UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEPHEN C. FERLMANN, Chapter 7 Trustee of the Estate of Sushil Prasad and Susea S. Prasad,

Plaintiff,

v.

SUSHIL PRASAD; SUSEA S. PRASAD; MEYER WILSON CO., LPA; TRANSAMERICA FINANCIAL ADVICORS, INC. aka WORLD GROUP SECURITIES,INC.,

Defendants.

No. 2:15-cv-2229-JAM-EFB

**ORDER DENYING DEFENDANT MEYER WILSON CO., LPA'S MOTION TO WITHDRAW REFERENCE OF ADVERSAY PROCEEDING FROM BANKRUPTCY COURT**

Stephen Ferlmann ("Trustee"), bankruptcy trustee for debtors Sushil and Susea Prasad ("Debtors"), brought an adversary proceeding against Debtor's former legal counsel, Meyer Wilson Co. ("Meyer Wilson"), alleging that it hid assets from the bankruptcy estate and committed malpractice. Meyer Wilson, invoking vague references to securities and arbitration law, now moves this court to withdraw the reference from bankruptcy court.

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For the reasons stated below, the Court denies the motion.[1]

## I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Debtors filed a voluntary Chapter 13 bankruptcy petition in 2009. See In re Prasad, 09-94269 (E.D. Cal. Bankr.). A few years later, Debtors retained the law firm Meyer Wilson Company, LPA to represent them in an arbitration against Transamerica Financial Advisors ("Tranamerica"), a company formally known as World Group Securities. See Second Amended Complaint ("SAC") ¶¶ 7-9, Doc. #44, Ferlmann v. Prasad, 15-9018 (E.D. Cal. Bankr.). In that arbitration, the Debtors alleged that Transamerica had negligently supervised one of its brokers, Vincent Thakur Singh, who had fraudulently taken Debtors' money as part of a Ponzi scheme. See SAC ¶ 9. The Debtors were ultimately successful in settling the claims against Transamerica for $105,000, $42,000 of which went to Meyer Wilson as attorneys' fees. SAC ¶ 11.

Meanwhile, bankruptcy proceedings continued. In 2015, the bankruptcy Trustee filed an adversary complaint against Debtors, Meyer Wilson, and Transamerica, alleging that they hid the settlement proceeds from the bankruptcy court, and that the bankruptcy estate is entitled to those proceeds. See SAC ¶¶ 13-18. Trustee also alleged that Meyer Wilson is liable for legal malpractice in "misrepresenting their authority to Transamerica" during the negotiations, wrongfully "arrang[ing] for the disbursement of the settlement proceeds to entities other than

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for December 16, 2015.

[Trustee], to wit themselves and the Debtors[,]" and "wrongfully prosecut[ing], settl[ing], and misappropriat[ing]" the proceeds. SAC ¶¶ 52-53.

Meyer Wilson thereafter filed a motion to withdraw reference of the adversary proceeding from bankruptcy court (Doc. #1). Debtors and Trustee oppose the motion (Docs. ##4, 5). Transamerica filed a partial opposition (Doc. #3).

## II. OPINION

### A. Legal Standard

Withdrawal of reference from bankruptcy is governed by 28 U.S.C. § 157(d). This section provides two kinds of withdrawal: mandatory and permissive.

A court "shall" withdraw a proceeding "if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d). The Court construes this mandatory withdrawal provision narrowly. In re Temecula Valley Bancorp, Inc., 523 B.R. 210, 214 (C.D. Cal. 2014) (citing In re Vicars Ins. Agency, Inc., 96 F.3d 949, 952 (7th Cir. 1996)). This narrow construction requires that a proceeding only be withdrawn if it involves "substantial and material questions" of federal law outside their "routine application[s]." See Sec. Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers, 124 F.3d 999, 1008 n.4 (9th Cir. 1997); In re Temecula, 523 B.R. at 214 (citation omitted). The party seeking withdrawal bears the burden of persuasion. FTC v. First Alliance Mortg.

Co., 282 B.R. 894, 902 (C.D. Cal. 2001) (citation omitted).

As to permissive withdrawal, a court "may" withdraw a proceeding, "in whole or in part . . . for cause shown." 28 U.S.C. § 157(d). "The standard for permissive withdrawal is high and must be satisfied by the party seeking withdrawal." Rock Ridge Properties, Inc. v. Greenback Mortg. Fund, LLC, 2012 WL 346465, at *2 (E.D. Cal. Jan. 31, 2012). Permissive withdrawal is in the district court's discretion. In re KSL Media, Inc., 2016 WL 74385, at *2 (C.D. Cal. Jan. 6, 2016). In deciding whether to exercise its discretion, the court considers factors including "(1) the efficient use of judicial resources; (2) delay and costs to parties; (3) uniformity of bankruptcy administration; and (4) prevention of forum shopping as well as whether the issues are 'core' or 'non-core' within the meaning of [28 U.S.C.] § 157(b)(2), and whether any party has a right to a jury trial." Id. (citations and internal quotation marks omitted).

B. Analysis

The moving party, Meyer Wilson, contends that withdrawal is mandatory, and in the alternative, that this Court should exercise its discretion to withdraw the adversary proceeding. Mot. at 4-6. Transamerica filed a "limited opposition" indicating that it "does not oppose withdrawal of the reference[,]" but in the case that the Court does withdraw the reference it should do so for the entire adversary proceeding (not just the claims concerning Meyer Wilson). Transamerica's Opp. at 2. Both Trustee and Debtors have filed oppositions arguing that withdrawal is not mandatory, and that the Court

should not exercise its discretion to withdraw the reference at this time. Debtors' Opp. at 2-3; Trustee's Opp. at 2, 6.

1. Mandatory Withdrawal

Meyer Wilson argues that withdrawal is mandatory because "[i]f reference of the Adversary Proceeding is not withdrawn by the District Court, the bankruptcy court will be required to make significant interpretation of non-Bankruptcy Code statutes." Mot. at 5:9-11. The Court disagrees.

Meyer Wilson struggles to identify any federal non-bankruptcy issue relevant to this case. The case involves issues concerning whether the settlement proceeds are part of the bankruptcy estate and whether Meyer Wilson committed malpractice in representing the Debtors and misappropriating the proceeds. Whether the proceeds were part of the bankruptcy estate hinges on when the underlying claims accrued. Claim accrual, in turn, is governed by state law and bankruptcy law – not other federal laws. In re Goldstein, 526 B.R. 13, 21 (9th Cir. B.A.P. 2015). Malpractice too is a state – not federal –question. Ross v. Yaspan, 2013 WL 3448725, at *4 (C.D. Cal. July 9, 2013).

Meyer Wilson attempts to avoid these problems by injecting "Federal Securities Law." See Mot. at 5; Reply at 2. Meyer Wilson argues,

> Although the causes of action alleged against [Tranamerica] were common law claims for negligence in failing to supervise Singh, common law fraud and misrepresentation, breach of fiduciary duty, breach of contract, and respondent superior, the conduct upon which these claims were based derived from NASD [National Association of Securities Dealers] Conduct Rules and the Securities Exchange Act."

Reply at 2:25-28. Meyer Wilson is unable to be much more

specific as to the applicability of securities law to facts of this case. Its briefing suggests that federal securities law is required to determine whether Transamerica was negligent in supervising Singh. Mot. at 3. But Meyer Wilson does not explain or show that the issue is particularly complicated, or even that it is relevant to any actual dispute about claim accrual here.

The absence of a coherent explanation is telling in itself. Meyer Wilson attempts to bolster its vague theories about federal laws by citing Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002). Howsam, according to Meyer Wilson, created a complicated question of when the Debtors' arbitration claims accrued. See Mot. at 5. It did not. In fact, Howsam considered a National Association of Securities Dealers ("NASD")'s rule that "no dispute shall be eligible for submission to arbitration where six (6) years have elapsed from the occurrence or event giving rise to the dispute." Howsam, 537 U.S. at 81 (internal quotation marks and alterations omitted). The Court held that the NASD arbitrator (rather than a court) is to apply the six-year rule. Id. at 83. Meyer Wilson has not shown that the rule in Howsam will arise in this case. Even if it did, there is no indication that the answer would involve more than "routine application" of the relevant law. The Court therefore holds that mandatory withdrawal is not warranted.

2. Permissive Withdrawal

The parties appear to agree that Meyer Wilson is entitled to a jury trial before the district court as to the malpractice claim. Mot. at 6-7; Trustee's Opp. at 6. Meyer Wilson contends that its entitlement to a jury trial "is highly relevant to

withdrawal of the reference and, by itself, constitutes cause to withdraw the reference." Mot. at 6:19-20. The Court disagrees. The Ninth Circuit has held that the right to a jury trial does not warrant transfer of all pre-trial proceedings to the district court. See In re Healthcentral.com, 504 F.3d 775, 787 (9th Cir. 2007). The procedure by which the bankruptcy court handles pretrial matters and the district court conducts a trial is a well-worn procedure in this district. It serves judicial economy and takes advantage of the bankruptcy court's special competency in bankruptcy law and its familiarity with the underlying facts of the cases already before it. See id. at 787-88 ("[R]equiring that an action be immediately transferred to district court simply because of a jury trial right would run counter to our bankruptcy system. . . . [T]his system 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. . . . Only by allowing the bankruptcy court to retain jurisdiction over the action until trial is actually ready do we ensure that our bankruptcy system is carried out.") (citations and emphasis omitted). These savings in judicial economy are all the more evident in this case, in which the underlying proceedings have been pending in the bankruptcy court since 2009. The bankruptcy court therefore has great familiarity with this case, while this Court does not.

The same efficiency interests cut against Meyer Wilson's argument about non-core aspects of this case. Most of the claims in this case appear to be core bankruptcy matters, because they "could arise only in the context of a bankruptcy case." See

Battle Ground Plaza, LLC v. Ray, 624 F.3d 1124, 1131 (9th Cir. 2010) (citation omitted). Indeed, the thrust of the case is whether the settlement proceeds are assets of the bankruptcy estate. To the extent there are other non-core matters, this Court follows the procedure set out by 28 U.S.C. § 157, whereby the bankruptcy court first considers the claims using its expertise in bankruptcy law and knowledge facts of the case and then "submit[s] proposed findings of fact and conclusions of law to the district court[.]" 28 U.S.C. § 157(c)(1). The district court reviews the proposed findings and conclusion de novo, considers any timely objections by the parties, and issues a final order. Id. This procedure is not only economical for the same reasons discussed above, but is also immensely helpful to the district court in rendering its decisions in bankruptcy cases.

As to the other factors – delay and cost to the parties and prevention of forum shopping – the Court finds that additional delay and costs would not result from the bankruptcy court retaining this matter. To the contrary, delay would result from the proceedings being immediately transferred to the district court, since the Court would need to catch up on over six years of litigation in this case. The Court therefore finds it preferable for the bankruptcy court to continue handling pretrial matters. In the event that this case reaches trial, the issues of fact and law will be significantly narrowed and this Court will be well-equipped to oversee the case at that time. Finally, the forum shopping factor is neutral here: there is neither evidence of forum shopping nor allegations of such.

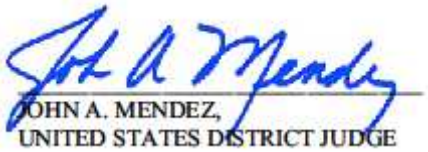
For these reasons, the Court declines to exercise its discretionary authority to withdraw the reference.

## III. ORDER

For the reasons set forth above, the Court DENIES the motion to withdraw reference.

IT IS SO ORDERED.

Dated: February 3, 2016



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE