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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FIRST INVESTORS FINANCIAL SERVICES, INC.,

Plaintiff,

vs.

SEAN N. FARMER and REBECCA L. MALONEY f/k/a REBECCA FARMER,

Defendants.

No. CV-13-0353-JLQ

ORDER OF REMAND PURSUANT TO 28 U.S.C. § 1452

BEFORE THE COURT is Plaintiff First Investors Financial Services, Inc. (“First Investors”) Motion for Order to Show Cause (ECF No. 2) and Motion for Order Waiving Replevin Bond (ECF No. 4). A telephonic hearing was held on the Motions on November 21, 2013. Kimberly Raphaeli appeared for Plaintiff First Investors. Charles Steinberg appeared for Defendant Rebecca Maloney. No one appeared on behalf of Sean Farmer.

I. Introduction: Claims and Procedural History

First Investors filed a Complaint in state court on August 19, 2013, alleging failure to pay a debt and seeking to repossess a 2003 GMC Yukon. Notice of Removal was filed on October 7, 2013, by counsel for Rebecca Maloney. The Notice represents that Sean Farmer consented to the removal, however Mr. Farmer has not appeared in federal court, has not filed anything in this case, and did not appear for the hearing. There is a return of service on file showing that Sean Farmer was served on September 23, 2013. (ECF No. 1-1, p. 36). The Notice of Removal further states that removal is proper

1 pursuant to 28 U.S.C. § 1334(e) because the case “involves the administration of
2 bankruptcy laws, and enforcement of lawful orders of the Bankruptcy Court.” (ECF No.
3 1-1, p. 2).

4 Rebecca Maloney filed an Answer and Counterclaim (ECF No. 6) on October 28,
5 2013. The Counterclaim asserts that Rebecca’s debt on the GMC Yukon was
6 successfully discharged under a three-year Chapter 13 bankruptcy plan and that First
7 Investor’s attempts to collect on the discharged debt are illegal and have caused her
8 emotional distress. First Investor counters that only Rebecca’s debt was discharged and
9 that her husband, Sean Farmer, still owes on the vehicle, has not paid, and First Investor
10 is entitled to possession. It is Rebecca’s position that she was awarded the vehicle in
11 divorce proceedings in 2009, prior to her filing for bankruptcy in 2010, and that she is
12 entitled to possession in addition to damages for wrongful collection attempts.

13 **II. Discussion**

14 **A. Plaintiff First Investor’s Request for Repossession**

15 Rebecca argues that a bankruptcy court is allowed to modify a debt and that
16 during bankruptcy the amount of First Investors’ secured claim was reduced to
17 \$9,375, that First Investors failed to object to this valuation, and that she paid off the
18 debt and received a discharge. This argument does not address that Sean is co-debtor
19 on the vehicle. First Investors argues that “the discharge provisions in bankruptcy do
20 not extend or apply to any debt of a former spouse.” (ECF No. 11, p. 5). First
21 Investors has filed 2013 Washington state vehicle licensing information which shows
22 Sean and Rebecca as registered owners and First Investors as the legal owner. (ECF
23 No. 12). First Investors concedes that it “is legally prohibited from collecting the
24 debt against [Rebecca] Maloney,” but argues it is not so prohibited from collecting
25 the debt from Sean Farmer. (ECF No. 11, p. 6).

26 First Investors cites to three Washington state opinions in support of the
27 argument that Sean remains liable for the debt. In *Arneson v. Arneson*, 38 Wash.2d

1 99, 101 (1951), the Washington Supreme Court stated that creditors of the spouses
2 are not parties to a divorce proceeding and “[i]t would appear elementary then, that
3 there is no due process of law in a divorce action as to the rights of creditors of the
4 spouses. The judgment can neither conclusively determine their rights, nor be made
5 available on their behalf as a basis for any of the provisional remedies.”

6 Similarly, in *In re Marriage of Bobbitt*, 135 Wash.App. 8 (2006), the court
7 found that even when one party is awarded property in a dissolution decree, the other
8 spouse may remain liable for the debt. The court stated, “Consistent with
9 Washington law, even though the liability for the mortgage was assigned to Bobbitt,
10 Esser was still subject to the mortgage owed the third-party community creditor,
11 namely the mortgage holder.” *Id.* at 17. The court then cites a family law treatise
12 which states: “distribution of community property to the spouses does not prevent a
13 community creditor from pursuing the former community property in the hands of
14 either spouse. From the perspective of the creditor it makes no difference that the
15 decree which terminated the marriage allocated the debt to be paid by one spouse or
16 the other.” *Id.* citing Kenneth W. Weber, Washington Practice: Family and
17 Community Property Law § 14.11.

18 Under the divorce decree, liability for the GMC Yukon was assigned to
19 Rebecca. The community’s liability for the GMC Yukon debt was assigned to
20 Rebecca, with the notation that “Sean is to have no financial obligation on this debt,
21 and his name is to be removed from the vehicle title AND loan upon issuance fo the
22 Final Divorce Decree.” (ECF No. 29, p. 11). However, it does not appear that his
23 name was removed from the vehicle title or loan. Rebecca and Sean were divorced at
24 the time Rebecca filed for bankruptcy, and Sean did not receive a discharge in
25 bankruptcy. Rebecca did file for bankruptcy and proposed a Chapter 13 bankruptcy
26 plan in which the secured amount of First Investors’ loan was reduced to \$9,375. She
27 then timely made payments for three years to pay off that amount. The “fresh start”

1 policy underlying the bankruptcy laws would be defeated if First Investors was able
2 to repossess the vehicle from Rebecca after failing to object to the modification of the
3 debt by the bankruptcy court and accepting the modified payments for three years.
4 “Bankruptcy relief attempts to provide the debtor with a fresh start unhampered by
5 the pressure and discouragement of preexisting debt.” *In re Marriage of Myers*, 54
6 Wash.App. 233, 236 (1989).

7 Rebecca is currently in possession of the vehicle. She received a discharge in
8 bankruptcy. The court does not find, as to Rebecca, that First Investors is entitled to
9 possession of the vehicle. Accordingly, First Investors’ Motion for Order to Show
10 Cause (ECF No. 2) which seeks an order putting First Investors in immediate
11 possession of the vehicle is DENIED. First Investors’ Motion for Order Waiving
12 Replevin Bond (ECF No. 4) is DENIED AS MOOT.

13 **B. Remand**

14 This action was removed pursuant to 28 U.S.C. § 1334. Federal courts have
15 original jurisdiction over cases which are related to bankruptcy proceedings. *In re*
16 *Schwartz*, 2012 WL 899331 (N.D.Cal. 2012). Under this ‘related to’ test,
17 “jurisdiction exists over any case where the outcome could conceivably have any
18 effect on the estate being administered in bankruptcy.” *Id.* citing *In re Pegasus Gold*
19 *Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). Additionally, Rebecca invoked Section
20 1334(e) for this removal, and contends that this court has jurisdiction as the claim
21 involves the property of the bankruptcy estate, namely the 2003 GMC Yukon.

22 The United States Code, Title 28, Section 1452 provides in relevant part that
23 claims related to bankruptcy and removed under Section 1334 may be remanded on
24 equitable grounds. Specifically: “The court to which such claim or cause of action is
25 removed may remand such claim or cause of action on any equitable ground.” 28
26 U.S.C. § 1452(b). Case law has identified several factors as relevant in determining
27 whether to remand under Section 1452: 1) the effect of the action on the

1 administration of the bankruptcy estate; 2) the extent to which the issues of state law
2 predominate; 3) the difficulty of applicable state law; 4) comity; 5) the relatedness or
3 remoteness of the action to the bankruptcy case; 6) the existence of right to a jury
4 trial; and 7) prejudice to the party involuntarily removed from state court. *Parke v.*
5 *Cardsystems Solutions*, 2006 WL 2917604 (N.D. Cal. 2006). Having considered
6 those factors, this court finds remand in this case is appropriate as the state courts are
7 better suited to determine whether First Investors can collect any remaining
8 obligation on the GMC Yukon from Sean, and can determine the effect of the state
9 dissolution of marriage proceeding.

10 **IT IS HEREBY ORDERED:**

11 1. First Investors' Motion for Order to Show Cause (ECF No. 2) which seeks
12 an order putting First Investors in immediate possession of the vehicle is **DENIED**.

13 2. First Investors' Motion for Order Waiving Replevin Bond (ECF No. 4) is
14 **DENIED AS MOOT**.

15 3. The Scheduling Conference set for December 19, 2013, is **HEREBY**
16 **VACATED**.

17 4. This action is **REMANDED** to the Superior Court of Douglas County for
18 all further proceedings pursuant to 28 U.S.C. § 1452. The Clerk of this court is
19 directed to mail a certified copy of this Order to the Clerk of the Superior Court of
20 Douglas County.

21 **IT IS SO ORDERED.** The Clerk is directed to enter this Order, furnish copies
22 to counsel, and close this file.

23 Dated December 11, 2013.

24 s/ Justin L. Quackenbush
25 JUSTIN L. QUACKENBUSH
26 SENIOR UNITED STATES DISTRICT JUDGE
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