

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF KENTUCKY**

IN RE:	)	
	)	
AMERICAN BUSINESS CORPORATION, INC.	)	CASE NO.: 06-32184(1)(11)
	)	
Debtor	)	
	)	
MICHAEL MARGOLIES	)	AP NO.: 07-03025
	)	
Plaintiff	)	
	)	
v.	)	
	)	
DANIEL PIXLER	)	
WILBUR ANTHONY HUFF	)	
AMERICAN BUSINESS CORPORATION, INC.	)	
	)	
Defendants	)	

**MEMORANDUM-OPINION**

This matter is before the Court on the Motion to Abstain and Remand to State Court of Plaintiff Michael Margolies (“Plaintiff”). The Court considered the Plaintiff’s Motion, the Response to Plaintiff’s Motion to Abstain and Remand to State Court of Defendants American Business Corporation, Inc. (“Debtor”), Wilbur Anthony Huff and David L. Pixler (collectively “Defendants”) and the record filed herein. For the following reasons, the Court **GRANTS** the Plaintiff’s Motion and remands this matter to the Supreme Court of the State of New York.

## **PROCEDURAL BACKGROUND**

On June 28, 2005, Plaintiff filed suit in the Supreme Court of the State of New York against the Defendants (referred to herein as the “State Court Action”).

On August 23, 2006, an Involuntary Chapter 7 Petition was filed against Debtor by Midwest Merger Management, Inc., ION Financial Services, Inc. and Scott P. Zoppoth, PLLC in the United States Bankruptcy Court for the Western District of Kentucky, Louisville Division.

On October 19, 2006, an Order of Relief was entered by this Court in Debtor’s bankruptcy case.

On October 30, 2006, an Order converting the Debtor’s Chapter 7 case to one under Chapter 11 of the United States Bankruptcy Code was entered by this Court in the Debtor’s bankruptcy case.

On January 29, 2007, Debtor filed a Notice of Removal Pursuant to Rule 9027 of the Federal Rules of Bankruptcy Procedure with this Court seeking to remove the State Court Action to this Court. On January 30, 2007, an Amended Notice of Removal was filed correcting procedural defects.

On February 9, 2007, Plaintiff filed a Response to the Debtor’s Amended Notice of Removal contending that the State Court Action is not a core proceeding as defined by 28 U.S.C. §157(b)(2).

On February 22, 2007, Plaintiff filed his Motion to Abstain and Remand to State Court seeking remand of this action to the New York Supreme Court pursuant to 28 U.S.C. §1452(b), 28 U.S.C. §1334(c)(1)-(2), and Fed. R. Bankr. P. 9027(d).

On April 27, 2007, Debtor filed its Response to Plaintiff’s Motion to Abstain and Remand to State Court.

## LEGAL ANALYSIS

Plaintiff requests this Court to abstain from hearing this adversary proceeding and remand it to the New York Supreme Court. The Court finds that this action was improperly removed to this Court and must be remanded to the New York Supreme Court.

The State Court Action was initiated by the Plaintiff against the Debtor and remaining Defendants on June 28, 2005. The action is primarily a breach of contract action arising out of a sales transaction and is based on New York law.

While that action was pending, an Involuntary Petition was filed against the Debtor on August 23, 2006 in this Court. The parties dispute whether the bankruptcy proceeding was properly filed in this Court, each relying on different dates as to when the Debtor actually began doing business and was incorporated in Kentucky. Plaintiff contends Debtor did not meet the venue requirements to have the Petition filed in this Court pursuant to 28 U.S.C. §1408 because the business was not established in Louisville in the 180 days preceding the filing. Debtor contends the business was well established in Louisville for over 270 days prior to the filing and thus, venue is appropriate under 28 U.S.C. §1408.

The Court need not address the issue of appropriate venue for the bankruptcy at this juncture in order to resolve the pending motion. This action must be remanded to the New York Supreme Court because it was improperly removed to this Court.

Rule 9027 of the Federal Bankruptcy Rules of Procedure clearly states:

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 . . . .

See also, 28 U.S.C. §1452(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, . . .”). Here, Debtor is

attempting to remove a New York state court action directly to a United States Bankruptcy Court in Kentucky. The law is clear that the case could only initially be removed to a federal court in the Southern District of New York. See, In re Newport Creamery, Inc., 275 B.R. 179 (Bankr. D. R. I. 2002); In re S & K Airpower of Florida, Inc., 166 B.R. 193 (Bankr. S.D. Fla. 1994), and In re AG Industries, Inc., 279 B.R. 534 (Bankr. S.D. Ohio 2002). The matter must be remanded to the state court in New York.

Procedurally, the case had to be removed to a New York District Court before it could be transferred, if appropriate, to this Court. Due to the procedural defects with the removal, the Court need not address the issue of abstention.

#### **CONCLUSION**

For all of the above reasons, the Motion to Abstain and Remand to State Court of Plaintiff Michael Margolies is **GRANTED**. An Order remanding this adversary proceeding to the New York Supreme Court accompanies this Memorandum-Opinion.

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WILBUR ANTHONY HUFF	)	
AMERICAN BUSINESS	)	
CORPORATION, INC.	)	
	)	
Defendants	)	

**ORDER**

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Motion to Abstain and Remand to State Court of Plaintiff Michael Margolies, be and hereby is, **GRANTED**. This adversary proceeding is remanded to the Supreme Court of the State of New York for New York County (Index 05-602327).