

ORDERED.

Dated: October 16, 2020



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	Case No. 6:20-bk-01346-KSJ
)	Chapter 11
Ellingsworth Residential Community)	
Association, Inc.,)	
)	
Debtor.)	
)	
)	

ORDER DENYING ALICE GUAN’S MOTION TO ABSTAIN

Movant, Alice Guan (“Guan”), *pro se*, has filed substantial proofs of claim against the Debtor, Ellingsworth Residential Community Association, Inc. (“Debtor”).¹ Debtor has objected to Guan’s claims.² Because Guan’s claims originate under Florida state law and a lawsuit is pending before the Florida State Courts to resolve these claims, Guan requests this Court abstain from adjudicating any of her claims.³ Guan’s Motion to Abstain is denied.

Debtor is a homeowner’s association representing 80 homes in three separate developments. They have a gate, common area property, and a fountain but no other amenities,

¹ Claim Nos. 4-3 and 5-2.

² Doc. No. 313.

³ Doc. No. 235. A hearing on Guan’s Motion to Abstain was held on August 21, 2020.

such as a pool, community center, or playground. All 80 homeowners pay the same quarterly assessment of \$420.

In 2016, the developer, Meritage Homes, managed the Debtor and, acting on behalf of the Debtor, sued Guan in Florida State Court.⁴ Guan owns a home in one of the managed developments and allegedly had violated certain association rules relating to landscaping on her property. In 2019, after years of extensive litigation, the Florida State Court dismissed the Debtor's lawsuit directing the Debtor to pay Guan's attorneys' fees and costs. Before the Florida State Court could assess these fees or resolve Guan's multi-count counterclaim (collectively the "Claims"),⁵ the Debtor filed this Chapter 11 bankruptcy case on March 3, 2020.⁶

Debtor has proposed a plan of reorganization⁷ offering to pay its unsecured creditors, *pro rata*, their allowed claims.⁸ Debtor will devote all net disposable income for three years, including a special assessment of \$300,000, to make these payments. An independent trustee will verify Debtor's net disposable income and will make all required distributions to unsecured creditors, including Guan. Simultaneously with the entry of this order, I am entering an order confirming this plan of reorganization.⁹ Bottom line, all creditors, including Guan, will receive more under this confirmed plan than through any other viable option.

Guan, however, would prefer to return to state court to continue litigating her Claims. However, she voluntarily filed two unsecured proofs of claim in this bankruptcy case: Claim 4-3 for \$500,000 for her attorneys' fees and costs and Claim 5-2 for \$1,600,000 for her multi-count

⁴ The Florida State Court action is *Ellingsworth Residential Community Association, Inc. v. Alice Guan*, Case No. 2017-CA-002697 pending before the Circuit Court for Seminole County, Florida.

⁵ Guan's alleges she has counterclaims against the Debtor for (I) Abuse of Process, (II) RICO, (III) Intentional Infliction of Emotional Distress, (IV) Negligence, (V) Breach of Contract and (VI) Declaratory Judgment.

⁶ Doc. No. 1.

⁷ Doc. No. 294.

⁸ Doc. No. 54

⁹ Doc. Nos. 340 and 341. The trial to consider confirmation issues occurred on August 21 and September 10, 2020. The Court also simultaneously is denying Guan's motions to lift the automatic stay so she can return to state court to litigate her claims. Doc. Nos. 147 and 151.

counterclaim. Debtor has objected to Guan's proofs of claim.¹⁰ Debtor has propounded discovery to Guan, and I have established a deadline for the parties to complete discovery of January 29, 2021.¹¹ A trial is scheduled to resolve Guan's Claims on February 25, 2021. So, this Court can quickly and finally adjudicate the debt owed by the Debtor to Guan and then oversee the payment to her and other similarly situated unsecured creditors. Determination of Guan's claims are essential to the Debtor's performance under its confirmed plan of reorganization.

Guan argues this Court however should abstain from resolving the Claims because they are "non-core" proceedings involving Florida law and because it is "in the interest of justice, or in the interest of comity with State courts or respect for State law, and for the concerns that: there is no closeness of the claim with the main bankruptcy case, it is feasible to sever the claim, it reduces the burden on the bankruptcy court's docket, it eliminate Debtor's forum shopping, and the extent to which state law issues on the Complaint¹² dominates over bankruptcy issues."¹³

Abstention is not merited. "[C]ourts have broad discretion to abstain from hearing state law claims whenever appropriate in the interest of justice, or in the interest of comity with state courts or respect for state law."¹⁴ When determining whether it should abstain from hearing a particular proceeding, a court should consider these factors:

- (1) the effect or lack thereof on the efficient administration of the estate if a court abstains,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of applicable law,

¹⁰ Doc. No. 313.

¹¹ Doc. No. 308.

¹² Although Guan refers to a "Complaint" throughout the motion, the Debtor has not initiated an adversary proceeding against Guan by filing a complaint. The only adversary proceeding pending in this case has been filed by Guan, Case No. 6:20-ap-00055-KSJ. The issues raised in this adversary proceeding are unrelated to the adjudication of Guan's Claims.

¹³ Doc. No. 235, Par. 33-36, 38.

¹⁴ *VonGrabe v. Mecs (In re VonGrabe)*, 332 B.R. 40, 44 (Bankr. M.D. Fla. 2005) (quoting *In re United Container, LLC*, 284 B.R. 162, 176 (Bankr. S.D. Fla. 2002)).

- (4) any related proceedings in non-bankruptcy forums,
- (5) the jurisdictional basis other than 28 U.S.C. § 1334,
- (6) the 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) forum shopping by a party,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of non-debtor parties.¹⁵

Efficient administration posits retention by the Bankruptcy Court of all claim litigation. Under the now confirmed plan, **no** unsecured creditor can receive payment until **all** unsecured claims including Guan’s Claims are determined. If Guan now returned to state court to continue her lengthy, multi-year litigation, she essentially is holding the payments to the Debtor’s other unsecured creditors hostage.

Guan voluntarily filed proofs of claim, and this Court can just as easily resolve her Claims as the Florida State Court.¹⁶ That state law controls is nothing unusual. Almost every claim filed in every bankruptcy case arises under state law. And nothing is difficult or unusual in assessing

¹⁵ *Brook v. Ford Motor Credit Co., LLC, (In re Peacock)*, 455 B.R. 810, 813-14 (Bankr. M.D. Fla. 2011) (citing *In re Wood*, 216 B.R. 1010, 1014 (Bankr. M.D. Fla.1998) (internal citations and quotations omitted)).

¹⁶ By filing proofs of claim, Guan submitted to this Court’s jurisdiction. *In re Scrub Island Dev. Grp. Ltd.*, 523 B.R. 862, 873 (Bankr. M.D. Fla. 2015) (“[Bank] submitted itself to the jurisdiction of this Court by filing proofs of claim and seeking other affirmative relief in this bankruptcy.”) See also *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990)(“[B]y filing a claim against a bankruptcy estate the creditor triggers the process of allowance and disallowance of claims, thereby subjecting himself to the bankruptcy court’s equitable power.”)(internal quotations omitted); *In re Pearlman*, 493 B.R. 878, 886 (Bankr.M.D.Fla.2013) (“Once a claim is filed, the creditor is entitled to a resolution in equity only. The cause of action becomes part of the larger bankruptcy scheme because the proof of claim triggered the claim allowance and disallowance process.”)(citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989)).

attorneys' fees or determining if Guan has suffered any damages payable by the Debtor. Given that a trial date already is scheduled in February 2021, resolving these issues imposes no burden on the Bankruptcy Court. It is what we do every day.

Abstention would only hinder the efficient administration of this case, create unnecessary confusion, delay payment to legitimate creditors, cause substantial delay, and cost all parties more money for lawyers to litigate in two forums. No special state interest is raised given this is a routine dispute between a homeowner and her homeowner's association. Having considered all the factors, the Court concludes, using its broad discretion, abstention would not serve the interests of justice or comity with state courts.

Accordingly, it is **ORDERED** that the emergency motion to abstain (Doc. No. 235) is **DENIED**.

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The Clerk is directed to serve a copy of this Order on interested parties who are non-CM/ECF users.