in, arisen under, or have been related to his bankruptcy case.

⁴ The court does not deem it necessary to engage in a lengthy discussion of the jurisdictional grant of bankruptcy matters to the district court or of the core/non-core nature of proceedings dealt with by bankruptcy courts. For a detailed discussion, see *Beneficial Nat'l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 942-49 (Bankr. E.D. Tenn. 1998).

⁵ A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the
(continued...)

Plaintiff's bankruptcy case.⁶ The Sixth Circuit has adopted the test for relatedness as set forth in *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984 (3rd Cir. 1984):

?The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of [that] proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy 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 v. Michigan Consol. Gas Co., 918 F.2d 579, 583 (6th Cir. 1990) (quoting *Pacor, Inc.*, 743 F.2d at 994) (citations omitted).

The bankruptcy court has no jurisdiction of a proceeding that neither arises under title 11 nor arises in a case under title 11 and that is not related to the bankruptcy case. See *Celotex Corp. v. Edwards*, 115 S. Ct. 1493, 1498 (1995) ("[T]he Bankruptcy Court's jurisdiction . . . must be based on the 'arising under,' 'arising in,' or 'related to' language of [28 U.S.C.A.] §§ 1334(b) and 157(a) [(West 1993)]"); *Gallucci v. Grant (In re Gallucci)*, 931 F.2d 738, 741 (11th Cir. 1991) ("[B]ankruptcy courts by statute . . . may not entertain cases including noncore, unrelated matters."). Additionally, the Plaintiff's claims alleging racketeering, witness tampering, and

⁵(...continued)

bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C.A. § 157(c)(2) (West 1993).

⁶ For example, in Count III of the Amended Complaint, the Plaintiff avers that the Defendants breached a duty to him as a beneficiary of the Trust by engaging in settlement negotiations with the Trustee of the Plaintiff's bankruptcy estate. Clearly, these allegations relate to an event that took place after the commencement of the Debtor's bankruptcy case and present a postpetition claim personal to the Plaintiff which would not inure to the benefit of the bankruptcy estate.

transporting stolen property across state lines are claims that, from a practical standpoint, are more properly dealt with by the district court.

For the above reasons, the Plaintiff's Motion to Remand will be granted and an appropriate order remanding this action to the district court will be entered.

FILED: December 4, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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

In re

Case No. 00-30531

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Debtor

DONALD A. TANGWALL, Cestui que
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ROBERT LOOBY, MARK PLOE
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Defendants

ORDER

For the reasons stated in the Memorandum on Motion to Remand filed this date, the court directs that the Plaintiff's Response to Notice of Removal of District Court Action to Bankruptcy Court filed by the Plaintiff on October 8, 2002, having been deemed by the court a motion to remand is GRANTED. This action is remanded to the United States District Court for the Eastern District of Tennessee, Northern Division.

SO ORDERED.

ENTER: December 4, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE