

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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December 17, 2012

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Attorneys for TD Bank, N.A.

Re: OppenheimerFunds, Inc., et al. v. TD Bank, N.A., et al.
Adv. Proc. No. 12-50582 (PJW)

Dear Counsel:

This ruling is with respect to Plaintiffs' Motion To Remand To New York State Court. (Doc. # 76.) For the reasons briefly set forth below, I will grant the motion.

I start with the U.S. Bank proof of claim filed on November 3, 2011. Exhibit A to the proof of claim recites the following:

U.S. Bank as indenture trustee alleges and claims that it is entitled to a pro rata sharing (based upon the ratio

of the principal amount of the Tranche TEX Loan to the aggregate principal amounts of the Tranche TEX Loan plus the "Tranche A" and "Tranche B" Term Loans as defined in the Senior Credit Agreement) of all Collateral proceeds distributable to Senior Secured Parties or to the Collateral Agent on their behalf in this bankruptcy case under the Senior Credit Agreement and related documents, notwithstanding Subsection 3.04(f) of the Senior Intercreditor Agreement (as defined in the Senior Credit Agreement).

Exhibit A does not explain the basis for this allegation, but arguably that allegation implicates the administration of the estate.

The Complaint details the conduct of the parties that gives rise to the assertion that "OppenheimerFunds is entitled to equitable reformation of the Senior Intercreditor Agreement."

(Compl. ¶ 47.) The Complaint's prayer for relief seeks a judgment:

A. Reforming the Senior Intercreditor Agreement to provide that OppenheimerFunds' priority of payment is equal to that of the Senior Lending Group;

B. Alternatively, rescinding the Senior Intercreditor Agreement in whole or in part and declaring that as a result of such rescission, OppenheimerFunds' payment priority is equal to that of the Senior Lending Group;

C. Barring West and the other members of the Senior Lending Group from enforcing against OppenheimerFunds Section 3.04(f)(iv) of the altered version of the Senior Intercreditor Agreement and subordinating the rights of West and other members of the Senior Lending Group to repayment of principal to the right of OppenheimerFunds to repayment of principal.

(Compl. ¶¶ A, B and C.)

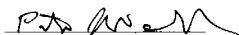
Among other theories of recovery OppenheimerFunds asserts that "pursuant to the doctrine of equitable subordination, the

right of West and other members of the Senior Lending Group to repayment of principal should be subordinated to OppenheimerFunds' right to repayment of principal." (Compl. ¶ 49.) TD argues that equitable subordination is a remedy unique to bankruptcy law. However, OppenheimerFunds cites a Connecticut state court ruling that granted equitable subordination relief. Thus, I reject TD's assertion that OppenheimerFunds "claim for equitable subordination arises under § 510(c) of the Bankruptcy Code." (Notice of Removal, p. 4-5.)

Equally important to this ruling is the fact that there are two causes of action in the Complaint. The second cause of action accuses defendant West of fraudulent conduct in dealing with OppenheimerFunds. As to that cause of action, OppenheimerFunds seeks a judgment "[a]warding OppenheimerFunds damages caused by the fraud of West." (Compl. ¶ D.) That cause of action does not implicate the administration of the estate. It is a garden variety common law cause of action that is appropriate for state court jurisdiction.

Thus, I will grant the motion to remand to the New York State Court.

Very truly yours,



Peter J. Walsh

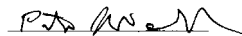
PJW:ipm

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

In re:)	Chapter 7
)	
BIONOL CLEARFIELD, LLC.,)	Case Nos. 11-12301 (PJW)
et al.,)	
)	
Debtors.)	
<hr/>		
)	
OPPENHEIMERFUNDS, INC.,)	
OPPENHEIMER MULTI-STATE)	
MUNICIPAL TRUST ON BEHALF OF)	
ITS SERIES OPPENHEIMER)	
PENNSYLVANIA MUNICIPAL FUND,)	
and OPPENHEIMER ROCHESTER)	
NATIONAL MUNICIPALS,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Proc. No. 12-50582 (PJW)
)	
TD BANK, N.A., WESTLB AG)	
(NEW YORK BRANCH), FARM CREDIT)	
BANK OF TEXAS, FIRST UNITED)	
BANK & TRUST, NGP CAPITAL)	
RESOURCES COMPANY, and)	
PLAINFIELD GAMING II INC.,)	
)	
Defendants.)	

ORDER

For the reasons set forth in the Court's letter ruling of this date, Plaintiffs' Motion To Remand To New York State Court (Doc. # 76) is **granted**.



Peter J. Walsh
United States Bankruptcy Judge

Dated: December 17, 2012