

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

| | | |
|-------------------|---|-------------------|
| IN RE: | § | |
| | § | |
| INDEPENDENCE FUEL | § | Case No. 22-60301 |
| SYSTEMS LLC | § | |
| | § | |
| Debtor | § | Chapter 11 |

| | | |
|--------------------------|---|------------------------|
| INDEPENDENCE FUEL | § | |
| SYSTEMS LLC, | § | |
| | § | |
| Plaintiff | § | |
| | § | |
| v. | § | Adversary No. 23-06006 |
| | § | |
| EASTMAN GAS COMPANY LLC, | § | |
| | § | |
| Defendant. | § | |

ORDER DENYING PLAINTIFF'S MOTION FOR REMAND

ON THIS DATE the Court considered the “Motion for Remand”¹ (the “Motion”) filed in the above-referenced adversary proceeding by Plaintiff, Independence Fuel Systems LLC (“Plaintiff” or “Debtor”), on May 22, 2023² together with its brief in support.³ Defendant, Eastman Gas Company LLC

¹ ECF Nos. 11, 25.

² The Motion was originally filed on March 16, 2023, but was denied without prejudice in the “Order Transferring Case to Eastern District of Texas and Referral of Adversary Case to Bankruptcy Court” entered by the U.S. District Court for the Northern District Court, to which this proceeding was originally removed. ECF No. 15. Plaintiff later re-urged the Motion on May 22, 2023. ECF No. 25.

³ ECF No. 12.

(“Defendant”), timely filed a response to the Motion.⁴ The Court finds that the argument and authorities of the parties are adequately presented in the pleadings and that the Court’s decision regarding the Motion would not be significantly aided by oral argument.

This history of the bankruptcy case underlying this proceeding is pertinent to resolution of the Motion. Plaintiff as Debtor filed the above bankruptcy case in this Court on July 14, 2022.⁵ Debtor was successful in its efforts to achieve confirmation of a SubChapter V reorganization plan, and the Court entered its “Agreed Order Confirming Debtor's Amended Plan of Reorganization” on December 16, 2022.⁶ Incorporated into that plan was an agreement to settle claims between Debtor and Eastman Midstream, LP.⁷ This settlement was “intended to settle and fully resolve any and all claims that exist, or may exist, by the Debtor against Eastman, Raymond Russell and Matthew Russell, as of the date of confirmation of [the] Plan.”⁸ After

⁴ ECF No. 28.

⁵ Case No. 22-60301, ECF No. 1.

⁶ Case No. 22-60301, ECF No. 102.

⁷ Case No. 22-60301, ECF No. 101, Pg. 16-17.

⁸ *Id.* The confirmed plan stated specifically that Debtor did "forever release, settle, compromise, acquit and forever discharge Eastman, Raymond Russell and Matthew Russell, from any and all claims, causes, causes of action, damages, costs, expenses, and liabilities of any kind, character or description, whether direct or indirect, known or unknown, contingent or non-contingent, disclosed or hidden, in law or equity, that it has,

plan confirmation this Court entered its “Agreed Order Regarding The Application For Entry Of Final Decree” on April 24, 2023,⁹ and the case was closed on May 15, 2023.

This adversary proceeding was originally filed on January 24, 2023 in state court in Dallas County, Texas, shortly after entry of the confirmation order but prior to entry of the final decree.¹⁰ Defendant removed the suit to federal court in the Northern District of Texas, which then transferred it to the Eastern District of Texas. Plaintiff’s Motion asks to remand this proceeding back to state court in Dallas County, Texas.

The basis for Plaintiff’s remand request is that “Defendant has improperly attempted to create federal question jurisdiction where none exists.”¹¹ Plaintiff asserts this proceeding “involves a claim for breach of an Operating Agreement entered into by and between Plaintiff and Defendant’s

had or may have against Eastman, Raymond Russell and Matt Russell as of the date of confirmation of this Plan.” *Id.* “Eastman” as defined in the plan refers to Eastman Midstream, LP. Case No. 22-60301, ECF No. 101, Pg. 9. According to its brief in support of a separate motion to dismiss this proceeding, Defendant, Eastman Gas Company, LLC, “is the general partner and 1% owner of Eastman Midstream, LP.” Def.’s Brief, ¶ 1, 1, ECF No. 7.

⁹ Case No. 22-60301, ECF No. 121.

¹⁰ ECF No. 1.

¹¹ Mot., 2, ECF No. 12.

agent, R. Kevin Russell.”¹² Put succinctly, Plaintiff is asking for remand by alleging this Court lacks subject matter jurisdiction over contractual claims between Plaintiff and R. Kevin Russell.¹³ Yet, the named Defendant is not R. Kevin Russell but rather Eastman Gas Company, LLC.¹⁴

In response, Defendant argues this case concerns not contractual claims between Plaintiff and R. Kevin Russell, but ownership of pipelines supplying compressed natural gas to Plaintiff’s stations.¹⁵ This is important because according to Defendant, Plaintiff “did not claim ownership” of the pipelines in

¹² *Id.* In fact, Plaintiff’s original petition filed in state court includes causes of action for breach of contract, breach of fiduciary duty, fraud/misrepresentation, oppressive conduct, tortious interference with current and prospective business relationships, accounting, conversion, fraudulent transfer, declaratory judgment, alter-ego, piercing the corporate veil, constructive trust, and disgorgement. Ex. 3, ECF No. 1.

¹³ 28 U.S.C. § 1334(b) provides, in relevant part, the following: “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.” (emphasis added). A proceeding “arises under” Title 11 if the proceeding is created or determined by a statutory provision of Title 11. A proceeding “arises in” a case under Title 11 if, by its very nature, it could arise only in the context of a bankruptcy case or, in other words, it is a proceeding which would have no practical existence outside of the bankruptcy context, such as a bankruptcy administrative matter. Finally, a proceeding is “related to” a case under Title 11 if its outcome could conceivably have an effect on a bankruptcy estate. *See, e.g., Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 752 (5th Cir. 1995). If a matter falls within one of those three distinct categories of bankruptcy proceedings, thereby giving the district court subject matter jurisdiction over that matter, then the district court may thereafter refer the matter to a bankruptcy court for that district under 28 U.S.C. §157(a). *See generally, Celotex Corp. v. Edwards*, 514 U.S. 300, 307-08 (1995).

¹⁴ This may be because R. Kevin Russell is himself a debtor in an individual bankruptcy proceeding, *In Re Richard Kevin Russell*, Case. No. 22-41793, pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

¹⁵ Obj. to Mot., ¶ 6, 4, ECF No. 28.

its bankruptcy case because it “knows” that Eastman Midstream, LP owns the pipelines as set forth in its objection to plan confirmation.¹⁶ In evaluating the substance of this proceeding and whether subject matter jurisdiction exists, Defendant’s framing of the dispute is more convincing. If the pipelines are owned by Eastman Midstream, LP, then at issue is the scope and enforcement of the release provisions in the confirmed plan. If the pipelines are owned by Plaintiff, then they were property of Plaintiff’s bankruptcy estate and it is necessary to consider whether they were disclosed to creditors, treated properly under the plan, and whether Plaintiff’s claims are possibly estopped.

At minimum, this Court has subject matter jurisdiction under 28 U.S.C. § 1334 because the claims in this proceeding are “related to” the underlying bankruptcy case of Plaintiff, Independence Fuel Systems, LLC.¹⁷ In addition, the reorganization plan confirmed by this Court in Plaintiff’s bankruptcy case

¹⁶ *Id.* at ¶ 3-4.

¹⁷ It is usually unnecessary for a court to make a determination as to which precise category applies to a particular matter, so long as it determines that it has, at the least, “related to” jurisdiction under § 1334. *Matter of Zale Corp.*, 62 F.3d 746, 752 (5th Cir. 1995), (quoting *In re Walker*, 51 F.3d 562, 569 (5th Cir. 1995)) [“For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings ‘arising under,’ ‘arising in a case under,’ or ‘related to a case under,’ title 11. Instead, to ascertain whether jurisdiction exists, it is necessary only to determine whether a matter is at least ‘related to’ the bankruptcy.”](citations omitted).

retains jurisdiction “to enforce or interpret this Plan.”¹⁸ Determining the scope or application of the plan releases, and enforcing them if necessary, are issues squarely within this Court’s subject matter jurisdiction because a “[b]ankruptcy [c]ourt plainly ha[s] jurisdiction to interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009), citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934).

Because jurisdiction exists, the Court must also consider whether that jurisdiction should be exercised in lieu of remanding this proceeding back to state court. The ability of a court, sitting in bankruptcy, to remand a case after removal is shaped by 28 U.S.C. §1452(b). This statute allows a court to which a state law claim is removed to remand on any "equitable grounds." *Id.* A district court has much more discretion when ordering remand in bankruptcy than under the general removal statute. *Browning v. Navarro*, 743 F.2d 1069, 1076 n.21 (5th Cir. 1984). In fact, "removal statutes are to be strictly construed, and any doubts concerning removal must be resolved against removal and in favor of remanding the case to state court." *Luevano v. Dow Corning Corp.*, 183 B.R. 751, 752 (W.D. Tex. 1995), citing *Shamrock Oil and Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941). In determining whether remand is appropriate, the Court looks to the factors articulated for

¹⁸ Sec. Am. Plan, Art. IX, Pg. 16, Case No. 22-60301, ECF No. 101.

equitable remand, “supplementing its analysis with respect for abstention principles.” *O'Rourke v. Cairns*, 129 B.R. 87, 90 (E.D. La. 1991).¹⁹ The following factors are generally considered the most relevant considerations as to whether a federal court should decline to exercise jurisdiction over a particular matter:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other non-bankruptcy proceeding;
- (5) jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;

¹⁹ In addition to equitable remand under 28 U.S.C. § 1452(b), the Court may and in some cases must decline to exercise its jurisdiction under either discretionary or mandatory abstention. These doctrines allow a bankruptcy court to prudently exercise its judgment by refraining from hearing those controversies which, though related to the bankruptcy case, should more properly be heard in another forum. 28 U.S.C. §1334 defines both forms of abstention:

- (c)(1) [Discretionary] 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) [Mandatory] Upon timely motion of a party in a proceeding based upon a State law claim ..., 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.

There is overlap in the factors used for evaluating whether remand or abstain from hearing a proceeding. *Broyles v. U.S. Gypsum Co.*, 266 B.R. 778, 785 (E.D. Tex. 2001).

- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of non-debtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Broyles v. U.S. Gypsum Co., 266 B.R. 778, 785 (E.D. Tex. 2001); *see also Genesis Producing Co., L.P. v. Smith Big Oil Corp.*, No. H-13-3342, 2014 U.S. Dist. LEXIS 109370, at *9 (S.D. Tex. 2014); *Kelly Grimsley Real Estate Ltd. v. McMahon*, No. 4:16-CV-806, 2016 U.S. Dist. LEXIS 174042, at *6 (E.D. Tex. 2016). None of these factors alone is dispositive of the inquiry, but the presence of several factors in a particular case should trigger concern as to whether a bankruptcy court should exercise its jurisdiction under § 1334.

In this proceeding, the balance of these factors weigh against equitable remand. The settlement and release of claims in Plaintiff's confirmed plan was an integral part of the bargain struck to permit reorganization. Thus, the protection and enforcement of the settlement and plan releases has a direct bearing on administration of the estate. State law issues do not predominate over bankruptcy issues, but rather the question of ownership of

property and its proper disclosure by Debtor are central bankruptcy issues. Neither party has identified for the Court a related proceeding commenced in state court, and a determination of ownership of the pipelines in question is not remote from the matters ostensibly resolved in the main bankruptcy case. Despite Plaintiff's attempt to characterize the claims in this proceeding as purely contractual state law claims, the Court instead considers the substance of the matters at issue to be the interpretation and enforcement of the confirmed reorganization plan. The Court does not find in these circumstances that comity weighs in favor of remand, for why is a state court better suited to determine the scope of a plan release or the effect of a confirmation order entered by this Court?

Accordingly, for the reasons set forth above, the Court finds that just cause exists for the entry of the following order.

IT IS THEREFORE ORDERED that the "Motion for Remand" filed by Plaintiff, Independence Fuel Systems LLC, on May 22, 2023 is **DENIED** such that the above proceeding will remain before this Court.

Signed on 11/20/2023



THE HONORABLE JOSHUA P. SEARCY
UNITED STATES BANKRUPTCY JUDGE