

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
ARCHANGEL DIAMOND CORPORATION,)	Case No. 09-22621 HRT
)	Chapter 11
Debtor.)	
)	
_____)	
)	
ARCHANGEL DIAMOND CORPORATION,)	Adversary Proc. No. 09-1755 HRT
)	
Plaintiff,)	
)	
v.)	
)	
OAD LUKOIL,)	
)	
Defendant.)	
_____)	

ORDER ON MOTION FOR ABSTENTION AND REMAND

This matter comes before the Court on Defendant OAO Lukoil’s [“Lukoil”] Motion for Abstention and Remand, filed December 22, 2009; Plaintiff Archangel Diamond Corporation’s (“Archangel”) Opposition thereto, filed January 15, 2010, along with its Supplemental Filing in Opposition to the Motion, filed January 28, 2010; and Lukoil’s Reply, filed January 29, 2010. Following oral argument on September 20, 2010, the Court took the matter under advisement. The Court is now prepared to rule, and hereby concludes as follows:

I. Background¹

The parties to this dispute are Archangel, a Canadian public company that had its principal place of business in Colorado between 1998 and 2002; Arkhangelskgeoldobycha (“AGD”), a Russian public company in the oil, gas, and mining business with its principal place of business in Arkhangelsk, Russia; and Lukoil, a Russian public company with its principal place of business in Moscow, Russia. The factual background is set forth in two published Colorado cases, *Archangel Diamond Corp. v. Arkhangelskgeoldobycha*, 94 P.3d 1208, 1211-12 (Colo. Ct. App. 2004), and *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1190-91 (Colo. 2005). In short, in 1993, Archangel’s predecessor and AGD’s predecessor entered into an agreement for the exploration and development of diamond fields in northern Russia. Archangel

¹ The following facts are undisputed or are allegations of the parties that are taken in the light most favorable to the non-moving party.

alleges that the parties' agreement, as subsequently amended, was breached. In 1998, Archangel brought an arbitration proceeding in Stockholm, Sweden (the "Stockholm Proceeding") against AGD and Lukoil, which was alleged to have taken over management and control of AGD. In 2001, the Stockholm Proceeding was dismissed when the arbitral tribunal held that the dispute was required to be heard in the courts of the Russian Federation. Archangel appealed the dismissal.

In November 2001, while the appeal of the Stockholm Proceeding was pending, Archangel brought suit in Denver, Colorado (the "Colorado Litigation"), against AGD and Lukoil, asserting contract and tort claims. Archangel also asserted a separate tort claim against AGD for breach of contract and breach of the duty of good faith and fair dealing. In its complaint (the "2001 Complaint"), Archangel alleged specific jurisdiction over Lukoil and AGD based on fraudulent communications directed into Colorado. Archangel further alleged general jurisdiction over Lukoil because it conducted business in Colorado, including the operation of a gas station in Glendale, Colorado.

On January 11, 2002, during the course of the Colorado Litigation, Lukoil and AGD removed the case to the U.S. District Court. Archangel opposed this effort, arguing that the removal was an attempt to take advantage of the federal *forum non conveniens* standard, which was arguably more favorable to dismissal than the Colorado standard. In support of its motion to remand, Archangel asserted that the Colorado Litigation was "a pure commercial dispute between private parties governed by state contract and tort law." (Plaintiff's Motion for Remand at 12, included in this Court's docket #23.) By order entered April 18, 2002, the U.S. District Court granted Archangel's Motion for Remand.

Following remand to the Denver District Court, AGD and Lukoil moved to dismiss the Colorado Litigation under several theories, including lack of personal jurisdiction under Colo. R. Civ. P. 12(b)(2) and *forum non conveniens*. The Denver District Court did not hold an evidentiary hearing, but ruled on the basis of the 2001 Complaint and affidavits submitted by the parties, granting the motion to dismiss on October 15, 2002. Archangel appealed, and on March 25, 2004, the Colorado Court of Appeals affirmed on personal jurisdiction grounds. Archangel then appealed to the Colorado Supreme Court. On November 21, 2005, the Colorado Supreme Court upheld the Denver District Court's dismissal of AGD for lack of personal jurisdiction but reversed the dismissal of Lukoil, holding that Archangel had established a prima facie case of general jurisdiction over Lukoil with its allegations that Lukoil had operated a gas station in Glendale, Colorado, and that the Denver District Court had erred when it resolved disputed facts on that issue without conducting an evidentiary hearing. Accordingly, the Colorado Supreme Court remanded the case to the Colorado Court of Appeals to address the remaining issue of *forum non conveniens*. On June 29, 2006, the Colorado Court of Appeals reversed the Denver District Court's dismissal on *forum non conveniens* grounds.

Meanwhile, in the Stockholm Proceeding, the Swedish State Court issued a decision

reversing the dismissal of the arbitral proceeding. In November 2006, the Stockholm Proceeding resumed. During 2007, Archangel filed its statement of claim, and AGD provided its statements of defense.

At the same time, in the Colorado Litigation, on remand from the Colorado Court of Appeals, Lukoil renewed its motion to dismiss for lack of personal jurisdiction and asked the Denver District Court to stay further proceedings on the merits pending an evidentiary hearing on the jurisdictional issue. The court granted Lukoil's motion by order entered June 11, 2007 ("2007 Stay Order"). During 2007, the parties participated in discovery on the issue of jurisdiction.

During 2008, both the Colorado Litigation and the Stockholm Proceeding were stayed while the parties attempted to settle their dispute, an effort that was unsuccessful. During 2009, jurisdictional discovery resumed in the Colorado Litigation. On June 26, 2009, one of Archangel's attorneys and two other creditors filed an involuntary Chapter 7 bankruptcy petition against Archangel in the District of Colorado. Archangel consented to relief and converted the case to Chapter 11 on September 3, 2009. In October 2009, Archangel dismissed the Stockholm Proceeding without prejudice.

On November 23, 2009, in connection with jurisdictional discovery in the Colorado Litigation, Archangel took the deposition of Dean Silverud of DS Engineering. Archangel alleges that the deposition revealed that Lukoil, through DS Engineering as Lukoil's "*de facto* Colorado office," engaged in a wire fraud and money laundering scheme.

The day after the deposition, November 24, 2009, Archangel filed its First Amended Complaint (the "2009 Amended Complaint"). The 2009 Amended Complaint asserted four new causes of action against Lukoil: (1) violation of section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (2) violation of section 1962(d) of RICO; (3) violation of the Colorado Organized Crime Control Act, Colo. Rev. Stat. § 18-17-104(3); and (4) violation of the Colorado Organized Crime Control Act, Colo. Rev. Stat. § 18-17-104(4).

After filing its 2009 Amended Complaint, Archangel removed the Colorado Litigation to the U.S. District Court under 28 U.S.C. §§ 1334 and 1452, stating in its Notice of Removal that it did not consent to the entry of final orders by the Bankruptcy Court. (Not. of Removal ¶ 19, included in this Court's docket #2.) Thereafter, on December 3, 2009, Lukoil moved to refer the matter to this Court, and the U.S. District Court granted the reference over Archangel's objection because the matter was related to the bankruptcy case. Meanwhile, in the bankruptcy case, this

Court entered an order confirming Archangel's amended plan² on December 17, 2009.

On December 22, 2009, Lukoil filed its Motion for Abstention and Remand (docket #10,11), to which Archangel filed an opposition and supplement thereto (docket #19, 23), and Lukoil filed a reply (docket #25). On January 4, 2010, Archangel filed a Motion to Withdraw the Reference (docket #12), to which Lukoil objected (docket #18), and Archangel filed a reply (docket #26). Archangel's Motion to Withdraw the Reference was denied by the U.S. District Court on July 7, 2010 (docket #34), leaving determination of Lukoil's Motion for Abstention and Remand to this Court. On January 15, 2010, Archangel also filed a Motion for Declaratory Judgment that OAO Lukoil Has Submitted to the Jurisdiction of the Bankruptcy Court (docket #20), to which Lukoil filed an objection (docket #27), and Archangel filed a reply (docket #45).

On June 30, 2010, Archangel filed its final report (docket #175 in case #09-22621 HRT), stating that, as anticipated in its Chapter 11 plan, Archangel had transferred all its property to a liquidating trust. Archangel requested entry of a final decree under Fed. R. Bankr. P. 3022, finding that the estate has been fully administered, and an order closing the bankruptcy case. The bankruptcy case is ready to be closed, following the submission of appropriate schedules and a period of time during which interested parties may object to the final report (see docket #185 in case #09-22621 HRT).

On September 20, 2010, this Court heard oral argument on the pending motions and took the matters under advisement. For the reasons discussed below, the Court will grant Lukoil's Motion for Abstention and Remand and deny Archangel's Motion for Declaratory Judgment.

II. Mandatory Abstention

The elements of mandatory abstention are found in 28 U.S.C. § 1334(c)(2). A federal court must abstain if the following six requirements are satisfied: (1) a party files a timely motion; (2) the proceeding is based on a state-law claim; (3) the proceeding is a "related to" proceeding; (4) there is no basis for federal jurisdiction other than section 1334; (5) an action is pending in state court; and (6) the state court action can be timely adjudicated. *In re Schempp Real Estate LLC*, 303 B.R. 866, 871 (Bankr. D. Colo. 2003) (citing *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764 (10th Cir. BAP 1997)).

A. Timely Motion

The parties do not dispute that Lukoil's motion was timely filed, pursuant to this Court's

² Even though the Order confirming the Debtor's amended plan is entitled "Order Confirming Debtor's Amended Plan of Reorganization," the plan is actually entitled "Debtor's Amended Plan of Liquidation."

December 11, 2009, Minute Order (docket #7). This element is therefore satisfied.

B. Proceeding Based on State-law Claim

Archangel's 2001 Complaint asserted six claims for relief: (1) fraud and aiding and abetting fraud; (2) breach of contract; (3) intentional interference with contractual relations; (4) civil conspiracy; (5) breach of the duty of good faith and fair dealing; (6) breach of fiduciary duty and aiding and abetting breach of fiduciary duty; and (7) unjust enrichment. Archangel also asserted a right to injunctive relief. All claims were asserted under Colorado law. In 2002, when Lukoil and AGD removed the Colorado Litigation to the U.S. District Court, Archangel sought remand, arguing that the Colorado Litigation was "a pure commercial dispute between private parties governed by state contract and tort law." Archangel prevailed, and the U.S. District Court remanded the case back to the Denver District Court. Before the filing of the 2009 Amended Complaint, this proceeding was clearly one based on a state-law claim.

The 2009 Amended Complaint asserts four new claims for relief: (1) violation of section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act (RICO); (2) violation of section 1962(d) of RICO; (3) violation of the Colorado Organized Crime Control Act, Colo. Rev. Stat. § 18-17-104(3); and (4) violation of the Colorado Organized Crime Control Act, Colo. Rev. Stat. § 18-17-104(4). Thus, of the eleven claims asserted, two arise under federal law. There is a question as to whether the additional two claims change the nature of the proceeding. Archangel appears to take different positions on the issue in its objection to Lukoil's motion. On the one hand, Archangel states: "Although the Amended Complaint adds allegations regarding the *de facto* Colorado office and RICO, the majority of the allegations are the same." (Docket #19, at 16.) Based on the similarity in substance between the 2001 Complaint and the 2009 Amended Complaint, Archangel argues that the parties could pick up where they left things in U.S. District Court in 2002, using the scheduling order issued March 7, 2002, before the U.S. District Court granted Archangel's motion for remand. (*See id.*) On the other hand, two pages later in the same objection, Archangel states that "with the Amended Complaint, the case is starting from scratch with very different allegations and issues." (*Id.* at 18.)

Lukoil argues that the 2001 Complaint was not properly amended. It also argues that in reviewing the factors for abstention, the Court should consider "attempts by a removing party to fabricate federal court jurisdiction," citing *Thomasson v. AmSouth Bank, N.A.*, 59 B.R. 997 (N.D. Ala. 1986), to support that proposition. (Docket #10,11 at 9). The Court does not read *Thomasson* to support Lukoil's contention. Indeed, the Court's own research has revealed that courts are loath to dismiss for lack of jurisdiction, absent a claim that is "wholly insubstantial." *See Bell v. Hood*, 327 U.S. 678, 682-83 (1946). At this stage, the Court declines to so find. On its face, the 2009 Amended Complaint appears to be a proceeding that is based, in part, on federal-law claims. The Court therefore concludes that this element is not satisfied.

C. “Related to” Proceeding

Bankruptcy courts have jurisdiction over “core proceedings” and “related proceedings.” *See Midgard*, 204 B.R. at 771 (citing 28 U.S.C. § 157(b)(2)). The term “core proceeding” includes matters “arising under” the Bankruptcy Code and “arising in” bankruptcy cases. Proceedings arising under the Bankruptcy Code assert causes of action created by the Code, such as avoidance actions under 11 U.S.C. §§ 544, 547, 548, or 549. *Id.* Proceedings arising in a bankruptcy case are not causes of action created by the Code, but are matters that could not exist outside of a bankruptcy case, such as confirmation of a plan. *Id.* Here, the parties agree that none of the claims asserted by Archangel is a core proceeding that arises under the Bankruptcy Code or arises in Archangel’s bankruptcy case.

“A proceeding is ‘related to’ a bankruptcy case if it could have been commenced in federal or state court independently of the bankruptcy case, but the ‘outcome of that proceeding could conceivably have an effect on the estate being administered in bankruptcy.’” *Id.* (quoting *Gardner*, 913 F.2d at 1518)). Here, the Colorado Litigation was, in fact, commenced in state court independently of the bankruptcy case. The parties do not dispute that its outcome could conceivably have an effect on Archangel’s estate. Therefore, this proceeding is a “related to” proceeding, and this element is satisfied.

D. Basis for Federal Jurisdiction other than 28 U.S.C. § 1334

As originally postured, the Colorado Litigation would have had no basis for federal jurisdiction other than 28 U.S.C. § 1334. Archangel’s 2001 Complaint asserted only state-law claims, and when Lukoil removed the Colorado Litigation in 2002, Archangel successfully obtained remand. With the filing of the 2009 Amended Complaint, Archangel now asserts two federal causes of action. Taking the 2009 Amended Complaint on its face, as discussed above, the Court concludes that Archangel has stated a basis for federal jurisdiction other than § 1334, and this element is not satisfied.

E. Action Pending in State Court

Here, the case was originally filed in state court, where it was pending for eight years before Archangel’s removal. The case meets the requirement of a pending action. *See Schempp Real Estate*, 303 B.R. at 874. This element is therefore satisfied.

F. Action Can Be Timely Adjudicated in State Court

“The primary focus of the timeliness prong is whether allowing the case to stay in state court will adversely affect the bankruptcy case.” *Schempp Real Estate*, 303 B.R. at 874. In evaluating whether allowing a case to proceed in state court will adversely affect the administration of a bankruptcy case, courts have considered some or all of the following factors:

(1) backlog of the state court and federal court calendar; (2) status of the proceeding in state court prior to being removed (i.e., whether discovery had been commenced); (3) status of the proceeding in the bankruptcy court; (4) the complexity of the issues to be resolved; (5) whether the parties consent to the bankruptcy court entering judgment in the non-core case; (6) whether a jury demand has been made; and (7) whether the underlying bankruptcy case is a reorganization or liquidation case.

Id. at 874 (citing *Midgard*, 204 B.R. at 778-79).

Regarding the first factor, the Court has no evidence before it regarding the state court calendar; however, this Court is experiencing a high volume of case filings, leading to a backlog on its calendar. The Court believes that the U.S. District Court also has a substantial caseload.

Regarding the second factor, during the eight years that passed between the filing of the case and Archangel's removal to this Court, the parties argued motions and appeals to all three levels of the Colorado state court system. Following remand from the Colorado Court of Appeals, the Denver District Court issued its 2007 Stay Order, which set an evidentiary hearing on the jurisdictional issue and limited discovery to that issue, staying all other proceedings. The parties were conducting discovery under the 2007 Stay Order when Archangel, as debtor-in-possession, removed this proceeding to the U.S. District Court. If this case were remanded, this Court has no doubt that the Denver District Court could promptly resume the proceeding under its 2007 Stay Order, setting the matter for an evidentiary hearing on the jurisdictional issue without significant delay.

Regarding the third factor, this Court has conducted no proceedings other than briefing and oral argument on the issue of whether remand is appropriate. Lukoil's time to respond to the 2009 Amended Complaint has been stayed, as has all discovery, pending a determination on the motion to remand.

Regarding the fourth factor, complexity of the issues to be resolved, the Court concludes that the contract and tort claims of the 2001 Complaint and the additional RICO and Colorado Organized Crime Control Act allegations of the 2009 Amended Complaint are not particularly complex. But, the outstanding issue of personal jurisdiction over Lukoil is a complex issue, and one in which the Colorado state courts have already invested a significant amount of time.

Regarding the fifth and sixth factors, neither party has consented to this Court's jurisdiction. Absent such consent, this Court cannot enter a final judgment in this case, which adds procedural inefficiency and delay to the proceeding. Also, Archangel has demanded a jury trial. As this Court cannot conduct a jury trial, this case would proceed on a two-track basis, under which this Court would handle all pre-trial matters, leaving the actual trial to be conducted by the U.S. District Court. Such a process imposes additional procedural inefficiency and delay.

Finally, regarding the seventh factor, Archangel's plan of liquidation has been confirmed. All of its property has been transferred to a liquidating trust, and Archangel has filed a final report and requested closing of the case. Abstention and remand will have no effect on what little administration remains in Archangel's bankruptcy case.

The above factors support a conclusion that allowing the case to return to state court will not adversely affect Archangel's bankruptcy case. Any state-court adjudication would be a timely one. Archangel questions whether the state court could adjudicate this matter at all, given Lukoil's objection to personal jurisdiction, but Lukoil objects to the jurisdiction of the U.S. District Court as well, arguing that only the courts of the Russian Federation have sufficient jurisdiction. This Court concludes that the Denver District Court and any subsequently-involved Colorado appellate court are equally as capable of determining personal jurisdiction as this Court and the U.S. District Court. This Court further notes that the Denver District Court would have subject-matter jurisdiction to determine all claims asserted by Archangel, including the RICO claims. *See Tafflin v. Levitt*, 493 U.S. 455 (1990) (holding that state courts have concurrent jurisdiction over civil RICO claims). Because the state court could timely and completely adjudicate Archangel's claims, this element is satisfied.

G. Conclusion Regarding Mandatory Abstention.

Four of the six elements of mandatory abstention are met. If the case were still proceeding under the 2001 Complaint, all six elements would have been met. As discussed above, the Court does not determine whether the 2009 Amended Complaint was properly filed. At this stage of the proceeding, the Court does not find the 2009 Amended Complaint so lacking that it fails sufficiently to allege federal court jurisdiction. The Court therefore concludes that the 2009 Amended Complaint prevents this case from meeting all required elements of mandatory abstention.

III. Discretionary Abstention

Though abstention from this case is not mandatory, nothing in 28 U.S.C. § 1334 prevents this Court, "in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(c)(1).

Courts apply the following factors to a discretionary abstention analysis and determination:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other

nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 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 involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Schempp Real Estate, 303 B.R. at 876. The Court will evaluate each in turn.

A. Effect or Lack Thereof on the Efficient Administration of the Estate if the Court Abstains

The Court’s abstention from this case is not likely to have any appreciable effect on the administration of the bankruptcy estate, because little administration remains. Archangel’s plan has been confirmed. Pursuant to that plan, Archangel transferred all its property to a liquidating trust. The trustee of that trust is now administering the property, including the Colorado Litigation. Archangel has filed a final report and has requested an order closing its bankruptcy case. This factor favors abstention.

B. Extent to Which State Law Issues Predominate

For the first eight years of the Colorado Litigation, the proceeding was based exclusively on state-law claims. With the filing of the 2009 Amended Complaint, two of the eleven claims asserted arise under federal law. But, as Archangel admits in its objection to Lukoil’s motion: “Although the Amended Complaint adds allegations regarding the *de facto* Colorado office and RICO, the majority of the allegations are the same.” (Docket #19, at 16.) The Court concludes that even under the 2009 Amended Complaint, state-law issues predominate. This factor favors abstention.

C. Difficulty or Unsettled Nature of the Applicable Law

The contract and tort claims of the 2001 Complaint and the additional RICO and Colorado Organized Crime Control Act allegations of the 2009 Amended Complaint are not particularly difficult or unsettled. But, the outstanding issue of personal jurisdiction over Lukoil is a complex issue that has already resulted in a Colorado Supreme Court decision. The case was remanded to the Colorado Court of Appeals, which remanded it to the Denver District Court, which set the matter for an evidentiary hearing in its 2007 Stay Order. The jurisdictional issue is one that should be resolved by the state courts. This factor favors abstention.

D. Presence of Related Proceedings Commenced in State Court or Other Non-Bankruptcy Court

No related proceedings have been commenced in state court or any other non-bankruptcy court. This factor is inapplicable.

E. Jurisdictional Basis other than 28 U.S.C. § 1334

In its 2009 Amended Complaint, Archangel asserts two claims for relief that arise under federal law. As discussed above, at this stage, the Court concludes that the allegations are not so “wholly insubstantial” that they fail to state a basis for federal court jurisdiction. *See Bell v. Hood*, 327 U.S. at 682-83. Thus, Archangel has alleged a jurisdictional basis other than 28 U.S.C. § 1334. However, as discussed above, the federal courts’ jurisdiction is not exclusive. *Tafflin v. Levitt*, 493 U.S. at 458. This factor is neutral.

F. Degree of Relatedness or Remoteness of Proceeding to Bankruptcy Case

Archangel’s position is that the purpose of the bankruptcy and its plan is to protect its key asset, the ongoing litigation against Lukoil and AGD. However, the claims alleged in the 2001 Complaint and the 2009 Amended Complaint are far removed from bankruptcy law. As in *Schempp Real Estate*, this bankruptcy case may have been little more than an effort to enlist additional resources as yet another litigation tactic in what is essentially a two-party dispute. *Schempp Real Estate*, 303 B.R. at 877. At any rate, Archangel’s plan has now been confirmed, all of its assets have been transferred to a liquidating trust, and it has filed a final report requesting entry of an order closing the bankruptcy case. This factor favors abstention.

G. Substance of Asserted Core Proceeding, Feasibility of Severing State-law Claims from Core Bankruptcy Matters

The parties agree that this proceeding is not a core proceeding. As such, there is no need for this Court to retain jurisdiction over any part. The Denver District Court may fully determine the interests of the parties. These two factors favor abstention.

H. Burden on Bankruptcy Court’s Docket

This Court is experiencing a high volume of filings, and the Court’s caseload is unlikely to allow it to determine this case more readily or rapidly than the Denver District Court. As in *Schempp Real Estate*, while one individual case may not impose an intolerable burden on this Court’s docket, the Court is disinclined to allow its resources to be diverted to a matter that can be just as expeditiously determined in the state court where it was pending for over eight years. This factor favors abstention.

I. Likelihood that Commencement of the Proceeding in Bankruptcy Court Involves Forum Shopping

From its inception, this case has involved forum shopping. When Archangel brought the Stockholm Proceeding in Sweden, Lukoil initially obtained dismissal on the grounds that the dispute could be decided only by the courts of the Russian Federation. Rather than proceed in Russia, Archangel instead chose to bring the Colorado Litigation in Denver District Court. When Lukoil and AGD sought to remove the proceeding to the U.S. District Court, Archangel objected. At that time, each party was seeking a better forum for a *forum non conveniens* argument. Archangel prevailed, and the Colorado Litigation was remanded to the Colorado state courts. Now, after eight years of litigation in that court system, facing an evidentiary hearing on jurisdiction under the 2007 Stay Order, Archangel wishes to switch horses, moving the case to federal court in order to take advantage of what it views to be a more favorable jurisdictional standard. This Court cannot condone such efforts. *See In re Abacus Broadcasting Corp.*, 154 B.R. 682, 686 (Bankr. W.D. Tex. 1993) (“Forum shopping has never been favored by federal courts, and courts are quick to discern the evil in all its disguises.”). This factor favors abstention.

J. Existence of a Right to A Jury Trial

Archangel has demanded a jury trial. As discussed above, because this Court cannot conduct a jury trial, this case would proceed on a two-track basis, under which this Court would handle all pre-trial matters, with any ruling subject to *de novo* review by the U.S. District Court, leaving the actual trial to be conducted by that court. Such a process imposes additional procedural inefficiency and delay. This factor favors abstention.

K. Presence in the Proceeding of Non-Debtor Parties

Now that Archangel’s plan has been confirmed and its assets transferred to a liquidating trust, this case actually involves two non-debtor parties: Archangel’s liquidating trust, administered by a liquidating trustee, and Lukoil. This factor favors abstention.

L. Conclusion Regarding Discretionary Abstention

Almost all of the factors discussed above favor abstention. This is a case in which state-law issues predominate, which was removed after eight years of litigation in the state court system. Now that Archangel’s bankruptcy case has been completed, there is little reason for this Court to exercise its jurisdiction to resolve the dispute. The Court is particularly concerned with what appears to be forum shopping in order to avoid a hearing under the 2007 Stay Order and to obtain a more favorable jurisdictional standard. In this case, comity and respect for the Colorado state courts favor abstention.

IV. Equitable Factors

Under 28 U.S.C. § 1452, “The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.” The factors to consider are similar to the abstention factors. They include:

- 1) duplication of judicial resources; 2) uneconomical use of judicial resources; 3) effect of remand on the administration of the bankruptcy estate; 4) case involves questions of state law better addressed by a state court; 5) comity; 6) prejudice to the involuntarily removed parties; 7) lessened possibility of an inconsistent result; and 8) expertise of the court where action originated.

River Cement Co. v. Bangert Bros. Constr. Co., 852 F. Supp. 25, 27 (D. Colo. 1994). Many of these factors are discussed above. Here, the Court concludes that further proceedings in this Court would result in an uneconomical use of judicial resources and would violate principles of comity.

In 2001, Archangel chose the Denver District Court as its forum. At that time, it objected to Lukoil’s efforts to remove the case to federal court. After years of significant proceedings in the state courts, and facing an evidentiary hearing on the issue of jurisdiction under the 2007 Stay Order, Archangel changed directions, now contending that this Court, or the U.S. District Court, is a more appropriate forum. This Court is not persuaded. This Court’s exercise of jurisdiction over this matter would put it in the position of taking over a case that has been heard, appealed to the Colorado Court of Appeals, appealed to the Colorado Supreme Court, and then remanded for further proceedings related to the significant jurisdictional issues posed by the initial complaint. The Colorado courts have a strong interest in determining these jurisdictional questions, and in resolving the matters pled by Archangel, which predominantly arise under state law. This Court’s exercise of jurisdiction would be contrary to the interests of comity between the federal and state courts.

Archangel asserts that equity does not support remand. The crux of Archangel’s argument is that because Lukoil asserts that the state court lacks jurisdiction, the state proceeding is inadequate to resolve Archangel’s claims and remand is therefore inappropriate. Archangel’s argument ignores the fact that Lukoil has also objected to the jurisdiction of the U.S. District Court. It is not clear whether any court in the United States can or should exercise jurisdiction in this matter, a dispute between the successors in interest of a Canadian company and a Russian company that entered into a contract to explore and develop diamond mines in Russia (which contract provided for arbitration in Sweden). Even if this Court were to assume that Archangel would have a higher likelihood of success in the federal court system, this Court will not ignore principles of comity and respect for the state court system in order to reach a certain result.

The case of *Hospitality Ventures/Lavista v. Heartwood 11, LLC (In re Hospitality*

Ventures/Lavista), 314 B.R. 843 (Bankr. N.D. Ga. 2004), which Archangel cites as support, is inapposite. In *Hospitality Ventures*, the debtor had not brought a state-law proceeding to challenge the amount of its ad valorem property tax obligations. *Id.* at 845. By the time the bankruptcy case was filed, it was too late to challenge the tax assessments. The bankruptcy court determined that because the debtor could not bring an action in another forum, the bankruptcy court could not abstain from determining the amount of the debtor's taxes under § 1334(c)(1). *Id.* at 849-51 (citing *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940)). Here, Archangel did file an action in state court and prosecuted that action for eight years. Archangel thus has another forum in which to litigate,³ and the Court concludes that the other forum has a greater interest in resolving this dispute.

Archangel argues that if the Colorado Litigation is returned to the Colorado state courts (step 1), and the state court dismisses for lack of jurisdiction (step 2), Archangel will simply re-file the 2009 Amended Complaint in the U.S. District Court (step 3). Archangel suggests that this Court's retention of jurisdiction will promote judicial economy by reaching the same result with fewer steps. The Court disagrees. Each step has its own procedural and substantive safeguards, and the better practice is for the jurisdictional issue to be resolved by the state court system before which the issue was pending for over eight years. If the case proceeds as may be anticipated by Archangel, then Archangel may pursue whatever actions are appropriate.⁴ Concerns for judicial economy do not justify short-circuiting the state court's resolution of the outstanding jurisdictional issue.

Finally, Archangel has cited *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813-17 (1976), for the proposition that federal courts have a "virtually unflagging obligation" to exercise their jurisdiction. Of course, in that case, the Court held that the U.S. District Court properly dismissed the pending federal action in favor of state court proceedings, noting the presence of several factors that counseled against the exercise of federal jurisdiction. Similarly here, several factors counsel against the exercise of this Court's jurisdiction, including the length of time the Colorado Litigation was pending in the Colorado state court system, the predominance of state law issues and the importance of the jurisdictional issue to the Colorado state courts, and the lack of relatedness to Archangel's bankruptcy case, which has been fully administered and is ready to be closed. The Court therefore concludes that equitable factors favor remand.

³ Archangel may also have other forum choices, including the Stockholm Proceeding, which Archangel voluntarily dismissed in October 2009, and the courts of the Russian Federation, which Lukoil admits would have jurisdiction over it.

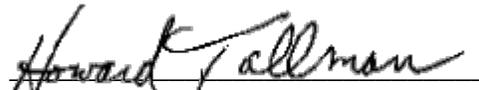
⁴ The issue of whether Archangel could re-file the 2009 Amended Complaint in the U.S. District Court is not before this Court, and the Court makes no finding as to whether such action may be appropriate or permitted under any applicable rule.

V. Conclusion

The Court's analysis of 28 U.S.C. §§ 1334 and 1452 demonstrates that the Court should exercise its discretion to abstain from exercising its jurisdiction over this dispute. By separate judgment, this Court will abstain from hearing this action and will remand the case to the Denver District Court. Accordingly, Archangel's Motion for declaratory judgment will be denied as moot.

DATED this 28th day of October, 2010.

BY THE COURT:


Howard R. Tallman, Judge
United States Bankruptcy Court