

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	) Chapter 11
	)
TRICORD SYSTEMS, INC.,	) (Bankr. D. Minn.
	) Case No. 02-82361)
Debtor.	)
	)
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RGC INTERNATIONAL INVESTORS,	)
LDC,	)
	)
Plaintiff,	)
	) (Bankr. D. Del.
v.	) Adversary No. 02-4943 (MFW))
	)
TRICORD SYSTEMS, INC., JOAN	)
WRABETZ, KEITH THORNDYKE, LOUIS	)
C. COLE, YUVAL ALMOG, TOM R.	)
DILLON, DONALD L. LUCAS, FRED	)
G. MOORE and JOHN MITCHAM,	)
	)
Defendants.	)
	)
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MEMORANDUM OPINION<sup>2</sup>

Before the Court are two Motions. The first, filed by Tricord Systems, Inc. ("Tricord"), and the individually named directors and officers ("the Director Defendants") seeks to transfer venue to the United States Bankruptcy Court for the District of Minnesota ("the Transfer Motion"). The second, filed by RGC International Investors, LDC ("RGC") seeks to remand this adversary proceeding to the Court of Chancery of the State of Delaware ("the Remand Motion"). For the reasons set forth below,

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<sup>1</sup> This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

the Remand Motion will be granted and the Transfer Motion will be denied as moot.

I. BACKGROUND

Tricord, a technology company incorporated in Delaware and headquartered in Plymouth, Minnesota, sought investors to provide a much-needed infusion of capital in late 2000 and early 2001. In February 2001, RGC, an investment group, made an equity investment of \$25 million in Tricord pursuant to a Stock Purchase Agreement containing specified contractual remedies designed to protect RGC in the event Tricord became insolvent or was unable to maintain a listing on a national securities market. By February 2002, Tricord's financial performance and prospects for continued viability were sufficiently bleak that RGC concluded in a letter to Tricord that "the only proper course of action to preserve value for Tricord's shareholders is to commence an orderly sale of the company's technology and other assets to the highest bidders and to preserve the company's liquid and other assets for distribution to shareholders." Tricord declined to do so.

As a result, RGC commenced an action in the Delaware Chancery Court on April 5, 2002, and filed an Amended Complaint in that Court on May 15, 2002. The Amended Complaint contained claims based solely on Delaware law for breach of contract,

common law fraud, breach of fiduciary duty, corporate waste, injunctive relief, and the appointment of a receiver. On April 19, 2002, RGC filed a motion for expedited proceedings, which was denied. However, a December 2002 trial date was set. On July 16, Tricord's continuing losses coupled with the threat of an immediate delisting of its stock, prompted RGC to renew its motion for expedited proceedings. That was granted on July 30, 2002 and trial was set for October 7, 2002.

On August 2, 2002, Tricord file a voluntary Chapter 11 petition in the United States Bankruptcy Court for the District of Minnesota. On the same day, the Chancery Court action was removed to this Court pursuant to the Notice of Removal filed by Tricord. On August 8, 2002, Tricord and the Director Defendants filed the Transfer Motion. Since August 16, 2002, this action has been tolled by a series of stipulations between the parties which were approved by this Court.

While this action was tolled, RGC and Tricord reached a settlement which was approved by the Bankruptcy Court in Minnesota on September 18, 2002. As a result, Tricord withdrew as a co-proponent of the Transfer Motion on January 9, 2003, and RGC dismissed its claims against Tricord on January 10, 2003.

## II. DISCUSSION

We begin our consideration of the Motions before us with the Remand Motion. Lone Star Indus., Inc. v. Liberty Mutual Ins. Co., 131 B.R. 269, 273 (D. Del. 1991) (logical and practical principles "dictate that the remand motion be determined before the venue motion"). Jurisdiction is premised on section 1334(b) of title 28, which provides that the "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

As this action was initially commenced in Delaware Chancery Court prior to the filing of the Chapter 11 petition, this action cannot be said to arise under title 11. Similarly, it cannot be said to have arisen in a title 11 case. For this Court to have jurisdiction, then, this action must be related to a case under title 11.

A proceeding is related to a case under title 11 if it "'could conceivably have any effect on the estate being administered in bankruptcy' such that 'it is possible that [the] proceeding may impact on the debtor's rights, liabilities, options, or freedom of action or the handling or administration of the bankrupt estate.'" Copelin v. Spirco, Inc., 182 F.3d 174, 179 (3d Cir. 1999) (internal citations omitted). The Third Circuit has held that "the key word is 'conceivable.'" Id.

As noted above, Tricord is no longer a party to this action. Additionally, RGC has agreed to limit its recovery in this case to available insurance proceeds. This not only eliminates any claim RGC may have but also eliminates any indemnification claims against the bankruptcy estate by the Director Defendants for any difference between the amount of any judgments and the policy limits. Thus, this action can have no impact on the administration of Tricord's bankruptcy estate. Further, the action raises no bankruptcy issues but only issues related to Delaware state law. Therefore, we conclude that this action is not one related to a case under title 11. As such, this Court lacks jurisdiction to hear the action and it must be remanded.

### III. CONCLUSION

For the foregoing reasons, RGC's Motion to Remand will be granted. That determination renders the Motion to Transfer Venue moot.

An appropriate Order is attached.

BY THE COURT:

Dated: March 24, 2003

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

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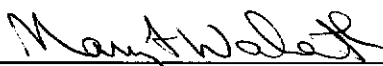
O R D E R

AND NOW, this 24TH day of MARCH, 2003, upon consideration of the Motion to Transfer Venue filed by Tricord and Individually-Named Directors and Officers and the Motion for Remand filed by RGC International Investors, LDC, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that RGC's Motion for Remand is **GRANTED**; and it is further

ORDERED that the Motion to Transfer Venue is **DENIED** as moot.

BY THE COURT:

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

cc: See attached

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