IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

IN RE:

I. MEADE HUFFORD AND
DIANNE P. HUFFORD — CASE NO. 8600317WC

I. MEADE HUFFORD AND
DIANNE P. HUFFORD — PLAINTIFFS

vs. — ADVERSARY NO. 890231WC

MAGNOLIA FEDERAL BANK FOR SAVINGS, WILLIAM F. JONES, TRUSTEE, L. O. BRANYAN, JR. AND MARTHA S. BRANYAN — DEFENDANTS

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Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

The question before the Court is whether a state court action which has been removed to this Court should be remanded to state court. It is the opinion of this Court that the case should

be remanded.

FINDINGS OF FACT

A chronology of significant dates and events in this case is as follows:

On February 16, 1986, the debtors, I. Meade Hufford and his wife, Dianne P. Hufford, filed a petition for relief pursuant to Chapter 11 of the Bankruptcy Code.[1] Mr. Hufford had been engaged in the oil and gas business and had significant assets and liabilities. Among his assets was his personal residence in Natchez, Mississippi. It was an antebellum home known as "The Cliffs". The home was encumbered by a first deed of trust to Magnolia Federal Bank for Savings ("Magnolia") and a second deed of trust to the Deposit Guaranty National Bank ("Deposit Guaranty").

On March 19, 1986, Magnolia filed a motion to lift the stay provided by 11 U.S.C. §362 or to receive adequate protection payments from the Debtors.

On April 29, 1986, an Agreed Judgment was entered wherein the Debtors recognized, among other things, that there was an outstanding balance of $512,266.54 owing to Magnolia. The judgment provided that the Debtors would pay to Magnolia the sum of $2,000.00 on May 2nd and June 2nd, 1986, and that on June 19, 1986, the automatic stay of Section 362 of the Bankruptcy Code would immediately terminate without further Court approval and that Magnolia would be entitled to foreclose pursuant to its deed of

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[1] 11 U.C.S. §101 et seq.

trust. The judgment further provided that it could not be modified in a subsequent plan of reorganization or in any amended plan of reorganization.

On August 7, 1986, while the home was in the process of being foreclosed by Magnolia, the Debtors were granted a Temporary Restraining Order by the Chancery Court of Adams County which stopped a scheduled foreclosure. Ultimately, on October 1, 1986, Magnolia foreclosed the property and it was the high bidder at a price of $490,000.00. Shortly thereafter, the exact date is in dispute, Magnolia resold the property to L. O. Branyan and Martha S. Branyan for $650,000.00.

The following year, on June 16, 1987, this Court entered its order confirming the Debtors' plan of reorganization.

On April 5, 1989, the Supreme Court of Mississippi entered an opinion in the case of Wansley vs. First National Bank of Vicksburg, 1989 Miss. LEXIS 198. In its opinion the Supreme Court held two foreclosure sales to be invalid and set aside deficiency judgments a bank had obtained. It held that the bank's failure to appoint a disinterested trustee rendered the foreclosure sales voidable. The bank petitioned for rehearing.

In the aftermath of that opinion, on June 23, 1989, the Debtors filed in the Chancery Court of Adams County, Mississippi, the cause of action which is now before this Court. Their complaint is bottomed on two major premises. One, they claim that the trustee who conducted the foreclosure sale was not a disinterested trustee and for that reason the sale should be

invalidated. Two, they claim that under the terms of the deed of trust and the laws of Mississippi they are entitled to all overage from the sale of the property and that they are also entitled to punitive damages and attorney fees.

The Defendants removed the state court action to the U. S. District Court and the matter was then transferred to this Court.

The Huffords, who are the Debtors in bankruptcy and the Plaintiffs in the state court action, timely filed a Motion to Remand the case to the Chancery Court of Adams County, Mississippi. After the matter reached this Court the parties filed appropriate briefs on the question of whether the case should be remanded. This Court took no action on the motion for the reason that one of the two central issues in the case relies on the opinion in the Wansley case which had been entered on April 5, 1989. As noted, the Supreme Court had granted a rehearing and the rehearing stayed under advisement in the Supreme Court until it rendered a new opinion on August 8, 1990. As a practical matter, the claim of the Debtors could not have moved forward either in State Court or Bankruptcy Court because of the pending rehearing in the Supreme Court.

The second opinion of the Supreme Court is cited as Wansley vs. First National Bank of Vicksburg, 566 So.2d 1218 (Miss. 1990). In the second opinion the Supreme Court reversed its previous opinion. In simple terms, it held that the trustee did not have to be a disinterested person. For all intents and

purposes, the opinion appears to have eviscerated one of the two main contentions of the Plaintiffs in their cause of action.

In any event, the matter is now ready for decision by this Court.

CONCLUSIONS OF LAW

There are two statutes which must be considered in deciding this matter, to-wit:

28 USC § 1452

§1452. Removal of claims related to bankruptcy cases.

> (a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United Stats 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 to not remand, is not reviewable by appeal or otherwise.

28 USC § 1334

§1334. Bankruptcy cases and proceedings.

> (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. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. 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.

(d) 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.[2]

In essence, Section 1452 provides that a party may remove

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[2] According to information received from the Administrative Office of the United States Courts, these two code sections were amended by Section 309 of the Federal Courts Implementation Act of 1990. The amended versions of these code sections were not available to this Court at the time this opinion was being written. However, according to the information received, the amendments did not change the substantive law in these two sections. The amendments only provided that final orders could be entered by this Court and appeal taken to the District Court, rather than this Court making a report and recommendation to the District Court.

a civil action to the district court if the district court has jurisdiction of the claim under Section 1334, but that the district court may remand the claim.

A good overview of jurisdiction, abstention and remand as they relate to district courts and bankruptcy courts may be found in Collier on Bankruptcy, 15th Ed. at §§ 3.01(1)(c); 3.01(3); and 3.01(5)(g). In determining jurisdiction great consideration is placed upon whether a proceeding is a "core" proceeding or an "otherwise related" or "non-core" proceeding pursuant to 11 U.S.C. §157. A large body of law has developed in an effort to explain, identify and otherwise define, proceedings "arising under title 11", proceedings "arising in a case under title 11", and proceedings "related to a case under title 11." The definitive case in the Fifth Circuit is the case of Matter of Wood, 825 F.2d 90 (5th Cir. 1987).

In considering Section 1334 particular focus should be placed upon subsections 1334(c)(1) and (2). Section 1334(c)(2) provides for mandatory abstention in certain situations and subsection 1334(c)(1) provides for permissive or discretionary abstention.

In the case at bar, this Court is of the opinion that abstention is not mandated pursuant to Section 1334(c)(2). The majority view is that one of the elements necessary for mandatory abstention is that the state court case be pending at the time the petition in bankruptcy was filed. AmCore Bank N.A., Rockford vs. W. G. Jackson Screw Co. (In re Jackson Consolidated Industries,

Inc.), 17 BCD 46 (Bkrtcy. N.D. Ill. 1988); Levy vs. Butler, Payne and Griffin (In Re Landbank Equity Corp.), 77 B.R. 44, 50 (E.D.Va. 1987).

The Court next considers whether it should exercise discretionary abstention pursuant to 28 USC 1334(c)(1) and remand the case to state court pursuant to 28 USC §1452(b).

The Fifth Circuit Court of Appeals in the case of Browning vs. Navarro, 743 F.2d 1069, 1076 (5th Cir. 1984) noted that "any equitable ground" that might justify remand as contemplated in 28 USC §1452(b) might include:

1. forum non conveniens;
2. holding that, if the civil action has been bifurcated by removal, the entire action should be tried in the same court;
3. a holding that a state court is better able to respond to questions involving state law;
4. expertise of the particular court;
5. duplicative and uneconomic effort of judicial resources in two forums;
6. prejudice to the involuntarily removed parties;
7. comity considerations; and
8. a lessened possibility of an inconsistent result.

Pursuant to 28 U.S.C §1334(c)(1) there are three broad grounds for the Court to exercise discretionary abstention:

1. the interest of justice;
2. the interest of comity with state courts; and
3. respect for state law.

See: In Re Nanodata Computer Corporation, 74 B.R. 766 (W.D.N.Y. 1987); Thomasson v. AmSouth Bank, N.A., 59 B.R. 997 (N.D.Ala. 1986).

Although some courts have been of the opinion that Section 1334(c) is inapplicable to cases which have been removed to Federal Court pursuant to Section 1452, the policy considerations are the same. Bleichner Bonta Martinez & Brown, Inc vs. National Bank of Georgia (Matter of Micro Mart, Inc.), 72 B.R. 63 (Bkrtcy. N.D.Ga. 1987).

The case at bar is one that involves pure questions of state law. The foreclosed property is located in Adams County, Mississippi. There is no reason to think that it cannot be timely adjudicated in the Chancery Court of Adams County. Most of the witnesses will reside in that county. The case was not even initiated by the Debtors until more than two years after their plan of reorganization was confirmed.

Additionally, in accordance with their plan of reorganization which was confirmed on June 16, 1987, the Debtors proposed to make prorata distributions to unsecured creditors from a fund consisting of all of their income, over and above reasonable living and business expenses, and proceeds from the sale of unencumbered property. Distributions were to be made from this fund each six (6) months for a period of thirty-six (36) months after final confirmation of their plan. This three year period has now expired and it does not appear that even in the case of success by the Debtors that there would be a distribution to the unsecured

creditors. However, this Court is not adjudicating this point.

In any event, there is no compelling reason for this Court to retain this case and it is the opinion of the Court that the matter should be remanded to the Chancery Court of Adams County.

Pursuant to 28 USC §§ 1452 and 1334 as amended by Section 309 of the Federal Courts Implementation Act of 1990, this Court will enter a final judgment consistent with this opinion.

This the 22TH day of February, 1991.

Edward Ellington

UNITED STATES BANKRUPTCY JUDGE

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FINAL JUDGMENT

Consistent with the opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the above-styled case, being Chancery Court No. 36,663, should be, and it hereby is, remanded to the Chancery Court of Adams County, Mississippi.

ORDERED AND ADJUDGED this the 22nd day of February, 1991.

Edward Ellington

UNITED STATES BANKRUPTCY JUDGE