

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE)
)
MADISON CITY DEVELOPMENT) Bankruptcy Case No. 95-32556
COMPANY, INC.,)
)
Debtor.)
)
MADISON CITY DEVELOPMENT)
COMPANY, INC.,)
)
Plaintiff, Counterdefendant,)
)
vs.) Adversary Case No. 96-3009
)
)
ROBERT LITTLE and ILLINOIS)
LUMBER COMPANY, INC.,)
)
Defendants, Third Party Plaintiffs,)
)
vs.)
)
THE ESTATE OF GERALD MOSS,)
Deceased, NORA LEE MOSS, and)
MICHAEL MOSS,)
)
Third Party Defendants.)

OPINION

This matter having come before the Court on a Motion to Dismiss or, in the Alternative, Motion for Absentia and Jury Demand filed by Third Party Defendants, the Estate of Gerald Moss, Nora Lee Moss, and Michael Moss, and a Motion to Dismiss Counterclaim and Third Party Complaint filed by Plaintiff/Counterdefendant, Madison City Development Company, Inc.; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Court finds that the facts leading to the instant motions before it are not in dispute and that a brief chronology of the litigation between the parties herein is essential to support the Court's conclusions of law. This adversary proceeding did not originate in the Bankruptcy Court, but rather originated in the State Court where Madison City Development Company, Inc. (Debtor) filed suit against Robert E. Little on September

17, 1991, in Madison County, Illinois. In response to this lawsuit, Robert E. Little filed a Counterclaim against the Debtor and a Third Party Complaint against Third Party Defendants, the Estate of Gerald Moss, Nora Lee Moss, and Michael Moss. The Counterclaim and Third Party Complaint filed in State Court are identical to the Counterclaim and Third Party Complaint filed in this adversary proceeding. The State Court case proceeded through discovery and was set for trial on January 23, 1996. On December 15, 1995, the Debtor filed a Petition for Relief under Chapter 11 of the Bankruptcy Code. Subsequently, on January 11, 1996, the Bankruptcy Court granted Robert E. Little's Motion for Relief from the Stay to allow the State Court case in Madison County to proceed to trial and judgment. On the following day, January 12, 1996, the Debtor removed the State Court case to the Bankruptcy Court which gave rise to a Motion to Remand filed by Robert E. Little, which was granted on January 16, 1996, which resulted in all matters being returned to the State Court. Between January 16, 1996, and January 23, 1996, Mr. Little's attorneys withdrew and Mr. Little hired his current attorney, Ronald Pallman. In response to the adversary proceeding filed herein, Mr. Pallman filed an identical Counterclaim and Third Party Complaint to that already in the State Court process as part of his response to the Debtor's Complaint in this adversary proceeding. During the pendency of this adversary proceeding and while under order from this Court to proceed in the State Court, a hearing was held on the Third Party Defendants' Motion, for Summary Judgment with the result being that summary judgment was granted in favor of the Third Party Defendants as to Counts III, IV, VI, and VII of the Third Party Complaint. The State Court took Counts 1, II, and V under advisement on May 2, 1996. Counsel for Robert E. Little has conceded in open Court, on June 3, 1996, that he would be precluded under the principles of collateral estoppel and *res judicata* from proceeding on those counts which have already been ruled upon in the State Court. Therefore, all that would be left for this Court to hear would be those counts which are presently under advisement in Madison County.

Having reviewed the procedural history of this matter and the other facts set forth in the Motions to Dismiss and by counsel at hearing, the Court finds that the Motions to Dismiss both the Counterclaim and Third Party Complaint filed by Robert E. Little should be allowed. The Court can find no practical basis upon which to retain jurisdiction over this matter given the history of the matter in State Court and the fact that a judgment has already been granted as to a majority of the issues raised by the Counterclaim and Third

Party Complaint and that a final judgment may be nearing on the remainder within a very brief period of time. The Court finds that previous orders of the Court granting Defendant, Robert E. Little, relief from the automatic stay to proceed with litigation in the State Court and also the Order Granting Remand of this matter back to Madison County were proper and that no purpose will be served by this Court's retention of jurisdiction over matters which can be properly resolved in the State Court proceeding.

ENTERED: June 25, 1996

/s/ GERALD D. FINES
United States Bankruptcy Judge