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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 (9th 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 (9th 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 (9th 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 10th day of June, 2002.

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8 PATRICIA C. WILLIAMS, Bankruptcy Judge

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