

JUL 08 2011

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-10-1395-DMkKi
	)	
AVRAM MOSHE PERRY,	)	Bk. No. SV-09-11476-GM
	)	
Debtor.	)	Adv. No. SV-10-01356-GM
_____	)	
	)	
AVRAM MOSHE PERRY,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
	)	
CHASE AUTO FINANCE; KEY AUTO	)	
RECOVERY,	)	
	)	
Appellees.	)	
_____	)	

Argued and Submitted on June 17, 2011  
at Pasadena, California

Filed - July 8, 2011

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

Honorable Geraldine Mund, Bankruptcy Judge, Presiding

Appearances: Appellant Avram Moshe Perry argued pro se; Holly Jo Nolan, Esq., of Solomon, Grindle, Silverman & Wintringer, APC, argued for Appellee Chase Auto Finance.

Before: DUNN, MARKELL and Kirscher, Bankruptcy Judges.

<sup>1</sup> 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.

1 The debtor, Avram Moshe Perry, appeals the bankruptcy  
2 court's order granting Chase Auto Finance's ("Chase") motion for  
3 remand to state court.<sup>2</sup> We AFFIRM.

4  
5 **FACTS<sup>3</sup>**

6 A. Events in the bankruptcy case

7 This long-drawn out dispute between the debtor and Chase  
8 arises from the allegedly improper repossession of his 2001  
9 Nissan Pathfinder ("Nissan") by Chase's agent, Key Auto Recovery  
10 ("Key Auto"), prepetition.<sup>4</sup>

11  
12 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
13 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
14 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

15 <sup>3</sup> The debtor is no stranger to us; he previously appealed  
16 the bankruptcy court's order granting Chase relief from stay to  
17 sell the Nissan and denying his request for injunctive relief.  
18 Perry v. Chase Auto Finance (In re Perry), BAP No. CC-09-1135.  
19 We detailed the facts of the underlying bankruptcy case in the  
20 memorandum decision for the prior appeal. We recount here those  
21 facts relevant to the present appeal for the sake of ease of  
22 reference and clarity.

23 <sup>4</sup> Chase complains that the debtor did not provide any  
24 excerpts of record, which impeded its ability to respond to his  
25 arguments on appeal. Response Brief of Appellee at 9  
26 ("Appellee's Brief"). Under our March 2, 2011 order, we waived  
27 the requirement of Rule 8009(b) that the debtor file and serve  
28 excerpts of record.

29 Although we did not require the debtor to provide excerpts  
30 of record, we nonetheless obtained copies of relevant documents  
31 from the bankruptcy court's electronic docket. See O'Rourke v.  
32 Seaboard Surety Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-  
33 58 (9th Cir. 1988); Atwood v. Chase Manhattan Mortg. Co. (In re  
34 Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

35 We note that Chase could have served and filed its own  
36 (continued...)

1 In 2004, the debtor and Chase executed a promissory note and  
2 security agreement ("contract"), granting Chase a security  
3 interest in a 2001 Nissan Pathfinder ("Nissan"). In 2008, the  
4 debtor and Chase executed a modification of the contract  
5 ("rewrite agreement"), altering the payment terms. Chase alleged  
6 that the debtor defaulted under the rewrite agreement.

7 The debtor alleged that, on February 2, 2009, he contacted  
8 Chase, informing it that he intended to file for bankruptcy.  
9 Three days later, an attorney representing the debtor wrote to  
10 Chase "attempting to resolve a dispute involving [the debtor's]  
11 account." Respondent/Defendant JP Morgan Chase Bank, N.A.'s  
12 Notice of Lodgement in Support of Its Motion for Remand Back to  
13 State Court, Exh. B at 20 ("Supplement to Remand Motion")(adv.  
14 proc. docket no. 11). The letter directed Chase to communicate  
15 directly with the debtor, but made no mention of a possible  
16 future bankruptcy filing.

17 Early in the morning of February 6, 2009, Key Auto  
18 repossessed the Nissan. Five days later, the debtor filed his  
19 chapter 7 bankruptcy petition. He scheduled the Nissan as his  
20 personal property valued at \$9,000, subject to a disputed claim  
21 by Chase.

22 On February 17, 2009, the debtor filed a complaint against  
23

24 <sup>4</sup>(...continued)  
25 excerpts of record, but chose not to do so. See Rule 8009(b).  
26 See also Kyle v. Dye (In re Kyle), 317 B.R. 390, 394 (9th Cir.  
27 BAP 2004)("An appellee stands on tenuous footing when arguing  
28 that a record is too incomplete to permit appellate review.  
While the assembly of the record is appellant's duty, appellate  
rules allow appellees to participate in the designation of  
portions of transcripts and other parts of the record.").

1 Chase and Key Auto in state court ("Initial State Court  
2 Complaint")(case no. PC044679), alleging unlawful repossession  
3 and seeking turnover of the Nissan ("state court action").  
4 Supplement to Remand Motion, Exh. B at 9. The debtor later filed  
5 a pleading titled, "Supplemental Verified Class Action Complaint"  
6 ("Supplemental State Court Complaint"),<sup>5</sup> alleging various claims  
7 and causes of action, including violation of the automatic stay  
8 under § 362, breach of contract, conversion and violation of the  
9 Fair Debt Collection Practices Act.

10 The debtor further contended in the Supplemental State Court  
11 Complaint that Chase improperly repossessed the Nissan. He also  
12 requested that Chase turn over the Nissan as it constituted  
13 property of the bankruptcy estate under § 541. Supplement to  
14 Remand Motion, Exh. C at 35. The debtor claimed that, even  
15 though Chase repossessed the Nissan prepetition, he still held an  
16 ownership interest in it as of the petition date. Id. He  
17 further sought actual and punitive damages against Chase and Key  
18 Auto. Supplement to Remand Motion, Exh. C at 40. Chase  
19 eventually filed its answer to the Supplemental State Court  
20 Complaint on June 1, 2009. Supplement to Remand Motion, Exh. F  
21 at 20-34.

22 Meanwhile, in his bankruptcy case, on February 25, 2009, the  
23

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24 <sup>5</sup> The debtor attempted to characterize the state court  
25 action as a class action, brought on behalf of all persons who  
26 "leased or purchased vehicles [that were] repossessed by [Chase  
27 and Key Auto] in violation of California law . . . ." Supplement  
28 to Remand Motion, Exh. C at 30. According to Chase, the state  
court denied the debtor's motion for class certification.  
Appellee's Brief at 4 n.3.

1 debtor filed a pleading titled, "Opposition to Chase Bank Motion  
2 to Lift Stay, Request from the United States District Court for a  
3 Preliminary and/or Permanent Injunction and/or Any Relief Under  
4 28 U.S.C. sec. 2283, Money Damages" ("Opposition/Injunction  
5 Request")(main case docket no. 14). At that time, Chase had not  
6 filed a relief from stay motion.

7 The debtor opposed relief from stay for Chase because of its  
8 allegedly improper actions in repossessing the Nissan. He also  
9 sought to enjoin Chase from selling the Nissan and to require it  
10 to turn over the Nissan to the debtor.

11 Chase filed its motion for relief from stay ("Stay Relief  
12 Motion") on March 10, 2009, seeking permission to proceed under  
13 state law to sell the Nissan. Chase asserted that the Nissan had  
14 negative equity of \$2,262.28, based on its fair market value of  
15 \$7,245 and the debtor's debt of \$9,507.28.

16 On April 9, 2009, the bankruptcy court held a hearing on the  
17 Stay Relief Motion and the Opposition/Injunction Request. The  
18 bankruptcy court denied the debtor's Opposition/Injunction  
19 Request, as procedurally, he needed to initiate an adversary  
20 proceeding to obtain an injunction against Chase. See Rule  
21 7001(7).

22 The bankruptcy court found that Chase did not violate the  
23 automatic stay in repossessing the Nissan because it repossessed  
24 the Nissan prepetition. The bankruptcy court granted Chase's  
25 Stay Relief Motion, effective April 17, 2009, to give the debtor  
26 time to obtain in state court a restraining order against Chase  
27 from selling the Nissan.

28 Before the bankruptcy court could enter any order, the

1 debtor filed a motion for reconsideration of its ruling on the  
2 Stay Relief Motion. The bankruptcy court denied the motion for  
3 reconsideration. The bankruptcy court entered the order granting  
4 Chase relief from the automatic stay ("Stay Relief Order") on  
5 April 23, 2009. Chase sold the Nissan on May 30, 2009.

6 The debtor appealed the Stay Relief Order (BAP No. CC-09-  
7 1135).<sup>6</sup> We dismissed as moot his appeal of the Stay Relief Order  
8 because Chase already had sold the Nissan to a third party.<sup>7</sup>

9  
10 B. Events in the adversary proceedings

11 Approximately ten months after the bankruptcy court entered  
12 the Stay Relief Order, on February 5, 2010, the debtor initiated  
13 an adversary proceeding against Chase and Key Auto ("Adversary  
14 Proceeding I")(adv. proc. no. 10-1043). The debtor repeated in  
15 the complaint ("Adversary Proceeding I Complaint") many of the  
16 claims and causes of action he asserted in his Supplemental State  
17 Court Complaint. Supplement to Remand Motion, Exh. G at 3-46.  
18 He also set forth additional claims, including trespass, breach  
19 of the peace, negligent misrepresentation and intentional  
20 infliction of emotional distress.

21 One month later, Chase filed a motion for the bankruptcy  
22 court to abstain from hearing Adversary Proceeding I ("Abstention

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23  
24 <sup>6</sup> The debtor also appealed the bankruptcy court's decision  
25 to abstain from adjudicating his state law claim for damages. We  
26 do not include facts concerning that portion of the prior appeal,  
as we do not believe they are relevant to the present appeal.

27 <sup>7</sup> The debtor appealed our decision in the prior appeal to  
28 the Ninth Circuit; the appeal is pending before the Ninth  
Circuit.

1 Motion")(adv. proc. docket no. 5), contending that nearly all of  
2 the claims raised therein involved state law and that the state  
3 court action was pending and set for trial. Key Auto also  
4 separately filed a motion for abstention (adv. proc. docket no.  
5 11), echoing Chase's arguments. After a hearing on April 28,  
6 2010, the bankruptcy court entered an order ("Abstention  
7 Order")(adv. proc. docket no. 25) denying both Chase's and Key  
8 Auto's motions for abstention without prejudice. The bankruptcy  
9 court stayed Adversary Proceeding I, however, pending the outcome  
10 of the state court action.<sup>8</sup>

11 Meanwhile, on May 18, 2010, the state court issued an order  
12 classifying the debtor as a vexatious litigant under California  
13 Civil Procedure Code ("CCP") § 391 ("Vexatious Litigant Order").  
14 The state court also required under the Vexatious Litigant Order  
15 that the debtor post \$7,500 as security, staying the state court  
16 action pending proof of payment.<sup>9</sup> Supplement to Remand Motion,  
17 Exh. I at 10. The state court set a status hearing concerning

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18  
19 <sup>8</sup> The debtor filed a motion and request for entry of default  
20 against Key Auto in Adversary Proceeding I (adv. proc. docket  
21 nos. 23 and 24). The clerk apparently entered the default order  
22 (adv. proc. docket no. 23). Key Auto filed a motion to set aside  
23 the default order ("Motion to Vacate Default Order")(adv. proc.  
24 docket no. 28). The bankruptcy court granted Key Auto's Motion  
to Vacate Default, entering an order vacating the default order  
on July 14, 2010 ("Order Vacating Default")(adv. proc. docket no.  
41).

25 The debtor appealed the Order Vacating Default to the BAP  
26 (BAP No. 10-1265). We dismissed the appeal on the grounds that  
the Order Vacating Default was interlocutory. The debtor  
27 appealed our decision to the Ninth Circuit, where it is pending.

28 <sup>9</sup> According to Chase, the debtor had not posted the security  
in the state court action. Appellee's Brief at 6.

1 the posting of the security for July 23, 2010. Id.

2 On August 19, 2010, the debtor initiated the instant  
3 adversary proceeding ("Adversary Proceeding II")(adv. proc. no.  
4 10-1356) by filing a pleading titled, "Notice of Removal to the  
5 United States Bankruptcy Court from the Superior Court  
6 (Chatsworth Courthouse), County of Los Angeles, State of  
7 California" ("Removal Notice"), seeking to remove the state court  
8 action to the bankruptcy court.

9 The debtor concurrently filed a pleading titled, "Notice of  
10 Petition and Verified Petition for Warrant of Removal" ("Removal  
11 Petition")(adv. proc. docket no. 3), which repeated many of the  
12 claims he asserted in the Adversary Proceeding I Complaint. He  
13 asserted additional claims as well, including breach of implied  
14 covenant of good faith and fair dealing, intentional interference  
15 with economic relations, bad faith and civil conspiracy.<sup>10</sup> The  
16 debtor also sought actual and punitive damages.

17 Chase subsequently filed a motion for remand back to state  
18 court ("Remand Motion")(adv. proc. docket no. 9), arguing that  
19 the Removal Notice was untimely under Rule 9027(a)(3).<sup>11</sup> Under  
20

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21 <sup>10</sup> The debtor asserted civil conspiracy as a cause of action  
22 or claim in the Supplemental State Court Complaint.

23 <sup>11</sup> Rule 9027(a)(3) provides:

24 If a claim or cause of action is asserted in another  
25 court after the commencement of a case under the Code,  
26 a notice of removal may be filed with the clerk only  
27 within the shorter of (A) 30 days after receipt,  
28 through service or otherwise, of a copy of the initial  
pleading setting forth the claim or cause of action

(continued...)



1 Rule 9027(a)(3), the plaintiff may file a notice of removal  
2 within 30 days after receipt of the initial pleading containing  
3 the cause of action or claim sought to be removed (i.e., the  
4 defendant's responsive pleading). Remand was mandatory, Chase  
5 maintained, if the plaintiff failed to file the notice of removal  
6 within the time limit specified by the rule. Here, Chase pointed  
7 out, the debtor filed the Removal Notice more than a year after  
8 Chase filed its answer in the state court action. Because the  
9 debtor failed to file the Removal Notice timely, Chase contended,  
10 the bankruptcy court must remand the state court action back to  
11 state court.

12 Chase further argued that the debtor initiated Adversary  
13 Proceeding II as a way to forum shop and to avoid the potential  
14 dismissal of the state court action for failing to post security  
15 pursuant to the Vexatious Litigant Order.

16 Chase also contended that the claims asserted in the Removal  
17 Petition mirrored those asserted in the Adversary Proceeding I  
18 Complaint. Chase pointed out that the bankruptcy court had  
19 stayed Adversary Proceeding I pending the outcome of the state  
20 court action. In initiating Adversary Proceeding II, Chase  
21 claimed, the debtor sought to circumvent the bankruptcy court's  
22 Abstention Order.

23 Moreover, Chase alleged, the debtor asserted in the Removal  
24 Petition claims involving state law only. The claims in the  
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26 <sup>11</sup>(...continued)

27 sought to be removed, or (B) 30 days after receipt of  
28 the summons if the initial pleading has been filed with  
the court but not served with the summons.

1 Removal Petition, Chase concluded, thus were non-core.

2 The debtor opposed the Remand Motion ("Remand Opposition").  
3 He contended that the Removal Notice was timely under 28 U.S.C.  
4 § 1446(b).<sup>12</sup> According to the debtor, under 28 U.S.C. § 1446(b),  
5 he had up to a year after initiating the state court action to  
6 remove it to the bankruptcy court.

7 He further claimed that he timely filed the Removal Notice  
8 under Rule 9027(b)(3). He pointed out that Key Auto did not file  
9 its answer until December 17, 2009, more than ten months after he  
10 initiated the state court action. The debtor thus could file the  
11 Removal Notice within thirty days following December 17, 2009.

12 The debtor maintained that removal of the state court action  
13 was appropriate because it contained claims concerning the

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15 <sup>12</sup> 28 U.S.C. 1446(b) provides:

16 The notice of removal of a civil action or proceeding  
17 shall be filed within thirty days after the receipt by  
18 the defendant, through service or otherwise, of a copy  
19 of the initial pleading setting forth the claim for  
20 relief upon which such action or proceeding is based,  
21 or within thirty days after the service of summons upon  
22 the defendant if such initial pleading has then been  
23 filed in court and is not required to be served on the  
24 defendant, whichever period is shorter.

25 If the case stated by the initial pleading is not  
26 removable, a notice of removal may be filed within  
27 thirty days after receipt by the defendant, through  
28 service or otherwise, of a copy of an amended pleading,  
motion, order or other paper from which it may first be  
ascertained that the case is one which is or has become  
removable, except that a case may not be removed on the  
basis of jurisdiction conferred by section 1332 of this  
title more than 1 year after commencement of the  
action.

1 administration of the bankruptcy estate. These claims, the  
2 debtor asserted, arose from Chase's improper repossession of the  
3 Nissan, which had been property of the estate. Moreover, because  
4 the state court action involved issues affecting the  
5 administration of the bankruptcy estate, it constituted a core  
6 proceeding over which the bankruptcy court had jurisdiction.

7 The bankruptcy court issued a tentative ruling (adv. proc.  
8 docket no. 16) sometime before or on the day of the September 29,  
9 2010 hearing on the Remand Motion.<sup>13</sup> The bankruptcy court  
10 determined that the removal was improper and untimely. It  
11 further noted that the very same claims already had been stayed  
12 in Adversary Proceeding I pending a result from the state court.  
13 The bankruptcy court thus proposed granting the Remand Motion and  
14 remanding the matter to state court.

15 At the hearing, the bankruptcy court explained to the debtor  
16 that the issues he raised were state law issues. Tr. of  
17 September 29, 2010 hr'g, 6:14-15 (adv. proc. docket no. 34).  
18 Moreover, the bankruptcy court pointed out, Chase's alleged  
19 wrongful repossession, which formed the basis of the debtor's  
20 claims, occurred prepetition. Tr. of September 29, 2010 hr'g,  
21 6:15-17. The bankruptcy court told the debtor:

22 Now, if there had been no bankruptcy, it would [have  
23 been] tried in state court. You have nothing to bring  
24 it into federal court, except the fact that there is a  
25 bankruptcy. And what I did was I said, let the state  
26 court sort out state law, that's what they're supposed  
27 to do, and then I'll take a look and see if there's any  
28 bankruptcy issues remaining, and I'll deal with that  
after they're through, because I don't want to run two

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<sup>13</sup> The bankruptcy court entered its tentative ruling on  
September 30, 2010.

1 things parallel to each other.

2 Tr. of September 29, 2010 hr'g, 6:17-25.

3 The bankruptcy court granted Chase's Remand Motion and  
4 remanded the matter to state court, noting that it would put its  
5 tentative ruling on the record. Tr. of September 29, 2010 hr'g,  
6 8:11-12. The bankruptcy court entered an order ("Remand  
7 Order")(adv. proc. docket no. 26) consistent with its tentative  
8 ruling on October 28, 2010.

9 The debtor timely appealed.<sup>14</sup>

### 11 JURISDICTION

12 The bankruptcy court had jurisdiction under 28 U.S.C.  
13 § 1452(b). We have jurisdiction under 28 U.S.C. §§ 1452(b) and  
14 158.

### 16 ISSUE

17 Did the bankruptcy court abuse its discretion in granting  
18 Chase's motion to remand?

### 20 STANDARDS OF REVIEW

21 "Decisions to remand under 28 U.S.C. § 1452(b) are committed  
22 to the sound discretion of the bankruptcy judge and are reviewed  
23 for abuse of discretion." McCarthy v. Prince (In re McCarthy),  
24 230 B.R. 414, 416 (9th Cir. BAP 1999). We follow a two-part test  
25 to determine objectively whether the bankruptcy court abused its

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26  
27 <sup>14</sup> Although the debtor filed his notice of appeal before the  
28 bankruptcy court entered the Remand Order, we deem his notice of  
appeal timely under Rule 8002(a).

1 discretion. United States v. Hinkson, 585 F.3d 1247, 1261-62  
2 (9th Cir. 2009)(en banc). First, we "determine de novo whether  
3 the bankruptcy court identified the correct legal rule to apply  
4 to the relief requested." Id. Second, we examine the bankruptcy  
5 court's factual findings under the clearly erroneous standard.  
6 Id. at 1262 & n.20. We must affirm the bankruptcy court's  
7 factual findings unless those findings are "(1) 'illogical,'  
8 (2) 'implausible,' or (3) without 'support in inferences that may  
9 be drawn from the facts in the record.'" Id. If we determine  
10 that the bankruptcy court erred under either part of the test, we  
11 must reverse for an abuse of discretion. Id.

#### 12 13 **DISCUSSION**

14 The debtor argues that 28 U.S.C. § 1446(b) ("§ 1446(b)"),  
15 not Rule 9027(c)(3), governs the present matter. He maintains  
16 that § 1446(b) trumps Rule 9027(c)(3) because statutes, not  
17 rules, take precedence. Appellant's Reply Brief at 9, 13. The  
18 debtor next asserts that the period for him to seek removal had  
19 been extended if both the bankruptcy court and state court had  
20 applied "consecutive and concurrent stays." Appellant's Opening  
21 Brief at 6. Applying his interpretation of § 1446(b), the debtor  
22 contends that he had up to a year after he initiated the state  
23 court action to remove it to the bankruptcy court.

24 The debtor misapprehends the applicability of § 1446 to the  
25 present matter. Section 1446(a) provides:

26 A defendant or defendants desiring to remove any civil  
27 action or criminal prosecution from a State court shall  
28 file in the district court of the United States for the  
district and division within which such action is  
pending a notice of removal signed pursuant to Rule 11

1 of the Federal Rules of Civil Procedure and containing  
2 a short and plain statement of the grounds for removal,  
3 together with a copy of all process, pleadings, and  
orders served upon such defendant or defendants in such  
action.

4 (Emphasis added.)

5 Section 1446(b) then sets forth deadlines by which the  
6 defendant must file the notice of removal. A plain reading of  
7 § 1446 indicates that § 1446 relates only to a defendant who  
8 seeks to remove a state court action to the bankruptcy court.

9 28 U.S.C. § 1452 ("§ 1452"), on the other hand, applies to  
10 any party seeking to remove a cause of action or a claim to the  
11 bankruptcy court. 1 Collier on Bankruptcy, ¶ 3.07[1] (Alan N.  
12 Resnick and Henry J. Sommer, eds., 16th ed. 2011)("Collier on  
13 Bankruptcy") (explaining that any party may remove under § 1452).  
14 Here, the debtor is the plaintiff in the underlying state court  
15 action. The debtor, not Chase, sought to remove the state court  
16 action to the bankruptcy court. Section 1446 thus does not apply  
17 to the present matter. Section 1452 instead applies.

18 Under § 1452(a), the plaintiff to a state court action may  
19 remove the state court action to the bankruptcy court.<sup>15</sup> Under  
20 § 1452(b), the bankruptcy court to which the state court action  
21

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22 <sup>15</sup> Section 1452(a) provides:

23  
24 A party may remove any claim or cause of action in a  
25 civil action other than a proceeding before the United  
26 States Tax Court or a civil action by a governmental  
27 unit to enforce such governmental unit's policy or  
28 regulatory power, to the district court for the  
district where such civil action is pending, if such  
district court has jurisdiction of such claim or cause  
of action under section 1334 of this title.

1 has been removed may remand the state court action "on any  
2 equitable ground."<sup>16</sup> "This 'any equitable ground' remand  
3 standard is an unusually broad grant of authority."<sup>17</sup> McCarthy,  
4 230 B.R. at 417.

5 Rule 9027 governs the procedure for removal under § 1452(a).  
6 1 Collier on Bankruptcy, ¶ 3.07[5]. In other words, it  
7 implements the objectives of § 1452(a). Rule 9027 sets forth two  
8 different deadlines by which the plaintiff must seek removal of  
9 the state court action. Rule 9027(a)(2) applies to state court  
10 actions initiated prepetition while Rule 9027(a)(3) applies to  
11 state court actions initiated postpetition. Here, the debtor  
12 filed his chapter 7 bankruptcy petition before he filed the  
13 Initial State Court Complaint. Rule 9027(a)(3) thus applies.

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14  
15 <sup>16</sup> Section 1452(b) provides:

16 The court to which such claim or cause of action is  
17 removed may remand such claim or cause of action on any  
18 equitable ground. An order entered under this  
19 subsection remanding a claim or cause of action, or a  
20 decision to not remand, is not reviewable by appeal or  
21 otherwise by the court of appeals under section 158(d),  
1291, or 1292 of this title or by the Supreme Court of  
the United States under section 1254 of this title.

22 <sup>17</sup> Numerous courts have pointed out that the standards for  
governing remand are similar to those governing abstention.  
23 1 Collier on Bankruptcy, ¶ 3.07[6]. Courts have outlined the  
24 following factors to consider in deciding whether to remand:  
25 "(1) the effect of the action on the administration of the  
26 bankruptcy estate; (2) the extent to which the issues of state  
27 law predominate; (3) the difficulty of applicable state law;  
28 (4) comity; (5) the relatedness of the action to the bankruptcy  
case; (6) any jury trial right; and (7) prejudice to plaintiffs  
from removal." Id. See also Williams v. Shell Oil Co. (In re  
Williams), 169 B.R. 684, 692-93 (S.D. Cal. 1994).

1 Rule 9027(a)(3) provides, in relevant part, that, if the  
2 bankruptcy case is pending when the state court action is  
3 initiated, the plaintiff may remove the state court action only  
4 within 30 days after receipt of the initial pleading setting  
5 forth the claim or cause of action sought to be removed (i.e.,  
6 the defendant's responsive pleading).

7 The debtor claims that Chase's and Key Auto's months-long  
8 delays in filing their answers to the Initial State Court  
9 Complaint extended the deadline by which he could file the  
10 Removal Notice. Appellant's Reply Brief at 12. The debtor does  
11 not cite any authority supporting this contention.

12 Rule 9027(a)(3) required the debtor to have filed his  
13 Removal Notice within thirty days of receiving Chase's and Key  
14 Auto's answers. Assuming that the 30-day deadline ran from  
15 December 17, 2009, the date on which Key Auto filed its answer,  
16 the debtor had until January 19, 2010, to file the Removal  
17 Notice. Although Chase and Key Auto filed their answers on June  
18 1, 2009, and December 17, 2009, respectively, the debtor waited  
19 until August 19, 2010 - eight months after Key Auto's filing - to  
20 file the Removal Notice.

21 The debtor's Removal Notice clearly was untimely under Rule  
22 9027(a)(3). The bankruptcy court thus did not abuse its  
23 discretion in granting Chase's Remand Motion.<sup>18</sup>

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26 <sup>18</sup> Chase argues that the debtor failed to provide a copy of  
27 all process and pleadings from the state court action, as  
28 required under Rule 9027(a)(1). We decline to address that  
argument, as the bankruptcy court made no determination on it.



1 **CONCLUSION**<sup>19</sup>

2 The debtor's Removal Notice was both procedurally and  
3 substantively defective under § 1452 and Rule 9027(a)(3). The  
4 bankruptcy court applied the correct legal standard; we see no  
5 clear error in the bankruptcy court's fact findings to support  
6 its ruling. The bankruptcy court did not abuse its discretion in  
7 remanding the state court action. We AFFIRM.

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19 <sup>19</sup> The debtor further argues that the bankruptcy court  
20 should not have granted the Remand Motion because the bankruptcy  
21 court had jurisdiction to consider the claims asserted in  
22 Adversary Proceeding II. As far as the issues regarding the  
23 automatic stay are concerned, as noted above, the repossession  
24 took place prepetition, when no stay was in effect. See  
25 § 362(a). Under § 541, the bankruptcy estate arguably had an  
26 interest in the Nissan; Chase had not yet sold the Nissan, so the  
27 bankruptcy estate retained at least title interest in it.  
28 Whether or not the bankruptcy court had jurisdiction, however, is  
beside the point, because the state court had at least concurrent  
jurisdiction to consider claims set forth in the state court  
action. We can see no abuse of discretion in the bankruptcy  
court's granting Chase's Remand Motion based on its alleged  
jurisdiction to consider the debtor's claims.