

ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
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In re: §
§
PROVIDENT ROYALTIES, LLC, et al., §
§
Debtors. §

Case No. 09-33886- HDH-11

PFM, LLC, §
§
Plaintiff, §
§
v. §
§
PROVIDENT ROYALTIES, LLC, et al. §
§
Defendants. §

Civil Action No. 3:11-CV-2238-F

Adversary No. 10-03042-HDH

REPORT AND RECOMMENDATION TO THE DISTRICT COURT

A motion to withdraw the reference of the above entitled adversary proceeding was filed on August 17, 2011. The United States Bankruptcy Court conducted a status conference concerning the Motion to Withdraw the Reference, pursuant to 11 U.S.C. § 105(d). The bankruptcy court submits the following report to the United States District Court:

1. A response to the motion has been filed. The motion is not opposed.
2. The adversary proceeding has not been stayed pending a determination of the motion to withdraw the reference. However a motion to dismiss is pending and this court informed the parties at the status conference it would not rule on the motion to dismiss pending the District Court's decision on the motion to withdraw the reference.

3. This proceeding is a core proceeding. However, the Trustee has asserted state law counterclaims sounding in tort and in contract against PFM's proof of claim. The Trustee's counterclaims are independent of PFM's claims because the Trustee seeks damages from PFM which would exceed the amount of amount of PFM's claim. As set forth in the Trustee's Motion, the United States Supreme Court recently held that Congress could not delegate to a non-Article III court the judicial power "to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." *Stern v. Marshall*, ___ U.S. ___, 131 S.Ct. 2594, 2620; 180 L.Ed. 475; 2011 U.S. Lexis 4791 (2011). The Trustee's counterclaims cannot be resolved in the process of ruling on PFM's proof of claim, and thus, the Bankruptcy Court lacks the constitutional authority to enter final Orders on the Trustee's counterclaims

4. A jury trial has not been requested.

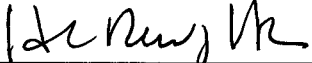
5. Pursuant to the agreement of the parties, the bankruptcy court has not entered a scheduling order.

6. Discovery has not yet commenced, and the parties are not ready for trial.

7. Based on the foregoing, the bankruptcy court recommends that the District Court grant the motion and withdraw the reference.

Dated: 10/17/11

Respectfully submitted,



United States Bankruptcy Judge

cc: Counsel