

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-43959

MARK VITALE.,

Chapter 13

Debtor.

Judge Thomas J. Tucker

MAACO FRANCHISING, INC.,

Plaintiff,

v.

Adv. Pro. No. 13-4620

MARK VITALE, *et al.*,

Defendants.

**ORDER REMANDING CASE, PURPORTEDLY REMOVED TO THIS COURT,
TO THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

On May 30, 2013, Debtor Mark Vitale, who has a pending Chapter 13 bankruptcy case in this Court, and who is a defendant in a civil case filed on May 2, 2013 in the United States District Court for the Eastern District of Pennsylvania (Case No. 2:13-cv-02395-CMR, the “Pennsylvania lawsuit”), filed a notice of removal in this Court, purportedly removing the Pennsylvania lawsuit to this bankruptcy court under Fed.R.Bankr.P. 9027 and 28 U.S.C. § 1452(a) (Docket 1 in Adv. Pro. No. 13-4620). This adversary proceeding was commenced as a result of this filing.

The Court concludes that there is no legal basis for the Debtor to remove the Pennsylvania lawsuit to either the bankruptcy court or the district court *for this district* (Eastern

District of Michigan). *See* 28 U.S.C. § 1452(a);¹ Fed.R.Bankr.P. 9027(a)(1).² The notice of removal filed in this Court, therefore, was improper and ineffective.

The notice of removal could only be filed in the United States District Court for the Eastern District of Pennsylvania, where the Pennsylvania lawsuit was already pending. Debtor Mark Vitale may be able to use other procedural tools to try to get the Pennsylvania lawsuit into this Court, but filing a notice of removal in this district is not one of them. Other such possible tools may include (1) filing a motion, *in the United States District Court for the Eastern District of Pennsylvania*, seeking a change of venue to the United States District Court for the Eastern District of Michigan, under 28 U.S.C. §§ 1404(a); or (2) filing a motion, *in the United States District Court for the Eastern District of Pennsylvania*, for referral or transfer of the Pennsylvania lawsuit to the bankruptcy court for the Eastern District of Pennsylvania. If the

¹ Section 1452(a) provides:

(a) *A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, 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*

28 U.S.C. § 1452(a) (italics added).

² Fed.R.Bankr.P. 9027(a)(1) provides, 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. . . .

(Italics added).

Pennsylvania lawsuit were referred or transferred to the bankruptcy court in that district, Debtor might then be able to file a motion in that bankruptcy court for a transfer of the lawsuit to this district, under 28 U.S.C. § 1412 and Fed.R.Bankr.P. 7087.

In any event, because it is clear that the filing of the removal notice in this Court, in this district, was improper and ineffective,

IT IS ORDERED that the Pennsylvania lawsuit is remanded to the United States District Court for the Eastern District of Pennsylvania, from whence it came.

IT IS FURTHER ORDERED that **no later than today, June 7, 2013**, Debtor Mark Vitale must serve a copy of this Order on counsel for the Plaintiff Maaco Franchising, Inc. in the Pennsylvania lawsuit, and on the Clerk of the United States District Court for the Eastern District of Pennsylvania, and must file proof of such service in this adversary proceeding.

IT IS FURTHER ORDERED that this adversary proceeding is now concluded, and will be closed.

Signed on June 7, 2013

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge