

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF PUERTO RICO

IN THE MATTER OF: :  
: :  
VCS NATIONAL PACKING COMPANY, INC. : Case No. B-93-12076  
: (S.D. California)  
: :  
Debtor : Chapter 11  
: :  
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: :  
CONGRESO DE UNIONES :  
INDUSTRIALES DE PUERTO RICO :  
: :  
Plaintiff :  
: :  
v. : Adv. No. 94-0002  
: :  
VCS NATIONAL PACKING COMPANY, INC. :  
: :  
Defendant :  
: :  
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: :  
JOHNNY SANTANA-SANTOS, ET AL :  
: :  
Plaintiffs :  
: :  
v. : Adv. No. 94-0003  
: :  
VCS NATIONAL PACKING COMPANY, INC. :  
: :  
Defendant :  
: :  
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: :  
HERMINIA RIVERA-GARCIA, ET AL :  
: :  
Plaintiffs :  
: :  
v. : Adv. No. 94-10003  
: :  
VCS NATIONAL PACKING COMPANY, INC. :  
: :  
Defendant : **DECISION AND ORDER**

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BACKGROUND

These actions are before this court on motions to remand. The plaintiffs in all three actions allege that they were dismissed from their employment without just cause. The actions all originated in the Superior Court of Puerto Rico, Ponce Part. In sum there are over 900 plaintiffs. The defendant in all three actions, VCS National Packing Company, Inc. ("VCS") filed bankruptcy in the Southern District of California. Subsequently, VCS sought to remove the action brought by Herminia Rivera-Garcia, et al, to the District Court of Puerto Rico based on diversity of the parties. VCS removed the action brought by Congreso De Uniones Industriales de Puerto Rico and the action brought by Johnny Santana-Santos, et al, to the Bankruptcy Court for the District of Puerto Rico. VCS sought to have the District Court withdraw reference of the two adversaries filed with the Bankruptcy Court and to consolidate all three actions in the District Court.

On June 6, 1994, the Honorable Carmen Consuelo Cerezo, Chief, U.S. District Judge, issued an opinion finding that diversity did not exist between VCS and the plaintiffs in the Rivera-Garcia case. The Court also found that the action involved a purely state law claim, that there was no independent basis for jurisdiction and

that the case was related to the bankruptcy but not a core proceeding. Accordingly, the Court remanded the action to the Superior Court of Puerto Rico, Ponce Part. The Court also denied VCS' motion to withdraw reference of the two actions pending before the Bankruptcy Court.

After the District Court remanded the Rivera-Garcia case to the Superior Court, VCS removed it to the Bankruptcy Court for the District of Puerto Rico. Motions have been filed by the plaintiffs in all three cases requesting that this court remand the cases to the Superior Court of Puerto Rico, Ponce Part (Dkt.# 11 in Adv. No. 94-0002, Dkt.# 9 in Adv. No. 94-0003, Dkt.# 2 in Adv. No. 94-10003). Likewise, VCS has filed its opposition to the motions for remand in all three cases.

The parties concede that the plaintiffs in the three cases are asserting identical claims under the same state statute pursuant to the same industrial plant closing. The plaintiffs contend that Judge Cerezo's opinion is controlling and that it requires this court to remand all three cases to the Superior Court of Puerto Rico. VCS argues that the portion of Judge Cerezo's opinion, which indicates that no federal question exists and that the issues raised are related to the bankruptcy but not core proceedings, is nothing more than dicta, erroneous and not dispositive of the

bankruptcy jurisdictional issue. VCS argues that the claims in all three actions are all claims arising under Title 11 and that this court has original jurisdiction under 28 U.S.C. § 1334(b).

#### DISCUSSION

The United States Code provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Section 1334 further provides that:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United State absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. . . .

11 U.S.C. § 1334(c) (2).

In this case, the District Court made a determination regarding the nature of the Rivera-Garcia case. The court determined that the case "involves purely state law claims under Law 80 of May 30 1976, 29 LPRA §185, et seq., and Law 2 of October 17, 1961, as amended, 32 LPRA § 3118-3133; and has no independent basis for federal jurisdiction, being peripherally related to the bankruptcy." Judge Cerezo's Opinion and Order of June 6, 1994 at

p. 4 (footnote omitted). The issues raised by all three cases are identical. Thus, the issues raised in all three cases involve only state law claims and are related to the bankruptcy case but not core proceedings. As there is no federal question presented, nor is diversity present, this action could not have been commenced in a court of the United States absent the defendant's petition in bankruptcy. The actions were commenced and can be timely adjudicated in the Superior Court of Puerto Rico, Ponce Part. Timely motions have been filed by the plaintiffs in all three actions requesting that this court remand the cases to the Superior Court of Puerto Rico, Ponce Part. Under these circumstances, abstention is mandatory.

#### ORDER

Based on Judge Cerezo's Opinion and Order in the Rivera-Garcia case and 11 U.S.C. § 1334(c)(2), this court will abstain from hearing these proceedings. The plaintiffs' motions to remand

(Dkt.# 11 in Adv. No. 94-0002, Dkt.# 9 in Adv. No. 94-0003, Dkt.# 2 in Adv. No. 94-10003) are GRANTED. The Clerk of the Court shall remand all three actions to the Superior Court of Puerto Rico, Ponce Part.

IT IS SO ORDERED.

Dated at San Juan, Puerto Rico this \_\_\_\_ day of January, 1995.

By the Court:

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Gerardo A. Carlo  
U.S. Bankruptcy Judge