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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In re:)	No. CV-10-1245-PHX-GMS
Elizabeth Woldrich,)	BK-08-17307-PHX-RJH
Debtor.)	Adv. No. 09-242-PHX-RJH
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Ticor Title Insurance Co.,)	ORDER
Plaintiff,)	
vs.)	
Elizabeth Woldrich,)	
Defendant.)	
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Pending before this Court is Plaintiff’s Motion for Withdrawal of Reference of its adversary proceeding from the bankruptcy court. (Doc. 2). For the reasons set forth below, Plaintiff’s Motion is denied without prejudice.

BACKGROUND

On December 1, 2008, Defendant Elizabeth Woldrich (“Defendant”), filed for Chapter 7 bankruptcy. (Doc. 2 at 4). Plaintiff Ticor Title Insurance Co. (“Plaintiff”), timely filed an adversary proceeding in the bankruptcy court asserting that, pursuant to 11 U.S.C. § 523(a)(2) and (6), a debt allegedly owed by Defendant to Plaintiff should not be discharged because of fraud. *Id.* Plaintiff alleges that Defendant provided a forged Release and Reconveyance upon which Plaintiff relied and was subsequently harmed. *Id.* Plaintiff timely

1 filed a request for a jury trial on the issues of liability and damages. It does not, however,
2 seek a jury trial on the issue of dischargeability of the debt. *Id.* at 4, 6. Defendant contends
3 that Plaintiff is not entitled to a trial by jury. (Doc. 6, p. 3). Plaintiff now moves for
4 withdrawal of the adversary proceeding to the District Court pursuant to 28 U.S.C. § 157(d).
5 (Doc. 2).

6 LEGAL STANDARD

7 28 U.S.C. § 157 states, “Each district court may provide that any or all cases under
8 title 11 and any or all proceedings arising under title 11 or arising in or related to a case
9 under title 11 shall be referred to the bankruptcy judges for the district.” 28 U.S.C. § 157(a).
10 This District refers all bankruptcy cases to the bankruptcy court. *See* General Order 01-15
11 (June 29, 2001). However, district courts “may withdraw, in whole or in part, any case or
12 proceeding referred [to the bankruptcy court] under this section, on its own motion or on
13 timely motion of any party, for cause shown.” 28 U.S.C. § 157(d).

14 When determining whether there is cause to withdraw, “a district court should
15 consider the efficient use of judicial resources, delay and costs to the parties, uniformity of
16 bankruptcy administration, the prevention of forum shopping, and other related factors.” *Sec.*
17 *Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008
18 (9th Cir. 1997) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993). Further,
19 courts “should first evaluate whether the claim is core or non-core, since it is upon this issue
20 that questions of efficiency and uniformity will turn.” *In re Orion*, 4 F.3d at 1101 (cited
21 approvingly by the Ninth Circuit in *Sec. Farms*, 124 F.3d at 1008). “[H]earing core matters
22 in a district court could be an inefficient allocation of judicial resources given that the
23 bankruptcy court generally will be more familiar with the facts and issues”, and “may enter
24 appropriate orders and judgments.” *Id.* (internal quotation and citation omitted).

25 A bankruptcy judge may only conduct a jury trial if specially designated to do so by
26 the district court and with the express consent of all the parties. *See* 28 U.S.C. § 157(e).
27 Consequently, a demand for a trial by jury may have the effect of mandating withdrawal to
28 the district court for trial. *See Growe ex rel. Great Northern Paper, Inc. v. Bilodard Inc.*, 325

1 B.R. 490, 492 (D. Me. 2005). “However, it does not follow that withdrawal must be granted
2 as a matter of course at any point during a proceeding in which a jury demand is made.” *Id.*
3 “Only by allowing the bankruptcy court to retain jurisdiction over the action until trial is
4 actually ready do we ensure that our bankruptcy system is carried out.” *In re*
5 *Healthcentral.com*, 504 F.3d 775, 788 (9th Cir. 2007). “Thus, a court may deny a motion
6 to withdraw on the basis of a jury demand while allowing the movant to renew the motion
7 when the bankruptcy court certifies that the adversary proceeding is ready for trial.” *Grove*
8 *ex rel.*, 325 B.R. at 492.

9 DISCUSSION

10 Plaintiff seeks a determination that Defendant’s alleged debt owed to Plaintiff should
11 not be discharged in bankruptcy because of fraud. Section 157 clearly states that
12 “determinations as to the dischargeability of particular debts” are core proceedings. 28
13 U.S.C. § 157(b)(2)(I). It is also clear that “there is no right to a jury trial in an adversary
14 proceeding to determine whether a debt is dischargeable.” *In re Locke*, 205 B.R. 592, 599
15 (9th Cir. BAP 1996) (citing *In re Hooper*, 112 B.R. 1009, 1012–13 (9th Cir. BAP 1990)).
16 The bankruptcy court is already familiar with the facts and issues of this case, and Plaintiff
17 does not seek a jury trial as to the issue of dischargeability.

18 Plaintiff believes the determination of whether Plaintiff has a right to a jury trial for
19 its underlying fraud claim is separate from whether this Motion for Withdrawal should be
20 granted. While that may be, since it is not clear whether a trial on the issues of liability and
21 damages is necessary, the Court need not determine at this time whether Plaintiff is entitled
22 to a jury trial. *See In re Hooper*, 112 B.R. at 1013 (“[T]he bankruptcy court found the debt
23 dischargeable and did not reach the damages question.”). The Court notes that the parties
24 have submitted Statements of Position to the bankruptcy court concerning whether this Court
25 or the bankruptcy court should decide whether Plaintiff is entitled to a jury trial. The
26 necessity of deciding the question will become apparent when the bankruptcy court rules on
27 the dischargeability issue. The bankruptcy court is then fully capable of determining whether
28 Plaintiff has a jury right on the liability and damages questions. If it does, the reference will

1 then be withdrawn as to these issues. Plaintiff's Motion for Withdrawal of Reference is
2 premature.

3 **IT IS THEREFORE ORDERED:**

4 1. Plaintiff's Motion for Withdrawal of Reference (Doc. 2) is **DENIED** without
5 prejudice.

6 2. The Clerk of the Court is directed to **TERMINATE** this action.

7 DATED this 6th day of August, 2010.

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11 G. Murray Snow
12 United States District Judge
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