IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

TWIN CITY FIRE INSRUANCE COMPANY, Plaintiff, vs. THOMAS SPRY, THOMAS PAIGE INTERNATIONAL, DEBORAH ESTRIN, ABBOTT ESTRIN, and FITZGERALD ADDISION GROUP, LLC, Defendants.	)	No. 2:15-cv-01663-DCN **ORDER**
ABBOTT SIMON ESTRIN, and DEBORAH LEAH ESTRIN, Appellants, vs. TWIN CITY FIRE INSRUANCE COMPANY, Appellee.	)	No. 2:16-mc-00273-DCN

The following matter is before the court on Abbott Simon Estrin ("Mr. Estrin") and Deborah Leah Estrin's ("Ms. Estrin," together with Mr. Estrin, the "Estrins")[1] motion for leave to appeal Bankruptcy Judge David R. Duncan's (the "Bankruptcy Judge") January 22, 2016 order denying the Estrins' request for a continuance, Case No. 2:16-mc-

[1] The Estrins are defendants in the adversary proceeding referred to the bankruptcy court under Case Number 2:15-cv-1663-DCN, and self-styled "appellants" under the case number assigned to what the court construes as a motion for leave to appeal, No. 2:16-mc-00273-DCN. To avoid interjecting unnecessary confusion into an already tangled procedural web, the court simply refers to the Estrins, generally.

00273-DCN, ECF No. 1, and the Bankruptcy Judge's February 23, 2016 Report and Recommendation (the "R&R") that the court withdraw reference of all causes of action in Case No. 2:15-cv-01663-DCN (the "Primary Action") and transfer that action to the Central District of California. Case No. 2:15-cv-01663-DCN, ECF No. 96.[2] For the foregoing reasons, the court denies the Estrins' motion for leave to appeal and rejects the Bankruptcy Judge's recommendation to withdraw reference.

I. BACKGROUND[3]

On July 12, 2013, Twin City Fire Insurance Company ("Twin City") filed the Primary Action against the Estrins and defendants Thomas Spry ("Spry") and Thomas Paige International ("TPI," together with Spry, the "TPI Defendants") in the Central District of California, alleging that the Estrins had engaged in a fraudulent scheme to obtain fees for recruiting services that were never performed. According to the complaint, Ms. Estrin, who was employed by Home Serve USA Corp. f/k/a Home Service USA Corp. ("HSUSA"), funnelled candidates for employment to her husband, who would then "present" the candidates to HSUSA via TPI and Spry—TPI's chief executive officer. HSUSA would then pay TPI a recruiting fee for candidates that would not have required any recruiting fee, but for the Estrins' involvement, at which point the TPI Defendants would split their ill-gotten proceeds with the Estrins.[4] Based on these

[2] Hereinafter, all ECF Number citations refer to Case Number 2:15-cv-01663-DCN, unless otherwise stated.

[3] The facts underlying the claims in the Primary Action are not directly relevant to the issue before the court. Therefore, the court directs the parties to the facts outlined in the R&R for a more thorough discussion of such claims.

[4] Twin City insured HSUSA against employee theft. HSUSA assigned Twin City its rights against the Estrins in exchange for Twin City's payment of the insurance proceeds.

allegations, Twin City brought claims for conspiracy to commit fraud, fraud, and violation of California Business and Professions Code 17200, et. seq. Notably, the TPI Defendants were California residents at all times relevant to the Primary Action.

The TPI Defendants filed an answer with a jury demand on September 30, 2013. ECF No. 8. The Estrins, however, never answered the complaint. Instead, the Estrins filed a motion to dismiss the Primary Action for lack of jurisdiction. ECF No. 15. This motion was denied on April 8, 2014. ECF No. 41. In the meantime, the court scheduled the Primary Action for a "jury trial" on September 9, 2014. ECF No. 24. Twin City filed an amended complaint on August 14, 2014 to add Fitzgerald Addison Group, LLC ("Fitzgerald Allison") as a defendant. ECF No. 51. Again, the Estrins failed to file an answer. Twin City reached a settlement with the TPI Defendants on January 29, 2015. Fitzgerald Allison was placed in default on February 20, 2015. ECF No. 60.

Sometime in 2014, the Estrins moved from Florida to South Carolina, and on August 25, 2014, the Estrins filed for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court of the District of South Carolina (the "Bankruptcy Court"). Case No. 14-br-04795-dd. Twin City filed an adversary proceeding in the Bankruptcy Court on March 6, 2015 (the "Adversary Proceeding"), alleging that the Estrins' debts to Twin City were not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). Case No. 15-br-80039-dd.[5] The Estrins filed an answer in the Adversary Proceeding on April 1, 2015. Adversary Proceeding ECF No. 5. On March 13, 2015, Twin City moved to transfer the Primary Action to this court. The

[5] Hereinafter, "Adversary Proceeding ECF No." will be used to cite to the Adversary Proceeding docket.

Central District of California granted this motion, reasoning that: (1) the Estrins' liability in the Primary Action may have a significant impact on the estate, (2) there is "significant overlap" between the determination of the Estrins' liability in the Primary Action and "the determination whether the claim in the [b]ankruptcy [c]ase is dischargeable," and (3) transfer would most convenient for the parties. ECF No. 70 at 3.

On May 26, 2015, this court entered an order referring the Primary Action to the Bankruptcy Court. ECF No. 89. On September 18, 2015, the Estrins informed the court that they had moved yet again—this time, to New Orleans, Louisiana. ECF No. 95. On November 18, 2015, the Bankruptcy Court set a January 28, 2016 trial date in the Adversary Proceeding. Adversary Proceeding ECF No. 60. On December 29, 2015, the Estrins filed a motion for a jury trial. Adversary Proceeding ECF No. 63. The Bankruptcy Court, relying on Twin City's counsel's representation at a pretrial conference that the only issue to be tried was the dischargability of the debt, R&R at 4, denied the Estrins' motion for a jury trial, holding that "[n]o right to a jury trial exists for nondischargeability proceedings." Adversary Proceeding ECF No. 65.

Shortly before trial, on January 6, 2016, the Estrins requested a continuance of 120 days, stating that Mr. Estrin was too ill to travel and participate in the trial. Adversary Proceeding ECF No. 70. The Bankruptcy Court denied this request on the grounds that the Estrins' motion was untimely, lacking in evidentiary support, and appeared to be part of a pattern of conduct designed to delay the Adversary Proceeding. Adversary Proceeding ECF No. 75. The Estrins appealed the Bankruptcy Court's denial of their motion for a continuance—without first moving for leave to appeal—and requested a stay of the Adversary Proceeding pending the appeal. Trial commenced on

January 28, 2016. The Estrins did not appear. The same day, the Bankruptcy Court issued an order denying the Estrins' request to stay the proceedings pending appeal. Adversary Proceeding ECF No. 80. The Bankruptcy Court later entered an order finding that the Estrins' debts to Twin City are not dischargeable. Adversary Proceeding ECF No. 86.

The remaining issues in the Adversary Proceeding are the "amount of the debt owed by the Estrins to [Twin City] and all three causes of action in the [Primary Action]." R&R at 5. On February 23, 2016, the Bankruptcy Court issued its R&R, recommending that the court withdraw reference of the Primary Action. Id. at 8. The Bankruptcy Court reasoned that it could not resolve the remaining issues in the Adversary Proceeding because the Estrins had not waived their right to a jury trial or consented to allow the Bankruptcy Court to conduct a jury trial on the claims in the Primary Action. R&R at 7. On March 8, 2016, Twin City filed a limited objection to the R&R, arguing that the Estrins waived their right to a jury trial on the remaining issues before the court, and therefore, there is no reason for the Bankruptcy Court not to address all remaining factual issues in the Adversary Proceeding. ECF No. 96-10. On March 21, 2016, the Estrins filed their own limited objection, arguing that they did not waive their right to a jury trial, and the case should be referred to the United States District Court in the Eastern District of Louisiana. ECF No. 96-12. The Estrins also filed a response to Twin City's objection, again arguing that they did not waive their right to a jury trial in the Primary Action. ECF No. 96-13. On March 28, 2016, the Bankruptcy Court issued a Supplemental Report and Recommendation ("Supplemental R&R"), in which it found that "there remains a question regarding whether [the Estrins] are entitled to a jury trial

on the issues still remaining to be tried,"[6] but added that, if the Estrins "have in fact waived their right to jury trial, this Court can hear the remaining issues in the [Primary Action] and can make proposed findings of fact and conclusions of law for the District Court's consideration." ECF No. 98, Supplemental R&R at 3. The Estrins filed an objection to the Supplemental R&R on May 31, 2016. ECF No. 101. The matters are now ripe for the court's review.

II. DISCUSSION

When the procedural complexities of this case are disentangled, the issues presented are rather simple: (1) must the court reverse the Bankruptcy Court's denial of the Estrins' motion for a continuance? (2) did the Estrins waive their right to a jury trial with respect to Twin City's claims in the Primary Action? and (3) should the court withdraw reference of the remaining issues in the Adversary Proceeding, and if so, should the court transfer this action to another district? The court addresses each issue in turn.

A. Appeal of Bankruptcy Court's Ruling on Motion for Continuance

As to the first issue, the court finds no reason to disturb the decision of the Bankruptcy Court. The Estrins filed their notice of appeal on January 28, 2016, Case No. 2:16-nc-0273, ECF No. 1, six days after the Bankruptcy Court denied their request for a continuance. As the Bankruptcy Court's order was plainly interlocutory, the Estrins were required to seek leave of the district court prior to filing their appeal. 28 U.S.C. § 158(a)(3) ("The district courts of the United States shall have jurisdiction to hear

[6] This appears to represent a departure from the Bankruptcy Court's previous position set forth in the R&R.

appeals . . . with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title."). Though the Estrins did not seek leave to appeal the Bankruptcy Court's decision, they did file an otherwise timely notice of appeal. In such circumstances, Federal Rule of Bankruptcy Procedrue 8003(c) "requires the district court to . . . (1) grant leave to appeal, (2) order the party to file a motion for leave to appeal, or (3) deny leave to appeal after considering the notice of appeal as a motion for leave to appeal." Cathcart v. Campbell, No. 2:10-2534, 2010 WL 4622462, at *1 (D.S.C. Oct. 12, 2010) (quoting In re Poor, 2008 WL 3925268 at *2 (W.D.N.C. Aug. 21, 2008)), report and recommendation approved, 2010 WL 4622457 (D.S.C. Nov. 3, 2010).

When evaluating a motion for leave to appeal under 28 U.S.C. § 158(a)(3), district courts in the Fourth Circuit employ the same basic analysis used to evaluate a motion for leave to appeal under 28 U.S.C. § 1292(b). In re Mastercraft Interiors, Ltd., 2009 WL 2223740, at *1 (D. Md. July 22, 2009). Under this standard the district court "should grant leave to appeal if '(1) the order involves a controlling question of law, (2) to which there is a substantial ground for difference of opinion; and (3) immediate appeal would materially advance the termination of the litigation.'" Id. (quoting Atlantic Textile Group, Inc. v. Neal, 191 B.R. 652, 653 (E.D. Va. 1996)). The Estrins' request for a continuance most certainly did not involve a "controlling question of law." Consequently, it cannot have involved a "controlling question to law to which there is a substantial ground for difference of opinion." Id. (emphasis added). The court also fails to see how it resolving the issue would have "materially advanced" the litigation.

Therefore, the court finds that the Estrins' notice of appeal, which the court construes as a motion for leave to appeal, must be denied.

Even if the appeal were properly before the court, the court would affirm the Bankruptcy Court's decision. In its order denying the requested continuance, the Bankruptcy Court correctly observed that such matters are committed to "'the trial court's discretion.'" In re Wilson, 2015 WL 1929711, at *2 (Bankr. D.S.C. Apr. 27, 2015) (internal alteration omitted) (quoting Berry v. Gutierrez, 587 F. Supp. 2d 717, 722 (E.D. Va. 2008)). A trial court abuses its discretion when it "den[ies] a continuance on the basis of an 'unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay.'" United States v. Garrison, 612 F. App'x 655, 656 (4th Cir. 2015) (quoting Morris v. Slappy, 461 U.S. 1, 11–12 (1983)). Here, the Bankruptcy Court carefully explained the reasoning behind its decision. It noted that the Estrins had failed to explain why Mr. Estrin had been able to participate in earlier stages of the litigation,[7] but now needed a continuance, as there was no indication that his condition had worsened. Adversary Proceeding ECF No. 75 at 2. The court also noted that the Estrins had previously engaged in attempts to delay the proceedings. Id. Moreover, even if the Bankruptcy Court had believed the Estrins' claim that Mr. Estrin's health had deteriorated, the record contains no suggestion that a continuance would have provided any benefit, as the Estrins indicate that Mr. Estrin's health problems are "chronic" and his age has caused such conditions to worsen. Case No. 2:16-mc-0273-DCN, ECF No. 1 at

[7] The Estrins argue that the Bankruptcy Court was incorrect in asserting that Mr. Estrin participated in a pretrial hearing on November 17, 2015. Case No. 2:16-mc-0273-DCN, ECF No. 1 at 1. Even assuming this is true, the court finds that the Bankruptcy Court's error on this point was so minor that it does not warrant disrupting the Bankruptcy Court's decision.

1. Therefore, the court concludes that, even if it were to reach the merits of Estrins' appeal, the Bankruptcy Court's order denying the Estrins' motion for a continuance should be affirmed.

B. Waiver of Right to a Jury Trial

Turning to the second issue, Twin City argues that the Estrins have waived their right to a jury trial on the claims in the Primary Action because they have failed to properly demand a jury trial pursuant to Federal Rule of Civil Procedure 38. ECF No. 93-10. Rule 38(b) provides that "[o]n any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and (2) filing the demand in accordance with Rule 5(d)." Pursuant to Rule 38(d), "[a] party waives a jury trial unless its demand is properly served and filed." Federal Rule of Bankruptcy Procedure 9015(a) incorporates the timing and demand requirements of Federal Rule of Civil Procedure 38. Fed. R. Bankr. P. 9015 ("Rules 38, 39, 47-49, and 51, F. R. Civ. P., and Rule 81(c) F. R. Civ. P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F. R. Civ. P. shall be filed in accordance with Rule 5005."). Thus, the Estrins were required to properly serve and file a jury demand to avoid waiving their right to a jury trial.

The Estrins have not done so.[8] Concededly, this issue is complicated by the fact that the Estrins have never filed <u>any</u> pleading directly in reference to the Primary Action

[8] The Estrins primary argument on this issue is that they did, in fact, make a jury demand in the Primary Action. Their evidence for this claim is the fact that the U.S. District Court for the Central District of California set a date for a "jury trial" during a February 24, 2014 hearing in the Primary Action. Of course, Rule 38 requires a party to <u>file</u> its jury demand, so even if the District Court for the Central District of California did

when it was filed. Instead, they somehow avoided filing any pleading in the Primary Action before it was transferred to this court on April 17, 2015 and referred to the Bankruptcy Court on May 26, 2015. The Estrins did file an answer in the Adversarial Proceeding on April 1, 2015, Adversarial Proceeding ECF No. 5, but this occurred before the Primary Action was referred to the Bankruptcy Court and consolidated into the Adversarial Proceeding. Thus, it might be argued that the Estrins' time to serve and file a jury demand has never expired simply because they have never filed any pleading in reference to the Primary Action, and thus, their December 15, 2015 motion for a jury trial serves as a timely jury demand. Adversary Proceeding ECF No. 63. Indeed, some courts appear to tolerate this result, curious as it may be. In Cambridge Integrated Servs. Grp., Inc. v. Concentra Integrated Servs., Inc., for instance, the court took heed of the principle that "'courts must indulge every reasonable presumption against waiver,'" 2010 WL 4736171, at *1 (W.D. La. Nov. 16, 2010) (quoting McAfee v. Martin, 63 F.3d 436, 437 (5th Cir. 1995)), and held that where it was "undisputed that [the defendant] [] never filed an answer in response to the original Complaint, or the First and Second Supplemental and Amended Complaints," the defendant's jury demand was timely. This would suggest that, as long as a defendant does not file a responsive pleading, it preserves the ability to demand a jury trial—even if the pleading itself would be untimely.

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schedule a jury trial in response to the Estrins' request, that would not be enough to establish compliance with Rule 38. Moreover, the court thinks it is much more likely that the jury trial was scheduled because the other defendants had already demanded a jury trial. The fact that the a jury trial was scheduled at one point during the Primary Action is simply not enough to establish compliance with Rule 38. Therefore, the court need not concern itself with this argument. The important question is not whether the Estrins made a jury demand but when their time to make a jury demand expired.

However, the court in Cordius Trust v. Kummerfeld appeared to take a different view. 2006 WL 1876677, at *3 (S.D.N.Y. July 7, 2006). In Cordius Trust, the defendant failed to file any pleading in response to the plaintiff's 2003 petition for a writ of execution until 2006, at which point the defendant included a jury demand. Id. The court observed that the 2006 answer "does not reply to any recent filing by [the defendant], but instead references the original [p]etition filed in 2003." Id. Thus, the court reasoned:

> [the plaintiff] has not filed any pleading that would revive [the defendant's] right to file an answer in 2006 . . . . As a result, nothing has happened to restart the clock for the filing of a timely demand for jury trial. Therefore, [the defendant's] demand for jury trial, filed nearly three years after the last pleading of the issues is untimely.

Id. This seems a much more logical position. It would be bizarre to allow a party to preserve its right to a jury trial by failing to comply with the most basic of procedural requirements—filing a timely, responsive pleading. Nevertheless, the court will not rest its holding on this theory, as it recognizes that the plain language of Rule 38 leaves open this very possibility. Instead, the court simply wishes to point out that, if the time to serve a jury demand under Rule 38 is tied to the time to file a responsive pleading, the Estrins have most certainly waived their right to a jury trial in this case.

Instead, the court wishes to highlight a second rationale presented in Cordius Trust, where the court determined that the defendant's initial response to the petition contained the functional equivalent of an answer. Id. Though the defendant did not file any answer to the petition, it did file a motion to dismiss, which was accompanied by an affidavit "addressing in detail the assertions of fact made in the [p]etition." Id. The court recognized that, generally, "[a] motion or reply to a motion does not start the clock under Rule 38(d)." Id. at *2; see also Cambridge Integrated Services Group, 2010 WL

4736171, at *1 (concluding that "[t]he motions to dismiss and for summary judgment are not "pleadings" for the purpose of Rule 38."). Nevertheless, the court held that the affidavit accompanying the motion to dismiss functioned as an answer, noting that the affidavit's "factual presentation was unnecessary to support the accompanying motion to dismiss, which raised legal issues." Id. at *3.

The court concludes that the Estrins have provided similar pleading equivalents in this case. Like the defendants in Cordius Trust, the Estrins initial response to the complaint in the Primary Action was a motion to dismiss—specifically, a motion to dismiss for lack of personal jurisdiction and improper venue. ECF No. 14. The Estrins' basic argument in that motion was that their involvement in the alleged fraudulent scheme was not sufficiently connected to California to support the court's exercise of personal jurisdiction. While the affidavits filed alongside the motion contained some facts directed toward the jurisdictional inquiry, they also contained factual assertions that were wholly "unnecessary to support the [] motion to dismiss." Cordius Trust, 2006 WL 1876677, at *3. For instance, Mrs. Estrin's affidavit addressed the process by which positions were filled at HSUSA, her involvement in that process, and a series of statements denying very specific allegations in the complaint. ECF No. 14-1, Deborah Estrin Dec. ¶¶ 5–8. Mr. Estrin's affidavit contains similar statements. ECF No. 14-2, Abbott Estrin Dec. ¶¶ 3–7. Twin City was given an opportunity to conduct jurisdictional discovery and the motion to dismiss was denied on April 8, 2014. ECF No. 41. The parties then proceeded with the litigation until January of 2015, when the court was notified of the Estrins' South Carolina bankruptcy petition. This certainly suggests that the parties understood that the Estrins had already provided their responses to the

complaint. Thus, the affidavits filed alongside the Estrins' motion to dismiss may well have functioned as their answers to the complaint in the Primary Action.

But even if such affidavits cannot be considered "pleadings" for Rule 38 purposes, the court finds that the Estrins' answer in the Adversary Proceeding can. The Estrins filed their answer in the Adversary Proceeding on April 1, 2015. Adversary Proceeding ECF No. 5. The only reason there is a question as to whether this pleading triggered the deadline to make a jury demand under Rule 38 is the fact that it was filed before the Primary Action was referred to the Bankruptcy Court. One might argue that, because the Estrins' answer was filed before the referral, it not "directed at" any issues for which the Estrins' possessed a right to a jury trial under Rule 38. However, the first amended complaint in the Primary Action was explicitly incorporated into the complaint in the Adversary Proceeding. Adversary Proceeding ECF No. 1 ¶ 16. Moreover, the complaint in the Adversary Proceeding sought an order "[e]stablishing the indebtedness due and owing by the [d]efendants to Twin City pursuant to the causes of action alleged by Twin City in the [Primary Action], which will be transferred to this [c]ourt for final adjudication." Id. ¶ a. Thus, the complaint in the Adversary Proceeding not only sought relief which implicated the Estrins' right to a jury trial, it specifically contemplated the transfer of the Primary Action into the Adversary Proceeding. On these facts, the court is convinced that when the Estrins filed their answer in the Adversary Proceeding, they were effectively responding to the allegations in the Primary Action. This view is bolstered by the fact that the Estrins' answer actually referenced their response to the complaint in the Primary Action. Adversary Proceeding ECF No. 5 ¶ 2. Because it is clear that the parties contemplated that the claims in the Primary Action would be

transferred to the Adversary Proceeding at the time they filed their pleadings, the court is convinced that the Estrins April 1, 2015 answer was "directed at" those claims within the meaning of Rule 38. Thus, the Estrins waived their right to a jury trial on those claims by failing to make a jury demand within 14 days of filing their answer in the Adversary Proceeding.

C. Withdrawal of Reference and Transfer of Venue

Having determined that the Estrins waived their right to a jury trial, there is no reason why the Bankruptcy Court cannot resolve this matter. The court analyzes this issue under the framework of 28 U.S.C. § 157(d),[9] which provides that "[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." In determining whether "cause" for withdrawal exists, the court may weigh a number of factors: "(i) whether the proceeding is core or non-core, (ii) the uniform administration of bankruptcy proceedings, (iii) expediting the bankruptcy process and promoting judicial economy, (iv) the efficient use of debtors' and creditors' resources, (v) the reduction of forum shopping, and (vi) the preservation of the right to a jury trial." Vieira v. AGM, II, LLC, 366 B.R. 532, 538 (D.S.C. 2007).

Here, the remaining issues before the Bankruptcy Court may well be non-core proceedings,[10] but this does not require withdrawal. Id. (adopting position "that

[9] The Bankruptcy Court and the Estrins each suggest the court withdraw reference of the Primary Action and transfer the case to another district. This would require a second analysis under 28 U.S.C. § 1404(a). Because the court finds withdrawal inappropriate, it does not reach the transfer of venue issue.

[10] "[T]he distinction between what is 'core' and what is 'non-core' is far from clear." AGM, II, 366 B.R. at 539 (internal quotation marks omitted). Because the court is convinced that the remaining factors way heavily against withdrawal, the court

discretionary withdrawal of reference should be determined on a case-by-case basis by weighing all the factors presented in a particular case, including the core/non-core distinction") see also Blue Cross & Blue Shield of N.C. v. Jemsek Clinic, P.A., 506 B.R. 694, 698 (W.D.N.C. 2014) (denying motion to withdraw reference where "the core/non-core factor favors withdrawal, [but] the other factors strongly favor retention by the Bankruptcy Court."). Given the aforementioned overlap between the claims in the Primary Action and the dischargeability issue already decided by the Bankruptcy Court, allowing the Bankruptcy Court to resolve the remaining issues in the Adversary Proceeding would help to ensure uniformity and avoid inconsistent results. Concerns of judicial economy and the parties' resources also favor resolving this matter in the Bankruptcy Court, as the Bankruptcy Court is already familiar with the facts of the case and the issues presented therein. The court is also concerned that the Estrins may be engaged in some manner of forum shopping, or at least, seeking to change forums in the hopes of delaying the proceedings. In either case, such behavior weighs against withdrawal. Finally, for the reasons outlined in part II.B., the court finds that the Estrins have waived their right to a jury trial, and consequently, there is no need for the court to preserve that right. For all of these reasons, the court finds there is no reason to withdraw reference of the claims in the Primary Action from the Bankruptcy Court.

The Estrins suggest that the case should be transferred to the Eastern District of Louisiana, where they now reside. ECF No. 96-12 at 5. The Estrins once again cite Mr. Estrins medical concerns, arguing that "[r]eferring the case to any other geographic venue

declines to engage in a "core vs. non-core" analysis, and simply states that, regardless of the outcome of that analysis, it finds withdrawal to be inappropriate in this case.

is tantamount to denying Mr. Estrin the ability to fully participate in the defense of the case due to his health and inability to travel." Id. However, for the same reasons explained in the Bankruptcy Court's order denying the Estrins' motion for a continuance, the court finds that this argument is not particularly credible and is most certainly lacking in evidentiary support. See Adversary Proceeding ECF No. 75 at 2 (explaining that the Estrins' request for a continuance was inconsistent with their past participation in the proceedings and the evidentiary support provided alongside the motion was not sufficiently detailed or credible to support the Estrins' arguments). Thus, the court finds that the Estrins' desire to transfer the case to the Eastern District of Louisiana does not warrant withdrawal—or, for that matter, transfer of venue—in this case.

III. CONCLUSION

For the foregoing reasons, the court **DENIES** the Estrins' motion for leave to appeal, **REJECTS** the R&R, and returns this case to the Bankruptcy Court.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

July 25, 2017
Charleston, South Carolina