

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<i>In re</i> GLC LIMITED,	:	Case No. 1:15-cv-26
	:	
Debtor.	:	Judge Timothy S. Black
	:	
GLC LIMITED,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
BARRY SWITZER FAMILY, LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER GRANTING DEFENDANTS’ MOTION**

**TO WITHDRAW THE REFERENCE TO THE BANKRUPTCY COURT (Doc. 1)**

This civil action is before the Court on Defendants’ Motion to Withdraw the Reference. (Doc. 1). Plaintiff did not file an opposition and the matter is now ripe for decision.

On February 19, 2013, Plaintiff GLC Limited, a chapter 11 debtor, commenced an adversary proceeding in the U.S. Bankruptcy Court for the Southern District of Ohio against Defendants Barry Switzer Family, LLC and Barry Switzer.<sup>1</sup> Plaintiff sought to avoid \$100,000 in payments to Defendants as allegedly fraudulent transfers pursuant to 11 U.S.C. § 548(a)(1). Defendants asserted an affirmative defense under § 548(c) and demanded a jury trial, but did not file a claim against the bankruptcy estate.

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<sup>1</sup> Plaintiff’s bankruptcy proceeding is case number 1:11-bk-11090 and the adversary proceeding is case number 1:13-ap-1017.

After the completion of discovery, the parties filed cross motions for summary judgment. Plaintiff argued that the payments were fraudulent transfers under both the actual fraud and constructive fraud standards in § 548(a)(1)(A) and § 548(a)(1)(B). Defendants contended that they were entitled to an affirmative defense under § 548(c) because the payments were made in good faith and for reasonably equivalent value. On November 18, 2014, the Bankruptcy Court issued an ordering granting partial summary judgment to Plaintiff under the actual fraud standard in § 548(a)(1)(A). The Bankruptcy Court also concluded that factual disputes precluded summary judgment for Defendants on their affirmative defense and for Plaintiff on claim for a constructively fraudulent transfer under § 548(a)(1)(B). Accordingly, the Bankruptcy Court ordered the case to proceed to trial on Defendants' § 548(c) defense and Plaintiff's § 548(a)(1)(B) claim, if it chose to pursue it.

Defendants subsequently filed a notice of election for a jury trial in the District Court. On December 16, 2014, the Bankruptcy Court issued an order concluding that it did not possess the constitutional authority to enter a final judgment in this fraudulent transfer action because Defendants had not filed a claim against the bankruptcy estate. Further, the Bankruptcy Court found that Defendants were entitled to a jury trial, but that it was unable to conduct a jury trial because Defendants did not consent to a jury trial in the Bankruptcy Court. Accordingly, the Bankruptcy Court advised Defendants to file a motion to withdraw the reference with the District Court if they wished to preserve their right to a jury trial. Defendants timely filed their Motion to Withdraw the Reference on December 19, 2014. (Doc. 1).

Pursuant to 28 U.S.C. § 157(d), “[t]he district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.” “Where the party seeking withdrawal of the reference is entitled to a jury trial under the Seventh Amendment, cause to withdraw the reference automatically exists.” *In re Oasis Corp.*, No. 2:08-cv-288, 2008 WL 2473496, at \*2 (S.D. Ohio June 18, 2008). Withdrawal of the reference is particularly appropriate when, as here, the Bankruptcy Court has resolved all pretrial matters and the case is ripe for trial. *In re Oakley*, No. 2:06-cv-556, 2007 WL 710244, at \*3 (S.D. Ohio Mar. 6, 2007). The Supreme Court has conclusively held that a defendant who has not submitted a claim against the bankruptcy estate and is sued by the estate for an allegedly fraudulent transfer under § 548 has a Seventh Amendment right to a jury trial. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-61 (1989).

Accordingly, Defendants’ Motion to Withdraw the Reference (Doc. 1) is **GRANTED**. The reference to the Bankruptcy Court in case number 1:13-ap-1017 is hereby **WITHDRAWN** in whole and transferred to this Court for further proceedings.

This case is set for a status conference by telephone on 2/4/2015 at 11:00 a.m. Counsel are advised to have their calendars available in order to set a trial date. COUNSEL SHALL CALL: 1-888-684-8852; Access code: 8411435; Security code: 123456, and wait for the Court to join the conference.

**IT IS SO ORDERED.**

Date: 1/21/15

/s/ Timothy S. Black  
Timothy S. Black  
United States District Judge