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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KELLEEN F. SULLIVAN, et al.,
Plaintiffs,
v.
STEPHEN A. FINN, et al.,
Defendants.

Case No. [3:17-cv-05799-WHO](#)

**SHORT ORDER ON DEFENDANTS'
MOTION TO TRANSFER**

Re: Dkt. No. 19

INTRODUCTION

The parties dispute whether this action should be transferred to the United States Bankruptcy Court in the Northern District of California, where the Honorable Roger L. Efremsky is presiding over a matter involving the same nucleus of facts. I am inclined to think that plaintiffs potentially have claims that are independent of the claims of the entities in bankruptcy, but I am unsure whether an Adversary Proceeding will proceed in bankruptcy to address the entities' claims that are based on the same facts as the individuals' claims. If the Adversary Proceeding occurs, I would value the recommendation of Chief Judge Efremsky on the interrelationship, if any, of the entities' claims and those of the individuals, and by waiting I would avoid the potential for inconsistent adjudications. The parties have indicated that Chief Judge Efremsky has scheduled a hearing in that matter on March 19, 2018, at which he will determine whether the Adversary Proceeding will continue. Because those issues are relevant to the disposition of this motion, I will defer ruling until Chief Judge Efremsky decides how the bankruptcy matter will proceed.

BACKGROUND

Siblings Kelleen Sullivan and Ross Sullivan (the "Sullivans") bring claims against Kelleen's ex-husband Stephen A. Finn ("Finn"), and Trust Company of America, Inc. ("TCA"), a

1 company in which he owns a majority of the voting stock. Compl. ¶¶ 1, 3. The Sullivans allege
2 that Finn and TCA wrested control of the formerly family-owned and operated Sullivan Winery
3 (the “Winery”) and proceeded to drive the business into debt while accruing credit in Finn’s favor.
4 *See generally* Compl. The Winery is structured as two “closely interrelated businesses”—Sullivan
5 Vineyards Corporation (“SVC”) and Sullivan Vineyards Partnership (“SVP”). Compl. ¶ 10. Finn
6 eventually foreclosed on two notes, prevented SVC and SVP from obtaining new financing, and
7 engaged in expensive litigation ploys—all of which caused SVC and SVP to file for Chapter 11
8 bankruptcy in February 2017. *See* Voluntary Petition for Non-Individuals Filing for Bankruptcy,
9 filed by SVC on February 1, 2017 (Request for Judicial Notice, Ex. A; Dkt. No. 19-1 at 4);
10 Voluntary Petition for Non-Individuals Filing for Bankruptcy, filed by SVP on February 2, 2017
11 (Request for Judicial Notice, Ex. B; Dkt. No. 19-1 at 14)(jointly, the “SVC/SVP Bankruptcy”).¹

12 On July 14, 2017, SVC and SVP, under the control of the Sullivans as debtors-in-
13 possession, commenced an action in the Bankruptcy Court against Finn and Angelica De Vere.
14 *See* SVC/SVP Complaint, Adv. Proc. No. 17-1023 (the “Adversary Proceeding”)(RJN, Ex. D;
15 Dkt. No. 19-1 at 49); Ross Sullivan Decl. ¶ 3 (Dkt. No. 25-2). The first two claims on the
16 SVC/SVP Complaint stem from objections to Finn and de Vere’s claims against the estate—SVC
17 and SVP object to Finn’s claims for relief against each entity in the amount of \$4,656,692.36,

18
19 ¹ Finn requests judicial notice of certain documents on the docket in the jointly administered
20 bankruptcy proceeding pending in the United States Bankruptcy Court for the Northern District of
21 California, entitled *In re Sullivan Vineyards Corporation* and *In re Sullivan Vineyards*
22 *Partnership*, N.D. Cal. Bankruptcy Court Case No 17-10065-RLE-11. *See* Request for Judicial
23 Notice ISO Mot. to Transfer to Bankruptcy Court (Dkt. No. 19-1). Specifically, he requests that I
24 take notice of the voluntary petitions filed by SVC (Ex. A) and SVP (Ex. B), the Order on Motions
25 for Order for Joint Administration of Cases, entered March 13, 2017 (Ex. C), the Complaint, filed
26 July 14, 2017 (Ex. D), the Order Vacating Prior Order to Convert and Directing the Appointment
27 of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104, entered August 29, 2017 (Ex. E), Order
28 Approving Appointment of Chapter 11 Trustee, entered August 29, 2017 (Ex. F), the Chapter 11
Status Conference Statement, filed by Chapter 11 Trustee on October 9, 2017 (Ex. G), Joint
Reorganization Plan of SVC, SVP, and the Sullivans, dated October 20, 2017 (Ex. H), Plan
Proponents’ Reply to “Secured Creditor’s Comments to Disclosure Statement and Latest
Reorganization Plan,” filed October 28, 2017 (Ex. I), Order Authorizing Trustee to (1) Sell Real
and Personal Property Assets of Debtors Free and Clear of Liens and Encumbrances Pursuant to
11 U.S.C. § 363(b) and (f), and (2) Assume and Assign Executory Contracts Pursuant to 11 U.S.C.
§ 365, entered December 11, 2017 (Ex. J).

Because these documents constitute matters of public record not subject to reasonable dispute,
Finn’s request is GRANTED. *See* Fed. R. Evid. 201.

1 SVC/SVP Complaint ¶¶ 6–13, and SVC objects to de Vere’s contract claim
2 against it in the amount of \$1,046,826, SVC/SVP Complaint ¶¶ 14–25. In the third claim, both
3 entities seek monetary damages arising from breach of the fiduciary duties of loyalty and care, and
4 SVC requests equitable indemnity for any liability stemming from an individual’s employment
5 between 2013 and October 2015, SVC/SVP Complaint ¶¶ 26–34. SVC and SVP alleged that their
6 complaint constituted a “core proceeding pursuant to 28 U.S.C. § 157(b)” and they “consent[ed] to
7 entry of a final order or judgment by the Bankruptcy Court.” SVC/SVP Complaint ¶ 5.

8 On August 21, 2017, the Bankruptcy Court proposed the appointment of a Chapter 11
9 trustee, and, with no opposition from SVC and SVP, thereafter approved the appointment of
10 Chapter 11 trustee Timothy Hoffman, at which point the Sullivans ceased their control over SVC
11 and SVP as debtors-in-possession. *See* Order Vacating Prior Order to Convert and Directing the
12 Appointment of a Chapter 11 Trustee (RJN, Ex. E; Dkt. No. 19-1 at 59); Order Approving Trustee
13 (RJN, Ex. F; Dkt. No. 19-1 at 64). Trustee Hoffman hired an experienced winery consultant and
14 determined that “a reorganization of the Debtor’s business is not feasible.” Chapter 11 Status
15 Conference St., filed on October 9, 2017 (RJN, Ex. G; Dkt. No. 19-1 at 69).

16 In September 2017, counsel for the Sullivans notified Trustee Hoffman’s counsel that the
17 Sullivans planned to file a complaint on behalf of SVC shareholders and SVP partners against
18 Finn for breach of his fiduciary duties. Niesar Decl. ¶ 2 (Dkt. No. 25-1); *see* 9/21/17 Email from
19 Niesar to Oliner (Nieser Decl., Ex. A). On October 6, 2017, the Sullivans filed their complaint.
20 Compl. (Dkt. No. 1). In this action (one of three related cases before me), the Sullivans assert
21 claims against Finn for breach of fiduciary duty owed to SVP’s partners, Compl. ¶¶ 75–88, and
22 breach of fiduciary duty by controlling shareholder to SVC’s non-controlling shareholders,
23 Compl. ¶¶ 89–99; a claim against TCA for aiding and abetting breach of fiduciary duty, Compl. ¶¶
24 100–108; and a claim against both Finn and TCA for unfair business practices, Compl. ¶¶ 109–
25 117. On October 9, 2017, a copy of the complaint was provided to Trustee Hoffman’s counsel
26 with a note that they “had worked very hard to avoid asserting any claims belonging to the
27 bankruptcy estates... .” Niesar Decl. ¶ 3; *see* 10/9/17 Email from Niesar to Oliner (Niesar Decl.,
28 Ex. B).

1 On October 23, 2017, the parties discussed this action at a status conference in the
2 Bankruptcy Court. Niesar Decl. ¶ 4. Finn argued, as he does here, that this action involves
3 derivative claims belonging to the estate, and not to individual shareholders and partners. *Id.* The
4 Sullivans responded that this action involves their individual claims. *Id.* Neither Trustee Hoffman
5 nor his counsel commented on the action.² *Id.*

6 At the October 30, 2017 status conference, Trustee Hoffman announced that he had
7 received a letter of intent from a buyer interested in buying the assets of SVC and SVP at an
8 amount sufficient to satisfy all creditors.³ *See* Audio Recording from 10/30/17 Status Conference
9 in N.D. Cal. Bankruptcy Court Case No 17-10065-RLE, Dkt. No. 230. The Sullivans consented
10 on the record to the sale. *Id.*

11 On December 11, 2017, the Bankruptcy Court entered an order authorizing Trustee
12 Hoffman to sell the assets of the debtors free and clear of liens and assume and assign executory
13 contracts. Order Authorizing Sale (RJN, Ex. J; Dkt. No. 19-1 at 102). The proceeds from the sale
14 would include sufficient funds to settle all of the potential creditors' claims against the estate.
15 Sullivan Decl. ¶7; *see* Hoffman Decl. ISO Mot. to Sell (Sullivan Decl., Ex. A, Dkt. No. 25-2 at 5).

16 In late December, SVC, SVP, and the Sullivans submitted to the Bankruptcy Court a joint
17 reorganization plan (the "Plan"). Sullivan Decl. ¶ 9; *see* the Plan (Sullivan Decl., Ex. B). The
18 Plan is premised on the sale closing, and includes provisions upon confirmation of the Plan for
19 terminating Trustee Hoffman's authority and duties and dismissal of the Adversary Proceeding

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21 ² The Sullivans emphasize these points to rebut the January 30, 2018 declaration from Trustee
22 Hoffman in support of Finn's motion to transfer this action to the Bankruptcy Court. Sullivan
23 Decl. ¶ 12; Niesar Decl. ¶ 6; *see* Hoffman Decl. (Dkt. No. 22). The Sullivans object to paragraphs
24 i and j of the Hoffman Declaration because they constitute improper conclusions and argument in
25 violation of Civil Local Rule 7-5(b). *See* Opp'n at 1-2. I will not strike those paragraphs but
26 accord them no weight because they are conclusory.

27 In their reply, defendants object to paragraph 4 of the Niesar declaration and the second sentence
28 of paragraph 8 of the Sullivan declaration of hearsay and relevance grounds. *See* Reply at 14.
Defendants' objections are OVERRULED. The assertions are relevant to the proceedings, and, to
the extent they contain hearsay, I will consider those statements only to provide context to the
issues, and not for their truth.

³ According to Ross Sullivan, he "found and brought to the negotiating table" the prospective
purchaser. Sullivan Decl. ¶ 6.

1 without prejudice. Sullivan Decl. ¶ 9; *see* the Plan, Article 6.1, Article 9 (Dkt. No. 25-2 at 10).
2 The Bankruptcy Court has scheduled a hearing on the Plan for March 19, 2018. Sullivan Decl. ¶
3 9.

4 On January 10, 2018, the sale closed for a confidential sum. Sullivan Decl. ¶¶ 8, 10. As
5 part of the closing, Finn and associated parties received \$17,798,405.20, including \$2,647,833.70
6 in attorneys’ fees and other costs. Sullivan Decl. ¶ 10. Those payments fully satisfied the claims
7 of Finn and associated entities.⁴ *Id.* ¶¶ 10–11.

8 LEGAL STANDARD

9 “Bankruptcy judges may hear and determine all cases under title 11 and all core
10 proceedings arising under title 11... .” 28 U.S.C. § 157(b)(1). “Core proceeding include, but are
11 not limited to—(A) matters concerning the administration of the estate ... (C) counterclaims by
12 the estate against persons filing claims against the estate ... [and] (O) other proceedings affecting
13 the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity
14 security holder relationship, except personal injury tort or wrongful death claims” 28 U.S.C.
15 § 157 (b)(2).

16 Even if a matter does not constitute a “core proceeding” under title 11, bankruptcy judges
17 may hear matters “related to a case under title 11[.]” 28 U.S.C. § 157; *see also* 28 U.S.C. §
18 1334(b)(granting district courts “original but not exclusive jurisdiction of all civil proceedings
19 arising under title 11, or arising in or related to cases under title 11); N.D. Cal. Gen. Order No. 24
20 (referring to the bankruptcy judges of this district “all cases under title 11, and all proceedings
21 arising under title 11 or arising in or related to cases under title 11.”). When a bankruptcy judge
22 hears a matter that “is not a core proceeding but that is otherwise related to a case under title 11[.]
23 ... the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the
24 district court[.]” 28 U.S.C. § 157(c)(1). The district court will review *de novo* the bankruptcy
25 judge’s proposed findings and conclusions and enter any order or judgment, unless all parties
26 consent to the bankruptcy judge entering any such orders subject to review by appeal to the district

27 _____
28 ⁴ Finn has since filed amended claims in the SVC/SVP Bankruptcy Action and now disputes
whether the sale proceeds were sufficient to cover all claims. *See* discussion *infra*.

1 court. 28 U.S.C. § 157(c)(2).

2 **DISCUSSION**

3 As an initial matter, the Sullivans’ claims are not “core claims” under Title 11. *See In re*
4 *Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010)(“[A] core proceeding is one that invokes a substantive
5 right provided by title 11 or ... a proceeding that, by its nature, could arise only in the context of a
6 bankruptcy case.”)(internal quotation marks omitted).

7 The question of whether this matter is “related to” a case under title 11 is less clear. “[T]he
8 test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of*
9 *the proceeding could conceivably have any effect on the estate being administered in bankruptcy.*”
10 *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988)(emphasis in original)(quoting another source). In
11 other words, “[a]n action is related to bankruptcy if the outcome could alter the debtor’s rights,
12 liabilities, options, or freedom of action (either positively or negatively) and which in any way
13 impacts upon the handling and administration of the bankrupt estate.” *Id.* In addition, “common
14 facts alone are insufficient to confer ‘related to’ jurisdiction.” *In re Canion*, 196 F.3d 579, 585
15 (5th Cir. 1999).

16 The parties dispute whether the Sullivans’ claims belong to the Sullivans as individual
17 shareholders and partners, or to the SVC and SVP entities. I am inclined to find that their
18 allegations state claims that may entitle them to relief as individuals. *See Schnabel v. Lui*, 302
19 F.3d 1023, 1030 (9th Cir. 2002)(“Under California law, partners are permitted to ‘maintain an
20 action against the partnership or another partner for legal or equitable relief.’”)(quoting Cal. Corp.
21 Code § 16405(b)); *Jara v. Suprema Meats, Inc.*, 121 Cal. App. 4th 1238, 1254–1258 (2004)
22 (summarizing cases addressing actions by minority shareholders alleging breach of fiduciary duty
23 by the majority shareholder and allowing plaintiff’s individual action even when allegations
24 include potential damage to the corporation); *Jones v. H. F. Ahmanson & Co.*, 1 Cal. 3d 93, 108
25 (1969)(“[M]ajority shareholders, either singly or acting in concert to accomplish a joint purpose,
26 have a fiduciary responsibility to the minority and to the corporation to use their ability to control
27 the corporation in a fair, just, and equitable manner.”).

28 But defendants insist that even if the claims are not property of the estate, they are related

1 to the bankruptcy action because they affect the administration of the estate. To support this
2 position, defendants highlight the overlapping facts, and they cite to Trustee Hoffman's
3 declaration. But "common facts alone are insufficient to confer 'related to' jurisdiction[.]" *In re*
4 *Canion*, 196 F.3d at 585, and I am not considering Trustee Hoffman's conclusory statements, *see*
5 *supra* note 2. Finally, they ask me to take judicial notice of amended proofs of claims against
6 SVC and SVP filed by Finn in the SVC/SVP bankruptcy on March 6, 2018.⁵ *See* Request for
7 Leave to File Supplemental Request for Judicial Notice ISO Mot. to Transfer (Dkt. No. 38). In
8 those claims, Finn seeks indemnification from SVC and SVP for the claims filed by the Sullivans
9 in this action.

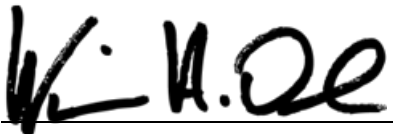
10 I will wait to see what Chief Judge Efremsky does. If he approves the Plan and dismisses
11 the Adversary Proceeding, the bankruptcy proceeding will close and it makes sense for this case to
12 remain with me.⁶ If the court denies the plan, I may transfer this action after considering any
13 order from Chief Judge Efremsky that follows the March 19, 2018 hearing.

14 **CONCLUSION**

15 After the Bankruptcy Court decides the issues presented to it on March 19, 2018, the
16 parties should file a joint statement notifying me of those decisions within one week. I will
17 thereafter rule on defendants' motion to transfer.

18 **IT IS SO ORDERED.**

19 Dated: March 8, 2018

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22 William H. Orrick
23 United States District Judge

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26
27 ⁵ The claims were filed the day before the hearing on this motion.

28 ⁶ The court will also hear plaintiffs' motion to discharge Trustee Hoffman. The decision on that motion may also impact the Adversary Proceeding.