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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re)
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CHUNG XAY LUU,)
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 Debtor.)
_____)
PREM DHAWAN, Trustee in)
Bankruptcy,)
)
 Plaintiff,)
)
 v.)
)
THAM THI MAI,)
)
 Defendant.)
_____)

2:06-cv-2657-GEB-KJM

ORDER

On January 25, 2007, an Order issued denying Defendant's motion to withdraw reference to the United States Bankruptcy Court for the Eastern District of California. On February 5, 2007, Defendant filed a motion to alter or amend findings of fact and conclusions of law and to alter or amend the Court's January 25, 2007 Order.¹

¹ On February 7, 2007, the Court issued an Order in which it required the parties to address the applicability of the newly
(continued...)

1 Defendant cites authority in its motion that was not
2 previously brought to the Court's attention. Specifically, Defendant
3 cites a Supreme Court decision in Granfinanciera, S.A. v. Nordberg,
4 492 U.S. 33 (1989), arguing that under this decision Defendant is
5 entitled to a jury trial on all issues involved in the bankruptcy
6 adversary proceeding since they concern fraudulent transfer claims,
7 and the Supreme Court has held that "fraudulent transfer actions are
8 the assertion of private rights that more nearly resemble state-law
9 contract claims and are not core proceedings." (Mot. at 3:2, 22-23.)
10 Further, Defendant cites a case from this district involving
11 fraudulent conveyances where the court determined that the defendant
12 had the right to a jury trial, and withdrew the reference since
13 defendant did not consent to holding the jury trial in the Bankruptcy
14 Court. (Id. at 4; Index of Bankruptcy Exhibits, Ex. D.)

15 Plaintiff does not dispute the applicability of
16 Granfinanciera, but argues that the reference should not be withdrawn
17 because Defendant expressly consented to the bankruptcy judge
18 conducting a jury trial. (Opp'n at 5:11-14, 6:5-9.) Plaintiff argues
19 Defendant's consent is evinced where "[i]n [p]aragraph 1 of
20 Defendant's Answer . . . Defendant admitted Plaintiff's contention
21 [that the bankruptcy court has jurisdiction pursuant to 28 U.S.C. §§
22 1334, 151 and 157] in its entirety, without reservation." (Id. at
23 6:5-8.)

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26 ¹(...continued)
27 cited authority and indicated that because of that authority the
28 motion should be reconsidered *sua sponte*. Since neither party
has objected to treating Plaintiff's motion as a request for
reconsideration, it is so treated. (Feb. 7, 2007 Order at 2:25-
27, n.1, 2:7-8.)

1 Under 28 U.S.C. § 157(e),

2 [i]f the right to a jury trial applies in a
3 proceeding that may be heard under this section by
4 a bankruptcy judge, the bankruptcy judge may
5 conduct the jury if specifically designated to
6 exercise such jurisdiction by the district court
7 and *with the express consent of all the parties.*

8 28 U.S.C. § 157(e) (emphasis added). Defendant counters that she has
9 "not consent[ed] to the Bankruptcy Judge conducting [a] jury trial in
10 this adversary proceeding." (Mot. at 3:3-4.) Further, Defendant
11 argues that she "timely claimed her right to a jury trial in [her
12 Answer]." (Reply at 7:15-17; see Def.'s Answer ¶ 3, ("Defendant . . .
13 affirmatively alleges, in view of this answer and request for jury
14 trial, the above-entitled Court no longer has jurisdiction in this
15 matter [and] [j]urisdiction is subject to 28 U.S.C. [§] 157(d) and 28
16 U.S.C. [§] 157(e).").)

17 Defendant has not consented to the bankruptcy court
18 conducting a jury trial in the adversary proceeding. "Withdrawal of
19 the reference is [] required . . . where defendant who is entitled to
20 a jury trial does not consent to the holding of such trial in the
21 Bankruptcy Court." Lara v. Casimiro, 2006 WL 1581897, at *4 (E.D.
22 Cal. June 6, 2006) (citation omitted). Accordingly, the reference to
23 the United States Bankruptcy Court is withdrawn.

24 Further, a status hearing is scheduled to commence at 9:00
25 am on May 7, 2007, so that trial could be scheduled and it could be
26 decided whether any portion of a scheduling order issued in the
27 bankruptcy proceeding should be modified. A joint status report shall
28 be filed no later than fourteen (14) days before the hearing in which

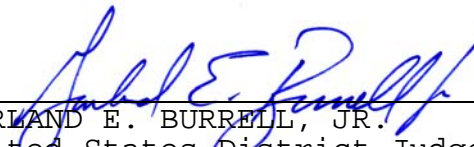
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1 the parties are to address the status of this action and when a final
2 pretrial conference and trial should be scheduled.

3 IT IS SO ORDERED.

4 Dated: March 14, 2007

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8 GARLAND E. BURRELL, JR.
9 United States District Judge
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