

CIVIL MINUTES - GENERAL

CASE NO.: CV 16-01903 SJODATE: April 29, 2016

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I. BACKGROUND

On August 10, 2015, Plaintiff filed a Complaint against Defendants asserting causes of action for (1 & 2) avoidance of fraudulent transfers; (3) recovery of avoided transfers; (4) conspiracy to defraud; (5) imposition of a constructive trust; (6) accounting; (7) declaratory judgment quieting title to real properties; (8) turnover; (9) injunctive relief; (10) permission to sell real properties in which a non-debtor asserts an interest; and (11) substantive consolidation of Defendants with the Debtor's estate. (See App'x in Supp. Mot. ("App'x"), Ex. B ("Compl."), ECF No. 3-1.) Defendants filed their respective answers on September 17, 2015, demanding a jury trial. (See *generally* App'x, Exs. A, C-F.) Plaintiff filed a Statement of Non-Consent to a Jury Trial Conducted by the Bankruptcy Court on September 22, 2015. (App'x, Exs. A, G.) None of the Defendants have filed a Proof of Claim. (App'x, Ex. H.)

II. DISCUSSIONA. Legal Standards for Withdrawal

Pursuant to 28 U.S.C. § 157(d) ("Section 157"), a district court has the authority to withdraw reference to the bankruptcy court. See 28 U.S.C. § 157(d). Section 157(d) provides for both permissive and mandatory withdrawal, depending on the circumstances of the action. *Id.* "The district court **may withdraw**, in whole or in part, any case or proceeding referred . . . on its own motion or on timely motion of any party, for cause shown." *Id.* (emphasis added). The district court **shall withdraw** if "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." *Id.* The party seeking withdrawal carries the "burden of persuasion." *FTC v. First Alliance Mortg. Co.*, 282 B.R. 894, 902 (C.D. Cal. 2001) (citation omitted). It is within a district court's discretion to grant or deny a motion for permissive withdrawal of reference; that decision will not be disturbed unless the court abuses its discretion. See *In re Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990).

B. Right to Jury Trial in Fraudulent Conveyance Actions

In the page-long argument section of his Motion, Plaintiff contends that "[t]he withdrawal of the reference as to the Adversary Proceeding is appropriate" because the Complaint filed in the Adversary Proceeding alleges in part that Defendants received fraudulent transfers from the Debtor, and that actions to avoid fraudulent transfers require a jury trial by an Article III court. (See *generally* Mot. 4-5.)

The Court does not write on a blank slate. In *Granfinanciera, S.A. v. Nordberg*, the United States Supreme Court held that the Seventh Amendment confers upon persons who have not submitted a claim against a bankruptcy estate a right to a jury trial when sued by the trustee in bankruptcy

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to recover an allegedly fraudulent money transfer, notwithstanding Congress's designation of fraudulent conveyance actions as "core proceedings" in Section 157(b)(2)(H) which a non-Article III bankruptcy judge may adjudicate. 492 U.S. 33, 36 (1989). The Supreme Court in *Granfinanciera* expressly declined to consider, however, whether bankruptcy courts may constitutionally conduct such jury trials. *Id.* at 50.

The Ninth Circuit confronted this issue head-on in *In re Healthcentral.com*, ruling that the defendant in that action was entitled to a Seventh Amendment jury trial in the district court. 504 F.3d 775, 786 (9th Cir. 2007). The Ninth Circuit also held, however, that "[a] valid right to a Seventh Amendment jury trial in the district court does not mean the bankruptcy court must instantly give up jurisdiction and that the action must be transferred to the district court. Instead, we hold, the bankruptcy court may retain jurisdiction over the action for pre-trial matters." *Id.* at 788.

The Ninth Circuit elaborated on its decision in *In re Healthcentral.com* in *In re Bellingham Insurance Agency, Inc.*, unequivocally holding that "fraudulent conveyance claims, because they do not fall within the public rights exception, cannot be adjudicated by non-Article III judges." 702 F.3d 553, 561 (9th Cir. 2012). The Ninth Circuit further held, however, that "§ 157(b)(1) provides bankruptcy courts the power to hear fraudulent conveyance cases and to submit reports and recommendations to the district courts. Such cases remain in the core, and the § 157(b)(1) power to 'hear and determine' them authorizes the bankruptcy courts to issue proposed findings of fact and conclusions of law. **Only the power to enter final judgment is abrogated.**" *Id.* at 565-66 (emphasis added). Later in the opinion, however, the Ninth Circuit noted that "§ 157(e) permits bankruptcy judges to conduct jury trials 'with the **express** consent of all the parties'." *Id.* at 569 (emphasis in original).

Thus, although bankruptcy courts may not, absent express consent being given by all parties, conduct jury trials or enter final judgments. Bankruptcy courts may, however, hear fraudulent conveyance cases and submit reports and recommendations containing proposed findings of fact and conclusions of law to district courts.

B. Permissive Withdrawal

Having determined that withdrawal is not required in order to satisfy the requirements of the Seventh Amendment, the Court now analyzes whether this case presents one of the "limited number of circumstances" in which permissive withdrawal should be permitted. *Hawaiian Airlines, Inc. v. Mesa Air Grp., Inc.*, 355 B.R. 214, 223 (D. Haw. 2006) (citations omitted). The Ninth Circuit has held that "[i]n determining whether cause exists, a district court should consider the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors." *Sec. Farms v. Int'l Bd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997).

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Although Plaintiff does not address any of these factors in its Motion, the Court finds that withdrawal should not be permitted in this case. Although there is no evidence of forum shopping on the part of either Plaintiff or Defendants, the remaining factors all weigh in favor of denying the Motion.

First, with respect to efficiency, the Court concludes that "hearing core matters in a district court could be an inefficient allocation of judicial resources given that the bankruptcy court generally will be more familiar with the facts and issues." *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993); accord *In re Molina*, 2010 WL 3516107, at *2 (N.D. Cal. Sept. 8, 2010); *In re Woldrich*, No. 10-1245, 2010 WL 3087487, at *1 (D. Ariz. Aug. 6, 2010). Having the bankruptcy court submit proposed findings of fact and conclusions of law in fraudulent conveyance cases "promotes judicial economy and efficiency by making use of the bankruptcy court's unique knowledge of Title 11 and familiarity with the actions before them." *In re Healthcentral.com*, 504 F.3d at 787-88. Although the Adversary Proceeding has not been pending for a significant amount of time, given the bankruptcy court's familiarity with the parties and the legal issues, the Court finds that it would be more efficient for the bankruptcy court to make decisions in the first instance even though these findings may be subject to de novo review. Any inefficiencies, including delays and costs, are outweighed by efficiencies gained in leaving the proceeding in bankruptcy court.

The Court also finds that the uniformity of bankruptcy administration favors denying the Motion. The claims presented in the Complaint seek to avoid and recover fraudulent transfers undertaken as party of a conspiracy to "defraud the Creditors of the Debtor." (Compl. ¶¶ 43, 45.) Therefore, these fraudulent conveyance claims arise under federal bankruptcy law and would not exist absent the bankruptcy proceeding. See 11 U.S.C. §§ 544 & 548.

On balance, the Court finds that permissive withdrawal is not appropriate in this case, and accordingly **DENIES** the Motion and remands this case back to the Bankruptcy Court for all pretrial matters.

III. RULING

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Withdraw the Reference of Adversary Proceeding Per Bankruptcy Court Approved Stipulation with the Defendants. This case is hereby remanded to the Bankruptcy Court for all pretrial matters.