The document below is hereby signed.

Signed: March 8, 2018



SMartin Telf

S. Martin Teel, Jr. United States Bankruptcy Judge UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

In re	)
MARTHA AKERS,	) Case No. 16-00600 ) (Chapter 7)
Debtor.	)
JOHN P. FITZGERALD, III,	) )
Plaintiff,	)
v.	<ul> <li>Adversary Proceeding No.</li> <li>17-10034</li> </ul>
MARTHA AKERS,	)
	) Not for publication in
Defendant.	) West's Bankruptcy Reporter.

## MEMORANDUM DECISION AND ORDER STRIKING NOTICES OF REMOVAL

In her Amended Notice of Removal the debtor asserts that by way of the Amended Notice of Removal this adversary proceeding, in which the plaintiff seeks to deny the debtor a discharge, is automatically removed to the District Court under 28 U.S.C. 1441, et seq. I will strike the Amended Notice of Removal because the removal statutes do not apply to an adversary proceeding already pending in the Bankruptcy Court as a unit of the District Court. First, 28 U.S.C. § 1441 deals with only removal of "a civil action brought in a State court." The adversary proceeding was not brought in a State court.

Second, 28 U.S.C. § 1452 (the only other removal statute of possible relevance) relates to civil actions over which the District Court has jurisdiction under 28 U.S.C. § 1334. The adversary proceeding, seeking to deny the debtor a discharge under 11 U.S.C. § 727(a), is one arising under the Bankruptcy Code, and is thus one over which the District Court has jurisdiction under 28 U.S.C. § 1334(b). However, under District Court Local Bankruptcy Rule ("DCt.LBR") 5011-1(a), as authorized by 28 U.S.C. § 157(a), the adversary proceeding has been referred to the Bankruptcy Court, which under 28 U.S.C. § 151 serves as a unit of the District Court. The subject matter jurisdiction that the Bankruptcy Court is exercising over the proceeding is that of the District Court under 28 U.S.C. § 1334(b). In other words, the exercise of the jurisdiction of the District Court over the proceeding is already in place. The removal statute is inapplicable to a proceeding over which the District Court's subject matter jurisdiction is already being exercised. Filing a notice of removal has accomplished nothing.

In any event, DCt.LBR 5011-1(b) provides in pertinent part:

The referral pursuant to paragraph (a) of proceedings to the bankruptcy judges of this District includes any civil action (or claim or cause of action in a civil action) removed on the basis that the District Court has

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jurisdiction over the civil action under 28 U.S.C.  $\S$  1334.

As the Comment to DCt.LBR 5011-1 explains:

Paragraph (b) clarifies that civil actions removed under 28 U.S.C. § 1452(a) (or under the more general removal provision of 28 U.S.C. § 1441(a)) on the basis that the District Court has jurisdiction over the civil action pursuant to the bankruptcy jurisdiction statute, 28 U.S.C. § 1334, are referred to the Bankruptcy Court.

Accordingly, even if (which is not the case) the Amended Notice of Removal could be viewed as removing the adversary proceeding to the District Court, it would accomplish nothing because the removed proceeding would be referred to the Bankruptcy Court by DCt.LBR 5011-1.

Because the removal statutes do not apply to a proceeding already pending in the Bankruptcy Court as a unit of the District Court and because nothing is served by the Amended Notice of Removal (or by the Notice of Removal (Dkt. No. 22) which was thereby amended), it is

ORDERED that the Amended Notice of Removal (Dkt. No. 23) and the Notice of Removal (Dkt. No. 22) are STRICKEN.

[Signed and dated above.]

Copies to: Recipients of e-notification of orders; debtor (by hand-mail); debtor (held at the clerk's office, directed to the debtor's attention).

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