IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
SPEEDCAST INTERNATIONAL LIMITED, et al.,	§	Case No. 20-32243 (mi)
	§	
	§	
Debtors.	§	Chapter 11
	§	
CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust	§	Jointly Administered
	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 22-03019
	§	
PETER SHAPER,	§	
	§	
Defendant.	§	

PLAINTIFF'S MOTION TO REMAND

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Plaintiff Catherine E. Youngman, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust, and pursuant to 28 U.S.C. § 1452(b) and 28 U.S.C. § 1334(c), respectfully moves this Court to abstain from exercising subject matter jurisdiction and remand this action to the State Court.

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I. SUMMARY OF THE ARGUMENT

Defendant Peter Shaper's only basis for removing this case is 28 U.S.C. § 1452, invoking this Court's bankruptcy jurisdiction under 28 U.S.C. § 1334(b). But despite invoking bankruptcy jurisdiction and arguing that the matter is core (it is not), it is clear from Shaper's removal papers and his Motion to Dismiss that he has no desire to litigate this case in bankruptcy court. Instead, Shaper seeks to use 28 U.S.C. § 1452 to vault into federal district court in a case that otherwise provides no basis for federal jurisdiction.

The Trustee's Petition asserts causes of action in a Texas state court, against a Texas defendant, under Texas state law. There are no federal claims at issue in this case, and there are no claims asserted under the Bankruptcy Code. Further, there is no dispute that the Texas state court has jurisdiction to (1) adjudicate this matter through a jury trial — which *both* parties have requested — and (2) enter a final judgment. This Court should remand this action ("**Action**") to the Texas state court for two independent reasons.

First, the Action is subject to mandatory abstention under § 1334(c)(2). This is a non-core proceeding that does not "arise under" or "arise in" a case under Chapter 11 of the Bankruptcy Code because the claims (1) do not assert any substantive right created or governed by Title 11, as required for "arising under" jurisdiction, and (2) are not dependent on (and could have been brought without the existence of) the underlying bankruptcy, as would be required for "arising in" jurisdiction. The Action was filed almost nine months after the effective date of the Plan[1] and will not impact the administration of the estate — as there is no longer an estate to administer. Further, litigation of the Action in state court was expressly contemplated by the Plan. *See* Plan at 70

[1] *In re Speedcast*, Order Approving Joint Ch. 11 Plan (Dkt. No. 1397) (Jan. 22, 2021) (the "**Order**") and Ex. A thereto (the "**Plan**").

("[T]he Bankruptcy Court's jurisdiction with respect to the Litigation Trust Causes of Action and the Class 3 Trust Causes of Action *shall not be exclusive*.") (emphasis added).

Second, even if mandatory abstention did not apply, the Court should exercise its discretionary right to abstain from hearing this case. Permissive abstention and equitable remand are appropriate here because, among other things, there is no relationship between the Action and the efficient administration of any bankruptcy estate; the claims only concern state common law; the parties both seek a jury trial; and the Court has an interest in demonstrating comity to the state court from which this suit was removed.

II. BACKGROUND

This Action arises from Defendant Peter Shaper's breach of fiduciary duties he owed while serving as a Director and CEO of Speedcast International Limited ("**Speedcast**" or the "**Company**"), which was operating as debtor-in-possession in a chapter 11 proceeding before this Court. The Court is familiar with the facts of that proceeding, and the relevant allegations are explained in the Trustee's Petition and briefly revisited here.

Shaper served as a Director of Speedcast beginning in September 2019 and, in March 2020, also became the Company's CEO. *See* Unredacted Original Petition ("**Pet.**"), Dkt. No. 3, ¶¶ 3, 36. While Shaper touted himself as Speedcast's savior, he joined the Company with the plan to use his position to secure an attractive investment opportunity for himself and the Houston-based private equity firm he founded, Genesis Park. *Id.* ¶¶ 8, 17. Initially, Shaper attempted to secure this opportunity as part of a critical equity raise for Speedcast — withholding his support for the initiative until the Company agreed to satisfy his demands. *Id.* ¶¶ 38-42. When the equity raise was aborted at the onset of the COVID-19 pandemic, and Speedcast filed for bankruptcy, Shaper continued to steadfastly pursue this opportunity. *See id.* ¶¶ 43, 49-97. The Company filed for relief

under chapter 11 of the Bankruptcy Code in this Court on April 23, 2020 and continued to operate its business as a debtor-in-possession.[2] Although Shaper was responsible for using his best efforts to maximize the value of Speedcast for the benefit of all its stakeholders, this responsibility directly conflicted with his desire to enrich himself and Genesis Park. This was because a higher valuation for Speedcast meant a *lower* return on the investment that Shaper and Genesis Park wanted to make in the Company.

Faced with this conflict, Shaper put his personal interests ahead of Speedcast's. He did so by, among other things, levying threats to suppress the value of Speedcast and obstructing a meaningful process to maximize value. *See id.* ¶¶ 49-134. Indeed, at the plan confirmation hearing this Court noted the "extensive evidence" that Shaper "repeatedly violated his fiduciary duties." *Id.* ¶¶ 13, 97.

By Order dated January 22, 2021, the Court approved the Third Amended Joint Chapter 11 Plan and Plan Settlement Agreement. Under the Plan, this Court approved the Class 3 Trust to pursue these claims against Shaper. *See, e.g.*, Order at 41-43; Plan at 43-47. The Plan Settlement Agreement released claims against a broad swath of "Released Parties," but the claims against Shaper were not released and were instead categorized as Class 3 Trust Causes of Action subject to prosecution by the Class 3 Trustee. *See* Order at 41-43;[3] Plan at 4, 12-13, 15-16, 43-47. In carving out the Class 3 Trust and appointing the Class 3 Trustee, the Court created a narrow, orderly class of claims that could be pursued against Shaper following the broader Plan confirmation. The Plan also specified that claims against Shaper can be litigated outside of

[2] *In re: Speedcast Int'l Ltd.*, No. 20-32243 (Bankr. S.D. Tex. 2021).

[3] The Court held: "[T]his Court's findings of fact and conclusions of law shall not preclude or impair in any way (whether pursuant to the doctrines of claim preclusion, res judicata, law of the case, or otherwise) any claims or Causes of Action against Mr. Shaper that are preserved by the Plan and this Confirmation Order." Plan at 15.

Bankruptcy Court: "the Bankruptcy Court's jurisdiction with respect to the Litigation Trust Causes of Action and the Class 3 Trust Causes of Action *shall not be exclusive*." Plan at 70 (emphasis added).

The Order and Plan also make clear that the Class 3 Trust is "a legally separate and distinct Entity from the Debtors" over which the Debtors have "no direct or indirect control, influence or authority." *See* Order at 42. The Class 3 Trustee is obligated to act in the best interests of all Class 3 Beneficiaries and in furtherance of the purpose of the Class 3 Trust, which is: "(i) evaluating and prosecuting the Class 3 Causes of Action, (ii) liquidating the Class 3 Trust Assets and (iii) distributing the Class 3 Trust Distributable Proceeds, if any, to the Class 3 Trust Beneficiaries." *Id.*; Plan at 43.[4] Plaintiff was appointed to serve as Trustee pursuant to the Class 3 Trust Agreement and, under oversight of the Litigation Trust Committee,[5] is authorized to prosecute Class 3 Trust Causes of Action. *See* Order Ex. B Plan Settlement Agreement, Ex. 5 Class 3 Trust Agreement (the "**Trust Agreement**") at 7-8.

Pursuant to this authority, the Trustee commenced the Action in the 61st Judicial District of Harris County, Texas on January 7, 2022. In the Petition, the Trustee asserts causes of action under Texas state law against Shaper for: Shaper's breach of fiduciary duty; Shaper's knowing participation in a breach of fiduciary duty by another director of debtor-in-possession Speedcast; Shaper's aiding and abetting breach of fiduciary duty; and Shaper's conspiracy to breach fiduciary duties. *See* Pet. ¶¶ 98-134. The Petition seeks damages and equitable relief, including

[4] The Class 3 Beneficiaries are "each holder of an Allowed Syndicated Facility Secured Claim as of the Class 3 Trust Record Date." *See* Plan 4.3(a); Trust Agreement at 2.

[5] The Litigation Oversight Committee charged with "advising, assisting, supervising, and directing the Class 3 Trustee in the administration of the Class 3 Trust pursuant to th[e] Class 3 Trust Agreement." *See* Order at Ex. 5 to Ex. B.

disgorgement of any improper benefits and salary. *Id.* ¶ 138. The Trustee's Petition included a jury demand. *Id.*

On January 7, Shaper removed the state court action to this Court pursuant to 28 U.S.C. § 1452(a). *See* Not. Removal, Dkt. No. 1, at 1. The only asserted basis for jurisdiction is 28 U.S.C. § 1334. *Id.* ¶¶ 11-13. Shaper categorizes this case as a core proceeding, but his removal notice makes clear that his intent is *not* for this case to be litigated before this Court. Instead, Shaper makes a jury demand and states that he "does not consent to final order or judgment by the bankruptcy judge, including jury trial in bankruptcy court." *Id.* ¶ 16. Thus, although Defendant removed to this Court by invoking bankruptcy jurisdiction, and maintaining this is a core proceeding, Shaper not only seeks to wriggle out of state court, but he also wants to leverage bankruptcy removal to dodge adjudication of key issues by this Court, too. Neither is appropriate, and this case should be sent back to Texas state court.

III. ARGUMENT

A. Mandatory Abstention Applies

This case is subject to mandatory abstention under 28 U.S.C. § 1334(c)(2), which provides:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

When a case satisfies the criteria, it must be remanded. *In re Dune Energy, Inc.*, 575 B.R. 716, 726 (Bankr. W.D. Tex. 2017) ("If the requirements for mandatory abstention are met, a federal court has no discretion—it must abstain."). The four criteria are: (1) the claims are non-core; (2) the claims have no independent basis for federal jurisdiction other than § 1334(b); (3) an action has been commenced in state court; and (4) the action can be timely adjudicated in state court. *Id*; *see*

In re Houston Reg'l Sports Network, L.P., 514 B.R. 211, 214 (Bankr. S.D. Tex. 2014). All are satisfied here.

The Proceeding is Non-Core. The Trustee's claims do not present a core matter. To determine whether a claim is core or non-core, courts first look to the illustrative list of "core" proceedings in 28 U.S.C. § 157(b)(2). *See In re Morrison*, 409 B.R. 384, 390 (S.D. Tex. 2009). "Even if a matter falls within the literal language of [the list], the matter must also arise under Title 11 or arise in a Title 11 bankruptcy case." *Id.* A proceeding "arises in" a bankruptcy case only if it "is one that would arise only in bankruptcy." *Id.* (quotes omitted). In contrast, "[i]f the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding." *Id*. (quotes omitted). Critically, "[c]ourts within the Fifth Circuit have consistently found that post-confirmation suits by plan trustees based on state law claims are only within the 'related to' (and not 'core') bankruptcy jurisdiction of a federal district court." *In re Dune Energy, Inc.*, 575 B.R. at 729 (collecting cases).

Shaper cannot dispute that the claims alleged in the Action are <u>not</u> included on the list of "core" proceedings in § 157(b)(2) and do not invoke a substantive right provided by title 11.[6] Nor do these claims — which concern Shaper's breach of his fiduciary duty or aiding and abetting the breach of another — arise only in the context of a bankruptcy case. To the contrary: "[T]he

[6] Shaper cannot credibly argue that the claims fall under § 157(b)(2)(A) ("matters concerning the administration of the estate") as the bankruptcy estate "ceases to exist" after confirmation of a plan. *In re Craig's Stores of Tex., Inc.*, 266 F.3d 388, 390 (5th Cir. 2001); 11 U.S.C. § 1141(b) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of the plan vests all of the property of the estate in the debtor."). A post-confirmation action, therefore, can generally have no "impact on th[e] estate." *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 2005 WL 1745471, at *7 (S.D. Tex. July 25, 2005); *see also In re Encompass Servs. Corp.* 337 B.R. 864, 871 (Bankr. S.D. Tex. 2006), *aff'd*, 2006 WL 1207743 (S.D. Tex. May 3, 2006) (noting that "[w]ithout an estate to administer or to which to return assets, this Court can hardly determine the suit at bar to be a core proceeding under § 157(b)(2)(A) and (E), or under the provision in (O) that gives core status to 'proceedings affecting the liquidation of the assets of the estate'").

overwhelming majority of courts . . . conclude that breach of fiduciary claims do not involve the application of bankruptcy law, are ordinary state law causes of action, and could proceed outside the bankruptcy court. *In re Allied Sys. Holdings, Inc.*, 524 B.R. 598, 606 (Bankr. D. Del. 2015) (holding that breach of fiduciary duty and aiding and abetting breach of fiduciary duty claims against debtor's CEO are non-core proceedings).[7] The fact that the Trustee's claims are based in part on Shaper's post-petition conduct does not change this result: "Claims that 'arise in' a bankruptcy case are claims that by their nature, not their particular factual circumstances, could only arise in the context of a bankruptcy case." *In re Cano*, 410 B.R. 506, 545 (Bankr. S.D. Tex. 2009) (cite and quotes omitted) (alteration adopted); *see In re Enron Corp. Sec.*, 535 F.3d 325, 335 (5th Cir. 2008). The Trustee's claims are not, by their nature, limited to a bankruptcy context, even if the circumstances of the Action involve Speedcast's bankruptcy.

In re Southmark Corp., 163 F.3d 925 (5th Cir. 1999), does not hold otherwise. That case involved a court-appointed professional that was far more intertwined with the administration of the estate and the bankruptcy proceeding itself. There, the debtor, Southmark, filed a malpractice claim against the accountant to the court-appointed examiner in Southmark's chapter 11 reorganization. *Id.* at 927. In determining the matter was core, the Fifth Circuit focused on the specific role of court-appointed professionals, who are "court-approved managers of the debtor's estate," subject to Bankruptcy Code provisions covering, *inter alia*, "the basis for compensation, appointment and removal." *Id.* at 931. The *Southmark* court also found it significant that the

[7] Nor is this proceeding "core" just because it is brought by a litigation trust established by the bankruptcy plan. *See In re Dune Energy, Inc.*, 575 B.R. at 729; *WRT Creditors Liquidation Trust v. CIBC Oppenheimer Corp.*, 75 F.Supp.2d 596, 612 (Bankr. S.D. Tex. 1999) ("This court does not agree that mandatory abstention is inapplicable based solely on the fact that the [plaintiff] WRT Trust was created by the reorganization plan the bankruptcy court confirmed."). Similarly, "[a] bankruptcy court's order or confirmed plan authorizing the prosecution of a cause of action does not make the cause of action a 'core' proceeding." *In re Dune Energy, Inc.*, 575 B.R. at 729.

accountant in that case "ha[d] filed administrative claims to obtain its fees in the bankruptcy court," and observed "[a]ward of the professionals' fees and enforcement of the appropriate standards of conduct are inseparably related functions of bankruptcy courts." *Id.* Here, in contrast, Shaper was not appointed, approved, or paid by the bankruptcy Court; he was a director of a debtor-in-possession. Rather than being appointed by the bankruptcy court, by default, a Chapter 11 debtor is a debtor-in-possession. *See* 11 U.S.C. § 1101 *et seq.* Shaper was not paid fees by this Court, and litigation of this Action will not impact orders previously issued by this Court. Although Shaper had fiduciary duties as a director of a debtor-in-possession, he is fundamentally differently situated than the court-appointed professionals discussed in *Southmark*. This non-core matter does not "arise under" or "arise in" a case under Chapter 11.

The Remaining Criteria Are Satisfied. The remaining criteria for mandatory abstention are easily satisfied. *First*, the claims have no independent basis for federal jurisdiction other than § 1334(b) — the only asserted basis for jurisdiction is 28 U.S.C. § 1334. Not. Removal ¶¶ 11-13. Shaper could not have removed on diversity grounds (he is a Texas domiciliary) nor on federal question grounds (there are only state law causes of action). *Second*, the Trustee commenced an action in state court. *Third*, the action can be timely adjudicated in state court, which, unlike a bankruptcy court, can adjudicate the case through jury trial. *See* 28 U.S.C. § 1334(c)(2); *In re Houston Reg'l Sports Network, L.P.*, 514 B.R. at 214. All of the criteria for mandatory remand are satisfied, and the case should be remanded under § 1334(c)(2).

B. <u>Equitable Remand and Permissive Abstention Are Appropriate</u>

Even were this matter not subject to mandatory abstention, the Trustee's case should be remanded to Texas state court under well-established principles of equitable remand and permissive abstention. *See In re Gober*, 100 F.3d 1195, 1206-07 (5th Cir. 1996) (observing

"[n]othing . . . prevents a court from permissively abstaining" where "some, but not all, of the requirements for mandatory abstention are met").

There are two related bases on which this matter should be permissively remanded to state court: equitable remand, codified at 28 USC. § 1452(b), and permissive abstention, embodied in 28 U.S.C. § 1334(c)(1). Section 1452(b) (equitable remand) and § 1334 (abstention) both "favor[] comity and the resolution of state law questions by state courts." *J.T. Thorpe Co. v. Am. Motorists*, 2003 WL 23323005, at *6 (S.D. Tex. June 9, 2003). Even if the Court determines that this is a core matter, and thus not subject to mandatory abstention, it may and should discretionarily decline to hear the proceeding under § 1334(c)(1). *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 426 (Bankr. S.D. Tex. 1987) ("[I]t is clear that permissive abstention is available in core as well as noncore proceedings."). Similarly, the Court may choose to "remand [this] claim or cause of action on any equitable ground" under 28 U.S.C. § 1452(b). Together, equitable remand and permissive abstention "strongly evince a congressional policy that, absent countervailing circumstance, the trial of state law created issues and rights should be allowed to proceed in state court, particularly where there is no basis for federal jurisdiction independent of § 1334 and the litigation can be timely completed in state court." *J.T. Thorpe Co.*, 2003 WL 23323005, at *6.

In addition to overarching considerations of comity and equity, Courts often examine the same fourteen factors for determining equitable remand and permissive abstention. *See, e.g.*, *id.* at *6. These are:

(1) Effect or lack thereof on the efficient administration of the estate if the court recommends [remand or] abstention;

(2) Extent to which state law issues predominate over bankruptcy issues;

(3) Difficult or unsettled nature of applicable law;

(4) Presence of related proceeding commenced in state court or other non-bankruptcy proceeding;

(5) Jurisdictional basis, if any, other than § 1334;

(6) Degree of relatedness or remoteness of proceeding to 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 judgment 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;

(12) The presence in the proceeding of non-debtor parties;

(13) Comity; and

(14) Possibility of prejudice to other parties in the action.

In re Houston Reg'l Sports Network, L.P., 514 B.R. at 215 (citing *Special Value Continuation Partners, L.P. v. Jones*, 2011 WL 5593058, at *7-8 (Bankr. S.D. Tex. 2011)). "More important than the numerical count of factors weighing for and against abstention, the Court must determine which arguments are of greater importance and persuasion." *Id.* at 217. Here, the most important and persuasive factors weigh decisively in favor of remand.

(1) Effect or lack thereof on the efficient administration of the estate if the court recommends [remand or] abstention. This factor strongly supports abstention and remand because there is no longer a bankruptcy estate to administer. *See, e.g.*, *In re Pickett*, 362 B.R. 794, 798 (Bankr. S.D. Tex. 2007) ("Without a bankruptcy estate in existence, this factor favors abstention."). The Court has already confirmed the Plan and approved the Plan Settlement Agreement; indeed, as part of that Order and Plan, the Court ensured that the Trustee's claims against Shaper could be asserted and pursued in state court. *See* Plan at 70.

By the time the Action was filed, the Plan had been confirmed and effective — for nearly nine months — and the reorganized debtors were no longer under the Court's supervision. *See, e.g.*, *In re Encompass Servs. Corp.*, 2006 WL 1207743, at *3 (S.D. Tex. May 3, 2006) (claims raised in adversary proceeding did not affect the execution or implementation of the confirmed plan as "[t]he adversary proceeding did not begin until nearly two years after the confirmation"). As the Reorganized Debtors' recent Motion For Final Decree[8] makes clear, the Plan has been substantially consummated, all payments required to be made pursuant to the Plan have been paid or will be paid, and all of the transactions contemplated by the Plan have closed.[9] The Trustee's prosecution of the Action will not affect *any* of these determinations. *See, e.g.*, *In re Dune Energy, Inc.*, 575 B.R. at 732 (first factor favors abstention because "there is no longer a bankruptcy estate to administer in the Debtors' bankruptcy case. A liquidating Plan has been confirmed and the Debtors are no longer operating under bankruptcy supervision (or otherwise)"). Indeed, this Action is one of the only cited reasons for the Reorganized Debtors' request to keep the Remaining Case open. Motion for Final Decree ¶ 23(c). There is no reason to impose this delay and burden on this Court. If the case is returned to Texas state court, this will aid efficient administration by removing one of the barriers to final, complete closure of the chapter 11 case.[10]

Further, even assuming the Action were before this Court, the Court will not be entering final judgment, as both parties have requested a jury trial. *See* Not. Removal ¶¶ 15-16. "Therefore,

[8] *In re Speedcast*, Motion for Entry of Final Decree Closing Certain of the Chapter 11 Cases, Dkt. No. 1908 ("**Motion for Final Decree**").

[9] Notably, the Motion for Final Decree provides that the bankruptcy case will remain open for the purpose of allowing the Class 3 Trustee "the opportunity to exercise [her] rights with respect to the Class 3 Trust Causes of Action." Motion for Final Decree at 2.

[10] The Reorganized Debtors' Proposed Final Decree incorporates the language from the Plan that "the Bankruptcy Court's jurisdiction with respect to the Litigation Trust Causes of Action and the Class 3 Trust Causes of Action shall not be exclusive." Motion for Final Decree Ex. A ¶ 6.

any detrimental effect to the efficient administration of the estate cannot be said to result from a decision to abstain and remand." *Special Value Continuation Partners, L.P.*, 2011 WL 5593058, at *8. The first factor supports abstention for this additional reason. *See id.* (first factor favors abstention because "[t]his Court's decision to abstain and remand will not have any negative effect on the efficient administration of the estate which would not already occur").

(2) State law issues predominate. The second factor strongly favors abstention when the complaint alleges "solely state causes of action." *Id.* at *9 (second factor "strongly supports abstention and remand because, whether New York or Texas law applies, these are solely state causes of action"); *see also In re Houston Reg'l Sports Network, L.P.*, 514 B.R. at 215 (second factor supports abstention because "all claims in th[e] suit are state law claims"); *Ross v. Watkins*, 2007 WL 1850869, at *3 (S.D. Tex. June 26, 2007) (reasons supporting abstention include that "[s]tate law issues entirely dwarf any related bankruptcy issues"). As Shaper concedes, that is the case here. *See* Not. Removal ¶ 13 ("[T]he Action asserts state law claims."). These claims do not require the Court's expertise in substantive bankruptcy law or its knowledge of the broader administration of this bankruptcy estate.

(3) Difficult or unsettled nature of applicable law. This factor weighs in favor of remand. The causes of action the Trustee asserts, including its claim for aiding and abetting breach of fiduciary duty, are clearly established under Texas law and thus not difficult or unsettled. As this Court has previously recognized, Texas law recognizes aiding and abetting liability for breach of fiduciary duty. *In re Houston Reg'l Sports Network, L.P.*, 547 B.R. 717, 759 (Bankr. S.D. Tex. 2016) (observing, *inter alia*, the "weight of authority in other jurisdictions" recognize this cause of action).

Nevertheless, Shaper has already asked this Court for a new interpretation of Texas law. Shaper's Motion to Dismiss encourages this Court to change a prior interpretation of Texas law and find that there is no common law cause of action for aiding and abetting a breach of fiduciary duty in Texas. *See* Mot. Dismiss, Dkt. No. 8, at 27 n.7 (encouraging the Court to "revisit[]" its conclusion that Texas recognized a cause of action for aiding and abetting breach of fiduciary duties under Texas law"). Indeed, Shaper clearly paints this issue as an unsettled question of applicable Texas state law. *Id.* (quoting *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 224 (Tex. 2017), to argue that "[t]he Texas Supreme Court 'has not expressly decided whether Texas recognizes a cause of action for aiding and abetting'"). This is a concession that this factor favors remand and is more appropriately addressed by the Texas state court.

Moreover, as Shaper acknowledges, the claims asserted in the Action are state law claims, which is another reason this factor favors remand. *See, e.g.*, *In re McClenon*, 2019 WL 451241, at *3 (Bankr. S.D. Tex. Feb. 4, 2019) ("The claims asserted in this adversary proceeding are 'garden variety' state law causes of action . . . that a state court can easily adjudicate—and should adjudicate. This factor therefore favors abstention."); *see also In re SBMC Healthcare, LLC*, 519 B.R. 172, 191 (Bankr. S.D. Tex. 2014), *aff'd*, 2017 WL 2062992 (S.D. Tex. May 11, 2017) (factor favors abstention because "the causes of action are entirely based on state law principles to which state courts are 'better able to respond'").

(4) The Trustee commenced the Action in state court. The fourth factor favors abstention when the action has already been filed in state court. That is the case here. *See, e.g.*, *In re SBMC Healthcare, LLC*, 519 B.R. at 191 ("Plaintiffs initially sued the Defendants in Harris County District Court. This factor therefore favors abstention.").

(5) Jurisdictional basis, if any, other than § 1334. This factor favors abstention when federal jurisdiction is based solely on § 1334. *See, e.g.*, *Special Value Continuation Partners, L.P.*, 2011 WL 5593058, at *9 (fifth factor "weighs in favor of abstention and remand because there is neither diversity nor federal question jurisdiction. Federal jurisdiction is based solely on § 1334"); *In re Houston Reg'l Sports Network, L.P.*, 514 B.R. at 215-16 (factor supports abstention because "[f]ederal jurisdiction is based solely on § 1334"); *In re Hanna*, 2018 WL 6601869, at *3 (Bankr. S.D. Tex. Dec. 13, 2018) ("Jurisdiction under § 1334 is the only basis for jurisdiction and, thus, this factor favors abstention."). Shaper concedes that is the case here. *See* Not. Removal ¶ 11 ("[T]he Action falls within [federal] jurisdiction under section 1334(b) of the Bankruptcy Code."). Shaper could not have removed on diversity grounds (he is a Texas domiciliary) nor on federal question grounds (there are only state law causes of action). This factor favors remand.

(6) Degree of relatedness or remoteness of proceeding to main bankruptcy case. This factor favors remand. "Although this adversary proceeding is related to the bankruptcy case, its outcome is not dispositive of any issue in the main bankruptcy case." *Special Value Continuation Partners*, *L.P.*, 2011 WL 5593058, at *10. As explained in connection with factor 1, the Court provided for separate, orderly adjudication of these claims absent and apart from the main bankruptcy in the Plan and Confirmation Order.

(7) The substance of the complaint. This factor supports abstention and remand because, as discussed above, the Action is not a core proceeding. *See, e.g.*, *In re Hanna,* 2018 WL 6601869, at *3 ("Factor 7 supports abstention because the dispute at bar is not a core proceeding."); *In re Houston Reg'l Sports Network, L.P.*, 514 B.R. at 216 ("Factor 7, substance of the complaint, supports abstention and remand [because] [t]his is not a core proceeding.").

Even if the Court concludes this is a core matter, this factor is at least neutral. The state action is not an end-run around the proper bankruptcy channels, which is a primary concern under this factor. *See Sabre Techs., L.P. v. TSM Skyline Exhibits, Inc*., 2008 WL 4330897, at *5 (S.D. Tex. Sept. 18, 2008) (discussing *Sears Petroleum & Transp. Corp. v. Burgess Constr. Servs., Inc.*, 417 F. Supp. 2d 212, 222 (D. Mass. 2006)). Rather, the Bankruptcy Court specifically deputized the Class 3 Trustee to pursue these claims and to pursue them in either this Court or Texas state court. Moreover, the claims at issue are not "substantive right[s] created by the federal bankruptcy law"—they are state law claims that arose in the context of a bankruptcy proceeding. *See Matter of Wood*, 825 F.2d 90, 97 (5th Cir. 1987); *see also* Factor 2, *supra*.

(8) The feasibility of severing state law claims from core bankruptcy matters to allow judgment to be entered in state court with enforcement left to the bankruptcy court. For the reasons discussed in Factor 1 and in the Motion for Final Decree, there are no core bankruptcy matters remaining from which to sever the state law claims alleged in the Action. Therefore, this factor supports abstention. *See, e.g.*, *In re SBMC Healthcare, LLC*, 519 B.R. at 192 ("[T]he dispute consists entirely of state law causes of action, and the Court cannot identify any bankruptcy matters from which to sever these state law claims. Considering that severance of claims is not a concern, this factor favors abstention.").

(9) The burden of the bankruptcy court's docket. Although the Trustee defers to this Court's understanding of its own docket, there is no indication that the state court would be overwhelmed by the Action. *See In re Hassell*, 2020 WL 728890, at *5 (Bankr. S.D. Tex. Jan. 7, 2020) (factor is neutral when bankruptcy court and state court can both "hear these proceedings without overwhelming its docket"). Notably, in 2021, the Harris County District Court maintained nearly a 100% clearance rate for its civil docket, indicating it has the capacity to adjudicate the

Action. *See* Harris County District Courts Civil District Courts Dashboard, https://www.justex.net/dashboard/Civil (last accessed March 9, 2022) (analyzing the "Clearance Rate" as the "number of outgoing cases as a percentage of the number of incoming cases"). Moreover, the parties have made a jury demand, which increases the burden due to the "substantial amount of time [] necessary for conducting a jury trial." *In re Southland Sys., Inc.*, 2007 WL 2819806, at *4 (Bankr. S.D. Tex. Sept. 21, 2007). If the Court retains jurisdiction, that burden would ultimately be borne by the district court, *see* Factor 11, *infra*; however, given the significant burden on that court's docket, this factor may weigh in favor of remand.

(10) The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties. This factor supports remand. As an initial matter, there is no credible argument that the *Trustee* forum shopped by filing the Action in Texas state court: Shaper is a Texas resident and actions that he undertook in Texas form the basis of the complaint. *See Special Value Continuation Partners, L.P.*, 2011 WL 5593058, at *9 (noting the "unusual situation" of "Texas residents complaining the other party is forum shopping after being sued in Texas state court for common law [claims] that allegedly occurred in Texas").

Moreover, despite invoking bankruptcy jurisdiction and arguing that the matter concerns core claims, Shaper's filings in this case make clear his objective is to get into federal district court in an otherwise unremovable case. In his Notice of Removal, Shaper stated he "does not consent to final order or judgment by the bankruptcy judge, including jury trial in bankruptcy court." *See* Not. Removal ¶ 16. This signals Shaper's intent and preference to obtain a federal district court forum for ultimate adjudication of this matter, as "[t]he Fifth Circuit holds that without consent of the parties, a bankruptcy judge lacks the authority to conduct a jury trial." *Tow v. Park Lake Communities, LP*, 2018 WL 287861, at *3 (S.D. Tex. Jan. 4, 2018) (cite omitted); *In re Clay*, 35

F.3d 190, 196-98 (5th Cir. 1994); *see* 28 U.S.C. § 157(e). The Trustee chose the state court forum for this action; Shaper's removal is "untoward" forum shopping that weighs in favor of remand.[11]

(11) The existence of a right to a jury trial. Both parties have demanded a jury trial, and Shaper has stated he does not consent to a jury trial in this Court. *See* Pet. ¶ 138; Not. Removal ¶ 16. This favors remand, as a jury trial cannot occur in this Court. *See, e.g.*, *In re Hanna*, 2018 WL 6601869, at *4 ("This factor weighs in favor of abstention because [defendant] has the right to a jury trial in state court given the causes of action asserted in this adversary proceeding."); 28 U.S.C. § 157(e); *In re Clay*, 35 F.3d at 196-98. Instead, should the Court retain this matter, the jury trial would take place in district court — a forum to which Shaper is otherwise not entitled. *See* Factor 5, *supra.* If the case is remanded to Texas state court, the forum in which the Trustee originally filed and made a jury demand, that court can hear the matter through to a jury trial. In addition, given the presence of a jury demand, the Court's familiarity with the matter is of less weight in considering remand, as this Court will not be presented with most determinative matters. *In re Southland Sys., Inc.*, 2007 WL 2819806, at *4 (factor weighed in favor of remand because "[m]ost determinative matters will be presented to a jury"). Finally, the request for a jury trial will increase the burden on the federal courts' docket, particularly given the "substantial amount of time" needed for conducting a jury trial. *Id.* This factor favors remand.

(12) The presence in the proceeding of non-debtor parties. Although the Trustee is authorized to pursue Class 3 Trust Causes of Action on behalf of the Debtor and Debtor's estate against Shaper, the Class 3 Trust is "a legally separate and distinct Entity from the Debtors" over which the Debtors have "no direct or indirect control, influence, or authority." *See* Order at 42;

[11] The Trustee filed a notice stating it did not consent to entry of final orders or judgment by the bankruptcy court on the basis that the matter belongs in state court. *See* Not. Consent Dkt. No. 13. If, however, the Court decides not to remand the matter, the Trustee would urge that all pretrial matters stay before the Bankruptcy Judge.

Plan at 4. Thus, the Trustee is functionally a non-debtor party, even though she is pursuing claims on behalf of the Debtor's Estate. Shaper, likewise, is not the debtor. Thus, this factor weighs in favor of remand. *See In re McClenon*, 2019 WL 451241, at *4 (weighs in favor of abstention when all Defendants are non-debtor parties).

(13) Comity. The Trustee already filed the Action in Texas state court when Shaper removed the lawsuit. Thus, comity favors abstention. *See, e.g.*, *In re SBMC Healthcare, LLC*, 519 B.R. at 192 ("Plaintiffs had already instituted their suit in Texas state court when Defendants removed the lawsuit to this Court. Thus, this factor favors abstention.").

(14) Possibility of prejudice to other parties in the action. Shaper, a Texas citizen and domiciliary, will not be prejudiced by adjudication of this action in Texas state court. The Trustee, on the other hand, will be prejudiced if this action is not remanded to state court. Part of Congress's intent in codifying 28 U.S.C. § 1334 was to "maintain[] respect for the plaintiff's choice of forum," while also encouraging efficient judicial proceedings. *See In re Mugica*, 362 B.R. 782, 792 (Bankr. S.D. Tex. 2007). Here, the Trustee selected the Texas state forum, in part, due to the less expensive and often more streamlined path through discovery, motions practice, and jury trial. There are no complex issues of federal or bankruptcy law; rather, there are state claims under Texas law that properly belong in a Texas state forum.

* * *

The factors decisively weigh in favor of the state court forum. Just as importantly, there are no countervailing considerations: this case does not intertwine with the Estate nor raise matters that invoke this Court's knowledge of the chapter 11 case. As the recent Motion for Entry of Final Decree makes clear, the estate has been fully administered, and keeping this case in bankruptcy court would actually impede final administration of the estate. This Court's Order and Plan

specifically contemplated and provided for this separate, narrow case against Shaper following the Plan's approval and, indeed, specifically noted the bankruptcy court would not have exclusive jurisdiction for such claims. The Court should conclude that mandatory remand is warranted or, alternatively, equitably remand or permissively abstain in favor of the Texas state court.

IV. CONCLUSION

For the foregoing reasons, this Court should remand the case to the 61st Judicial District of Harris County, Texas, where the case can and will be fully and fairly adjudicated.

Date: March 9, 2022

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF SPEEDCAST SFA LENDERS' LITIGATION TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2022, a true and correct copy of the foregoing was served upon all counsel of record via the Court's ECF system.

/s/ Susanna R. Allen
Susanna R. Allen

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
SPEEDCAST INTERNATIONAL LIMITED, et al.,	§	Case No. 20-32243 (mi)
	§	
	§	
Debtors.	§	Chapter 11
	§	
CATHERINE E. YOUNGMAN, in her capacity as Class 3 Trustee for the Speedcast SFA Lenders' Litigation Trust	§	Jointly Administered
	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 22-03019
	§	
PETER SHAPER,	§	
	§	
Defendant.	§	

ORDER

Pending before the Court is Plaintiff's Motion to Remand pursuant to 28 U.S.C. § 1452(b) and 28 U.S.C. § 1334(c) (the "Motion"). The Court, having considered Plaintiff's Motion, Defendant's Opposition thereto, and Plaintiff's reply in support, if any, and the parties' arguments at hearing, if any, finds that the case should be remanded to Texas state court and that the Motion should be **GRANTED**.

The case is hereby remanded to the District Court of Harris County, Texas, 61st Judicial District. There shall be no further proceedings in this Court.

It is so ORDERED.

_____
Date

_____
THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE