UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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Re: Pharmaceutical Research Associates, Inc., and International Medical Technical Consultants, Inc. vs. Innovative Clinical Solutions, Ltd.
Adv. Proc. No. 00-1621 (PJW)

Dear Counsel:

This is the Court's ruling with respect to the Defendant's motion for abstention. (Doc. # 4). For the reasons discussed below, I will grant the motion.

The facts are not in dispute. Innovative Clinical Solutions, Ltd. and its debtor-subsidiaries ("ICSL" or "Debtors")

filed a voluntary chapter 11 petition on July 14, 2000. They filed a Joint Prepackaged Chapter 11 Plan of Reorganization ("Plan") and disclosure statement on the same day. On August 25, 2000, I approved the disclosure statement and confirmed the Plan with an effective date of September 21, 2000.

Under the Plan, all creditor claims other than claims of holders of ICSL's 6.75% convertible subordinated debentures are unimpaired. Thus, all general unsecured claims, including claims arising from a final order of any court, will be paid in cash in full when such claim is allowed. A claim is allowed when a court of competent jurisdiction enters a final order or the Debtors and claim holder agree as to the claim amount.

Approximately two years before filing bankruptcy, in October 1998, ICSL purchased The Crucible Group ("Crucible"), a clinical trial site management organization, from the Plaintiffs Pharmaceutical Research Associates, Inc. ("PRA") and International Medical Technical Consultants, Inc. ("IMTC"). Pursuant to an asset purchase agreement ("Agreement"), ICSL paid Plaintiffs $200,000 and assumed substantial long-term lease liabilities for the acquisition. ICSL suffered $500,000 in operating losses in the twelve-month period following its acquisition of Crucible which ICSL blames on PRA and IMTC's misrepresentations regarding the accuracy and completeness of Crucible's books, records and financial information.

On May 12, 2000, ICSL sued PRA and IMTC in the Superior Court of Providence, Rhode Island ("Rhode Island Suit"). ICSL's complaint pleads breach of contract, fraudulent misrepresentation and conversion arising under the Agreement. In response, PRA and IMTC filed a motion to dismiss based on the state court's alleged lack of jurisdiction following ICSL's July 14, 2000 bankruptcy filing. The state court denied the motion on October 17, 2000. On October 11, 2000, PRA and IMTC filed this adversary proceeding ("Complaint") for allowance of claim based on breach of the Agreement, unjust enrichment and constructive trust. On October 27, 2000, PRA and IMTC filed their answer in the Rhode Island Suit with counterclaims against ICSL apparently identical to the claims they assert in this adversary proceeding.

On November 13, 2000, ICSL filed the present motion for permissive abstention under 28 U.S.C. § 1334(c)(1). It contends the Complaint is based entirely on state law and is more properly tried in Rhode Island where a suit is already pending.

PRA and IMTC oppose the motion. They take the position that the Complaint is a core proceeding which seeks allowance of a substantial unsecured claim against ICSL's bankruptcy estate as contemplated by ICSL's plan and is in the forum of ICSL's choosing. They maintain that adjudication in this Court promotes prompt resolution of the claim and will render a judgment enforceable by my continued supervision over the Plan's administration.

Section 1334(c)(1) provides:

> Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining 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).

Courts in this Circuit consider the following twelve factors when deciding whether permissive abstention is proper:

(1) the effect or lack thereof on the efficient administration of the estate;
(2) the extent to which state law issues predominate over bankruptcy issues;
(3) the difficulty or unsettled nature of the applicable state law;
(4) the presence of a related proceeding commenced in state court or other non-bankruptcy 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 the 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 the enforcement left to the bankruptcy court;
(9) the burden on the court's docket;
(10) the likelihood that the commencement of the proceeding in bankruptcy court involves 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.

Omna Med. Partners, Inc. v. Carus Healthcare, P.A. (In re Omna Med. Partners, Inc.), 257 B.R. 666, 669 (Bankr. D. Del. 2000) citing Continental Airlines, Inc. v. Allen (In re Continental Airlines, Inc.), 156 B.R. 441, 443 (Bankr. D. Del. 1993).

Although I do not apply these twelve factors with the

rigidity of a mathematical formula, Trans World Airlines, Inc. v. Karabu Corp., 196 B.R. 711, 715 (Bankr. D. Del. 1996), I find that a strong majority of the factors favor abstention and I will accordingly grant ICSL's motion.

First, ICSL's Plan is confirmed and unsecured claims, other than those of the debenture holders, are unimpaired. Abstention will therefor not adversely impact administration of ICSL's estate (factor one). Second, the Complaint for imposition of a constructive trust, breach of contract and unjust enrichment is based predominantly on established state law (factors two and three) and is already the subject of a related state court suit initiated by the Debtors (factor four). Third, abstention does not compromise the enforceability of Plaintiffs' claim (factor eight) because Plaintiffs' claim is unimpaired under the Plan and will be paid in full if allowed.

Plaintiffs also do not persuade me that this is a core proceeding. To determine whether a proceeding is "core," I first consult the illustrative list of such proceedings provided in 28 U.S.C. § 157(b). Halper v. Halper, 164 F.3d 830, 836 (3d Cir. 1999). I then apply the established Third Circuit test for a "core" proceeding under which a proceeding qualifies if it (1) invokes a substantive right provided by title 11 or (2) if it is a proceeding that by its nature could arise only in the context of a bankruptcy case. Id.

Although styled as a suit for allowance of a claim against ICSL's estate, this case does not present a situation which otherwise invokes a substantive right provided by title 11. The Complaint is founded on paradigmatic state law causes of action. The proceeding could, and did, arise independently of ICSL's bankruptcy filing. The facts giving rise to the Complaint occurred almost two years prepetition and are based on a routine asset purchase agreement between sophisticated commercial entities. Whether this Court or the state court enters final judgment on the merits of Plaintiffs' breach of contract, constructive trust and unjust enrichment causes of action, the Plan provides that Plaintiffs' claim will be paid if they prevail, i.e., if the claim is allowed. Furthermore, ICSL's bankruptcy case was a prepackaged chapter 11 proceeding the primary purpose of which was to restructure specific debentures as equity and the assets of the estate have already revested in ICSL as of the Plan's effective date. Thus, I find that the substance of this proceeding is not core (factor seven) and that the nexus between the Complaint and the bankruptcy proceeding is remote (factor six).

Moreover, considering the volume of cases on my calendar, adjudication of a matter currently pending in another forum is a burden on this Court's docket (factor nine). Finally, the only link PRA and IMTC have to this Court is ICSL's bankruptcy petition. The Debtors' choice of forum for the causes of action raised in the

Complaint is the Rhode Island state court, not this one, as Plaintiffs wrongly contend. Thus, I am inclined to agree that Plaintiffs' attempt to adjudicate the issues here is an attempt at forum shopping (factor ten).

In conclusion, the majority of factors I must evaluate under 28 U.S.C. § 1334(c)(1) (factors one, two, three, four, six, seven, eight, nine and ten) favor permissive abstention. Accordingly, I will grant ICSL's motion.

SO ORDERED.

Very truly yours,

Peter J. Walsh

PJW:ipm