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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re Washington Mutual, Inc. Securities,
Derivative & ERISA Litigation

Case No. 2:08-md-1919 MJP

MICHAEL M. ANGELLO and ROBERT
J. ANGELLO,

Individual Case No. C11-1336 MJP

Plaintiffs,

ORDER DENYING MOTION TO
REMAND

v.

KERRY KILLINGER, JOHN NGO, and
DOES 1-100,

Defendants.

This matter comes before the Court on Plaintiffs' motion to remand this case to the Superior Court of San Diego, California. (No. C11-1336 MJP, Dkt. No. 4.) Having reviewed the motion, Defendants' response (Dkt. No. 11), Plaintiffs' reply (Dkt. No. 12), and all related papers, the Court DENIES Plaintiffs' motion.

Background

Plaintiffs Michael and Robert Angello pursue claims under California state law against Kerry Killinger, John Ngo, and Does 1-100 for their alleged mismanagement of Washington Mutual, Inc. ("WaMu"). (No. C11-1336 MJP, Dkt. No. 1-2 at 3-12 ("Compl.")). Plaintiffs allege that Defendant Killinger "planned, implemented, and/or presided over" a change in

1 WaMu’s “banking philosophy and policies” that lead to the bank’s collapse. (Compl. ¶¶ 8-9.)
2 Plaintiffs allege Defendant Ngo took “advantage of the sub prime market in return for bribes”
3 and “set in motion the scheme and philosophy that enabled KILLINGER to in effect loot the
4 company for his personal benefit.” (Compl. ¶ 13 (emphasis in original).) Plaintiffs pursue
5 claims for breach of fiduciary duty, fraudulent misrepresentation, unfair business practices,
6 negligence, conspiracy, declaratory relief, and punitive damages.

7 Plaintiffs originally filed suit in the Superior Court of San Diego, California on March
8 10, 2011. (*Id.*) Defendants removed the case to the U.S. District Court for the Southern
9 District of California on April 7, 2010, and then petitioned to have this case transferred to the
10 WaMu multidistrict litigation (“MDL”) proceedings pending in this Court. The Judicial Panel
11 on Multidistrict Litigation transferred the matter to this Court and the Court consolidated it
12 with MDL proceedings as a state court tag-along. (Dkt. Nos. 9, 10.)

13 Plaintiffs seek to remand their case back to the Superior Court of San Diego on the
14 theory that the Court lacks jurisdiction, and that it should abstain from asserting jurisdiction
15 under 28 U.S.C. § 1334(c) and 28 U.S.C. § 1452(b). (Dkt. No. 4.)

16 **Analysis**

17 **A. Jurisdiction**

18 Plaintiffs assert that the Court lacks jurisdiction because their claims are not “related
19 to” the bankruptcy proceedings involving WaMu. See 28 U.S.C. § 1334(b); (Dkt. No. 4 at 4-
20 6.) The Court disagrees.

21 Under 28 U.S.C. § 1334(b), the Court has original jurisdiction over all suits “arising in
22 or related to cases under title 11.” Section 1334(b) extends jurisdiction to suits that “could
23 conceivably have any effect on the estate being administered in bankruptcy.” In re Feitz, 852
24 F.2d 455, 457 (9th Cir. 1988) (quotation omitted). Even if the debtor is not named in the suit
25 that is “related to” the bankruptcy proceeding, jurisdiction under § 1334(b) may exist. See

1 Celotex Corp. v. Edwards, 514 U.S. 300, 307 n.5 (1995) (noting that § 1334(b) applies to
2 “suits between third parties which have an effect on the bankruptcy estate”) (quotation
3 omitted). Where the party has a right to indemnification from the debtor company, a suit
4 against that party is generally “related to” the bankruptcy proceedings. See Carpenters
5 Pension Trust v. Ebbers, 299 B.R. 610, 613 (Bankr. C.D. Cal. 2003). This right need not arise
6 out of an unconditional contractual agreement. See In re Sizzler Rest. Int’l, Inc., 262 B.R.
7 811, 818-19 (Bankr. C.D. Cal. 2001.)

8 Plaintiffs’ claims against Defendants fall squarely within this Court’s jurisdiction
9 under § 1334(b). First, WaMu is currently in bankruptcy proceedings. Second, Plaintiffs’
10 allegations against Killinger are likely to affect the bankruptcy estate. Not only is WaMu
11 contractually obligated to indemnify Killinger against allegations of fraud, but the bankruptcy
12 court has already entered an order permitting WaMu to advance defense costs from WaMu’s
13 Director and Officers (“D&O”) insurance policies to Killinger. (See No. 08-md-1919 MJP,
14 Dkt. No. 384 at 3.) This satisfies jurisdiction under § 1334(b). See Ebbers, 299 B.R. at 613.
15 Plaintiffs argue that because they have made a “small within limits offer to settle, the impact
16 on the bankruptcy estate . . . is negligible.” (Dkt. No. 4 at 6.) Plaintiffs ignore that the
17 pertinent inquiry is whether Plaintiffs’ claims have a conceivable effect on bankruptcy estate
18 at the time of removal, regardless of whether it is a small or big effect. See Spencer v. U.S.
19 Dist. Court, 393 F.3d 867, 871 (9th Cir. 2004). The Court DENIES the request to remand, as
20 the case falls within the Court’s jurisdiction pursuant to 28 U.S.C. § 1334(b).

21 B. Abstention

22 Plaintiffs ask the Court to remand the case in the interest of comity and equity
23 pursuant to 28 U.S.C. § 1334(c)(1) and 28 U.S.C. § 1452(b). Plaintiffs’ request is unavailing.

24 Where Section 1334(c) is concerned, “[a]bstention can exist only where there is a
25 parallel proceeding in state court.” Security Farms v. Int’l Bhd. of Teamsters, 124 F.3d 999,

1 1009 (9th Cir. 1997). This applies to both mandatory and permissive abstention. Id. at 1010.
2 When the underlying state proceedings are removed to federal court, they are no longer
3 considered pending in state court. See id. Here, Plaintiffs’ action was removed to federal
4 court, and there is no pending state court case. With no pendant state actions, § 1334(c) is
5 inapplicable.

6 Plaintiffs’ request to remand on the basis of equitable abstention and 28 U.S.C. §
7 1452(b) is unavailing. Seven factors are relevant to the Court’s consideration. Bally Total
8 Fitness Corp. v. Contra Costa Retail Ctr., 384 B.R. 566, 572 (Bankr. N.D. Cal. 2008). Those
9 factors are: (1) “the effect of the action on the administration of the bankruptcy estate”; (2) the
10 extent to which issues of state law predominate and the difficulty of applicable state law; (3)
11 comity; (4) “the relatedness or remoteness of the action to the bankruptcy case”; (5) the right
12 to a jury trial; and (6) “prejudice to the party involuntarily removed from state court.” Id.

13 The equities weigh against Plaintiffs’ request for abstention. First, having a case
14 outside the MDL seeking contribution from the WaMu estate weighs against abstention.
15 Second, while Plaintiffs’ claims are based on state law, they are not unusual or complex. See
16 In re Diversified Contract Servs., Inc., 167 B.R. 591, 597 (Bankr. N.D. Cal. 1994). Third,
17 Plaintiffs have not shown that comity is better served by remand. Fourth, the case is not
18 entirely remote from the bankruptcy case, although it is not particularly related. Fifth,
19 Plaintiffs have a right to jury in this Court. Sixth, Plaintiffs have not demonstrated any
20 prejudice. The fact that counsel may have to travel to Seattle is not evidence of prejudice. On
21 balance, these factors weigh against abstention. See Ankenbrandt v. Richards, 504 U.S. 689,
22 705 (1992) (“[F]ederal courts have a virtually unflagging obligation to exercise the
23 jurisdiction given them.”). The Court DENIES the request to remand on principles of equity
24 and comity.

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Conclusion

Plaintiffs have not shown why the Court lacks jurisdiction under § 1334(b) or why abstention under § 1334(c) or § 1452(b) is proper. The Court DENIES Plaintiffs' motion to remand.

The Clerk is directed to send a copy of this order to Plaintiffs and all counsel of record.

DATED this 6th day of October, 2011.


Marsha J. Pechman
United States District Judge