

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DEC 08 2005

IN RE:	)	CHAPTER 13
	)	
WAVIE JEAN JOHNSON	)	CASE NO. 05-91318-MHM
	)	
Debtor	)	
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	)	
CORNELIUS JOHNSON	)	
WAVIE JEAN JOHNSON	)	
	)	<b>ADVERSARY PROCEEDING</b>
Plaintiffs	)	<b>NO. 05-9067</b>
	)	
v.	)	
	)	
DAVID ENGEL	)	
	)	
Defendant	)	

**ORDER ABSTAINING AND REMANDING**

This adversary proceeding commenced upon filing by Plaintiff of a Notice of Removal to this Court of the action of Cornelius and Wavie Johnson v. David Engel, then pending in the Superior Court of Fulton County, Civil Action File No. 2004CV86450. The state court complaint appears to allege a non-core state law claim for relief against Defendant.

Pursuant to 28 U.S.C. §1334(c)(2), in an action which could *not* have been commenced in a court of the United States absent jurisdiction as a proceeding related to a bankruptcy case, this court "shall abstain" from hearing such proceeding if an action has been commenced and can be timely adjudicated in a state court. Plaintiff has presented no evidence that this proceeding cannot be timely adjudicated in Fulton Superior Court, where it was initially commenced.

In response to an order entered by this court October 14, 2005, Plaintiff/Debtor concedes

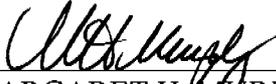
that the state court proceeding was commenced prepetition and raises issues of state law only. Although the real property which is the subject of the dispute between Plaintiff and Defendant is, arguably, property of the estate, or at least the claims asserted in the complaint against Defendant are property of the estate, that legal fact alone is insufficient to defeat mandatory abstention. To defeat mandatory abstention, Plaintiff must show that this is a core proceeding, i.e. the claim for relief arises under Title 11 or arises in a case under Title 11. *Farmers National Bank of Opelika v. Robertson*, 140 F. Supp. 1274 (M.D. Ala. 2001). As Plaintiffs' lawsuit was filed before the bankruptcy petition was filed, it is not a core proceeding.

Plaintiff also asserts that the mandatory abstention statute is inapplicable in a removed case, citing *In re Lazar*, 237 F. 3d 967 (9th Cir. 2001). The majority view, however, is that the mandatory abstention provision is applicable to removed cases. *Christo v. Padgett*, 223 F. 3d 1324, 1331 (11th Cir. 2000). Accordingly, it is hereby

ORDERED that, pursuant to 28 U.S.C. §1334(c)(2), this court abstains and remands this proceeding to the Superior Court of Fulton County.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiffs, Plaintiffs' attorney, and Defendant.

IT IS SO ORDERED, this the 7<sup>th</sup> day of December, 2005.

  
MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE