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FIFTH DIVISION
May 27, 2011

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|-------------------------|---|------------------|
| MICHELLE EVA MCDONALD, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County |
| |) | |
| v. |) | No. 10 L 062018 |
| |) | |
| TAILWIND SERVICES, LLC, |) | Honorable |
| |) | Roger Fein, |
| Defendant-Appellee. |) | Judge Presiding. |

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

ORDER

Held: After defendant filed a notice of removal of case to federal court pursuant to 28 U.S.C. §1452 and Federal Rule of Bankruptcy Procedure 9027, circuit court lacked subject matter jurisdiction and properly dismissed case. Appeal dismissed because Illinois state court never regained jurisdiction.

Plaintiff, Michelle Eva McDonald, appeals *pro se* from: (1) an order entered on June 22, 2010, denying her motion for a temporary restraining order; and (2) a final order entered on July 12, 2010, which, among other things, dismissed the instant case based upon lack of jurisdiction

in view of defendant's removal of matter to federal court. Because this court, similar to the circuit court, lacks subject matter jurisdiction over this matter, we dismiss this appeal.

BACKGROUND

On November 12, 2008, plaintiff commenced a bankruptcy case by filing a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code in the Northern District of Illinois Bankruptcy Court (Bankruptcy Case). Gregg Szilagyi, an employee of defendant, Tailwind Services, LLC, was appointed trustee. On February 18, 2009, plaintiff received her discharge and the Bankruptcy Case was closed. On February 23, 2009, Szilagyi was discharged.

On April 12, 2010, plaintiff, *pro se*, filed the instant action in the circuit court of Cook County. Plaintiff's 33-page complaint contained four counts alleging breach of fiduciary duty by defendant as trustee. On May 13, 2010, Joseph A. Baldi, counsel for defendant and Szilagyi, filed a notice of removal in the Northern District of Illinois Bankruptcy Court, pursuant to 28 U.S.C. §1452 and Federal Rule of Bankruptcy Procedure 9027. On May 17, 2010, Attorney Baldi filed, in the circuit court of Cook County, a copy of the notice of removal to federal court. He served a notice of this filing upon plaintiff.

On June 16, 2010, plaintiff filed an emergency motion for a temporary restraining order against Attorney Baldi. Also on June 16, 2010, plaintiff filed a motion for declaratory judgment.

On June 22, 2010, the circuit court, after a hearing, denied plaintiff's emergency motion for a temporary restraining order, and, over defendant's objection, continued the motion for declaratory judgment until July 21, 2010.

On June 23, 2010, plaintiff filed a notice of appeal from the June 22, 2010 interlocutory order denying her motion for a temporary restraining order. On June 24, 2010, plaintiff withdrew the appeal and filed a motion for default judgment against defendant.

On June 24, 2010, the Bankruptcy Court held a hearing on the Trustee's motion for dismissal of the case. Plaintiff did not appear.

On June 30, 2010, the Bankruptcy Court granted the trustees' motion to dismiss, and further stated:

"No action is pending in the state court at this time *** because the case has been removed to this court so the debtor should not be filing any motions in the state court with respect to this case. Any matters relating to this case must be filed with the bankruptcy court, not the state court. In addition, the debtor may not file any other actions against the trustee or his law firm in this court or any other court or forum without seeking permission from this court *before* filing any such action."

(Emphasis in original.)

On July 12, 2010, the circuit court entered an order stating: (1) the circuit court did not have jurisdiction over this case in view of federal preemption and the removal of this case to the Bankruptcy Court, and, accordingly, the case was dismissed with prejudice; (2) the previously set status date of July 21, 2010 was stricken; (3) any previously set, pending and all future motions were directed to be brought and presented in the Bankruptcy Court and not in the circuit court; and (4) the circuit court declined to take any further action regarding this case because it did not have jurisdiction to do so. The circuit court affixed to its order a copy of the June 30, 2010 order

entered in the Bankruptcy Case.

Plaintiff subsequently filed an appeal in this court.

ANALYSIS

Before addressing the issues raised by plaintiff, we must determine whether we have jurisdiction over this appeal. A reviewing court has an independent duty to consider its jurisdiction and to dismiss an appeal if it determines that it lacks jurisdiction. See, *e.g.*, *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985).

Section 1452 of the United States Code states:

“Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

“(b) The court to which such claim or cause of action is removed *may* remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals ... or by the Supreme Court of the United States[.]” (Emphasis added). 28 U.S.C. §1452.

Rule 9027 of the Federal Rules of Bankruptcy Procedure governs the procedures to be followed for removals made pursuant to 28 U.S.C. §1452, and states, in pertinent part:

“(a) Notice of removal

(1) Where filed; form and content

A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending.

(b) Notice

Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) Filing in non-bankruptcy court

Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(e) Procedure after removal

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all

necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.” (Emphasis added.)

In the instant case, the state court's jurisdiction immediately and totally ceased and the jurisdiction of the federal court immediately attached on May 17, 2010, the date upon which Attorney Baldi filed, in the circuit court of Cook County, the copy of the notice of removal (that had been filed in federal court on May 13, 2010).

As this court has acknowledged:

“Upon the filing of a sufficient removal petition, the state court's jurisdiction immediately and totally ceases and that of the federal court immediately attaches.

After such removal, only the federal court can restore jurisdiction to the state court. [Citation.] When the cause appears to be removable, it is ‘the duty of the state court to recognize the removal and proceed no further’ and to yield jurisdiction to the federal court. The state court has no discretion in the matter, and subsequent proceedings therein, except for the order of removal, are void. The state court should not resume consideration of the cause unless and until it is finally decided in the federal court that the cause was not removable. [Citations.] ”

Illinois Licensed Beverage Ass'n, Inc. v. Advanta Leasing Services, 333 Ill. App. 3d 927, 932-933 (2002).

Cf. Hartlein v. Illinois Power Co., 151 Ill. 2d 142, 154 (1992) (“When a petition for removal has been filed in Federal district court and other requirements of section 1446(e) of the Federal

1-10-2507

Judicial Procedures Code (28 U.S.C. § 1446(e) (1988)) have been met, the State court loses jurisdiction to proceed further until the case is remanded”); *Eastern v. Canty*, 75 Ill.2d 566, 571 (1979) (same).

CONCLUSION

In sum, the circuit court lost subject matter jurisdiction on May 17, 2010 when the matter was removed to federal court. Any subsequent proceedings in state court are void. Therefore, the order entered by the circuit court on June 22, 2010, denying plaintiff’s motion for a temporary restraining order, from which plaintiff now appeals, was a nullity. Additionally, once the instant case was removed from the state court, only the federal court could restore jurisdiction to the state court. That was not done in the instant case. Instead, as noted earlier, on June 30, 2010, the Bankruptcy Court specifically stated; “No action is pending in the state court at this time *** because the case has been removed to this court so the debtor should not be filing any motions in the state court with respect to this case.” On July 12, 2010, the circuit court here acknowledged that it lacked subject matter jurisdiction and properly dismissed this case with prejudice and correctly declined to take any further action. This court similarly lacks subject matter jurisdiction and this appeal must therefore be dismissed.

Appeal dismissed.