

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

T. ARTHUR PALM

PLAINTIFF

v.

CASE No. 09-2133

HEIDTMAN MINING, LLC and
MIDWEST TERMINALS OF TOLEDO, INC.

DEFENDANTS

O R D E R

Currently before the Court is Plaintiff's Motion to Quash Defendant's Notice of Removal (Doc. 4). The Court will construe the motion as a Motion to Remand. Separate Defendant Midwest Terminals of Toledo removed this matter to this Court on October 23, 2009, pursuant to Title 28, Section 1452(a) of the United States Code governing the removal of claims related to bankruptcy cases.

Plaintiff originally filed his Complaint in the Circuit Court of Sebastian County, Arkansas, on July 14, 2008. On April 10, 2009, the state court set the matter for jury trial to begin on October 26, 2009. On June 12, 2009, Separate Defendant Heidtman Mining filed a Chapter 11 petition in the United States Bankruptcy Court for the Western District of Arkansas, Fort Smith Division that remains pending before the bankruptcy court.

Pursuant to Title 28, Section 1452(b) of the United States Code, the court to which an action is removed may remand the action on any equitable ground. The Court has considered

numerous factors, including but not limited to: the effect of judicial economy, comity and respect for state court decision-making capabilities, the effect of remand upon the related title 11 estate, the predominance of state law issues, and the prejudice to other parties to this action. After consideration of these factors, the Court finds that equitable principles require the remand of this action to state court. This case has been pending in state court for over a year and was only removed on the Friday afternoon before the trial was set to begin Monday morning. Further, the bankruptcy case has been pending since June, and is no surprise to the parties involved in this case. Accordingly, the Court finds the Motion to Remand (Doc. 4) should be granted, and this case is remanded to the Circuit Court of Sebastian County, Arkansas.

IT IS SO ORDERED.

Dated: October 26, 2009

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge