

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger**

Civil Action No. 14-cv-03072-MSK

In re: VALLEY MORTGAGE, INC.

Debtor.

VMI LIQUIDATING TRUST DATED DECEMBER 16, 2011,

Plaintiff,

v.

COSTELLO IRA, LLC,

Defendant.

**ORDER DENYING MOTION TO WITHDRAW THE REFERENCE
AND REQUEST FOR TRIAL BY JURY**

THIS MATTER comes before the Court on the Defendant Costello IRA, LLC's Motion to Withdraw the Reference and Request for Trial by Jury (#2). The Plaintiff VMI Liquidating Trust Dated December 16, 2011 ("VMI") filed a Response (#4), objecting to withdrawal.

The motion to withdraw arises from an adversary proceeding pending in the United States Bankruptcy Court for the District of Colorado, No. 12-01269-SBB, in which the Plaintiff asserts claims of fraudulent transfer. The grounds for withdrawal are that the Defendant is entitled to a jury trial. The Defendant promptly demanded a jury trial, but did not request that this Court withdraw the reference to facilitate a jury trial for two years after its demand. The Plaintiff contends that the Defendant no longer has a right to a jury trial and has filed a motion before the Bankruptcy Court seeking to strike the Defendant's demand.

Under 28 U.S.C. § 157(d), a this Court may withdraw, in whole or in part, any case or proceeding automatically referred to the Bankruptcy Court, "for cause shown." However, the

Court finds that because the motion to strike remains pending before the Bankruptcy Court, it cannot yet ascertain whether there is any cause for withdrawal. If the motion is granted, the premise upon which the Defendant bases its Motion to Withdraw will cease to exist.

Accordingly, the Motion to Withdraw Reference and Request for Trial by Jury (#2) is **DENIED** with leave to renew should the Bankruptcy Court deny the Plaintiff's motion to strike. This matter shall be closed, but may be reopened to renew the motion.

Dated this 8th day of January, 2015.

BY THE COURT:



Marcia S. Krieger
Chief United States District Judge