

NOT FOR PUBLICATION

APR 12 2010

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

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In re:)
SOON WHA CHEY;)
DAVID CHEY,)
Debtors.)
_____)
SOON WHA CHEY; DAVID CHEY,)
Appellants,)
v.)
AMRANE COHEN, Chapter 13)
Trustee; WELLS FARGO BANK,²)
Appellees.)
_____)

BAP Nos. CC-09-1253-PaMoB
CC-09-1254-PaMoB
(related appeals)
Bk. Nos. SA 09-13917 RK
SA 09-13910 RK

MEMORANDUM¹

Argued and submitted at Pasadena, California
on March 19, 2010

Filed - April 12, 2010

Appeals from the United States Bankruptcy Court
for the Central District of California

Hon. Robert N. Kwan, Bankruptcy Judge, Presiding.

Before: PAPPAS, MONTALI and BRANDT,³ Bankruptcy Judges

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² Neither appellee has filed a brief or appeared in these appeals.

³ The Honorable Philip H. Brandt, Bankruptcy Judge for the Western District of Washington, sitting by designation.

1 Debtors Soon Wha Chey ("Mrs. Chey") and her son, David Chey
2 ("Mr. Chey"), appeal the decision of the bankruptcy court granting
3 relief from the automatic stay in their separate chapter 13⁴ cases
4 to Wells Fargo Bank, N.A. ("Wells Fargo") to proceed with
5 enforcement of a judgment entered against them in an unlawful
6 detainer action in state court. We AFFIRM.

7
8 **FACTS**

9 On November 5, 2003, Mrs. Chey signed an interspousal
10 transfer deed conveying title of a property in Irvine, California
11 ("the Property") to her husband, Young Chey ("Young") "as his sole
12 and separate property." The interspousal deed was recorded on
13 December 23, 2003, in the Orange County Records Office. Young
14 subsequently granted three deeds of trust on the Property: the
15 first to Equity 1 Lenders Group (succeeded by GMAC Mortgage) on
16 December 3, 2003; the second to Bank of the West on August 23,
17 2004; and the third to Wells Fargo, recorded on October 3, 2005.

18 After Young passed away in May, 2007, Bank of the West
19 initiated foreclosure proceedings on the Property.

20 On August 1, 2007, Mrs. Chey filed a chapter 13 bankruptcy
21 petition. On her Schedules, she listed a fee simple ownership
22 interest in the Property. Later, on November 13, 2007, she filed
23 an adversary proceeding to quiet title in the Property, naming as
24 defendants GMAC Mortgage, Bank of the West and Wells Fargo. Mrs.
25 Chey failed to propose a confirmable plan by the deadline

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⁴ Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 established by the bankruptcy court, and her bankruptcy case was
2 dismissed on February 19, 2008. The bankruptcy court dismissed
3 the adversary proceeding on May 30, 2008, suggesting that the
4 quiet title action would more appropriately be pursued in state
5 court.

6 Mrs. Chey commenced an action in Orange County Superior Court
7 (Central Justice Center) on May 22, 2008. Chey v. GMAC Mortgage,
8 LLC et al., Case No. 2008-00107011. Although styled an "unlimited
9 civil suit," the focus of the complaint was her request to quiet
10 title in Mrs. Chey as against GMAC, Bank of the West and Wells
11 Fargo. Mrs. Chey sought a temporary restraining order prohibiting
12 the foreclosure, which the state court granted, but then dissolved
13 on June 24, 2008. Bank of the West and Wells Fargo properly
14 noticed and scheduled a foreclosure sale for July 11, 2008. Mrs.
15 Chey sought a preliminary injunction against the sale on July 10,
16 2008, which was denied by the state court. The foreclosure sale
17 was conducted on July 11, 2008, at which Wells Fargo was the high
18 bidder. A Trustee's Deed of Sale was recorded conveying the
19 Property to Wells Fargo on July 30, 2008. Although Mrs. Chey
20 continued with the quiet title action, the state court indicated
21 its intention to grant the banks' demurrer without leave to amend
22 in a tentative ruling on March 3, 2009. Mrs. Chey dismissed the
23 suit shortly thereafter.

24 On November 30, 2008, Wells Fargo filed an unlawful detainer
25 action concerning the Property in Orange County Superior Court
26 (Harbor Justice Center). Wells Fargo Bank, N.A. v. Young Chey and
27 Does 1-20, Case No. 2008-00219380 (the "Unlawful Detainer
28 Action"). Wells Fargo claimed ownership of the Property based on

1 the foreclosure sale and the recording of the trustee's deed in
2 its favor. Mrs. Chey and her son were not named as defendants in
3 the complaint, but it was directed against any occupants and
4 alleged that the occupants included the "former owners."

5 On April 28, 2009, the state court held a hearing on Wells
6 Fargo's motion for summary judgment in the Unlawful Detainer
7 Action. That same day, a five-page minute order was filed wherein
8 the state court granted a summary judgment in favor of the bank.
9 In particular, the order provided that: "Plaintiff [Wells Fargo]
10 is entitled to possession of the premises and to damages of \$30.00
11 per day from September 7, 2008 until the Defendants deliver up
12 possession to the Plaintiff." A formal order was entered May 12,
13 2009, and identified the defendants by name as Soon Wha Chey and
14 David Chey.

15 Mrs. Chey filed her second chapter 13 bankruptcy case on
16 April 30, 2009. Mr. Chey filed a chapter 13 petition the same
17 day.

18 Wells Fargo moved for relief from the automatic stay in both
19 bankruptcy cases on June 4, 2009. The Cheys filed a response on
20 June 16, 2009, generally disputing the bank's arguments, stressing
21 that the interspousal transfer deed was void, and insisting that
22 Mrs. Chey was the owner of the Property as the surviving spouse
23 with right of survivorship.

24 The bankruptcy court heard the bank's motion for relief from
25 stay on June 30, 2009. After hearing from both parties, the court
26 directed them to submit supplemental briefings addressing the
27 factors for stay relief and permissive abstention as articulated
28 in Christensen v. Tucson Estates, Inc. (In re Tucson Estates,

1 Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). The court set a final
2 hearing on the motion for July 29, 2009.

3 On July 15, 2009, the Cheys filed a joint supplemental
4 opposition to the motion for stay relief. Among their arguments
5 was that the state court judgment in the Unlawful Detainer Action
6 was entered twelve days after the Cheys filed their bankruptcy
7 petitions and, thus, was void as entered in violation of the
8 automatic stay. The bank's supplemental brief in support of
9 relief from stay, also filed on July 15, defended its original
10 positions, suggesting that res judicata applied to the state court
11 judgment, and discussing how the Tucson Estates factors justified
12 stay relief. The Cheys filed yet another supplemental brief on
13 July 22, 2009, disputing the binding effect of the state court
14 judgment, and making various procedural objections, but did not
15 discuss the Tucson Estates factors. In turn, the bank replied to
16 the Chey's opposition on July 22, 2009.

17 After reviewing the supplemental briefs, the bankruptcy court
18 vacated the hearing scheduled for July 29, 2009, and entered its
19 Order Granting Wells Fargo's Motion for Relief from the Automatic
20 Stay (the "Stay Relief Order") on July 30, 2009. To support its
21 decision to grant stay relief to the bank, the bankruptcy court
22 made these critical findings:

23 - The bank is the record holder of title to the Property as
24 evidenced by a recorded deed following a foreclosure sale.

25 - The bank obtained an order for possession of the Property
26 two days before the filing of the bankruptcy cases. Under the
27 "ministerial act exception," the postpetition entry of that order
28 did not violate the automatic stay.

1 - Application of the Tucson Estates factors indicated relief
2 from stay was appropriate.

3 The Cheys filed timely appeals of the Stay Relief Order on
4 August 6, 2009. The Cheys also removed the Unlawful Detainer
5 Action to the Bankruptcy Court on August 7, 2009.

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JURISDICTION

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The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
and 157(b) (2) (G). We have jurisdiction under 28 U.S.C. § 158.

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ISSUE

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Whether the bankruptcy court abused its discretion in
granting relief from stay to Wells Fargo.

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STANDARD OF REVIEW

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The bankruptcy court's decision to grant relief from stay is
reviewed for abuse of discretion. Kronmeyer v. Am. Contractors
Indem. Co. (In re Kronmeyer), 405 B.R. 915, 918 (9th Cir. BAP
2009). In applying an abuse of discretion test, we first
"determine de novo whether the [bankruptcy] court identified the
correct legal rule to apply to the relief requested." United
States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009). If the
bankruptcy court identified the correct legal rule, we then
determine whether its "application of the correct legal standard
[to the facts] was (1) illogical, (2) implausible, or (3) without
support in inferences that may be drawn from the facts in the
record." Id. (internal quotation marks omitted). If the
bankruptcy court did not identify the correct legal rule, or its

1 application of the correct legal standard to the facts was
2 illogical, implausible, or without support in inferences that may
3 be drawn from the facts in the record, then the bankruptcy court
4 has abused its discretion. Id.

6 DISCUSSION

7 The bankruptcy court granted Wells Fargo relief from stay
8 under § 362(d) (1). That statute provides:

9 On request of a party in interest and after notice and a
10 hearing, the court shall grant relief from the stay
11 provided under subsection (a) of this section, such as
12 by terminating, annulling, modifying, or conditioning
such stay – (1) for cause, including the lack of
adequate protection of an interest in property of such
party in interest[.]

13 Thus, § 362(d) (1) directs the court to grant relief from the
14 automatic stay upon a showing of “cause.” Cause has no clear
15 definition in the Bankruptcy Code or the case law, but is
16 determined on a case-by-case basis. In re MacDonald, 755 F.2d
17 715, 717 (9th Cir. 1985). The Ninth Circuit has held that where,
18 as here, a bankruptcy court may abstain from deciding issues in
19 favor of state court proceedings involving the same issues, “cause
20 may exist for lifting the stay as to the state court trial.” In
21 re Tucson Estates, 912 F.2d at 1166.

22 In Tucson Estates, a case that dealt with relief from stay,
23 the court articulated a non-exclusive list of factors that a
24 bankruptcy court should consider in deciding whether to
25 permissively abstain and, consequently, grant relief from stay to
26 allow a state court action to continue. The bankruptcy court here
27 analyzed those factors, finding sufficient grounds for permissive
28 abstention, and thus good cause for granting relief from stay to

1 Wells Fargo. Those factors, along with other accepted grounds in
2 the case law for determining cause for stay relief, are examined
3 below. First, however, we dispose of two issues raised in the
4 pleadings and addressed in the bankruptcy court's order.

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6 A. The Property is the property of Wells Fargo.

7 The vast bulk of the arguments presented by Mrs. and Mr. Chey
8 are premised upon the theory that Mrs. Chey is the owner of the
9 Property in fee simple as the surviving spouse of her husband.
10 This fundamental assumption is, based upon this record, flawed.

11 Bankruptcy courts must look to state law to determine whether
12 and to what extent the debtor has any legal or equitable interests
13 in property as of the commencement of the case. Butner v. United
14 States, 440 U.S. 48, 54-55 (1979). Here, the bankruptcy court
15 found that Wells Fargo, not the Cheys or their bankruptcy estates,
16 was the owner of the Property. That determination is consistent
17 with California and federal bankruptcy law.

18 Under California law, "the trustee's sale shall be deemed
19 final upon the acceptance of the last and highest bid[.]" CAL.
20 CIV. CODE 2924h(c). The party that submits the last and highest
21 bid, in this case Wells Fargo, "at a nonjudicial foreclosure sale
22 receives title under a trustee's deed free and clear of any right,
23 title or interest of the trustor." Wells Fargo Bank v. Neilsen,
24 178 Cal. App. 4th 602, 614 (Cal. Ct. App. 2009), rev. denied, 2010
25 Cal. LEXIS 991 (Cal., February 10, 2010) (emphasis added). A
26 properly conducted nonjudicial foreclosure sale "constitutes a
27 final adjudication of the rights of the borrower and lender."
28 Melendrez v. D & I Investment, Inc., 127 Cal. App. 4th 1238,

1 1249-1250 (Cal. Ct. App. 2005); Moeller v. Lien 25 Cal. App. 4th
2 822, 830-832 (Cal. Ct. App. 1994).

3 The bankruptcy court had uncontroverted evidence that Wells
4 Fargo was the successful bidder at a nonjudicial foreclosure sale
5 of the Property held on July 11, 2008, and that the trustee's deed
6 to Wells Fargo was recorded on July 30, 2008. In other words,
7 under California law, title to the Property passed to Wells Fargo
8 nine months before the Cheys filed their bankruptcy petitions,
9 "free and clear of any right, title or interest" of the Cheys.
10 Consequently, the bankruptcy court had ample evidence to support
11 its ruling that "the bank has facially valid title to the Property
12 based on its purchase of the Property at the prepetition
13 nonjudicial foreclosure sale conducted pursuant to a defaulted
14 pre-existing trust deed. . . . Neither [Mr. Chey] nor Mrs. Chey
15 has a title interest in the Property due to the prepetition
16 foreclosure sale." See also In re Boyd, 107 B.R. 541, 544 (Bankr.
17 N.D. Miss. 1989) (debtor who filed bankruptcy 33 months after
18 foreclosure sale and recordation of deed no longer had legal
19 rights in property).

20 The bankruptcy court was on solid ground when it cited this
21 prepetition transfer of title in the Stay Relief Order as one
22 cause for relief from the stay, quoting Kathleen R. March and Alan
23 M. Ahart, CALIFORNIA PRACTICE GUIDE: BANKRUPTCY ¶¶ 8:1195-96 (2009):

24 Prepetition loss of an ownership interest in property
25 constitutes cause for relief from stay. Where the
26 debtor (or the estate) no longer has a right to the
27 property, there is no reason not to allow the creditor
28 to repossess because filing a bankruptcy petition after
29 loss of ownership cannot reinstate the debtor's title.

Although not cited by the bankruptcy court in its Stay Relief

1 Order, this treatise goes on to comment on the legal status of a
2 debtor who retains possession after losing title:

3 Where a real property nonjudicial foreclosure was
4 completed and the deed recorded prepetition, the debtor
5 has neither legal nor equitable title to the property at
6 the time the bankruptcy petition is filed. Although the
7 debtor may still be in possession of the premises, his
8 or her status is essentially that of a "squatter." The
9 mortgagee (or purchaser at the foreclosure sale) is
10 entitled to the property and thus relief from the stay
11 should be granted.

12 Id. at 8:1196 (emphasis in original).

13 When they filed for bankruptcy, the Cheys' interest in the
14 Property was, at best, limited to their possession. And the Cheys
15 have not argued in this appeal that there is value to their
16 continuing possession of the Property. We therefore conclude the
17 bankruptcy court did not abuse its discretion when it declined to
18 continue the automatic stay so that the Cheys could remain in
19 possession of the Property.

20 B. Entry of the state court judgment in the Unlawful Detainer
21 Action did not violate the automatic stay.

22 The Cheys argue that the state court order granting
23 possession of the Property to Wells Fargo, entered twelve days
24 after the Cheys filed their bankruptcy petitions, violated
25 § 362(a)(1), which prohibits "the commencement or continuation
26 . . . of a judicial, administrative, or other action or proceeding
27 against the debtor that was or could have been commenced before
28 the commencement of the case under this title" We
29 disagree.

30 The Ninth Circuit, along with other courts of appeals, has
31 adopted a "ministerial act exception" to the general rule that a

1 non-bankruptcy court civil order is void when entered against a
2 debtor after he or she files for bankruptcy. In McCarthy, Johnson
3 & Miller v. N. Bay Plumbing, Inc. (In re Pettit), 217 F.3d 1072,
4 1080 (9th Cir. 2000), the court considered the effect of a federal
5 district court order releasing funds from a court registry account
6 over the objection of a debtor who claimed that the registry funds
7 were property of its bankruptcy estate. Although the district
8 court signed the order releasing the funds before the debtor filed
9 the bankruptcy petition, the clerk of court did not issue the
10 check until after the filing. Relying on the Second Circuit's
11 decision in Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 527
12 (2d Cir. 1994), the Ninth Circuit ruled that the:

13 exception [from the automatic stay] for ministerial acts
14 stems from the common sense principle that a judicial
15 "proceeding" within the meaning of section 362(a) of the
16 Bankruptcy Code ends once a decision on the merits has
17 been rendered. Ministerial acts or automatic
18 occurrences that entail no deliberation, discretion, or
19 judicial involvement do not constitute continuations of
20 such a proceeding. We now adopt the ministerial act
21 exception for this circuit[.]

22 In re Pettit, 217 F.3d at 1079; see also Roberts v. Comm'r, 175
23 F.3d 889, 897 (11th Cir. 1999); Soares v. Brockton Credit Union
24 (In re Soares), 107 F.3d 969, 974 (1st Cir. 1997); Savers Fed.
25 Sav. & Loan Ass'n v. McCarthy Constr. Co. (In re Knightsbridge
26 Dev. Co.), 884 F.2d 145, 148 (4th Cir. 1989).

27 Here, the bankruptcy court had evidence that the state court
28 judge heard the bank's summary judgment motion, ruled that the
bank was entitled to possession of the Property, and signed a
minute order directing the bank to submit a proposed order and
judgment consistent with the court's ruling, all before the Cheys
filed their bankruptcy petitions. Because there was no further

1 "deliberation, discretion, or judicial involvement" required, the
2 bankruptcy court properly determined that the clerk's entry of the
3 order formalizing the court's decision twelve days later, after
4 the bankruptcy petitions were filed, was a ministerial act and
5 therefore did not violate the automatic stay.

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7 C. The bankruptcy court did not abuse its discretion in granting
8 relief from stay to Wells Fargo.

9 As discussed above, the bankruptcy court granted relief from
10 stay to Wells Fargo so that it could proceed with its Unlawful
11 Detainer Action in state court against Mrs. Chey and Mr. Chey.
12 After the bank filed its motion for relief from stay, the
13 bankruptcy court allowed the Cheys and the bank additional time to
14 submit supplemental memoranda addressing the Tucson Estates
15 factors. The bank responded to the court's request; the Cheys
16 declined to address the impact of Tucson Estates.

17 The non-exclusive list of factors identified by the court of
18 appeals in Tucson Estates that suggest cause for permissive
19 abstention and, consequently, for relief from stay are:

20 1) the effect or lack thereof on the efficient
21 administration of the estate if a Court recommends
22 abstention, (2) the extent to which state law issues
23 predominate over bankruptcy issues, (3) the difficulty
24 or unsettled nature of the applicable law, (4) the
25 presence of a related proceeding commenced in state
26 court or other nonbankruptcy court, (5) the
27 jurisdictional basis, if any, other than 28 U.S.C.
28 § 1334, (6) the degree of relatedness or remoteness of
the proceeding to the main bankruptcy case, (7) the
substance rather than 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 enforcement left to
the bankruptcy court, (9) the burden of [the bankruptcy
court's] docket, (10) the likelihood that the
commencement of the proceeding in bankruptcy court

1 involves forum shopping by one of the parties, (11) the
2 existence of a right to a jury trial, and (12) the
presence in the proceeding of nondebtor parties.

3 In re Tucson Estates, 912 F.2d at 1167.

4 The bankruptcy court explicitly addressed these factors and
5 found that five were applicable in the Cheys' bankruptcy cases:

6 - State law issues relating to security interests in real
7 property predominate over bankruptcy issues. We agree with this
8 observation. At its heart, the dispute between the Cheys and the
9 bank centers on the question of who owns the Property, a
10 quintessential question of state law. Moreover, in this instance,
11 there is conclusive evidence that title to that Property vested in
12 Wells Fargo prepetition, well before any bankruptcy law became
13 applicable.

14 - The unlawful detainer case pending in state court indicates
15 the presence of a related proceeding commenced in state court.
16 The Cheys question the applicability of this factor, arguing that
17 they filed a notice of removal of the Unlawful Detainer Action to
18 the bankruptcy court, and consequently there is no "proceeding"
19 pending in state court. However, the abstention factors also
20 apply to removed actions. Baldwin Park Inn Assocs. v. City of
21 Baldwin Park (In re Baldwin Park Inn Assocs.), 144 B.R. 475, 480
22 (C.D. Cal. 1992) (the abstention provisions of 28 U.S.C. § 1334(c)
23 apply to removed actions).

24 - The jurisdictional basis over the bank's unlawful detainer
25 claim is only the bankruptcy court's "related to" jurisdiction
26 under 28 U.S.C. § 1334. This conclusion is also correct, since an
27 unlawful detainer action is not a proceeding under title 11, nor
28 one "arising under" title 11.

1 - The bank's unlawful detainer claims are non-core claims
2 grounded in state law. We agree for the same reasons as for the
3 above two findings.

4 - It is likely that the commencement of the bankruptcy cases
5 involves forum shopping by at least one of the parties because the
6 bankruptcy cases were filed by the Cheys, the losing parties in
7 the Unlawful Detainer Action, two days after the state court
8 issued its order granting possession of the Property to the bank.
9 In addition to the examples of forum shopping by the Cheys cited
10 by the bankruptcy court, we also note that Mrs. Chey dismissed her
11 quiet title action in the state court when it appeared that the
12 state court was prepared to do so without leave to amend her
13 complaint.

14 Besides the five factors discussed by the bankruptcy court in
15 its order, we find that the record also supports additional
16 grounds for cause for relief from the automatic stay. As
17 discussed above, the prepetition loss of title to a property can
18 constitute adequate cause for relief from stay to allow the new
19 owner to take possession of that property. Judicial economy is
20 also a ground for cause for abstention and relief from stay.

21 Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax
22 Indus., Inc.), 907 F.2d 1280, 1286-87 (2d Cir. 1990). In this
23 case, the Unlawful Detainer Action has advanced to the point of
24 entry of judgment, and the only remaining procedures would involve
25 enforcement of its judgment or an appeal. Relitigating the
26 Unlawful Detainer Action in the bankruptcy court would likely be a
27 burden on the bankruptcy court's limited resources.

28 The bankruptcy court did not abuse its discretion in deciding

1 that the Tucson Estates factors favored granting relief from stay.

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CONCLUSION

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The bankruptcy court applied the correct rules of law regarding Wells Fargo's request for relief from stay. Moreover, the court's application of the these standards to the facts was neither illogical, implausible, nor without support in inferences that may be drawn from the facts in the record. The bankruptcy court did not abuse its discretion in granting relief from stay to Wells Fargo to proceed with enforcement of a judgment in the Unlawful Detainer Action in state court.

We AFFIRM the order of the bankruptcy court.⁵

⁵ While the order of the bankruptcy court we affirm today authorized Wells Fargo to proceed to enforce its judgment in state court, as noted above, the Cheys caused that action to be removed to the bankruptcy court where we presume it is pending. Of course, the propriety of the removal of that action is not implicated in this appeal, and nothing in our decision should be interpreted to limit the ability of the bankruptcy court, in the exercise of its discretion, either to proceed with that action or to order that the action be remanded to state court.