

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: NICOLETTE L. DAVIS : MISC. ACTION  
: :  
JOHN DAVIS and NICOLETTE LYNN :  
DAVIS : NO. 06-MC-123  
: :  
vs. :  
: CHAPTER 13 BANKRUPTCY  
DEUTSCHE BANK NATIONAL TRUST :  
COMPANY, and NEW CENTURY : NO. 06-11746  
MORTGAGE CORPORATION and :  
NOVASTAR HOME MORTGAGE, INC. : ADVERSARY NO. 06-287

**MEMORANDUM AND ORDER**

**JOYNER, J.**

**November 20, 2006**

This miscellaneous matter has been brought before the Court on Motion of Defendant New Century Mortgage Corporation for Withdrawal of the Reference of the Adversary Proceeding to the Bankruptcy Court Pursuant to 28 U.S.C. §157(d). For the reasons set forth in the paragraphs which follow, the motion shall be granted.

**Factual Background**

Following their filing for bankruptcy protection under Chapter 13 on April 28, 2006, Plaintiffs commenced the adversary proceeding at issue (No. 06-287) on May 30, 2006, "seeking damages, a declaration of rescission, and remedies for rescission under the federal Truth in Lending Act, 15 U.S.C. §1601, *et. seq.*, ('the TILA') and applicable state law against the original lender and the subsequent assignee, and damages for pendent state

law claims against the broker, in a predatory loan transaction.” (Complaint, ¶1). Ten months prior to initiating this adversary action in the Bankruptcy Court, Plaintiffs had commenced a nearly identical cause of action in this Court by the filing of a complaint on July 29, 2005. From all appearances, discovery in that case, docketed at Civil Action No. 05-CV-4061, had closed and the defendants had filed motions for summary judgment when the plaintiffs filed for bankruptcy and the case was placed in civil suspense as the result of the automatic stay provision of the Bankruptcy Code, 11 U.S.C. §362. Although the docket entries in Case No. 05-4061 reflect that the plaintiffs’ attorney sent a letter to the Clerk’s office requesting that the action be referred to the Bankruptcy Court pursuant to 28 U.S.C. §157(a), no further action was taken in that case as no further motions were filed. As noted, Defendant New Century Mortgage Corporation now moves to withdraw the reference of the adversary proceeding from the Bankruptcy Court and consolidate that action with Civil Action No. 05-CV-4061.

### **Discussion**

As a general rule, the district courts have exclusive and original jurisdiction of all cases and civil proceedings arising under Title 11 of the United States Code. 28 U.S.C. §1334. However, under 28 U.S.C. §157(a), “[e]ach district court may provide that any or all cases under title 11 and any or all

proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.”<sup>1</sup> Pursuant to our standing orders and local rules, the District Court for the Eastern District of Pennsylvania does just that and hence all such cases are automatically referred to the bankruptcy judges for this district. That having been said, however, 28 U.S.C. §157(d) further provides:

The 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. The district court shall, on timely motion of a party, so withdraw a proceeding if the 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.

Thus, withdrawal of the reference may be either permissive upon cause shown, or mandatory upon a showing that resolution of the proceeding requires consideration of laws other than title 11. See, In re Joshua Hill, Inc., Civ. A. No. 03-MC-246, 43 Bankr. Ct. Dec. 36, 2004 U.S. Dist. LEXIS 10075 at \*3 (E.D.Pa. May 28, 2004), citing Hatzel & Buehler, Inc. v. Central Hudson Gas & Elec. Corp., 106 B.R. 367, 370 (D.Del. 1989). Although

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<sup>1</sup> The test for determining whether a civil proceeding is “related to” bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999). Thus, “an action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” Quattrone Accountants, Inc. v. I.R.S., 895 F.2d 921, 926 (3d Cir. 1990), quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984).

there is no statutory definition of what constitutes "cause shown" under Section 157(d) for permissive withdrawal of the reference, in determining whether cause is shown, courts generally begin by considering the threshold question of whether the matters to be withdrawn are "core" or "non-core" to the bankruptcy case. In re Northwestern Institute of Psychology, Inc., 272 B.R. 104, 107 (E.D.Pa. 2001), citing, *inter alia*, In re Pelullo, No. 95-22430, 1997 U.S. Dist. LEXIS 12324 (E.D.Pa. Aug. 15, 1997).<sup>2</sup> Once done, the courts next consider "the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990); In re Northwestern, 272 B.R. at 108.

Third Circuit precedents have "held that a proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." In re Guild and Gallery Plus, Inc., 72 F.3d 1171, 1178 (3d Cir. 1996), quoting In

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<sup>2</sup> Indeed, while the provisions of 28 U.S.C. §157(b)(1) allow the bankruptcy judge to hear and determine all bankruptcy cases and all core proceedings arising in a bankruptcy case, Section 158(c)(1) prohibits a bankruptcy judge from entering a final order or judgment with respect to non-core proceedings. Valley Forge Plaza Associates v. Fireman's Fund Insurance Companies, 107 B.R. 514, 516 (E.D.Pa. 1989). Instead, the bankruptcy judge is limited to submitting proposed findings of fact and conclusions of law under Section 157(c)(1). See id. Thereafter, "...any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C. §157(c)(1).

re Marcus Hook Development Park, Inc., 943 F.2d 261, 267 (3d Cir. 1991). In addition, Section 157(b)(2) provides a non-exhaustive listing of "core" proceedings:

Core proceedings include, but are not limited to-

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against

persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims;

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

In this case, the essence of the plaintiffs' claims is their entitlement to rescission of their home mortgage loan and money damages for the defendants' alleged failure to properly identify and/or include certain charges and fees on the Truth-in-Lending Disclosure form, Itemization of Prepaid Finance Charges, Notice of Right to Cancel and the Settlement Statement which they were allegedly required under the Truth in Lending Act ("TILA"), 15 U.S.C. §1601, *et. seq.* and Pennsylvania state law to give to Plaintiffs prior to the closing of their loan. As such claims do not fall within the definitions provided under §157(b)(2), do not invoke a substantive right provided by title 11 nor can arise only in the context of a bankruptcy case, we do not find this matter to be a core proceeding. Accordingly, the bankruptcy court could, at best, submit this matter to the district court on proposed findings of fact and conclusions of law only, following which it would be incumbent upon this court to review and consider the bankruptcy court's proposal and conduct a *de novo* review of any proposed finding and/or conclusion to which an objection has been made.

We thus next consider "the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." In so doing, we reiterate that in Civil Action No. 05-4061 which essentially mirrors the instant adversary action, discovery had been completed and motions for summary judgment had been filed when we were forced to stay the proceedings due to Plaintiffs' having filed for bankruptcy relief. Given the alignment of the two causes of action, it thus appears that the plaintiffs here are now endeavoring to shop for what they apparently believe will be a more favorable forum in the bankruptcy court or for additional time to respond to and/or avoid the defendants' motion for summary judgment filed in 05-4061. Needless to say, we do not find anything economical in the plaintiffs having filed the same causes of action twice in two separate fora. We additionally find that, in so doing, the plaintiffs only engender more confusion, delay and expense for both the Courts and all of the parties concerned and only increase the risk that inconsistent judgments will result. For these reasons, we believe that our discretion in this case is properly exercised by granting the defendants' motion and withdrawing the reference of the adversary proceeding to the bankruptcy court. See Generally, In re Enviro-Scope Corp., 57 B.R. 1005, 1008 (E.D.Pa. 1985)("Accordingly, a

district court is given broad discretion in determining whether to withdraw a matter from the bankruptcy court.”).

We further note that Fed.R.Civ.P. 11 provides, in relevant part:

**(b) Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

....

**(c) Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

**(1) How initiated.**

....

**(B) On Court’s Initiative.**

On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

....

In light of the foregoing conclusions, we believe it may be appropriate to sanction the plaintiffs’ attorney here. Indeed, the plaintiffs have had the same counsel throughout all of these

proceedings and we are hard-pressed to fathom any reason for his decision to file an identical adversary proceeding nearly one year after having commenced the civil action other than to delay and cause the defendants additional expense, perhaps in the hope of increasing their incentive to settle this case. Accordingly, an appropriate order shall be entered which shall include a directive to Plaintiffs' counsel to show cause for his actions.

That order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: NICOLETTE L. DAVIS	:	MISC. ACTION
	:	
JOHN DAVIS and NICOLETTE LYNN	:	
DAVIS	:	NO. 06-MC-123
	:	
vs.	:	
	:	CHAPTER 13 BANKRUPTCY
DEUTSCHE BANK NATIONAL TRUST	:	
COMPANY, and NEW CENTURY	:	NO. 06-11746
MORTGAGE CORPORATION and	:	
NOVASTAR HOME MORTGAGE, INC.	:	ADVERSARY NO. 06-287

**ORDER**

AND NOW, this \_\_\_\_\_ day of November, 2006, upon consideration of the Motion of Defendant New Century Mortgage Corporation for Withdrawal of Reference and Plaintiffs' Response thereto, it is hereby ORDERED that the Motion is GRANTED and Reference of the Adversary Proceeding docketed at No. 06-287 is WITHDRAWN and CONSOLIDATED with Civil Action No. 05-4061 before the undersigned.

IT IS FURTHER ORDERED that Plaintiffs' Attorney, David A. Scholl, Esquire is DIRECTED to show cause, if any he has, why sanctions should not be entered against him for the commencement of the said Adversary Proceeding and for his opposition to the Motion to Withdraw Reference within twenty (20) days of the entry date of this Order.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.