

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 10-cv-00229-REB

In re: ARCHANGEL DIAMOND CORPORATION,

Debtor.

ARCHANGEL DIAMOND CORPORATION,

Plaintiff,

v.

OAO Lukoil,

Defendant.

Bankruptcy Case No. 09-22621-HRT
Adversary Case No. 09-1755-HRT

ORDER DENYING MOTION TO WITHDRAW REFERENCE

Blackburn, J.

This matter is before me on **Plaintiff Archangel Diamond Corporation's Motion for Withdrawal of Reference To Bankruptcy Court** [#1]¹ filed February 3, 2010. The defendant filed a response [#2], and the plaintiff filed a reply [#3]. I deny the motion.

The plaintiff-debtor, Archangel Diamond Corporation, has a long-standing dispute with the defendant, OAO Lukoil. That dispute is the subject of a lawsuit originally filed in state court by Archangel Diamond. After Archangel Diamond filed bankruptcy, Archangel Diamond removed the state court case to the bankruptcy court as a matter related to the bankruptcy case, as permitted under 28 U.S.C. § 1452. Archangel Diamond's case against OAO Lukoil includes claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 - 1968, and includes a demand for a jury trial. After Archangel Diamond removed

¹ "[#1]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

the state court case to the bankruptcy court, OAO Lukoil filed a motion for remand and abstention in the bankruptcy court. The motion seeks remand of the case to the state court based on the equitable factors applicable under 28 U.S.C. § 1452(b) and discretionary remand under 28 U.S.C. § 1334(c)(1).

In its present motion, Archangel Diamond asks that I withdraw the reference to the bankruptcy court of Archangel Diamond's lawsuit against OAO Lukoil, including OAO Lukoil's pending motion for remand and abstention. Under **28 U.S.C. § 157(d)**, a district court may withdraw the reference of a case to the Bankruptcy Court for cause shown. The first sentence of **§ 157(d)** provides for permissive withdrawal of the reference. Withdrawal of the reference is mandatory if, on timely motion of a party, the district 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)**.

Archangel Diamond notes that if its case against OAO Lukoil is heard in federal court, then the case must be heard in the district court because the bankruptcy court may not conduct a jury trial. Archangel Diamond asks that I withdraw the reference to the bankruptcy court now and resolve in this court OAO Lukoil's pending motion for remand and abstention. Archangel Diamond argues, in essence, that there is no reason for the bankruptcy court to decide OAO Lukoil's motion for remand and abstention when the trial of the underlying case must be conducted in the district court.

I conclude that it is appropriate for the bankruptcy court to decide OAO Lukoil's motion for remand and abstention. The statutes on which OAO Lukoil's motion for remand is based, 28 U.S.C. § 1452(b) and 28 U.S.C. § 1334(c)(1), concern removal and jurisdiction in the context of bankruptcy law. In this context, it is not mandatory that I withdraw the reference of the motion for remand and abstention under 28 U.S.C. § 157. Of course, if the bankruptcy court denies the motion for remand and abstention, then I must withdraw the reference to the bankruptcy court of Archangel Diamond's lawsuit against OAO Lukoil because that suit includes a demand for a jury

trial by Archangel Diamond.

THEREFORE, IT IS ORDERED


1. That **Plaintiff Archangel Diamond Corporation's Motion for Withdrawal of Reference To Bankruptcy Court** [#1] filed February 3, 2010, is **DENIED** to the extent Archangel Diamond seeks withdrawal of the reference to the bankruptcy court of OAO Lukoil's motion for remand and abstention, which currently is pending in the bankruptcy court;

2. That **Plaintiff Archangel Diamond Corporation's Motion for Withdrawal of Reference To Bankruptcy Court** [#1] filed February 3, 2010, is **DENIED** without prejudice to the extent Archangel Diamond seeks withdrawal of the reference to the bankruptcy court of Archangel Diamond's lawsuit against OAO Lukoil, which case currently is pending before the bankruptcy court; and

3. That if the bankruptcy court denies OAO Lukoil's motion for remand and abstention, then Archangel Diamond may renew its motion for withdrawal of reference concerning Archangel Diamond's pending lawsuit against OAO Lukoil.

Dated July 7, 2010, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge