

**United States Bankruptcy Court
District of New Mexico**

Document Verification

Case Title: State of New Mexico v. Frank R. Trujillo, et al.
Case Number: 00-01235
Nature of Suit:
Judge Code: S
Reference Number: 00-01235 - S

Document Information		
Number:	15	
Description:	Minutes of Hearing Held On 12/1/00 Re: [5-1] Motion To Remand (00-1235) To The Eighth Judicial District Court by State of New Mexico, [1-1] Removal Notice of Notice of Removal By Defendant Ida J. Trujillo, Defendant Frank R. Trujillo of Cause No. 98-302 CV, Eighth Judicial District, County of Taos, State of NM, styled State of NM ex rel Patricia Madrid vs. Frank R. Trujillo and Ida R. Trujillo to USBC, Dist. of NM. (ADV. NO. 00-1235) by Frank R. Trujillo, Ida J. Trujillo . MOTION TO REMAND GRANTED.	
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Submitted By:	Jill L. Peterson	
Comments:	Minutes of Hearing Held on Dec. 1, 2000 on Oral Ruling on Motion to Remand and Notice of Removal.	

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Joe Jameson X

Date:
December 1, 2000

In Re:
FRANK TRUJILLO
IDA TRUJILLO
No. 11-00-11190 SS

STATE OF NEW MEXICO
No. 00-1235 S
v.
FRANK TRUJILLO
IDA TRUJILLO

Oral Ruling on Motion to Remand and Notice of Removal

Attorney for Plaintiff: Frank Weissbarth
Attorney for Defendant: Teresa Parrish

Summary of Proceedings:

Exhibits _____

Testimony _____

MOTION TO REMAND GRANTED

Oral Findings and Conclusions and Ruling in connection with Notice of Removal by debtor/defendants and Motion for Remand and Sanctions filed by plaintiff/State of NM

Appearances:

Frank Weissbarth for NM AG

Teresa Parrish for DIPs Frank and Ida Trujillo

Jurisd under 1334 and 157(b)(2)(A) & (O) and (b)(3), and 1452. The decision whether to remand or not in itself is a core matter, regardless of whether the subject of the removed action is core or non-core. 7052.

Background: State and Taos County sued Trujillos in Aug or Sept 98 alleging violations of subdivision acts of 1973 and 1996, of Unfair Practices Act, and also alleging nuisance. Ds and county reached agmt whereby county dismissed the complaint, and that was eventually approved by Court (although copy I have appears to say "not signed" above Judge Hall's name). State continued with the complaint, Ds answered and State filed MSJ.

On Oct 5 (doc 84) Court entered order modifying stay to permit much of the state action to go forward. On Nov 6, notice of removal filed. The state responded with a motion to dismiss and for sanctions, which together with the notice of removal came on for PH on Nov. 28.

Because of the imminence of important events in both the state court case (currently removed) and the underlying chapter 11 case, the parties agreed that the remand issue could be decided on the documents, including the state court case file, and the Court has expedited its review and decision-making. I asked the parties to designate which documents they wanted me to look at to decide this case; both sides have submitted those designations and the state has asked me not to look at some of the documents designated by debtors. The designations are filed in the adversary proceeding. I have looked at all the documents designated by both sides, and indeed virtually all the adversary proceeding file (the state court action) as well as portions of the chapter 11 file, such as schedules and statements of affairs, etc.

State argument: this is "classic" action that does not allow removal: a governmental unit (state) pursuing a police or regulatory action.

DIP argument is contained in the notice of removal (which appears to be missing at least one page, following paragraph 8.

Basic arguments:

court has exclusive jurisdiction of property of debtors and estate (1334(e) – true, but proves too much. If that is the only test, makes superfluous the language of 1452(a). The issues concerning subdivision law, UPA and nuisance – hard to imagine actions that are not more inherently police or regulatory.

Dismissal by County results in state not having some authority. To begin with, the order entered by Judge Hall, resulting from negotiations between state on one hand and Messrs Crollett and Morrison for debtors and county respectively, explicitly states that the dismissal “shall not prejudice any claims of the Plaintiff State of New Mexico....” And the Debtors’ response to the state’s objections to the settlement stipulation and memorandum in support thereof, signed by Mr. Crollett, specifically states that the settlement between the state and DIPs will not affect the “ability” of the state to go forward. In any event, this is exactly the sort of thing best addressed by Judge Hall, based on New Mexico law and based on the behaviour and actions of the parties as he has observed them.

BR court should be making decision on whether DIPs can deal with their property without complying with certain demands of the state. In fact, this is the question of police and regulatory power, and DIPs must comply with state law – 28 USC 959 – and this is not a question of exclusive jurisdiction of court over property of the estate, or to deal with certain kinds of discharges, etc.

Property is sole and separate of Ida: the materials submitted in support of the State MSJ show that, despite the protestations to the contrary by DIPs, there appears to be a real issue here. But is not an issue for BR, since by filing BR Ida submitted her s&s property to jurisdiction of court, and that is the issue that matters for purposes of remand, etc. No reason anyway that Judge Hall, who is already familiar with the case, cannot sort out that issue and determine its relevance.

157(b)(2) categories of core matters: even if this were a relevant consideration, just shows the “elasticity” of these categories – how virtually anything can fit into one category or another, despite Congress’ attempt to make meaningful distinctions.

Also, MSJ shows how many witnesses are in Taos. Makes sense also for the trial to take place up there, with Judge Hall, to accomodate all those folks and the litigants. And what if Judge Hall wants a view of the property?

Ruling:

This action will be remanded.

No sanctions – troubling, very close, but won’t award. White v GMC; UNM case (10th Cir.); Chromatic and Gell & Cooter vs. Hartmarx cases (USSCt). Won’t happen again. On Monday, still have the other hearing on presentment of Order to Sell in main case, but not the M/Protective Order as a result of this decision.

FW tdo

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