

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| IN RE: |) | CHAPTER 11 |
| |) | |
| FEDDERS NORTH AMERICA, INC., |) | Case No. 07-11176 (BLS) |
| <u>et al.</u> , |) | (Jointly Administered) |
| |) | |
| Debtors. |) | |
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| RG ADDING, L.L.C., |) | |
| |) | |
| Plaintiff, |) | Adversary No. 08-51140 (BLS) |
| v. |) | |
| |) | |
| CARRIER MID-ATLANTIC HQ a |) | |
| Division of CARRIER SALES |) | Docket Reference No. 25 |
| AND DISTRIBUTION, LLC; RONCO |) | |
| MECHANICAL CONTRACTORS, INC; |) | |
| BLASCO SUPPLY, INC., JJ |) | |
| CREWE AND SON, INC.; |) | |
| WILLIAMS MECHANICAL |) | |
| CONTRACTING CORP.; and |) | |
| VANGUARD MECHANICAL |) | |
| SERVICES, INC., |) | |
| |) | |
| Defendants. |) | |
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**MEMORANDUM ORDER GRANTING MOTION TO
DISMISS AND DIRECTING DISCRETIONARY ABSTENTION**

Before the Court is the Motion to Dismiss Complaint [Docket No. 25] (the "Motion to Dismiss") filed by Defendant Williams Mechanical Contracting Corporation ("Williams") and the Response in opposition thereto filed by Plaintiff RG Adding, L.L.C. ("RG Adding"); and the Court having conducted oral argument on the Motion to Dismiss on June 24, 2009; and based upon the record in these proceedings, the Court hereby FINDS as follows:

1. RG Adding purchased substantially all of the assets of Debtor herein Fedders Addison Company ("Fedders Addison") pursuant to an Order under 11 U.S.C. § 363(b) dated February 7, 2008.

2. Among the assets acquired by RG Adding was an account receivable owed by Williams to Fedders Addison.

3. Following the sale, RG Adding was apparently unsuccessful in collecting the receivable from Williams and instituted this adversary proceeding to collect the debt and to prevent Williams from asserting alleged rights of set-off that could reduce the account receivable.

4. Williams has sought dismissal of the Complaint on numerous grounds, including a request that the Court abstain from hearing this dispute under 28 U.S.C. § 1334(c) (1).

5. Section 1334(c) (1) provides for discretionary or permissive abstention:

[N]othing in this section prevents a district court in the interest of justice, or in the interest of comity with state courts of respect for state law, from abstaining from hearing particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. § 1334(c) (1).

6. In determining whether to abstain, courts consider twelve nonexclusive factors. In re Loewen Group Int'l, Inc., 344

B.R. 727, 730 (Bankr. D. Del. 2006). Evaluating the twelve factors is not a mathematical formula. Sun Healthcare Group, Inc. v. Levin (In re Sun Healthcare Group, Inc.), 267 B.R. 673, 679 (Bankr. D. Del. 2000). Id. The twelve factors are as follows:

(1) The effect or lack thereof on the efficient administration of the estate; (2) The extent to which state law issues predominate over bankruptcy issues; (3) The difficulty or unsettled nature of the applicable state law; (4) The presence of a related proceeding commenced in state law; (4) The presence of a related proceeding commenced in state or other non-bankruptcy 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 the 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 court's docket; (10) The likelihood that the commencement of the proceeding in bankruptcy court involved forum shopping by one of the parties; (11) The existence of the right to a jury trial; and (12) The presents in the proceeding of non-debtor parties.

Sun Healthcare Group, 267 B.R. at 678-79.

7. The following factors weigh in favor of abstention: (1) The resolution of the adversary proceeding will have no effect on the administration of the estate because the Debtor's plan has been confirmed; (2) State law issues predominate over bankruptcy issues; (3) The proceeding is remote from the main bankruptcy

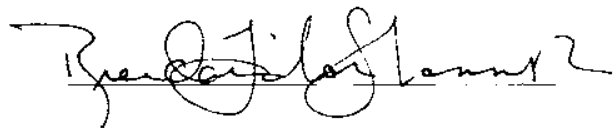
case; (4) The proceeding is non-core; (5) This Court's docket is significantly burdened with other pending consumer and corporate bankruptcy cases; (6) Williams has asserted its right to a jury trial in the collection action; (7) The proceeding involves two non-debtors.

8. The following factors weigh against abstention: (1) There is no related proceeding in a state court or other non-bankruptcy court; (2) Despite allegations by Williams, there is no concrete evidence that RG Adding engaged in forum shopping; and (3) The parties have asserted an independent basis for federal jurisdiction based upon diversity jurisdiction.

BASED UPON THE FOREGOING, it is hereby

ORDERED, that the Motion is granted, and the Complaint is dismissed as an exercise of this Court's discretion to abstain and thereby allow RG Adding and Williams, two non-debtors, to litigate this matter in another forum.

Dated: Wilmington, Delaware
July 17, 2009



Brendan Linehan Shannon
United States Bankruptcy Judge