

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

| | | |
|--------------------------------|---|-------------------|
| GEORGE L. MILLER, TRUSTEE | : | MISCELLANEOUS NO. |
| | : | 07-MC-00026 |
| Plaintiff | : | |
| | : | BANKRUPTCY NO. |
| v. | : | 05-26563BIF |
| | : | |
| MICHEAL L. PARKER, SR., ET AL. | : | ADVERSARY NO. |
| | : | 06-00643 |
| Defendants | : | |

MEMORANDUM

Baylson, J.

March 22, 2007

Defendants, Micheal L. Parker and Partel, Inc., filed a Motion to Withdraw the Reference of Adversary Proceeding No. 06-00643-BIF to the United States Bankruptcy Court for the Eastern District of Pennsylvania, on the grounds that they do not consent to a jury trial in the Bankruptcy Court. (Doc. No. 1). The Defendants correctly point out that, absent their consent, any jury trial must be conducted in the District Court. See 28 U.S.C. § 157(e) (“[B]ankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.”) (emphasis added). However, the fact that Defendants are entitled to a jury trial in this Court, does not mean pre-trial proceedings must be conducted in the District Court. Rather, at this stage, the decision to withdraw is discretionary: the Court may “withdraw[] the entire adversary matter, or withdraw[] only the trial portion, leaving the pre-trial and discovery matters to be handled by the bankruptcy judge.” In re Northwestern Inst. of Psychiatry, Inc. v. Travelers Indem. Co., 272 B.R. 104, 111 (E.D. Pa. 2001).

In In re Pruitt, 910 F.2d 1160 (3d Cir. 1990), the Third Circuit discussed the factors a district judge must take into consideration in deciding whether to withdraw the reference:

The district court should 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.

Id. at 1168. Courts have reached different conclusions in deciding whether withdrawal of pre-trial proceedings from the Bankruptcy Court best serves the interests of judicial economy and efficiency. Compare Northwestern Inst. of Psychiatry, 272 B.R. at 111-112 (finding it would be judicially economical to withdraw the entire reference of the adversary proceeding to the district court so that the district judge could "closely monitor [the] case and uniformly resolve all issues"); with In re Enron Corp., 295 B.R. 21, 27-28 (S.D.N.Y. 2003) ("Courts have also recognized that it serves the interests of judicial economy and efficiency to keep an action in [the] Bankruptcy Court for the resolution of pre-trial, managerial matters, even if the action will ultimately be transferred to a district court for trial."); Gucci by Armstrong v. Gucci, No. 96 Civ. 8216, 1997 WL 122838, at *1 (S.D.N.Y. Mar. 17, 1997) (declining to withdraw the reference to the bankruptcy court during the pre-trial stage because the "Court will benefit from [the] bankruptcy judge's] intimate familiarity with the related proceedings").

In this case, there are eleven defendants, and only three have filed a request for a jury trial: Micheal Parker and Partel Inc. (the movants), and a third defendant who did not seek to withdraw the case to the District Court. Three other defendants have filed proofs of claim, and therefore have submitted to the jurisdiction of the Bankruptcy Court. In light of these facts, the Court believes the interests of judicial economy and uniformity will be served most effectively by

having the Bankruptcy Judge oversee all of the pre-trial proceedings. Accordingly, the Court will deny Defendants' Motion to Withdraw without prejudice. Defendants may renew their motion after pre-trial proceedings, when the case becomes ready for trial.

An appropriate Order follows.

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

| | | |
|--------------------------------|---|-------------------|
| GEORGE L. MILLER, TRUSTEE | : | MISCELLANEOUS NO. |
| | : | 07-MC-00026 |
| Plaintiff | : | |
| | : | BANKRUPTCY NO. |
| v. | : | 05-26563BIF |
| | : | |
| MICHEAL L. PARKER, SR., ET AL. | : | ADVERSARY NO. |
| | : | 06-00643 |
| Defendants | : | |

ORDER

AND NOW, this 22nd day of March, 2007, Defendants Micheal L. Parker, Sr. and Partel, Inc., having moved for withdrawal of the reference of Adversary Proceeding No. 06-00643 to the United States Bankruptcy Court for the Eastern District of Pennsylvania (Doc. No. 1), it is hereby ORDERED that Defendants' Motion is DENIED without prejudice.

BY THE COURT:

s/Michael M. Baylson

Michael M. Baylson, U.S.D.J.