

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Zohar III, Corp., <i>et al.</i> , ¹)	Case No. 18-10512 (KBO)
)	
Debtors.)	(Jointly Administered)
_____)	
)	
ZOHAR III, LIMITED,)	
)	
Plaintiff,)	
)	
v.)	
)	Adv. Proc. No. 21-50477 (KBO)
STILA STYLES, LLC and LYNN TILTON,)	
)	
Defendants.)	
_____)	

**MEMORANDUM ORDER ABSTAINING AND REMANDING THE CHANCERY
ACTION TO THE DELAWARE COURT OF CHANCERY**

Upon consideration of the *Debtors’ Motion for Entry of an Order Remanding the Chancery Action* (the “Motion”) [Adv. D.I. 8] and all briefing and submissions filed in support of and in opposition to the Motion [Adv. D.I. 9, 20, 21, 26]; and after determining that oral argument is unnecessary as the Court’s decision-making process on the Motion would not be further aided; it is hereby **FOUND** and **CONCLUDED** that:

1. On May 1, 2021, Debtor Zohar III, Limited (“Zohar III”) commenced an action in the Court of Chancery of the State of Delaware (the “Court of Chancery”) against Lynn Tilton (“Tilton”) and Stila Styles, LLC (“Stila” and together with Tilton, the “Defendants”), styled as *Zohar III Ltd. v. Stila Styles, LLC*, C.A. No. 2021-08384-JRS (the “Chancery Action”). The Chancery Action seeks a judgment under 6 Del. C. § 18-110 declaring Kevin Carey as the Manager of Stila. In deciding the issue presented, the Court of Chancery will be tasked with deciding the enforceability of a November 2017 Written Consent (as defined in the Verified Complaint filed in the Chancery Action). Zohar III has asked this Court to do the same in an adversary pending before this Court.² Tilton removed the Chancery Action to the United States District Court for

¹ The Debtors, and, where applicable, the last four digits of their taxpayer identification number are as follows: Zohar III, Corp. (9612), Zohar II 2005-1, Corp. (4059), Zohar CDO 2003-1, Corp. (3724), Zohar III, Limited (9261), Zohar II 2005-1, Limited (8297), and Zohar CDO 2003-1, Limited (5119). The Debtors’ address is 3 Times Square, c/o FTI Consulting, Inc., New York, NY 10036.

² See generally *Zohar CDO 2003-1, Limited et al. v. Patriarch Partners, LLC (In re Zohar III, Corp., et al.)*, Adv. Proc. No. 20-50534 (the “Adversary”), D.I. 2.

the District of Delaware, which referred it to this Court. Zohar III then brought the instant Motion.

2. The Motion requests that this Court abstain from hearing the Chancery Action and remand it to the Court of Chancery pursuant to 28 U.S.C. §§ 1334 and 1452. In support, Zohar III argues that the Court must abstain from hearing the Chancery Action as all of the requirements for mandatory abstention under section 1334(c)(2) are met. Alternatively, it argues that the facts and circumstances warrant permissive abstention under section 1334(c)(1) and equitable remand under section 1452(b).

3. The Court has determined that the requirements necessary for mandatory abstention are met, and therefore it must abstain. As set forth by the Court of Appeals for the Third Circuit in *Stoe v. Flaherty*, there are five requirements that must be met before the Court is required to abstain from the Chancery Action pursuant to section 1334(c)(2):

- (1) the proceeding is based on a state law claim or cause of action;
- (2) the claim or cause of action is “related to” a case under title 11, but does not “arise under” title 11 and does not “arise in” a case under title 11, (3) federal courts would not have jurisdiction over the claim but for its relation to a bankruptcy case; (4) an action “is commenced” in a state forum of appropriate jurisdiction; and (5) the action can be “timely adjudicated” in a state forum of appropriate jurisdiction.³

4. In opposing mandatory abstention, the Defendants argue that the second, fourth, and fifth elements are not met. The Court does not agree. The Chancery Action contains one count that presents issues of pure state law addressing internal corporate governance. The matter is non-core and related to the above-captioned chapter 11 proceedings.⁴ It was commenced in an appropriate state court before Zohar III brought the Motion⁵ and presents legal theories that only partially overlap with those in the Adversary. Moreover, it requests relief not currently sought in the Adversary and includes Stila as a defendant whereas the Adversary does not.⁶ Finally, the

³ 436 F.3d 209, 213 (3d Cir. 2006). The motion must also be timely under section 1447(c) (requiring a motion to remand within 30 days after the filing of the notice of removal). No one disputes that the Motion was timely.

⁴ See, e.g., *Halper v. Halper*, 164 F.3d 830, 837 (3d Cir. 1999) (“Non-core proceedings include the broader universe of all proceedings that are not core proceedings but are nevertheless ‘related to’ a bankruptcy case.”); *In re Exide Techs.*, 544 F.3d 196, 206 (3d Cir. 2008) (“a claim will be deemed core ‘if (1) it 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.’” (quoting *Halper*, 164 F.3d at 836)).

⁵ See *Stoe*, 436 F.3d at 214 (“A removed case ‘is commenced’ in the state court and satisfies that requirement.”).

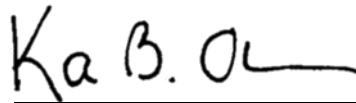
⁶ For instance, the Court has been tasked with determining whether, among other things, the November 2017 Written Consent violated a single provision of the Stila’s limited liability company agreement (the “LLC Agreement”). See Adv. Proc. No. 20-50534, D.I. 2 ¶ 366. In the Chancery Action, Zohar III enumerated multiple sections of the LLC Agreement that were breached by the November 2017 Written Consent. See, e.g., Verified Complaint ¶ 90. Moreover, this Court has not been asked to determine the

Court believes that the matter can be timely adjudicated in the Court of Chancery without disturbing the administration of these cases, the ongoing monetization processes, and the Adversary, which is in its infancy.⁷ Like this Court, the Court of Chancery is familiar with the parties and their disputes, and an expeditious resolution of the issues raised in the Chancery Action will add value to these proceedings.

5. The Defendants also argue that Zohar III waived its right to seek abstention or equitable remand because it has already challenged the November 2017 Written Consent in this Court and, in connection therewith, consented to this Court adjudicating the issues presented. The cases relied upon by the Defendants in support of this argument are distinguishable and, as noted, the Chancery Action seeks relief not currently sought from this Court and includes different legal theories as well as the presence of Stila. Even if Zohar III did waive its rights however, the Court may still consider whether permissive abstention is appropriate.⁸ Here, many of the factors courts consider in such an analysis weigh in favor of abstention.⁹

Accordingly, based upon the foregoing, it is hereby **ORDERED** that the Court abstains from hearing the Chancery Action pursuant to 28 U.S.C. § 1334(c)(2) and remands it to the Court of Chancery pursuant to 28 U.S.C. § 1452(b).

Dated: June 21, 2021



Karen B. Owens
United States Bankruptcy Judge

identity of Stila's manager. Rather, it has been asked to declare the consent void and unenforceable, to rescind the consent, and to award damages.

⁷ The parties and the Court have the ability to manage the monetization process of Stila as well as any related adversary proceeding to accommodate the timing, process, and adjudication of the Chancery Action.

⁸ See, e.g., *In re Fruit of the Loom, Inc.*, 407 B.R. 593, 598-99 (Bankr. D. Del. 2009).

⁹ See, e.g., *id.* at 599-600 (detailing the relevant factors, including “the effect or lack thereof on the efficient administrative of the estate;” “the extent to which state law issues predominate over bankruptcy issues;” “the jurisdictional basis, if any, other than section 1334”, “the feasibility of severing state law claims from core bankruptcy matters”; “the burden on the court’s docket;” and “the presence of non-debtor parties.”).