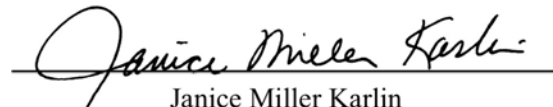


**SO ORDERED.**

**SIGNED this 20th day of February, 2018.**



  
Janice Miller Karlin  
United States Chief Bankruptcy Judge

---

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS**

**In re:  
James Robert Watkins  
Jodi Karen Watkins,**

**Case No. 17-40389  
Chapter 11**

**Debtors.**

---

**CNH Industrial Capital  
America, LLC,**

**Plaintiff,**

**Case No. 17-7023  
Adversary Proceeding**

**v.**

**PrairieLand Partners Inc. and  
Community National Bank &  
Trust-Chanute,**

**Defendants.**

---

**Order Granting Motions to Remand**

Four years ago, Debtors traded one encumbered tractor for another, and apparently went on their merry way. Although this commonplace exchange of collateral

occurs routinely in large farming operations, Plaintiff CNH Industrial Capital America, LLC now alleges that someone, somewhere, dropped the ball and did not ensure that all “i”s were dotted and “t”s were crossed. As a result, it alleges its first priority security interest in the collateral was not recognized and the tractor proceeds were sent elsewhere. The dispute now before this Court is CNH’s state court conversion claim against the two other creditors involved in the transaction.

The Court finds that it does not have jurisdiction over this removed matter because the removing party—Defendant Community National Bank & Trust—Chanute, has not satisfied its burden to show that the state court petition is related to Debtors’ Chapter 11 bankruptcy. The Court further finds that even if the Court did have jurisdiction, it would exercise its discretion to remand the matter under either 28 U.S.C. § 1334(c)(1) (permissive abstention) or 28 U.S.C. § 1452(b) (equitable remand). As a result, the motions to remand<sup>1</sup> filed by both Defendant PrairieLand Partners, Inc. and Plaintiff CNH are granted.

## **I. Background and Procedural History<sup>2</sup>**

Debtors James and Jodi Watkins, who own both a large farming and cattle operation and a feed store, filed a voluntary Chapter 11 petition in April 2017.<sup>3</sup>

---

<sup>1</sup> Docs 6 and 9.

<sup>2</sup> These facts, which appear undisputed, are gathered from the parties’ pleadings and from the docket of both this adversary case and Debtors’ bankruptcy case.

<sup>3</sup> Case No. 17-40389, Doc. 155 (Disclosure Statement).

Creditors have filed proofs of claim totaling \$9,182,591 (\$7,944,875 of which are claimed to be secured and \$67,720 claimed as priority).<sup>4</sup>

One such claimant, CNH, recently filed a petition in state court against PrairieLand and Community National Bank, alleging that it is a creditor of Debtor James Watkins and that it holds eleven cross-collateralized notes and security agreements. One of those contracts is a November 2011 sales contract for the purchase of a John Deere 9630t jd Tractor. CNH contends it has a purchase money security

---

<sup>4</sup> The parties involved in this adversary proceeding have filed the following claims:

**CNH:** Claim No. 58-1 (\$1,416,321 secured by various farm equipment valued at \$1,070,418).

**PrairieLand:** Claim No. 30-1 (\$14,631 secured by a 2014 JD 569 Round Baler); Claim No. 31-1 (\$36,433 secured by a 2014 JD 6150M Tractor w/H360 Loader); Claim No. 32-1 (\$113,490 secured by a 2014 JD 7580 Forage Harvester); and Claim No. 33-1 (\$22,084 unsecured). PrairieLand contends it is fully or oversecured for each secured claim.

**Community National Bank:** Claim No. 48-1 (\$160,000 secured by crops and general intangibles); Claim No. 49-2 (\$6,528 secured by a motor vehicle and deposit accounts, inventory, equipment, general intangibles, and crops); Claim No. 50-1 (\$1,487,496 secured by a real estate mortgage and assignment of life insurance); Claim No. 51-1 (\$145,921 secured by real estate and accounts, inventory, equipment, crops, and deposit accounts); Claim No. 52-1 (\$165,763 secured by real estate, a motor vehicle, and accounts, inventory, equipment, general intangibles, and crops); Claim No. 53-1 (\$172,247 secured by real estate, a motor vehicle, a life insurance assignment, accounts, inventory, equipment, general intangibles, and crops); Claim No. 54-1 (\$1,718,731 secured by real estate); Claim No. 55-1 (\$41,980 secured by real estate and accounts, inventory, equipment, general intangibles, crops, livestock, and deposit account); Claim No. 56-1 (\$167,157 secured by real estate and deposit accounts, inventory, equipment, general intangibles, and crops); and Claim No. 57-1 (\$125,260 secured by real estate and deposit accounts, inventory, equipment, general intangibles, and crops). The bank contends it is fully or oversecured for each claim.

No party has indicated which of these multiple claims, if any, would be impacted by the state court petition between the creditors.

interest in that tractor as a result of timely filing and renewing a UCC financing statement with the Kansas Secretary of State.

CNH further alleged in its state court petition that in March 2013, PrairieLand accepted from Mr. Watkins a trade of this tractor as part of a transaction in which Mr. Watkins purchased from PrairieLand a new John Deere 9560RT Tractor. At the time of this transaction, PrairieLand attributed a value of \$265,000 to the traded-in tractor. About a week later, PrairieLand paid \$265,000 to Community National Bank. The bank then applied those funds.<sup>5</sup> CNH received no funds from the transaction.

CNH alleges that it first learned over four years later—in April 2017 and as a result of Mr. Watkins’ bankruptcy—that he may have traded the original tractor for another. CNH claims neither PrairieLand nor Community National Bank informed CNH of the transaction, obtained CNH’s permission to accept CNH’s collateral as trade, or obtained CNH’s permission to issue or accept funds related to CNH’s collateral.

CNH’s petition states a claim for conversion, and seeks a joint and several judgment against both PrairieLand and Community National Bank in the amount of \$265,000—again, the purported value of the tractor when traded. CNH also asks for all costs and fees, and both pre and post judgment interest.

PrairieLand answered the state court petition by admitting the basic events that

---

<sup>5</sup> While the filed claims detail that Debtors and Community National Bank have a long and substantial lending history together, no party has informed the Court to which transaction these funds were applied.

occurred in March of 2013, including that Community National Bank's interest in the tractor was junior and inferior to CNH's interest. PrairieLand asserted the affirmative defense of statute of limitations, and also filed a crossclaim against Community National Bank. That crossclaim alleged a mistake in fact, and asserted that any recovery PrairieLand was required to pay to CNH should be indemnified by Community National Bank if a court determines that CNH had a superior security interest in the tractor and payment should not have been made to Community National Bank.

Community National Bank admits in its answer that it received the funds, but denies it was aware that those funds were for the sale of the tractor in which CNH claims a superior lien. The bank also asserts various affirmative defenses, including the statute of limitations, and asserts PrairieLand is comparatively at fault and/or contributorily negligent "as it was their failure to run a UCC search that created the claims in this suit."<sup>6</sup> Finally, the bank asserts three additional defenses: 1) under Kan. Stat. Ann. § 84-9-332(a), Community National Bank took funds from PrairieLand free and clear of any security interest, unless CNH carries its burden of proving collusion between Mr. Watkins and Community National Bank to violate CNH's rights in the tractor; 2) under Kan. Stat. Ann. § 84-3-418(c), Community National Bank cannot be liable for a mistaken payment, because remedies for mistaken payment cannot be asserted against a person who accepts an instrument in good faith and for value or who

---

<sup>6</sup> Doc. 1-10 ¶ 6.

in good faith changed position in reliance on the payment; and 3) not all necessary parties had been joined, as CNH had “bifurcated” its claims between the state court petition and an adversary petition against Mr. Watkins in the bankruptcy court, “regarding the same facts and events and requesting identical recovery.”<sup>7</sup>

The same day it answered the state court petition, Community National Bank filed its notice of removal, removing the Reno County petition to this Court. In its notice of removal, Community National Bank asserted related-to jurisdiction, and claimed the facts of this case are “identical” to those being stated in an adversary currently pending against Mr. Watkins by CNH—Adversary 17-7009. In that proceeding, CNH seeks a determination that a portion of the debt Mr. Watkins owes it is nondischargeable.<sup>8</sup>

The notice of removal alleges that 1) there is a risk of CNH obtaining two identical recoveries for the same injury if judgment is granted in its favor in both actions; 2) the parties in the state court might be prevented from protecting their

---

<sup>7</sup> Doc. 1-10 ¶ 9.

<sup>8</sup> CNH’s adversary proceeding against Mr. Watkins asserts that Mr. Watkins’ indebtedness to it in the sum of \$131,307 should not be discharged pursuant to 11 U.S.C. § 523(a)(6) (“willful and malicious injury by the debtor to another entity or to the property of another entity”). The parties have apparently resolved that dispute, as they have very recently filed a motion asking the court approve a compromise that would require Mr. Watkins to pay \$30,000 to CNH after all other plan payments are made. The proposed settlement also states that if CNH receives from sources other than Mr. Watkins an amount equal to or greater than \$130,000 prior to receipt of the \$30,000 payment, then CNH will release Mr. Watkins from his obligation to make the \$30,000 payment. *See* Case No. 17-40389, Doc. 224. The objection deadline on that motion has not expired.

rights in Debtors' bankruptcy given that they were not made a party to CNH's adversary proceeding in the bankruptcy court; and 3) Debtors' rights could be impacted due to CNH's claims in the simultaneous actions, because "any judgment obtained against [PrairieLand and Community National Bank] in the state court action could impact [Debtors'] Chapter 11 bankruptcy plan without [Debtors] having any right[] to participate in the state court action."<sup>9</sup>

Both CNH and PrairieLand have filed motions to remand. And while Community National Bank has consented to entry of final judgment by the bankruptcy court, PrairieLand has expressly declined to consent to the entry of final judgment by this Court.<sup>10</sup>

Debtors have recently moved for a potentially lengthy extension of time to amend their Chapter 11 bankruptcy to incorporate settlements they have reached with numerous creditors since filing their Second Amended plan. The basis for the motion is to allow the underlying dispute between CNH, PrairieLand, and Community National Bank to be resolved. Apparently, Community National Bank has indicated an intent to vote against any plan until the CNH claim is resolved.

## **II. Analysis**

### **A. This Court's Jurisdiction**

Under the federal statutes governing removal, a party "may remove any claim

---

<sup>9</sup> Doc. 1 p.2.

<sup>10</sup> Doc. 4.

or cause of action in a civil action . . . 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 [title 28].”<sup>11</sup> Under 28 U.S.C. § 1334(b), federal district courts have “original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.”

In this district, pursuant to 28 U.S.C. § 157(a), which permits referral to bankruptcy judges, the bankruptcy court has been referred “all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11” by the district court.<sup>12</sup> Pursuant to this referral, bankruptcy judges may thus hear and determine all “core proceedings arising under title 11, or arising in a case under title 11”<sup>13</sup> and all proceedings “arising in or related to a case under title 11.”<sup>14</sup>

No party argues that the state court petition by CNH is or could be a “core

---

<sup>11</sup> 28 U.S.C. § 1452(a).

<sup>12</sup> D. Kan. S.O. 13-1; D. Kan. Rule 83.8.5.

<sup>13</sup> 28 U.S.C. § 157(b)(1).

<sup>14</sup> 28 U.S.C. § 157(a). Although bankruptcy courts have jurisdiction to hear matters that are not core proceedings but that are otherwise related to cases under title 11, the bankruptcy judge is required to “submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be determined by the district judge . . .” 28 U.S.C. § 157(c)(1). The parties may consent to entry of judgment by a bankruptcy court in a related to case, but PrairieLand has *not* consented. *See* Fed. R. Bankr. P. 9027(e)(3) (requiring parties, within 14 days after the filing of a notice of removal, to “file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core,” and if alleging that the cause of action is non-core, “state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge”). While CNH has not filed the required statement, the Court assumes it does not consent based on its motion to remand.



proceeding[] arising under title 11, or arising in a case under title 11.”<sup>15</sup> Rather, Community National Bank asserts the Court has related-to jurisdiction over the state court petition.

Proceedings related to a bankruptcy case are those that “could have been commenced in federal or state court independently of the bankruptcy case, but the outcome of that proceeding could conceivably have an effect on the estate being administered in bankruptcy.”<sup>16</sup> To determine whether a matter is related to a bankruptcy case, courts focus on “whether the action potentially impacts administration of the bankruptcy estate.”<sup>17</sup> “Although the proceeding need not be against the debtor or his property, the proceeding is related to the bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action in any way, thereby impacting on the handling and administration of the bankruptcy estate.”<sup>18</sup> The party asserting subject matter jurisdiction, here Community National

---

<sup>15</sup> 28 U.S.C. § 157(b)(1). And obviously, it would be difficult to make such an argument. This matter does not arise in or arise under title 11; it is a state law matter that exists outside of bankruptcy and clearly does not depend on bankruptcy law for its existence.

<sup>16</sup> *Personette v. Midgard Corp. (In re Midgard Corp.)*, 204 B.R. 764, 771 (10th Cir. BAP 1997) (internal quotations omitted).

<sup>17</sup> *Santander Consumer, USA, Inc. v. Houlik (In re Houlik)*, 481 B.R. 661, 674 (10th Cir. BAP 2012). CNH makes the more narrow argument that its petition would have no “significant” effect or “meaningful” effect on Debtors, but that is not the true test. Rather, *potential* effects are all that are needed to bring the petition within this Court’s related-to jurisdiction.

<sup>18</sup> *Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1518 (10th Cir. 1990) (internal citations and quotations omitted).

Bank, has the burden of proving the existence of that jurisdiction.<sup>19</sup>

In support of their motions to remand, CNH and PrairieLand argue that Community National Bank's notice of removal did not satisfy its burden of showing related-to jurisdiction. Community National Bank counters as follows—essentially stating that if it is found liable on CNH's conversion claim, then Debtors would in turn be “responsible for any funds that [Community National Bank] pays to CNH.”<sup>20</sup>

When CNB&T received the funds at issue from PrairieLand those funds were applied to one of the Debtors' loans with CNB&T and the Debtors received the benefit of the same. Had CNB&T never received those funds the Debtors' loans with CNB&T would have had a higher balance upon the filing of the bankruptcy assuming that all other payments remained the same since March 2013. Since CNB&T is an over secured creditor any amounts paid would be secured by that same collateral.<sup>21</sup>

Community National Bank argues that Debtors' Chapter 11 plan cannot be confirmed until the amount of the Bank's claims is thus finalized.<sup>22</sup>

A similar jurisdiction question arose in *Gillespie Practical Tech, Inc. v. A-1 Plank & Scaffold Mfg, Inc. (In re A-1 Plank & Scaffold Mfg., Inc.)*.<sup>23</sup> In that case, a bank argued that the Court had related-to jurisdiction over its counterclaim for conversion and patent misuse because if the bank prevailed, then a separate entity would have its

---

<sup>19</sup> 2 Moore's Federal Practice § 12.30[5] (Matthew Bender 3d ed.); *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004).

<sup>20</sup> Doc. 16 at 2.

<sup>21</sup> *Id.*

<sup>22</sup> Community National Bank filed an acceptance ballot to the Second Amended Plan *See* Case No. 17-40389, Doc. 204 (Ballot Summary).

<sup>23</sup> 451 B.R. 135 (Bankr. D. Kan. 2011).

claim against the Chapter 11 estate reduced.<sup>24</sup> The matter at issue was a “conflict between two creditors” over property purchased by the bank in a credit bid.<sup>25</sup> The property at issue was no longer property of the bankruptcy estate and the bank’s claims against the bankruptcy estate had already been determined.<sup>26</sup> The Court concluded that the conflict between creditors over property that was no longer part of the bankruptcy estate would not impact the handling and administration of the bankruptcy estate, even if claims against the estate were reduced.<sup>27</sup> As a result, there was no subject matter jurisdiction.

A strikingly similar situation is present here. The only alleged effect on Debtors’ bankruptcy is a possible change to the amounts contained in creditors’ proofs of claim. Even that result would require a court to find that the conversion claim between the three creditors could and should impact the contract claims those creditors have against Debtors and that the creditors’ proofs of claims should be adjusted accordingly. And not only has Community National Bank failed to show this Court how that scenario could and would play out, it is hard to see the impact on the actual bankruptcy estate itself. No party disputes that the property that was traded (e.g., the tractor) is no longer a part of Debtors’ bankruptcy estate. Community National Bank has simply failed to show how this conflict between creditors would impact the

---

<sup>24</sup> *Id.* at 142.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

handling and administration of Debtors' Chapter 11 estate.<sup>28</sup> What administrative duties could the Court not complete?

Community National Bank's argument that the recovery sought by CNH in its adversary against Debtor, and its conversion suit against two creditors, is "identical" is also unconvincing. One adversary is for the willful and malicious injury by Mr. Watkins under 11 U.S.C. § 523(a)(6) for his actions in trading its collateral. The other is CNH's claim for damages against PrairieLand and Community National Bank for conversion of the collateral. While the facts underlying the transaction overlap in the two cases, they are entirely separate causes of action and recoveries.

Community National Bank has the burden of proving the existence of this Court's subject matter jurisdiction over the state court petition it removed to this Court. The Bank makes general statements about its claims against Debtors' Chapter 11 case, but never demonstrates what specifically would change as a result of the outcome of that dispute (other than to say that if it is required to pay CNH on CNH's conversion claim, its proofs of claim against Debtors estate would be increased). But how? And which claims are impacted? And what authority is there for such an impact?

---

<sup>28</sup> See also *Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1518 (10th Cir. 1990) ("A bankruptcy court has jurisdiction over disputes regarding alleged property of the bankruptcy estate at the outset of the case. When property leaves the bankruptcy estate, however, the bankruptcy court's jurisdiction typically lapses, and the property's relationship to the bankruptcy proceeding comes to an end. Thus, the bankruptcy court lacks related jurisdiction to resolve controversies between third party creditors which do not involve the debtor or his property unless the court cannot complete administrative duties without resolving the controversy.") (internal citations omitted).

The bottom line is that Community National Bank did not carry its burden to establish this Court's subject matter jurisdiction.

**B. Abstention**

Even if the Court had jurisdiction over this matter, the Court would still grant the motions to remand of PrairieLand and CNH under 28 U.S.C. § 1334(c), which provides for both permissive abstention under subsection (c)(1) and mandatory abstention under subsection (c)(2). As do the parties, the Court first assesses the applicability of mandatory abstention under § 1334(c)(2), which states:

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.

The test to determine whether mandatory abstention applies is multi-factor. “Mandatory abstention applies when all of the following elements are present: (1) the motion to abstain was timely; (2) the action is based on state law; (3) an action has been commenced in state court; (4) the action can be timely adjudicated in state court; (5) there is no independent basis for federal jurisdiction other than bankruptcy; (6) the matter is non-core.”<sup>29</sup>

Factors one through three (whether the motion to abstain was timely filed, whether the petition is based on state law, and whether the matter was already

---

<sup>29</sup> *Telluride Asset Resolution, LLC v. Telluride Global Dev., LLC (In re Telluride Income Growth, LP)*, 364 B.R. 390, 398 (10th Cir. BAP 2007).

commenced in state court) and factor five (that there is no independent basis for federal jurisdiction other than bankruptcy) are easily established. The motions to remand were filed within two weeks of the removal of the state court petition to this Court, and that petition is based on the state common law of conversion. The Court has already determined herein that factor six (the matter is non-core) is applicable. The remaining factor is factor four: whether the action can be timely adjudicated in state court.

“The burden of proving timely adjudication is on the party seeking abstention.”<sup>30</sup> When assessing this factor, courts “have focused on whether allowing an action to proceed in state court will have any unfavorable effect on the administration of a bankruptcy case” or the bankruptcy court’s efficient and expeditious handling of all matters connected with the bankruptcy estate.<sup>31</sup> The consideration of “timely adjudication” is itself a multi-factor test:

In considering whether allowing a case to proceed in state court will adversely affect the administration of a bankruptcy case, courts have considered some or all of the following factors: (1) backlog of the state court and federal court calendar; (2) status of the proceeding in state court prior to being removed (i.e., whether discovery had been commenced); (3) status of the proceeding in the bankruptcy court; (4) the complexity of the issues to be resolved; (5) whether the parties consent to the bankruptcy court entering judgment in the non-core case; (6) whether a jury demand has been made; and (7) whether the underlying

---

<sup>30</sup> *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 778 (10th Cir. BAP 1997).

<sup>31</sup> *Id.*

bankruptcy case is a reorganization or liquidation case.<sup>32</sup>

Some of these factors require the party moving for abstention to present evidence.<sup>33</sup> For example, the Tenth Circuit BAP has stated that evidence is required to demonstrate “the status of the state court calendar and status of [the] proceedings in state court,” but that other factors that are evident from the bankruptcy court and adversary record do not require evidence. Those factors include the status of the adversary proceeding, the consent of parties to have the bankruptcy court enter judgments, and the nature of the underlying bankruptcy case.<sup>34</sup>

Here, the Court has no evidence of any kind from the parties. For example, this Court has no idea of the state court’s current backlog, if any. Obviously, the state court petition had just been filed and answered, and the parties are now in the initial stages of discovery—a process that will have to be undertaken no matter where the litigation occurs.<sup>35</sup> The Court can also glean the status of the bankruptcy court proceeding from a review of its own docket sheet and from the record of numerous hearings already conducted. A disclosure statement has long since been approved, and Debtors announced at the last hearing that deals had been made with every objecting creditor

---

<sup>32</sup> *Id.* at 778–79 (internal footnotes and citations omitted).

<sup>33</sup> *Id.* at 779.

<sup>34</sup> *Id.*

<sup>35</sup> While the motions to remand were being briefed, the Court entered a Scheduling Order governing pretrial discovery. *See* Case No. 17-40389, Doc. 17. The Court is unaware of any reason why that discovery cannot conclude apace, regardless where the matter is ultimately tried.

but one. And since that hearing, even the remaining creditor has entered into a compromise with Debtors.<sup>36</sup>

All this stated, however, it is always difficult to predict the issues that will need resolved in any debtor's bankruptcy. But the fact remains that the parties have declined to unanimously consent to allow this Court to enter a final judgment in this Adversary Proceeding. That means that instead of issuing a binding final decision, this Court would instead be required to make a report and recommendation under 28 U.S.C. § 157(c)(1). The District Court would then be required to review that report and enter its final decision. Obviously, the necessity to involve a second federal judicial officer will further delay the ultimate entry of a final judgment. As a result, it is certainly possible that this more time-consuming two-tier review would result in the

---

<sup>36</sup> In a recent motion filed by Debtors to extend the deadline to file a third amended plan to codify (and provide notice of) the compromises made with six previously objecting creditors to Debtors' second amended plan, Debtors indicate that Community National Bank is now threatening to withdraw its acceptance ballot and object to confirmation. *See* Case No. 17-40389, Doc. 227.

The Court is unlikely to grant an open-ended extension for the filing of Debtors' third amended plan. The Court is presently unconvinced that it is in the best interest of the vast majority of creditors (or Debtors) to delay the filing of a third amended plan, and the scheduling of a confirmation trial if anyone objects. The litigation between these creditors, especially if a decision is appealed, could take easily more than a year or even two to conclude. Debtors' bankruptcy has been pending almost a year, and creditors deserve the opportunity to vote on a final plan—even if it contains contingencies dependent on the outcome of this state court litigation. Secured creditors not receiving adequate protection also deserve to begin receiving distributions if a plan is confirmed (or to begin to repossess collateral if confirmation is denied and the case ultimately converts to one under Chapter 7).



state court being able to enter final judgment sooner than the federal court.<sup>37</sup>

All this considered, the question of mandatory abstention under 28 U.S.C. § 1334(c)(2) certainly leans to favoring abstention, but it is admittedly not clear. The Court, therefore, next assesses whether permissive abstention under § 1334(c)(1) is applicable. That section states:

[N]othing 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.

Again, the Court will employ a multi-factor test, which includes:

1. the effect or lack of effect on the efficient administration of the estate if a court abstains;
2. the extent to which state law issues predominate over bankruptcy issues;
3. the difficulty or unsettled nature of the applicable state law;
4. the presence of a related proceeding commenced in the 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 on 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;
12. the presence in the proceeding of nondebtor parties;
- and 13. any unusual or other significant factors.<sup>38</sup>

As the parties moving for this Court's abstention under § 1334(c)(1), CNH and

---

<sup>37</sup> See *In re Midgard Corp.*, 204 B.R. at 779 (stating that the more time-consuming, two-tier review “may favor a finding of timely adjudication in a state court.”)

<sup>38</sup> *In re Lunt*, No. 10-13712, 2011 WL 1656404, at \*1–2 (Bankr. D. Kan. May 2, 2011) (citing 1 Norton Bankr. L & Prac. 3d § 8.6 (Thompson/West 2010)).

PrairieLand have the burden of establishing that permissive abstention is appropriate.<sup>39</sup> “Permissive abstention is a matter within the sound discretion of the bankruptcy court.”<sup>40</sup>

As the Court has noted throughout, the outcome of the state court petition will have little effect on the administration of Debtors’ Chapter 11 case because it is, in the main, a conflict between three creditors about who was entitled to receive the proceeds from the trade-in of previous estate property. In addition, state law dominates throughout CNH’s petition, the answers thereto, and the counterclaim thereon. There is no jurisdictional basis to bring the petition to this Court other than § 1334, and this Court has determined the state court petition is not closely intertwined with the bankruptcy, nor a core proceeding.<sup>41</sup> In addition, although this Court would not be burdened by retaining this case on its docket, the Court cannot imagine that the state court would be burdened either as it is not particularly complex. The Court also has no evidence of any forum shopping by any of the parties.

Turning to the remaining factors, the fact that all parties involved in the state

---

<sup>39</sup> *In re Commercial Fin. Servs., Inc.*, 215 B.R. 397, 413 (Bankr. N.D. Okla. 2000).

<sup>40</sup> *In re Tri-Valley Distrib., Inc.*, No. BAP UT-05-119, 2006 WL 2583247, at \*6 (10th Cir. BAP 2006).

<sup>41</sup> Under § 1334(c)(1), which is applicable to “both core and non-core matters when abstention best serves the interest of justice, judicial economy, or in the interest or comity with the state courts.” *The Scoular Co. v. Dalhart Consumers Fuel Assoc., Inc. (In re Podzemny)*, No. 11-09-14226 JL, 2010 WL 1795269, at \*6 (Bankr. D.N.M. May 3, 2010).

court petition are non-Debtors, and the fact that this Court has significant concerns about its own jurisdiction, constitute the “unusual or significant factors” contemplated for this analysis. Again, because at most, the Court would have related-to jurisdiction over the state court petition, and because two parties do not consent to entry of a final order by this Court, the two-tier review process is implicated, thus resulting in delay the state court would not experience. The Court finds there is simply no good reason for resolution of this dispute to be delayed in such a manner.

Community National Bank does not address the permissive abstention argument, but only states that equity does not *demand* remand of this matter. To the contrary, weighing all the above factors, and in the interest of comity with the state court and efficient and expeditious justice for the parties, the Court concludes it should abstain from hearing this matter under § 1334(c)(1).

### **C. Remand Based on Equitable Grounds**

To complete the analysis, CNH also argues that the Court should remand this matter to the state court under 28 U.S.C. § 1452(b), which permits remand of removed cases “on any equitable ground.” Some courts have looked at equitable factors when considering remand under § 1452(b), such as:

(1) forum non conveniens; (2) a 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.<sup>42</sup>

Other courts have determined that the “analysis of a request for equitable remand under § 1452(b) and permissive abstention under § 1334(c)(1) is substantively the same.”<sup>43</sup>

For the reasons stated above in support of discretionary abstention, the equities of this matter also require remand to state court. This Court wishes to allow state courts to decide state law matters involving same-state parties, especially when the matter does not have a direct impact on a debtor’s bankruptcy case. In addition, the state court petition is at the earliest stages of litigation, and it will be a more efficient expenditure of judicial resources to determine this dispute amongst three Kansas companies in a Kansas state court instead of using the resources of two federal judicial officers. Finally, counsel for all parties have offices located much closer to the state court than this Court, resulting in the state court providing a bit more convenient location for a trial.

---

<sup>42</sup> *Orman v. Hollywood Motion Picture & Television Museum*, No. 09-2333, 2009 WL 2914054, at \*3 (D. Kan. Sept. 8, 2009) (quoting *SBKC Serv. Corp. v. 1111 Prospect Partners, L.P.*, 204 B.R. 222, 225 (D. Kan. 1996)); see also *Textron Inv. Mgmt. Co. v. Struthers Thermo-Flood Corp.*, 169 B.R. 206, 211 (D. Kan. 1994) (stating factors as “whether (1) there is duplication of judicial resources or uneconomical use of judicial resources; (2) the remand will adversely affect the administration of the bankruptcy estate; (3) the case involves questions of state law better addressed by a state court; (4) there are comity considerations; (5) there is prejudice to unremoved parties; (6) the remand lessens the possibility of inconsistent results; and (7) the court where the actions originated has greater expertise”).

<sup>43</sup> *Marah Wood Prods., LLC v. Jones*, 534 B.R. 465, 477 (D. Conn. 2015).

### **III. Conclusion**

The Court finds that Community National Bank did not satisfy its burden of showing that this Court has subject matter jurisdiction over the removed state court petition. In addition, this case is based on a state law conversion claim that, in the interests of comity and justice, should be heard in the state court. The Court therefore exercises its discretion pursuant to 28 U.S.C. § 1334(c)(1) and abstains from hearing this proceeding. For the same reasons, the Court remands this matter to the state court under 28 U.S.C. § 1452(b).

Accordingly, the motions to remand of PrairieLand<sup>44</sup> and CNH<sup>45</sup> are granted. This proceeding is remanded to its original court for resolution.

**It is so ordered.**

###

---

<sup>44</sup> Doc. 6.

<sup>45</sup> Doc. 9.