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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re: No. Civ. S-09-274 JAM KJM
LARRY TEVIS and NANCY TEVIS, Order Denying Plaintiffs'
Motion to Withdraw Reference
Debtor.

LARRY TEVIS and NANCY TEVIS,
Plaintiffs,
v.
CAL VET, ET. AL.,
Defendants.

This matter comes before the Court on Plaintiffs Larry and Nancy Tevis' (the "Tevises") motion to withdraw reference pursuant to 28 U.S.C. Section 157(d).¹ Defendants Cal. Vet., et.

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

1 al oppose the motion. For the reasons set forth below,
2 Plaintiffs' motion is DENIED.

3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 Prior to the filing of their bankruptcy petition, the
5 Tevises were involved in state court litigation relating to the
6 purchase, construction, and installation of their mobile or
7 modular home. See Pls' Motion ("Pls' Mot."), Doc. # 1, Exh. 2
8 at 3:1-5. On June 21, 2004, the Tevises filed for bankruptcy
9 relief under Chapter 7. Id. at 3:14-15. They then removed the
10 modular home litigation to the bankruptcy court. Id. at 3:15-
11 16. The Chapter 7 Trustee, with advice and assistance of
12 counsel, entered into a settlement that resolved all but the
13 Cal-Vet litigation. Defs' Opposition ("Defs' Opp."), Doc. # 3,
14 at 2:15-17. Despite the Tevises' objection, the bankruptcy
15 court approved the settlements. The Tevises filed an appeal
16 from the approval of the settlement, but that appeal was
17 dismissed. Pls' Mot., Exh. 2 at 3:21-22, n.3.

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21 On December 1, 2004, the Tevises subsequently converted
22 their bankruptcy case to a case under Chapter 13. Id. The
23 conversion had the effect of outing the Chapter 7 Trustee and
24 the implementation of the settlement. In addition, the pendency
25 of the Chapter 13 case stayed Cal-Vet's foreclosure efforts.
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1 Defs' Opp. at 2:20-22. Ultimately, the Tevises defaulted on
2 their Chapter 13 plan.

3 On January 2, 2008, the instant action was brought in this
4 Court by the Tevises against Defendants. Doc. # 1. Plaintiffs
5 request the Court to vacate decisions of the bankruptcy court
6 and to transfer the action from the bankruptcy court to this
7 Court based on Plaintiffs' allegations of judicial bias and
8 prejudice. See Pls' Mot. at 2:1-21. Defendants contend there
9 are no grounds justifying withdrawal of the reference. Defs'
10 Opp. 4:7-16.
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12 II. OPINION

13 A. Legal Standard

14 28 U.S.C. § 157(d) provides a mechanism whereby matters
15 pending in a bankruptcy court may be transferred to the district
16 court. A transfer to the district court is accomplished by
17 "withdrawing" the "reference." A litigant who believes that a
18 certain proceeding or portion of a proceeding pending in the
19 bankruptcy court should be litigated in the district court may
20 make such a motion. 28 U.S.C. § 157(d). Such a motion is heard
21 by the district court. Fed.R.Bankr. 501(a).
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23 Most requests for withdrawal are governed by the so-called
24 permissive withdrawal provision of § 157(d), which provides that
25 the reference may be withdrawn in the exercise of the district
26 court's discretion "for cause shown." "In determining whether
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1 cause exists, a district court should consider the efficient use
2 of judicial resources, delay, and costs to the parties,
3 uniformity of bankruptcy administration, the prevention of forum
4 shopping, and other related factors." Security Farms v.
5 International Bhd. Of Teamsters, Chauffers, Warehousemen &
6 Helpers, 124 F.3d 999, 1008 (9th Cir. 1997). Withdrawal of the
7 reference is mandatory for proceedings that require
8 consideration of both bankruptcy law and other, non-bankruptcy
9 federal law that affects interstate commerce. 28 U.S.C. §
10 157(d). The burden of persuasion is on the party seeking
11 withdrawal. In re Homeland Stores, Inc., 204 B.R. 427, 430
12 (D.Del.1997).

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15 B. Plaintiffs' Motion to Withdraw the Reference

16 Plaintiffs assert that this Court should "vacate all Judge
17 Holman's decisions on the grounds of prejudice and bias" and
18 further, should vacate the "decisions that stem from his
19 predecessors decisions." Pls' Mot. at 2:20-21. In addition,
20 Plaintiffs request the action be transferred from the bankruptcy
21 court to this Court because Plaintiffs "need to literally sue
22 the bankruptcy court to vacate the bankruptcy judges' orders."
23 Pls' Reply, Doc. # 5, at 4:24-26. Plaintiffs, however, do not
24 present any detail showing that Judge Holman was prejudiced or
25 biased in his decisions nor that Judge Klein, Judge McKeag, or
26 any of the bankruptcy judges were biased or prejudiced in
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1 deciding Plaintiffs' case. As such, Plaintiffs have failed to
2 meet their burden of persuasion to show cause as required under
3 §157(d). Moreover, this matter has proceeded for over a year in
4 bankruptcy court and there are numerous pending motions. It
5 would be extremely disruptive to the case if the Court withdraws
6 the reference at this time. Further, Plaintiffs appear to be
7 forum shopping for a judge that will find in its favor.
8 Accordingly, after considering whether cause exists to withdraw
9 the reference, this Court finds that in the interest of
10 efficient use of judicial resources, delay, and costs to the
11 parties, uniformity of bankruptcy administration, and the
12 prevention of forum shopping, Plaintiffs' motion to withdraw the
13 reference is denied.
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17 III. ORDER

18 For the reasons set forth above, Plaintiffs' motion to
19 withdraw the reference is DENIED.

20 IT IS SO ORDERED.

21 Dated: April 8, 2009

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23 JOHN A. MENDEZ,
24 UNITED STATES DISTRICT JUDGE
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