

28 U.S.C. § 157(b)
28 U.S.C. § 1334(b)
28 U.S.C. § 1441(c)
28 U.S.C. § 1452(a) & (b)
Local Rule 2101-1

Aurora Bulb Corp. v. Tonkon, Torp 90-3103
In re Melridge, Inc. 387-06589-P11

6/6/90 Dist. Ct. Published 1990 WL 84500
Frye

Plaintiff, Aurora Bulb Corp., brought a motion to remand all three claims to state court or, in the alternative, for withdrawal of reference from bankruptcy court for the first and third claims. Plaintiff also sought a determination whether the action was a core or non-core proceeding.

The court found that the first and third claims, which arose under state negligence law, were non-core, related proceedings over which the district court has jurisdiction. In addition, the whole action was removable under 28 U.S.C. § 1441(c) because the plaintiff apparently conceded that the second claim, which alleged failure of the defendant attorneys to return fees because they were not disinterested parties under 11 U.S.C. § 327, was removable.

The court denied the motion to remand because there was no equitable ground under 28 U.S.C. § 1452(b) for remand of the first and third claims. The court granted the motion for withdrawal of reference on the first and third claims because they were tort claims based on state law, which are properly litigated in district court.

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

JUN - 8 1990

DONALD M. CINNAMOND, CLERK

BY

DEPUTY

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

JUN 21 1990

TERENCE H. DUNN, CLERK

IN THE UNITED STATES DISTRICT COURT BY LH DEPUTY

FOR THE DISTRICT OF OREGON

In re

MELRIDGE, INC., a
Washington corporation,

Debtor.

AURORA BULB CORPORATION,
fka MELRIDGE, INC., a
Washington corporation,

Plaintiff,

v.

TONKON, TORP, GALEN, MARMADUKE
& BOOTH, ALBERT N. KENNEDY,
BRUCE H. ORR, VICKI A. BALLOU,
TIMOTHY J. CONWAY, MARY D.
Del BALZO, HARRISON PEDDIE,
President and CEO, JAMES A.
MAROHN, Secretary Treasurer
and Vice President of Finance,
JAMES WANKO, General Sales
Manager, RIEN VEENSTRA,
General Production Manager,
LOU JAFFE and John Does 1
through 5,

Defendants.

///

PAGE 1 - OPINION

CV 90-558 FR
Bankruptcy Case
No. 387-06589-P11

Adversary No. 90-3103

O P I N I O N

1 Stephen C. Hendricks
Jose R. Mata
2 Stephen C. Hendricks, P.C.
319 S. W. Washington, Suite 520
3 Portland, Oregon 97204-2620

4 Attorneys for Plaintiff Aurora Bulb Corporation

5 Garr M. King
Susan E. Watts
6 Kennedy, King & Zimmer
2600 Pacwest Center
7 1211 S. W. Fifth Avenue
Portland, Oregon 97204

8 Attorneys for Defendants Tonkon, Torp, Galen,
9 Marmaduke & Booth, Albert N. Kennedy, Bruce H.
Orr, Vicki A. Ballou, Timothy J. Conway, and
10 Mary D. Del Balzo

11 Robert L. Meyer
Meyer, Habernigg & Wyse
900 S. W. Fifth Avenue, Suite 1900
12 Portland, Oregon 97204

13 Attorneys for Defendant Harrison Peddie

14 Susan K. Eggum
McEwen, Gislvoid, Rankin & Stewart
15 1600 Standard Plaza
1100 S. W. Sixth Avenue
16 Portland, Oregon 97204

17 Attorneys for Defendants James A. Marohn
and James Wanko

18 Charles R. Schrader
19 Allen, Kilmer, Schrader, Yazbeck & Chenoweth
1600 Security Pacific Building
20 1001 S. W. Fifth Avenue
Portland, Oregon 97204

21 Attorneys for Defendant Rien Veenstra

22 Richard M. Botteri
23 Weiss, DesCamp & Botteri
2300 U. S. Bancorp Tower
24 111 S. W. Fifth Avenue
Portland, Oregon 97204

25 Attorneys for Defendant Lou Jaffe
26

1 FRYE, Judge:

2 The matter before the court is the motion (#7) of plain-
3 tiff, Aurora Bulb Corporation (Aurora Bulb) to remand this
4 case to the Circuit Court of the State of Oregon for the
5 County of Multnomah and, in the alternative, for withdrawal
6 of reference from the bankruptcy court and for a determina-
7 tion of non-core status.

8 BACKGROUND

9 Aurora Bulb filed a proceeding under Chapter 11 in the
10 United States Bankruptcy Court for the District of Oregon,
11 where it was represented by the defendant attorneys. The
12 other named defendants are officers and agents of Aurora
13 Bulb.

14 Under 11 U.S.C. § 365(d)(4), leases not expressly
15 affirmed by a debtor within sixty days of the filing date
16 of the bankruptcy action are automatically rejected. This
17 court affirmed and adopted the decision from the bankruptcy
18 case that a certain SunFlor-SFO lease was rejected as a
19 matter of law sixty-one days after the filing date because
20 it had not been affirmed by Aurora Bulb. In re Melridge,
21 Bankruptcy Case No. 387-06589-P11. That decision is now
22 final. Thereafter, the defendant attorneys withdrew as
23 counsel for Aurora Bulb in the bankruptcy case.

24 Aurora Bulb filed this action in the state court
25 alleging three claims for relief: 1) attorney negligence
26 in failing to affirm a valuable lease in the bankruptcy

1 proceedings; 2) failure of the attorneys to return fees paid
2 to them because they were not disinterested parties in the
3 bankruptcy action within the meaning of 11 U.S.C. § 327 and
4 not entitled to represent Aurora Bulb; and 3) negligence of
5 the officer and employee defendants in failing to provide the
6 attorney defendants with a complete list of non-residential
7 real estate leases.

8 The defendant attorneys removed the action to this court
9 from the state court on the grounds that this court has juris-
10 diction over the claims pursuant to 28 U.S.C. § 1334 and Local
11 Rule 2101-1, and that Aurora Bulb's claims constitute core
12 proceedings within the meaning of 28 U.S.C. § 157(b).

13 Aurora Bulb moves this court to remand all three claims
14 to state court and, in the alternative, to withdraw the
15 reference from the bankruptcy court for the first and third
16 claims.

17 CONTENTIONS OF THE PARTIES

18 Aurora Bulb argues that defendants improperly removed
19 this action to the bankruptcy court. Aurora Bulb explains
20 that a state court case must be removed in the first instance
21 to the district court and not to the bankruptcy court because
22 28 U.S.C. § 1452(a) provides that "[a] party may remove any
23 claim . . . to the district court . . . if such district court
24 has jurisdiction."

25 In the alternative, Aurora Bulb contends that this court
26 should remand all claims on equitable grounds under section

1 1452(b). Aurora Bulb asserts that the first and third claims
2 arise under state law, and that they should be resolved in
3 state court. Aurora Bulb explains that these claims are at
4 most "related to" the bankruptcy case and are not core pro-
5 ceedings; that the procedural questions in this court are
6 complicated and will almost certainly result in appeals; that
7 the issue of core proceedings would be irrelevant in the state
8 court; and that assuming that these claims are not core pro-
9 ceedings, they are straightforward negligence claims under
10 state law and will be most expeditiously resolved in state
11 court.

12 In the alternative to the motion to remand, Aurora Bulb
13 contends that this court should withdraw reference from the
14 bankruptcy court and allow the action to proceed in this court
15 because these claims are like tort claims and not typically
16 litigated in bankruptcy court.

17 Defendant attorneys respond that the second claim was
18 properly before the bankruptcy court, and therefore removal
19 to this court is appropriate under section 1441(c), which
20 provides that whenever a separate claim is removable if sued
21 upon alone, the entire case may be removed; that these claims
22 are core proceedings in that they involve the administration
23 of the estate and seek to have funds turned over to the estate
24 pursuant to 28 U.S.C. § 157(b)(2); and that the reference
25 should not be withdrawn as to any of the three claims until
26 after the pretrial order is lodged.

1 Defendant attorneys point out that the claims of Aurora
2 Bulb involve issues peculiar to bankruptcy, and the second
3 claim for relief involves the statutory interpretation of the
4 bankruptcy code over which a bankruptcy court is more suited
5 to preside. Defendant attorneys assert that the first and
6 third claims can be resolved in this court after the pretrial
7 order is lodged in order to preserve the right of Aurora Bulb
8 to a jury trial, and that judicial efficiency will be pre-
9 served by denying the motion of Aurora Bulb to resolve all
10 pretrial matters in the bankruptcy court and then to refer
11 the issues to which a jury trial is preserved to the district
12 court for trial.

13 ANALYSIS

14 Bankruptcy courts have full judicial power over "core
15 proceedings," but only limited power to hear non-core or
16 related proceedings. In re Daniels-Head & Assocs., 819 F.2d
17 914, 917 (9th Cir. 1987). 28 U.S.C. § 157(b)(1) states:

18 Bankruptcy judges may hear and determine
19 all cases under title 11 and all core proceedings
20 arising under title 11, or arising in a case under
21 title 11, referred under subsection (a) of this
22 section, and may enter appropriate orders and
23 judgments, subject to review under section 158
24 of this title.

25 The distinction between core and non-core proceedings is
26 jurisdictional. Congress may not vest the power to adjudi-
cate, render final judgment, and issue binding orders in
a traditional contract action arising under state law to a
bankruptcy court without the consent of the litigants and

1 subject only to ordinary appellate review. Thomas v. Union
2 Carbide Agricultural Products Co., 473 U.S. 568, 584 (1985).

3 The issues presented in the first and third claims for
4 relief do not involve federal bankruptcy law. The bankruptcy
5 issues have been resolved in the bankruptcy court, and the
6 leases were found to be rejected. The issue presented by the
7 first and third claims arise under state negligence law and
8 are not "core" proceedings involving federal bankruptcy
9 concerns such as the restructuring of the debtor-creditor
10 relationship. In re Worcester, 811 F.2d 1224, 1229 n.5 (9th
11 Cir. 1987).

12 The reference to the bankruptcy court on the grounds that
13 this is a core proceeding was not proper.

14 28 U.S.C. § 1334(b) provides that "the district courts
15 shall have original but not exclusive jurisdiction of all
16 civil proceedings . . . related to cases under title 11."
17 This case is related to a case under title 11, and this court
18 is not without jurisdiction. In addition, 28 U.S.C. § 1441(c)
19 provides that whenever a separate claim is removable if sued
20 upon alone, the entire case may be removed. Aurora Bulb
21 appears to concede that the second claim is removeable. Sec-
22 tion 1441(c) provides that this court may remove the entire
23 case.

24 Aurora Bulb asserts that this court should decline to
25 exercise jurisdiction under 28 U.S.C. § 1452(b), which pro-
26 vides:

1 The court to which such claim or cause of
2 action is removed may remand such claim or cause of
3 action on any equitable ground. An order entered
4 under this subsection remanding a claim or cause of
5 action, or a decision to not remand, is not review-
6 able by appeal or otherwise.

7 As equitable grounds for remand, Aurora Bulb argues that a
8 remand of the entire case will negate the need for this court
9 to determine whether this is a core proceeding; that the
10 bankruptcy court cannot protect the right of Aurora Bulb to
11 a jury trial; that the proceedings in the bankruptcy court
12 will be subject to review in the district court, thereby add-
13 ing expense and delay; and that the state courts frequently
14 resolve legal malpractice cases and present a speedy docket
15 for resolution of this case.

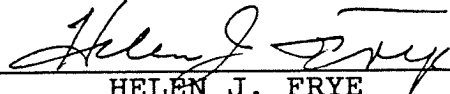
16 This court finds that there are no equitable grounds for
17 remand of the first and third claims. This record contains no
18 facts to support the contention of Aurora Bulb that resolution
19 of this case will be delayed in this court.

20 Aurora Bulb agrees with the defendants in their reply
21 memorandum that the reference to the bankruptcy court should
22 not be withdrawn with regard to the second claim for relief.
23 However, the tort claims based upon state law are properly
24 litigated in this court. Pretrial rulings in the bankruptcy
25 court will be subject to review in this court. The withdrawal
26 of reference on the first and third claims for relief will
27 save the parties time and expense. Aurora Bulb's motion to
28 withdraw reference on the first and third claims is granted.

CONCLUSION

Aurora Bulb's motion for remand (#7) is denied. Aurora Bulb's alternative motion to withdraw reference on the first and third claims (#7) is granted.

DATED this 6 day of June, 1990.



HELEN J. FRYE
United States District Judge

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

JUN - 6 1990

DONALD M. CINNAMOND, CLERK

BY *[Signature]* DEPUTY

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

JUN 2 1990

TERENCE H. DUNN, CLERK

IN THE UNITED STATES DISTRICT COURT BY _____ DEPUTY

FOR THE DISTRICT OF OREGON

In re

MELRIDGE, INC., a
Washington corporation,

Debtor.

AURORA BULB CORPORATION,
fka MELRIDGE, INC., a
Washington corporation,

Plaintiff,

v.

TONKON, TORP, GALEN, MARMADUKE
& BOOTH, ALBERT N. KENNEDY,
BRUCE H. ORR, VICKI A. BALLOU,
TIMOTHY J. CONWAY, MARY D.
Del BALZO, HARRISON PEDDIE,
President and CEO, JAMES A.
MAROHN, Secretary Treasurer
and Vice President of Finance,
JAMES WANKO, General Sales
Manager, RIEN VEENSTRA,
General Production Manager,
LOU JAFFE and John Does 1
through 5,

Defendants.

CV 90-558 FR
Bankruptcy Case
No. 387-06589-P11

Adversary No. 90-3103

O R D E R

///

PAGE 1 - ORDER

1 IT IS HEREBY ORDERED that plaintiff's motion for remand
2 (#7) is DENIED. Plaintiff's alternative motion to withdraw
3 reference on the first and third claims (#7) is GRANTED.

4 DATED this 6 day of June, 1990.

5 

6 HELEN J. FRYE
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26