

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole, Debtor.	Chapter 11 Case No. 13-13676-t11 Jointly Administered with: Case No. 13-13677-t11
Jointly Administered with: BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole. This pleading applies to: <input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor.	
Roman Catholic Church of the Diocese of Gallup, Debtor(s). Alfred A. Moya, Plaintiff, v. Roman Catholic Church of the Diocese of Gallup, et al., Defendant(s).	Case No.: 13-13676-t11 Adversary No.: 14-01034-t Date: November 10, 2015 Time: 9:00 a.m. Place: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, S.W., 13 th Floor Albuquerque, NM 87102

MOTION BY ALFRED MOYA TO REMAND ACTION TO STATE COURT

Alfred Moya (“Movant”) moves this Court for an order: (i) remanding this action to the Superior Court in the State of Arizona (Coconino County) pursuant to section 1452(b) of title 28 of the United States Code or (ii) abstaining and remanding pursuant to section 1334(c) of title 28 of the United States Code. In support of the motion, Movant alleges the following:

MOTION TO REMAND
ACTION TO STATE COURT

1. The Roman Catholic Church of the Diocese of Gallup (the “Diocese”) assigned Clement Hageman (“Hageman”) to Our Lady of Guadalupe Church & Parish in Holbrook, Arizona, where he sexually abused Alfred Moya.¹

2. On August 12, 2010, Movant filed suit against the Diocese, Our Lady of Guadalupe Church & Parish and Hageman’s estate in the Superior Court in the State of Arizona (Coconino County) (Case No. CV2010-00713) (the “State Court Action”).²

3. All of the abuse perpetrated by Hageman took place in Arizona, and all of Movant’s causes of action (sexual assault/sex abuse/molestation, breach of fiduciary duty, intentional infliction of emotional distress, intentional/negligent misrepresentation, negligent supervision/retention, child abuse and assault & battery) arise under Arizona statutory and common law.

4. After extensive pre-trial proceedings before the state court, the State Court Action was set for trial in February 2014.

5. On November 12, 2013 (the “Petition Date”), the Diocese and the Bishop of the Roman Catholic Church of the Diocese of the Gallup (collectively, the “Debtor”) filed petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The automatic stay imposed by Bankruptcy Code section 362(a)(1) prevented Movant from continuing to prosecute the State Court Action.

6. On February 6, 2014, the Debtor removed the State Court Action to the United States Bankruptcy Court for the District of Arizona by filing a *Notice of Removal*

¹ The facts in this motion are supported by the Declaration of Robert E. Pastor (the “Pastor Declaration”) and the Declaration of James I. Stang (the “Stang Declaration”), which were filed concurrently herewith.

² A true and correct copy of the Plaintiff’s First Amended Complaint is attached as Tab 2 to the Debtor’s *Notice of Filing Superior Court Pleadings Pursuant to Fed. R. Bankr. P. 9027(e)(2)* [Docket No. 9].

*Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027 (AZ Adversary No. 2:14-ap-00109-EPB).*³

7. The State Court Action (now pending as an adversary proceeding) was transferred to the United States Bankruptcy Court for the District of New Mexico on March 25, 2014 (NM Adversary No. 14-01034-t), and on August 9, 2014, Mr. Moya timely filed a proof of claim.⁴

8. On June 6, 2014, this Court approved the *Stipulated Order Regarding Abeyance of Adversary Proceeding and Reservation of Rights* (the “Stipulation”) pursuant to which the Debtor and Movant agreed, “The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.” *See* Stipulation, ¶ 1, at 2. The Stipulation further provides, “To the extent that either Plaintiff or Defendant wishes to reinitiate this Adversary Proceeding, such party may file a Motion with the Court notifying the Court and the parties that it no longer wants this Adversary Proceeding held in abeyance, and asking the Court to reinitiate the Adversary Proceeding.” *Id.* ¶ 2, at 3.⁵

9. After the parties failed to reach a mediated settlement of the chapter 11 case, Movant determined that the State Court Action (pending as the removed adversary proceeding) should no longer be held in abeyance. Accordingly, on July 8, 2015, Movant filed a *Motion for Relief from Stay* (the “Stay Motion”) so that the State Court Action could proceed to judgment in state court. The Court held a preliminary hearing on the *Stay Motion* on August 14, 2015; a final hearing is scheduled for November 10, 2015. Movant now also seeks to have the

³ A true and correct copy of the Notice of Removal is attached to the Official Committee of Unsecured Creditors’ Memorandum of Points and Authorities in Support of Plaintiffs’ Motions to Remand Actions to State Court (the “Committee Memorandum”).

⁴ Movant asks the Court to take judicial notice of his proof of claim, which was filed under seal in the main bankruptcy case.

⁵ A true and correct copy of the Stipulation is attached to the Committee Memorandum.

State Court Action remanded to the Arizona Court where it will go forward should the Court grant the *Stay Motion*.

10. The State Court Action is personal injury tort case that is before this Court solely because it is “related to” the Debtor’s bankruptcy case. See 28 U.S.C. § 1334(b). It is non-core proceedings for purposes of distribution. See 28 U.S.C. § 157(b)(2)(B). Movant has a right to a jury trial under state law which is unaffected by the Bankruptcy Code. See 28 U.S.C. § 1411. Absent remand, the State Court Action must be tried by the district court. See 28 U.S.C. § 157(b)(5).

11. The Debtor removed the State Court Actions solely under section 1452(a) of title 28 of the United States Code, which provides, “A party may remove any claim or cause of action in a civil action . . . 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.” 28 U.S.C. § 1452(a). A federal court to which actions are removed on the basis of their relationship to a bankruptcy case may remand such actions “on any equitable ground.” See 28 U.S.C. § 1452(b). For the reasons set forth in the *Official Committee of Unsecured Creditors’ Memorandum of Points and Authorities in Support of Plaintiffs’ Motions to Remand Actions to State Court* (the “Committee Memorandum”), the equities strongly favor remanding the State Court Action pursuant to section 1452(b) or abstaining and remanding pursuant to section 1334(c) of title 28 of the United States Code.

This Motion, which is opposed by the Debtors, is supported by the Committee Memorandum, the Declaration of Robert E. Pastor, the Declaration of James Stang and any other related declarations or reply pleadings and such other arguments and evidence as may be adduced at the hearing herein.

WHEREFORE, Movant prays that this Court issue an order: (i) remanding the State Court Action to the Arizona court pursuant to 28 U.S.C. § 1452(b) or (ii) abstaining and remanding pursuant to 28 U.S.C. § 1334(c) and for such other and further relief as the Court deems just.

Dated: October 9, 2015

Respectfully submitted,

MANLY, STEWART & FINALDI

By /s/ John C. Manly

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Dated: October 9, 2015

Respectfully submitted,

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By /s/ Robert E. Pastor

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