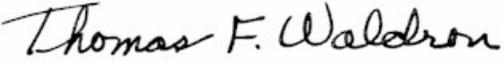


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: January 27, 2006



Thomas F. Waldron
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: ERIC BOLIN
LAURA BOLIN,

Debtors

Case No. 05-40424

Judge Waldron
Chapter 7

**DECISION ON ORDER
DETERMINING ABSTENTION**

DATED AT DAYTON, OHIO this 27th Day of January, 2006:

Pending before the Court are the Debtors' Motion For Lien Avoidance Under 11 U.S.C. § 506(d) (Doc. 18) and the Creditors Equity Trust Company and Arthur D. Paradise's Memorandum Opposing Debtors' Motion for Lien Avoidance (Doc. 21).

Upon review of these filings, the Court entered an Order Fixing Filing Dates Regarding Abstention (Doc. 23) which established January 17, 2006 as the date for the

parties to file memoranda containing arguments and citations of authority in support of their positions on the issue of abstention.

Thereafter, only counsel for the Debtors filed a response. See Debtors' Memorandum In Opposition To Abstention On Debtors' Motion For Lien Avoidance (Doc. 26).

This Court has previously considered the issue of abstention.

Permissive abstention authorized by § 1334(c)(1) permits a bankruptcy court to exercise its discretion to abstain in favor of another court in certain circumstances. Specifically, section 1334(c)(1) provides as follows:

28 U.S.C. § 1334 refers to the United States district courts but, "the section refers to the bankruptcy court when the district court has referred a case or proceeding to the bankruptcy court." See *In re Cash Currency Exchange, Inc.*, 37 B.R. 617 (Bankr.D.C.Ill.1994) aff'd 762 F.2d 542, cert. denied, 474 U.S. 904, 106 S.Ct. 233, 88 L.Ed.2d 232 (1985).

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.

The decision whether to abstain is within the sound discretion of the bankruptcy judge. *Carver v. Carver*, 954 F.2d 1573 (11th Cir.1992), cert. denied, 506 U.S. 986, 113 S.Ct. 496, 121 L.Ed.2d 434 (1992). Permissive abstention is not limited to non-core matters, but is applicable in core proceedings, including a complaint to determine dischargeability of a debt, *In re Mitchell*, 132 B.R. 585 (Bankr.S.D.Ind.1991), and can be raised by a bankruptcy court on its own motion so long as the parties are given an opportunity to be heard. *In re Costa*, 172 B.R. 954 (Bankr.E.D.Cal.1994).

In re Tremaine, 188 B.R. 380, 384 (Bankr. S.D. Ohio 1995).

Additionally, this Court has noted the factors that assist a court in determining whether discretionary abstention is appropriate.

The decision to abstain or not is aided by an analysis of all relevant factors, including a non-exclusive list of thirteen (13) decisional criteria set forth by this court in *Nationwide Roofing & Sheet Metal, Inc. v. Cincinnati Ins. Co.* (*In re Nationwide Roofing & Sheet Metal, Inc.*), 130 B.R. 768

(Bankr.S.D.Ohio 1991). Specifically, the following factors were identified: 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 state court or other non-bankruptcy 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 this 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. *Nationwide*, 130 B.R. at 780 (citations omitted).

This non-exclusive list does not require a mechanical application of each factor, but provides a starting point for a permissive abstention analysis.

Id at 384-85.

Although counsel for the Debtors analyzed these factors in his Memoranda (Doc. 26), the Court notes there are several significant factors which persuade the Court that discretionary abstention is appropriate in this case.

First, it is essential to recognize that this is a Chapter 7 case and, on October 27, 2005, the Chapter 7 Trustee, after conducting the Meeting of Creditors, completed a Report of No Distribution, in which he reported that there are no assets available to administer for the benefit of Creditors in this estate.

While this determination by the Trustee, standing alone, would not be an outcome determinative factor, since the Debtors have additional rights and benefits available to them pursuant to provisions of the Bankruptcy Code, it is clear that one of the central concerns of a bankruptcy proceeding is notably absent. That is, whatever the result of the litigation between the Debtors and this particular Creditor, it will have no

impact on the future administration of this estate for the benefit of any creditors. An additional factor is that there is little if any “bankruptcy” law involved in this dispute; rather, the Debtors assert, pursuant to applicable non-bankruptcy law, both state and federal, that the Debtors are entitled to relief. In such circumstances, non-bankruptcy courts are both more competent and better able to determine such issues.

It must be recognized that there are certain unique judicial determinations that only the bankruptcy court can render. These are most obvious in connection with reorganization cases under chapters other than Chapter 7. As a result of the existing case load in this court (9,000+ case and additional adversary proceedings), this Court’s judicial time must be directed primarily to matters which can only be determined by the bankruptcy court and not by other courts.

In the circumstances of this case, including the fact that the result of this dispute will only involve this Creditor and the Debtors and will have no impact on the distribution of assets to creditors in this case, the existence of applicable non-bankruptcy law asserted as a basis for the Debtors’ relief, the availability of other courts possessing the familiarity and greater ability to determine such issues and the requirement that this Court primarily devote its judicial resources to bankruptcy issues, which can only be determined by the bankruptcy court, the Court determines that it is appropriate to exercise discretionary abstention and to abstain from all issues presented by the Debtors’ Motion For Lien Avoidance Under 11 U.S.C. § 506(d) (Doc. 18) and the Creditors Equity Trust Company and Arthur D. Paradise’s Memorandum Opposing Debtors’ Motion for Lien Avoidance (Doc. 21).

An order in accordance with this decision is simultaneously entered.

SO ORDERED.

c:

Eric Thomas Bolin and Laura Corrine Bolin, 5270 Upperton Drive, Miamisburg, Ohio 45342 (Debtors)

Thomas G. Eagle, Esq., 3386 North State Route 123, Lebanon, Ohio 45036 (Atty. for the Debtors)

Martin A. Beyer, Esq., 1900 Kettering Tower, Dayton, Ohio 45423 (Atty. for Equity Trust Company)

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