UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

PRM DEBTOR CORPORATION, Debtor.	Case No. 589-04925-MM Chapter 11
UNITED BUSINESS MACHINES, INC., Plaintiff, vs. PRM DEBTOR CORPORATION, Defendant.	Adversary No. 92-5337 **MEMORANDUM DECISION**

INTRODUCTION

Before the Court is the defendant's Motion to Abstain, or in the Alternative, to Transfer Venue.

FACTS

The debtor in this case, PRM Debtor Corporation, f/k/a Priam Corporation, sold computer peripherals to the defendant, UBM, Inc., during the past four years under the terms of the parties' purchase orders and invoices. PRM filed suit in September 1989 in a Texas state court in Harris County against UBM for the collection of an open account receivable and for the breach of a contract to pay for goods purchased. UBM filed an answer and counterclaim based upon the debtor's alleged refusal to accept rejected defective goods, breach of warranty, and breach of contract under the

Texas Business and Commerce Code, and fraud under the Texas Deceptive Trade Practices Act. The debtor is a Delaware corporation with its principal place of business in Santa Clara County, California, The defendant is a Texas corporation with its principal place of business in Harris County, Texas.

The debtor filed its bankruptcy petition in this district on October 30, 1989. The debtor stayed the pending state court action. On June 5, 1992, it dismissed the pending suit in Texas and filed the instant adversary proceeding on June 12, 1992 asserting substantially the same claims as those originally asserted in the state court suit. UBM filed an answer and asserted the same counterclaims. The parties dispute whether California law or Texas law is applicable to the parties' transactions because the parties' respective forms contain conflicting provisions.

All of the debtor's witnesses, who have not yet been identified, reside in California. All of the defendant's witnesses reside in Texas. The goods that are alleged to be defective are in Texas. The debtor solicited sales in Texas.

DISCUSSION

A. Mandatory Abstention

11 U.S.C. § 1334(c)(2) provides that abstention is mandatory if three elements are satisfied:

1) The case is based upon a state law claim or cause of action which, although related to a case under Title 11, does not arise under Title 11 or arise in a case under Title 11;

2) The case could not have been commenced in federal court absent bankruptcy court jurisdiction; and

3) The case could be timely adjudicated in a state court. 28 U.S.C. § 1334(c)(2).

First, some courts consider a proceeding to collect a debtor's account receivable to be a core proceeding under 11 U.S.C. §§ 157(b)(2)(E) and 157(b)(2)(O). In re Nuckols and Security, Inc., 109 Bankr. 294, 296 (Bankr. S.D. Ohio 1989). See also In re Southland + Keystone, 132 Bankr 632, 638 (Bankr. 9th Cir. 1991).

> [N]othing is more vitally and intimately linked to the affairs of the debtor than the collection of accounts receivable which arose in the course of the debtor's business and which will provide or contribute to

> the funding of the debtor as it seeks to find its way to viability. To put the adjudication of such matters out of the bankruptcy court will frustrate the very purpose of Chapter 11, for it will send such matters to courts which by reason of the pressure of other matters are unable to deal with the affairs of debtors as expeditiously as bankruptcy courts can.
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> Ordinary business accounts receivable ... are not "related only peripherally" to a Chapter 11 case. Their collection goes to the very heart of the rehabilitation scheme contemplated for Chapter 11.

Nuckols, 109 Bankr. at 296. But see Marathon and Collier.

Secondly, federal jurisdiction otherwise exists under diversity of citizenship. Finally, timely adjudication requires that there be a pending state court action. In re World Financial Services Center, Inc., 64 Bankr. 980, 989 Bankr. S.D. Cal. 1986). There is no longer a pending state court action for the collection of the debtor's account receivable from the defendant. Based on these three factors, mandatory abstention does not apply to this proceeding.

B. Discretionary Abstention

The Court may in its discretion nonetheless abstain from hearing a matter in the interest of justice, or in the interest of comity with state courts or respect for state law. 28 U.S.C. § 1334(c)(1). In In re Tucson Estates, Inc., the Ninth Circuit identified twelve factors that a court should consider when deciding whether to abstain:

1) the effect on the efficient administration of the estate;

2) the extent to which state law predominates over bankruptcy issues;

3) the difficulty or unsettled nature of the state law;

4) the presence of a related proceeding state court or other court;

5) the jurisdictional basis other than 28 U.S.C. § 1334;

6) the degree of relatedness to the main bankruptcy case;

7) the substance of the 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.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Notwithstanding that this is a core matter, the interests of justice dictates that this case be heard in the state court where it originated. It was the debtor's original choice of forum, which leads the Court to believe that the debtor did not think that there were sufficient contacts to file the suit originally in California.

It would not be an economic use of judicial resources to sever the defendant's state law claims from the core proceeding. State law issues also predominate in the counterclaim, and state courts are generally viewed as better

Because this Court is abstaining from hearing this proceeding, it is not necessary to reach the question of venue.