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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE GRACE MILES,
Debtor.

Case No: C 10-0940 SBA

**ORDER DENYING MOTION TO
FOR WITHDRAWAL OF
REFERENCE**

This matter is presently before the Court on the pro se Amended Motion to Withdraw the Reference filed by Debtor, Grace Miles (“Miles”) on February 11, 2010. (Docket 1-1). Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES the motion as untimely. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b).

I. BACKGROUND

On February 20, 2009, Miles filed a voluntary petition under Chapter 7 in the United States Bankruptcy Court for the Northern District of California (“Bankruptcy Proceeding”).¹ In re Grace Miles, No. 09-30419 TEC (Bankr. N.D. Cal. February 20, 2009). Almost a year after commencing the Bankruptcy Proceeding, Miles filed the instant motion to withdraw the case from the bankruptcy court to have the matter transferred to this

¹ “A Chapter 7 bankruptcy discharge releases the debtor from personal liability for her pre-bankruptcy debts.” In re Ybarra, 424 F.3d 1018, 1022 (9th Cir. 2005).

1 Court. She presents three grounds for the proposed withdrawal of reference: (1) the
2 bankruptcy matter involves property that is the subject of unlawful detainer proceedings;
3 (2) the bankruptcy proceeding involves a “personal injury” action which involves an “out
4 of state illegal video & audio, etc., of Miles while she was drugged, violated and
5 assaulted”; and (3) the judge assigned to her bankruptcy case, the Honorable Thomas E.
6 Carlson, was a defendant in a lawsuit previously filed in this Court. (Mot. at 1-2.)

7 Miles provides little, if any, factual information in support of her motion. However,
8 a review of the docket in the Bankruptcy Proceeding provides insight into Miles’ argument.
9 See Fed.R.Evid. 201; Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (“A
10 court may take judicial notice of matters of public record.”) (internal quotation marks
11 omitted). Records from the Bankruptcy Proceeding show that Tischau Partners (“Tischau”)
12 filed an unlawful detainer action against Miles in November 2009 in San Mateo County
13 Superior Court, based on her alleged failure to pay rent on an apartment leased to her by
14 Tischau. BR Docket 53 ¶ 7.² On January 27, 2010, Tischau filed a motion for relief from
15 the automatic stay, which Judge Carlson granted on February 10, 2010. BR Docket 70.

16 The personal injury action referenced by Miles pertains to a civil lawsuit initiated by
17 Miles in November 2004 in the San Mateo County Superior Court of California against her
18 former employer A.G. Edwards & Sons, Inc. (“A.G. Edwards”) and Royce Lee Makishima
19 (“Makashima”), her supervisor at A.G. Edwards. BR Docket 30 at 1. The complaint
20 alleged twenty causes of action, ranging from trespass to sexual harassment. Id. at 2.
21 Specifically, Miles alleged that defendants gradually drugged her food and liquids at home
22 and at work and sexually assaulted her while she was in a drug-induced state. BR Docket
23 31 Ex. A. The trial court entered judgment for defendants on July 28, 2008. BR Docket 30
24 at 2. Miles’ appeal remains pending. Id.

25 In the meantime, on September 10, 2008, Miles filed a new complaint in this Court
26 against Makishima, A.G. Edwards, Morgan Lewis (defendants’ attorneys) and various

27 ² “BR Docket” refers to docket entries in the bankruptcy court Case No. 09-30419
28 TC.

1 government and court staff, including Judge Carlson. Miles v. Makishima, et. al., No. 08-
2 04275 JSW (N.D. Cal. filed Sept. 10, 2008). The complaint alleged many of the same
3 claims as the earlier state court action, as well as additional allegations of collusion
4 between Judge Carlson, A.G. Edwards and Makishima. Compl. at 1-6, Miles v.
5 Makishima, et. al., No. 08-04275 JSW (N.D. Cal. filed Sept. 10, 2008). The Court
6 dismissed the Complaint on July 30, 2009.

7 **II. DISCUSSION**

8 Federal courts have original jurisdiction over civil proceedings arising in or related
9 to bankruptcy cases. 28 U.S.C. § 1334(a); In re McGhan, 288 F.3d 1172, 1179 (9th Cir.
10 2002). The district court may refer such matters to a bankruptcy judge. 28 U.S.C.
11 § 157(a); see also N.D. Cal. B.L.R. 5011-1(a) (referring bankruptcy cases under Title II and
12 civil proceedings arising thereunder to the bankruptcy court). However, a reference to the
13 bankruptcy court may be subject to a permissive or mandatory withdrawal, depending on
14 the circumstances presented. See 28 U.S.C. § 157(d).

15 A court may consider a motion for withdrawal of reference only if it is timely. Id.
16 “A motion to withdraw is timely if it was made as promptly as possible in light of the
17 developments in the bankruptcy proceeding.” Sec. Farms v. Int’l Broth. of Teamsters,
18 Chauffers, Warehousemen & Helpers, 124 F.3d 999, 1007 n.3 (9th Cir. 1997) (internal
19 quotation marks omitted). “Courts have found a motion to withdraw the reference untimely
20 when a significant amount of time has passed since the moving party had notice of the
21 grounds for withdrawing the reference or where withdrawal would have an adverse effect
22 on judicial economy.” Hupp v. Educ. Credit Mgt. Corp., 2007 WL 2703151 at *3 (Sept.
23 13, 2007) (denying motion to withdraw as untimely where plaintiff had filed complaint in
24 bankruptcy court fifteen months earlier); Laine v. Gross, 128 B.R. 588, 589 (D. Me. 1991)
25 (holding that motion to withdraw the reference was untimely when filed six months after
26 complaint as no new grounds for withdrawal were present).

27 In the instant case, Miles commenced her Chapter 7 action on February 20, 2009.
28 Yet, she waited for close to a year before she filed the instant motion to withdraw on

1 February 11, 2010. Miles has made no showing, nor is any apparent from the record, that
2 changed circumstances justify her belated motion to withdraw. The state court lawsuit
3 involving A.G. Edwards was filed in 2004 and concluded on July 28, 2008. The
4 subsequent federal action brought by Miles against Judge Carlson for allegedly conspiring
5 with A.G. Edwards and other involved in the prior state court lawsuit was filed in
6 September 2008 and resolved in July 2009. Finally, the unlawful detainer action was filed
7 by Tischau on November 19, 2009. It is thus evident from the record that Miles was well
8 aware of each of the purported grounds for the withdrawal well before she filed her motion
9 to withdraw. Likewise, withdrawing the reference at this juncture, after extensive
10 proceedings already have taken place, would likely have an adverse on judicial economy
11 and the administration of justice.

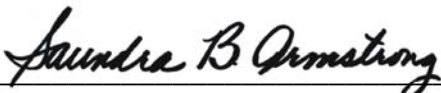
12 **III. CONCLUSION**

13 For the reasons stated above,

14 IT IS HEREBY ORDERED THAT the Motion to Withdraw the Reference is
15 DENIED. The Case Management Conference scheduled for September 23, 2010 is
16 VACATED. The Clerk shall close the file and terminate any pending matters.

17 IT IS SO ORDERED.

18 Dated: September 17, 2010

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20 SAUNDRA BROWN ARMSTRONG
21 United States District Judge
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