

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:)	
)	
COLORADO TIMBER RIDGE RANCH, L.P.,)	Bankruptcy Case No. 10-20006 EEB
)	Chapter 11
)	
Debtor.)	
<hr style="border: 0.5px solid black;"/>		
COLORADO'S TIMBER RIDGE)	
HOMEOWNERS ASSOCIATION,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No. 10-1333 EEB
)	
COLORADO TIMBER RIDGE RANCH, L.P.,)	
GEORGE TAULMAN, JEAN TAULMAN)	
and WALTER JOSEPH MACHOCK,)	
)	
Defendants.)	

ORDER

THIS MATTER comes before the Court on the Objection to Notice of Removal and the Motion to Abstain or Remand ("Motion"), filed by Plaintiff, and the response filed by Defendant Colorado Timber Ridge Ranch, L.P. ("Debtor"), as well as the associated Motion to Amend Answer and File Counterclaims, filed by Debtor and Plaintiff's Response. The Court being otherwise advised in the premises hereby FINDS and CONCLUDES:

I. Procedural History

Debtor is an owner and developer of real property located in Archuleta County, Colorado called Colorado's Timber Ridge Subdivision (the "Property"). Plaintiff is a homeowners' association ("HOA") for the Property, formed pursuant to the Colorado Common Interest Ownership Act ("CCIOA"). See Colo. Rev. Stat. §§ 38-33.3-101, *et seq.* Approximately eleven months prior to filing of Debtor's bankruptcy case, Plaintiff initiated a civil action against Debtor and other parties in Archuleta County District Court, Case No. 09 CV 95 (the "State Court Action"). The State Court Action concerns Debtor's attempt to develop a previously

undeveloped portion of the Property called “Timber Meadows.”¹ Plaintiff’s second amended complaint in the State Court Action alleges that Debtor failed to properly reserve its development rights under the CCIOA and seeks declaratory judgment that a plat which Debtor recorded in 2008 for Timber Meadows is void and that Debtor’s conveyance of two parcels of land in Timber Meadows to Defendants George and Jean Taulman is also void. Debtor filed an answer, jury demand and counterclaims in the State Court Action. The state court later dismissed Debtor’s counterclaims, without prejudice. A three-day jury trial was set for November 2010. Plaintiff then filed a motion for summary judgment. Shortly before its summary judgment response deadline, Debtor filed a Chapter 11 Petition on April 27, 2010.

On April 28, 2010, Debtor filed a Notice of Removal, thereby removing the State Court Action to this Court. Debtor contends this Court has jurisdiction over the case because it is either a “core” matter pursuant to 28 U.S.C. § 157(b), or a “related to” proceeding under of 28 U.S.C. § 157(c). On May 27, 2010, Plaintiff filed its Objection to Notice of Removal and its motion seeking remand to the state court. Plaintiff argues that this Court, at best, has “related to” jurisdiction over Plaintiff’s claims and that either mandatory abstention under 28 U.S.C. § 1334(c)(2) or discretionary abstention under 28 U.S.C. § 1334(c)(1) applies and requests remand to the state court.

II. Abstention

Under 28 U.S.C. § 1334(c), there are two types of bankruptcy abstention—mandatory and permissive abstention—both of which can apply to proceedings removed to bankruptcy courts. *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 775 (10th Cir. BAP 1997). Plaintiff argues both are applicable in this case.

A. Mandatory Abstention

In order for mandatory abstention to apply, all of the following elements must be present: “(1) the motion to abstain was timely; (2) the action is based on state law; (3) an action has been commenced in state court; (4) the action can be timely adjudicated in state court; (5) there is no independent basis for federal jurisdiction other than bankruptcy; (6) the matter is non-core.” *Telluride Asset Resolution, LLC v. Telluride Global Development, LLC (In re Telluride Income Growth, L.P.)*, 364 B.R. 390, 398 (10th Cir. BAP 2007). Here, the fifth element—no independent basis for federal jurisdiction other than bankruptcy—is dispositive because it is not met.

The State Court Action could have been commenced in a federal court absent commencement of Debtor’s bankruptcy case based on diversity of citizenship and an amount in

¹Debtor now contends that it erroneously included Timber Meadows in the legal description of Colorado’s Timber Ridge Subdivision, as listed in the Declaration of Protective Covenants, Conditions and Restrictions for Colorado’s Timber Ridge Subdivision. *See* Debtor’s Response in Opposition to Motion to Abstain or Remand, at 2.

controversy in excess of \$75,000. *See* 28 U.S.C. § 1332. There is complete diversity between Plaintiff and Defendants. *See Depex Reina 9 P'ship v. Texas Int'l Petroleum Corp.*, 897 F.2d 461, 463 (10th Cir. 1990) (“[D]iversity jurisdiction attaches only when all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation.”). Plaintiff is a Colorado non-profit corporation. Debtor is a California limited partnership. None of Debtor’s partners are citizens of Colorado. *See Depex Reina 9 P'ship*, 897 F.2d at 463 (for purposes of diversity, a partnership “is a citizen of each state in which a partner is a citizen.”); Debtor’s Statement of Financial Affairs, Question 21 (listing partners). Defendants George and Jean Taulman are residents of Taos, New Mexico. The amount in controversy is more than \$75,000.00.² Thus, Plaintiff could have commenced this proceeding in a federal court without invoking this Court’s bankruptcy jurisdiction. Because there is an alternative basis for federal jurisdiction, the requirements for mandatory abstention under 28 U.S.C. § 1334(c)(2) have not been satisfied.

B. Permissive Abstention

Permissive abstention applies where “in the interest of justice, or in the interest of comity with State courts or respect for State law” the court finds it appropriate to abstain “from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.” 28 U.S.C. § 1334(c)(1). Although there is no exclusive list, courts generally consider the following factors in a discretionary abstention analysis:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted “core” proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court’s] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves

²In cases seeking declaratory relief, “the amount in controversy is measured by the value of the object of the litigation.” *Lovell v. State Farm Mut. Auto. Ins. Co.*, 466 F.3d 893, 897 (10th Cir. 2006). This “value” can be established either by the amount the plaintiff seeks to recover, or “what the cost would be to the defendant if the plaintiff in fact recovers on a request for declaratory or injunctive relief.” *Baker v. Sears Holdings Corp.*, 557 F.Supp.2d 1208, 1212 (D. Colo. 2007). Plaintiff’s declaratory relief claim seeks to undo Debtor’s deed-in-lieu transfers to the Taulmans. According to Debtor, those transfers satisfied a debt of at least \$150,000. *See* Response in Opposition to Motion to Abstain or Remand, ¶¶10, 15.

forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC (In re Schempp Real Estate, LLC), 303 B.R. 866, 876 (Bankr. D. Colo. 2003). Although a court should consider all factors, the analysis is not a mere mathematical calculation of the number of factors favoring abstention versus the number of factors against. *Taub v. Hershkowitz (In re Taub)*, 417 B.R. 186, 191 (Bankr. E.D.N.Y. 2009) (“[A]lthough the bankruptcy court should consider all twelve factors, one should not be beguiled into a false sense that a head count will yield the answer with mathematical certainty.”). Ultimately, the decision to permissively abstain is left to the “broad discretion” of the bankruptcy court. *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 69 (1st Cir. 2002) (citing *Gober v. Terra + Corp.*, 100 F.3d 1195, 1206 (5th Cir.1996)). Considering the factors in this case, the Court concludes that permissive abstention is appropriate.

(1) State Law Issues Predominate

The claim brought by Plaintiff in the State Court Action sought declaratory judgment of the parties’ rights under state law. Plaintiff seeks to determine Debtor’s development rights to the Property under the CCIOA. Resolution of that claim involves interpretation of the covenants placed on the Property as well as the plats filed by Debtor—all purely state law issues under the CCIOA. Nothing in Plaintiff’s Second Amended Complaint invokes federal law. Thus, state law issues predominate.

Debtor points out that it has sought to amend its Answer to add counterclaims, several of which invoke provisions of the Bankruptcy Code. However, this Court’s abstention and remand analysis “must be made based on the current posture of the case.” *In re Schempp Real Estate, LLC*, 303 B.R. at 872. So “whether or not the debtor has counterclaims that may be stated as [bankruptcy] actions, has no relevance to the character of the Court’s jurisdiction or whether remand is appropriate.” *Id.* at 873.

Moreover, even if the Court considers Debtor’s proposed counterclaims, the predominance of state law issues is not undermined. The counterclaims, though labeled as bankruptcy claims, at base seek to challenge the validity of the restrictive covenants placed on the Property pursuant to the CCIOA. For example, Debtor’s proposed First Counter-Claim for declaratory judgment invokes 11 U.S.C. § 541, but seeks to determine the “extent and validity of the Covenants.” See Counterclaims at ¶ 33-38. While the counterclaim cites a provision of the Bankruptcy Code, it nevertheless involves the same state law issues as Plaintiff’s claim. Further, three of Debtor’s proposed counter-claims are straight state law claims for slander of title, quiet title and reformation of covenants. Thus, the Court concludes that state law issues predominate.

(2) Difficulty or Unsettled Nature of the Applicable Law

The interpretation and application of the CCIOA is not a particularly simple area of state law. The Colorado Legislature enacted the CCIOA in 1991 “to establish a clear, comprehensive,

and uniform framework for the creation and operation of common interest communities.” Colo. Rev. Stat. § 38-33.3-102(1)(a). It serves several purposes including the “strengthening of homeowner associations in common interest communities” and giving developers “flexible development rights with specific obligations within a uniform structure of development.” *Id.* at §§ 38-33.3-102(1)(b) & (c). The provisions of the CCIOA must be interpreted in light of these purposes. *E.g., Miller v. Curry*, 203 P.3d 626, 629-32 (Colo. App. 2009). The CCIOA has specific and often detailed regulations governing creation, amendment and termination of a declaration, plats and development rights. *See* Colo. Rev. Stat. §§ 38-33.3-201 to -222. This Court has no expertise nor experience with the CCIOA, or associated development rights and homeowner association powers. The state court is better situated to deal with these areas of local concern. Furthermore, according to Debtor, Plaintiff is seeking relief not specifically provided for in the CCIOA, including voiding of a plat and transfers of property. Whether or not such remedies are permitted under to CCIOA is therefore an unsettled area of state law and is better resolved by a state court.

(3) Presence of a Related Proceeding in State Court

The State Court Action, while currently stayed, had been pending for nearly eleven months prior to Debtor’s removal.

(4) Jurisdictional Basis Other Than 28 U.S.C. § 1334

As discussed above, it appears that Plaintiff could have brought its case in federal district court under diversity jurisdiction. This fact, however, does not change the predominance of state law issues in this case.

(5) Degree of Relatedness or Remoteness to Main Bankruptcy Case

Debtor argues this proceeding is integrally intertwined with the main bankruptcy case because it involves the Property and Debtor’s intent to sell the Timber Meadow Lots. This proceeding, Debtor argues, will determine whether the covenants contained in the declaration are valid and if Debtor can develop and/or sell the Timber Meadow Lots free and clear of those covenants pursuant to § 363(b) and (f). Debtor’s argument, however, proves too much.

The Court is aware that, by definition, the Property is central to Debtor’s single asset real estate case. That fact, however, does not control or trump all other factors. *See In re Schempp Real Estate, LLC*, 303 B.R. at 877. Similar to the *In re Schempp Real Estate* case, “[i]n many respects, this is a bankruptcy case in form only.” *Id.* By its own admission, Debtor has been attempting to negotiate its way out of the covenants restricting development of the Timber Meadow Lots for some time. Those attempts obviously failed, and faced with a substantive motion deadline in state court, Debtor filed its bankruptcy case and removed the State Court Action. Now Debtor is again attempting to achieve the same result—termination or alteration of the covenants—in this Court. While Debtor has attempted to clothe its efforts in bankruptcy

lingo, the validity of the covenants and Debtor's development rights remain state law issues that are better decided by a state court.

While abstention will affect Debtor's efforts to reorganize in bankruptcy, that does not mean that bankruptcy court is the only or best place to achieve reorganization. In this case, the state court is better placed to resolve issues with the restrictive covenants placed on Debtor's Property—which is Debtor's goal. Although Debtor contends the rights of its secured creditors are affected, there does not appear to be any real dispute as to the extent or validity of any liens on the Property. Moreover, the Court is very skeptical that Debtor can use the Bankruptcy Code to somehow strip off the restrictive covenants, through 11 U.S.C. § 363 or some other provision. Many bankruptcy courts have rejected such attempts. *E.g.*, *Gouveia v. Tazbir*, 37 F.3d 295, 299 (7th Cir. 1994) (debtor cannot sell property free and clear of equitable servitude limiting use of property to residential uses); *In re Oyster Bay Cove, Ltd.*, 196 B.R. 251, 255-56 (E.D.N.Y. 1996) (“Clearly, 11 U.S.C. § 363(f) and Bankruptcy Rule 6004, which refer to the sale of land ‘free and clear’ from these ‘interests,’ are not intended to sever easements and other non-monetary property interests that are created by substantive State law.”); *In re 523 East Fifth Street Housing Preservation Dev. Fund Corp.*, 79 B.R. 568, 570-76 (Bankr. S.D.N.Y. 1987) (debtor not entitled to sell property free and clear of restrictive covenant limiting use of property to low income housing). Thus, the Court finds this factor is neutral.

(6) Substance Rather Than Form of an Asserted “Core” Proceeding

Debtor contends this proceeding falls under this Court's core jurisdiction. A core proceeding is a proceeding that involves rights created by bankruptcy law or which only arise in a bankruptcy proceeding. *Telluride Asset Resolution, LLC v. Telluride Global Development, LLC (In re Telluride Income Growth, L.P.)*, 364 B.R. 390, 397 (10th Cir. BAP 2007). “Basically, bankruptcy courts have core jurisdiction over all cases that satisfy one of the following three criteria: (1) cases under Title 11; (2) proceedings arising under Title 11; (3) proceedings arising in a case under Title 11.” *Id.* The touchstone in determining whether a matter is core “would seem to be whether the case has a life of its own in either state or federal common law or statute independent of the federal bankruptcy laws. If it does, it is not a ‘core proceeding’; if it does not, it is.” *Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC (In re Schempp Real Estate, LLC)*, 303 B.R. 866, 873 (Bankr. D. Colo. 2003) (quoting *In re Marine Pollution Service, Inc.*, 88 B.R. 588, 596 (S.D.N.Y. 1988), *rev'd on other grounds*, 857 F.2d 91 (2nd Cir. 1988)) (internal citation omitted). Non-core actions are those “which do not depend on the bankruptcy laws for their existence and which could proceed in another court.” *Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1518 (10th Cir. 1990). So, a state court action initiated prior to the bankruptcy is “by definition, a non-core proceeding (at best, ‘related to’) because actions which could proceed in another court are not core proceedings.” *In re Schempp Real Estate*, 303 B.R. at 873 (quoting *In re Gardner*, 913 F.2d at 1518).

Under these standards, the State Court Action was not a core matter when Debtor first removed it to this Court. The action was initiated outside of bankruptcy court and involves matters of state law. As such, this Court at best had “related to” jurisdiction over Plaintiff's

claims. See *In re Schempp Real Estate*, 303 B.R. at 873; *In re Gardner*, 913 F.2d at 1518 (test to determine if a non-core matter is “related to” a bankruptcy case is “whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.”). Since the original removal, however, Plaintiff has filed a proof of claim in Debtor’s main bankruptcy case.³ The filing of a proof of claim changes the analysis because the definition of “core proceedings” specifically includes the “allowance or disallowance of claims against the estate.” 28 U.S.C. § 157(b)(2)(B). Courts have held that traditionally non-core, state-law claims may turn into core claims after the creditor files a proof of claim, if the proof of claim and state court claim raise the same issues. See *S.G. Phillips Constructors, Inc. v. City of Burlington (In re S.G. Phillips Constructors, Inc.)*, 45 F.3d 702, 705 (2d Cir. 1995) (“[W]hen a creditor files a proof of claim, the bankruptcy court has core jurisdiction to determine that claim, even if it was a prepetition contract claim arising under state law.”); *Grochocinski v. LaSalle Bank Nat’l Assoc. (In re K & R Express Systems, Inc.)*, 382 B.R. 443, 447 (N.D. Ill. 2007) (“A non-core claim will be considered core if it ‘arises out of the same transaction as the creditor’s proofs of claim . . . or . . . [its] adjudication . . . would require consideration of issues raised by the proofs of claim . . . such that the two claims are logically related.’”).

Here, Plaintiff filed a proof of claim and that claim appears to cover the same relief sought in the State Court Action. Plaintiff has therefore invoked this Court’s core jurisdiction to adjudicate its proof of claim. That adjudication, however, does not necessarily have to include a determination of Debtor’s liability under state law. The claims allowance process “is primarily a mechanism to determine if the holder of a claim is entitled to receive a distribution in the case.” *Frelin v. Oakwood Homes Corp.*, 292 B.R. 369, 378 (Bankr. E.D. Ark. 2003). If a debtor’s liability on the claim has not been determined prior to filing, “it may be litigated in an objection to a creditor’s proof of claim; however, the debtor’s liability may also be determined by another court, in which case, the court’s decision is generally given res judicata effect, and the creditor files a proof of claim for the judgment amount in the debtor’s bankruptcy case.” *Id.* In other words, there is a distinction between the task of determining whether Plaintiff has a claim, and determining what to do with it in the bankruptcy if it does. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167-68 (9th Cir. 1990) (finding adjudication of homeowner association’s claim to determine validity of covenants was not a core matter). In certain situations, it is appropriate to let a state court determine the first task, while leaving the latter to the bankruptcy court. See *id.* at 1167 (“[S]ection 1334 supports the duality of allowing a claim to be adjudicated to final judgment in state court while preserving the issues of the status and enforceability of the claim to the bankruptcy court.”) (citing *In re Republic Reader’s Serv., Inc.*, 81 B.R. 422, 427 (Bankr. S.D. Tex. 1987)). Such is the case here. As discussed above, Plaintiff’s claim involves issues of state law that the state court is better suited to decide it. Even though adjunction of Plaintiff’s proof of claim can be characterized as a core matter in form, the state-law substance of the claim favors abstention.

³Debtor established July 6, 2010 as the bar date for filing proofs of claim. Plaintiff filed its proof of claim in compliance with this deadline.

The same is true for Debtor's proposed counterclaims. Because Plaintiff filed a proof of claim, counterclaims of the estate fall within this Court's core jurisdiction under 28 U.S.C. 157(b)(2)(C). Nevertheless, the substance of those counterclaims relate to the validity of the covenants under the CCIOA. Indeed, three of the counterclaims are purely state law causes of action for slander of title, quiet title and reformation of covenants. The state court is best suited to determine these state law liability issues. If and when Plaintiff is determined to have a claim, this Court can determine its enforceability in bankruptcy, including Debtor's counterclaims for determination of claim under § 502, determination of secured claim under § 506(a), and equitable subordination. *See Phase One Landscapes, Inc. v. Hook (In re Smith)*, 2007 WL 4227256, at *3 (10th Cir. BAP December 3, 2007) (affirming permissive abstention where debtor could reassert objection to creditor's claim following resolution of dispute in state court).

(7) Effect of Abstention on the Efficient Administration of the Estate

As discussed above, because this proceeding will affect Debtor's primary asset and because this is a single asset real estate case, abstention will undoubtedly have some effect on administration of Debtor's estate. The Court notes, however, that there is no real dispute between the parties that the Property is included in Debtor's estate under 11 U.S.C. § 541. Rather, the parties' dispute centers on the restrictive covenants on that Property and Debtor's development rights under those covenants—a dispute that is governed purely by state law and need not be determined by this Court. *See In re Tucson Estates, Inc.*, 921 F.2d 1162, 1167-68 (9th Cir. 1990) (abstention appropriate in covenant dispute between homeowner association and debtor-landowner where “issue that is disputed—what the debtor's interest in that property is (i.e., what use can be made of the property)—is governed by state law . . . and need not be resolved by a federal court.”). Further, this Court's abstention would not amount to “abdication of any necessary role in the administration” of the Property. *Taub v. Hershkowitz (In re Taub)*, 417 B.R. 186, 193 (Bankr. E.D.N.Y. 2009). Rather, as discussed above, the state court “may fix the claims and obligations of the parties, which then may be administered in this Chapter 11 case.” *Id.* at 193-94. Thus, this factor weighs minimally against abstention.

(8) Feasibility of Severing State Law Claims

It is feasible for the state court to determine the interests of the parties under state law. The Debtor's state law counterclaims and defenses can be affirmatively pled in state court. This Court will retain jurisdiction to determine the issues of the status and enforceability Plaintiff's claim in bankruptcy. Further, depending on the state court determination, the Debtor may or may not desire a reorganization in bankruptcy, and further enforcement or other action by the bankruptcy court would be unnecessary.

(9) Burden of Bankruptcy Court's Docket

This Court's docket is strained due to the record number of bankruptcy cases currently being filed in this district. The existing volume will likely not permit this Court to determine this litigation any faster than the state court.

(10) Likelihood of Forum Shopping

To some extent, Debtor appears to be forum shopping. This case is just the latest chapter in a long standing, two-party dispute between Debtor and Plaintiff concerning covenants on the Property. Debtor admits it has attempting to resolve this dispute with Plaintiff for some time. The State Court Action was pending for nearly a year before Debtor filed its bankruptcy case on the eve of a substantive motion deadline in state court. "This bankruptcy appears to be nothing more than an effort to enlist the resources of the bankruptcy court as yet another litigation tactic in a two-party dispute." *Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC (In re Schempp Real Estate, LLC)*, 303 B.R. 866, 877 (Bankr. D. Colo. 2003). Since that dispute involves primarily state law issue, "the state court is the better forum for resolving most two-party disputes." *Id.* (citing *C-TC 9th Ave. Partnership v. Norton Co. (In re C-TC 9th Avenue Partnership)*, 113 F.3d 1304, 1312 n. 7 (2nd Cir.1997)).

(11) Existence of a Right to a Jury Trial

Debtor requested a jury trial in the State Court Action and it was set a jury trial prior to removal.

(12) Presence of Non-debtor Parties

There are three non-debtor defendants in this proceeding. Plaintiff's claims against those entities are not core matters and are, at best, "related to" matters. See *In re Exide Tech.*, 544 F.3d 196, 216 (3d Cir. 2008) ("[C]laims between non-debtors may be related to a bankruptcy case, but generally do not qualify as core proceedings under 28 U.S.C. § 157(b)."). As such, this Court cannot enter a final order or judgment unless the parties consent to it. 28 U.S.C. § 157(c)(1). If the parties do not so consent, the bankruptcy court must submit proposed findings of fact and conclusions of law to the district court, which then enters the final order. *Id.* This will cause duplication of effort between this Court and the U.S. District Court and add expense and delay to the process. Thus, this factor favors abstention.

In summary, the following factors weigh in favor of discretionary abstention in this matter: (1) state law questions predominate in this litigation; (2) interpretation of the CCIOA, including unsettled issues concerning available remedies under that statute, are best determined by the state court; (3) there is a related state court proceeding; (4) the substance of the asserted core matters is truly that of non-core state law issues; (5) it is feasible for the state court to determine issues of liability under state law; (6) Debtor is seeking to burden this Court's docket as a tool to gain advantage in its long-standing dispute with Plaintiff; (7) the Court believes that the filing of this bankruptcy case was, at least in part, motivated by Debtor's desire to find a friendly forum; (8) the existence of a right to a jury trial; and (9) the presence of non-debtor parties and the risk of duplicative efforts by this Court and the District Court. Although abstention will affect Debtor's main case and its ability to reorganize, the Court concludes those factors are outweighed by the other factors listed above. This is especially true given that the

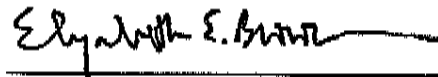
Court has significant doubts about the Debtor's ability to use the Bankruptcy Code to strip off restrictive covenants and thereby achieve its hoped-for reorganization.

III. Conclusion

For the reasons discussed above, the Court finds that permissive abstention pursuant to 28 U.S.C. § 1334(c)(1) is warranted. Accordingly, the Court hereby ABSTAINS from hearing this removed action, and Case No. 09 CV 95 is hereby REMANDED to Archuleta County District Court. The Court FURTHER ORDERS that Debtor's Motion to Amend Answer and File Counterclaims is moot for purposes of this Adversary Proceeding, and is, therefore, DENIED, without prejudice.

DATED this 15th day of July, 2010.

BY THE COURT:



Elizabeth E. Brown
United States Bankruptcy Judge