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4 UNITED STATES BANKRUPTCY COURT  
5 EASTERN DISTRICT OF WASHINGTON

6 In Re: )  
7 DUNCAN J. McNEIL, III ) No. 02-01731-W11  
8 Debtor(s). ) Adv. No. A02-00029-W11  
9 \_\_\_\_\_ )  
10 S.L.S. MANAGEMENT, INC., a )  
11 Washington corporation, et al., )  
12 Plaintiff(s), ) MEMORANDUM DECISION RE:  
13 vs. ) S.L.S. MANAGEMENT'S  
14 DUNCAN J. McNEIL, et al., ) MOTION FOR ORDER FOR  
15 Defendant(s). ) REMAND

16 THIS MATTER came on for hearing before the Honorable  
17 Patricia C. Williams on May 7, 2002 upon S.L.S. Management, Inc.'s  
18 Motion for Order for Remand to Spokane County Superior Court.  
19 (Docket No. 9). The following individuals were present at the  
20 hearing:

21 Attorneys:

22 Lynne Buchanan  
23 Duncan McNeil  
24 Carlos Valero  
25 Jay Jump  
26 Michael Sullivan  
27 Thomas Wilkening  
28 David Willems

Representing:

S.L.S. Management, Inc.  
Pro se Defendant  
Broadway Buildings  
Interested Party  
S.L.S. Management, Inc.  
Interest Party  
Process Server

FILED

MEMORANDUM DECISION RE: . . . - 1

JUN 10 2002

9 ENTERED JUN 10 2002

T.S. MCGREGOR, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

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1 The court reviewed the files and records herein, heard argument of  
2 the parties, and was fully advised in the premises. The court now  
3 enters its Memorandum Decision.

4 This unlawful detainer action was filed by Stanley and Michael  
5 Sullivan as owners of S.L.S. Management, Inc. against several  
6 entities including Mr. Duncan J. McNeil on February 27, 2002. The  
7 matter was removed from state court on March 7, 2002. It is  
8 unknown whether an answer was filed while the case was pending  
9 before the Superior Court, however, Mr. McNeil filed an answer in  
10 this court on March 21, 2002. On March 26, 2002, the plaintiff  
11 filed a Motion to Remand the proceeding to Superior Court.

12 A removed action can be remanded under 28 U.S.C. § 1452(b)  
13 (2001) on "any equitable grounds." The following cases have  
14 identified various factors to be addressed in considering the issue  
15 of remand: *Billington v. Winograde (In re Hotel Mt. Lassen)*, 207  
16 B.R. 935 (Bankr. E.D. Cal. 1997); *In re Tucson Estates, Inc.*, 912  
17 F.2d 1162 (9<sup>th</sup> Cir. 1990); *Williams v. Shell Oil Co.*, 169 B.R. 684  
18 (S.D. Cal. 1994); and *Schulman v. California (In re Lazar)*, 237  
19 F.3d 967 (9<sup>th</sup> Cir. 2001).

20 A major element in determining if remand is appropriate is the  
21 potential impact of the removed action upon the bankruptcy estate.  
22 Here, there is no pending bankruptcy estate. On February 21, 2002,  
23 Mr. McNeil's first Chapter 11 proceeding (01-06073-W11) was  
24 dismissed pursuant to the court's Memorandum Decision dated  
25 February 21, 2002. In that decision, Mr. McNeil was precluded from  
26 commencing any bankruptcy proceeding in this District without first  
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1 obtaining prior permission of the Bankruptcy Court in the Central  
2 District of California or this Bankruptcy Court. Mr. McNeil filed  
3 a second Chapter 11 petition (02-01731-W11) on March 1, 2002. It  
4 was subsequently dismissed on March 5, 2002 for failure to comply  
5 with the prior order. This proceeding was removed to the  
6 Bankruptcy Court on March 7, 2002. Neither now nor at the time  
7 this proceeding was removed has there been any bankruptcy  
8 proceeding which could be effected by the outcome of this case or  
9 to which this adversary proceeding could relate. This heavily  
10 weighs in favor of remanding the case to state court.

11 Application of other remand factors also indicates that remand  
12 is appropriate. There are primarily only state law issues involved  
13 and those state law issues are well settled principles of law.  
14 Despite various Title 11 Code sections being listed in the caption  
15 of the Answer, the only federal cause of action attempted to be  
16 pled in the counterclaim is a violation of the automatic stay under  
17 11 U.S.C. § 362. Although state courts are without jurisdiction to  
18 modify, lift or annul the automatic stay, both state and federal  
19 courts have jurisdiction to determine the applicability of and  
20 adjudicate claims for violation of the automatic stay. 28 U.S.C.  
21 § 1334(b); 11 U.S.C. § 362. *McGhan v. Rutz (In re McGhan)* 288 F.3d  
22 1172 (9<sup>th</sup> Cir. 2002). In addition, the defendant has demanded a  
23 jury trial which is more appropriately conducted in state court.  
24 Lastly, the record seems to indicate that the removal of this and  
25 two prior unlawful detainer actions involving the same parties is  
26 either an effort in forum shopping or some sort of bad faith delay

1 tactic on the part of Mr. McNeil.

2 Remand as provided in 28 U.S.C. § 1452(b) (2001) is appropriate  
3 in this case. The case is **REMANDED** to the State of Washington,  
4 Spokane County Superior Court.

5 DATED this 10<sup>th</sup> day of June, 2002.

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8 PATRICIA C. WILLIAMS, Bankruptcy Judge

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