



non-dischargeable. Celebration alleges that it is an unsecured creditor of Flower, and that its unsecured claim against Flower should be found non-dischargeable because of Flower's alleged fraud and willful and malicious conduct. *See* Adversary Complaint, *In re: Todd Flower*, No. 18-11780 (Bankr. E.D. Pa. June 29, 2018). In this Court, Celebration now moves for withdrawal of reference to the adversary proceeding. In essence, Celebration is seeking to conduct its adversary proceeding in this Court, rather than bankruptcy court.<sup>2</sup> For the reasons stated below, I deny Celebration's motion to withdraw the reference in part and grant it in part.

Under 28 U.S.C. § 157(d), a district court's withdrawal of reference may be either mandatory or discretionary. A district court may, at its discretion, "withdraw, in whole or in part, any case or proceeding referred under this section [to the Bankruptcy Court], on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d). In considering whether to exercise its discretion to withdraw reference, a district court first looks to whether the claim is a core or non-core bankruptcy proceeding. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993). A claim is core "if (1) it invokes a substantive right provided by title 11 or (2) if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *In re Exide Technologies*, 544 F.3d 196, 206 (3d Cir. 2008) (internal citations and quotations omitted).

Although one of Celebration's adversary proceeding claims—its request to find the debt owed by Flower to Celebration non-dischargeable—is a core bankruptcy proceeding, Celebration's adversary proceeding also asks the court to determine the threshold questions of whether Flower committed fraud or inflicted willful and malicious injury. With respect to the allegation that Flower committed fraud, Celebration refers to Arizona state law. *See* Adversary

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<sup>2</sup> Pursuant to 28 U.S.C. § 157(a) and the corresponding Standing Order adopted by this court, bankruptcy cases and proceedings in this district are automatically referred to the Bankruptcy Court for the Eastern District of Pennsylvania. However, 28 U.S.C. § 157(d) provides a mechanism by which a party can move to have the automatic referral to bankruptcy court "withdrawn," and to ask to have all or part of a case or proceeding heard in district court rather than bankruptcy court. *See generally* 1 Norton Bankr. L. & Prac. 3d § 4:59.

Complaint at 7, *In re: Todd Flower*, No. 18-11780 (Bankr. E.D. Pa. June 29, 2018). Indeed, Celebration's adversary proceeding essentially raises the same exact allegations and claims as its pending suit against Flower in Arizona state court. These state law claims do not invoke any substantive right under Title 11, but rather are state law claims. Additionally, because these claims are identical to the claims made by Celebration against Flower in the pending Arizona state court litigation, they plainly are not limited to the context of a bankruptcy case. Therefore, I will grant Celebration's motion in part, and withdraw the reference only as to Celebration's claims that Flower committed fraud and inflicted willful and malicious injury upon Celebration. The claim that the debt owed by Flower to Celebration is non-dischargeable remains referred to the Bankruptcy Court.

## ORDER

AND NOW, this \_\_26<sup>TH</sup>\_\_ day of September, 2018, it is **ORDERED** that Plaintiff's Motion for Withdrawal of Reference (ECF No. 1) is **DENIED** in part and **GRANTED** in part. The motion is **GRANTED** with respect to Plaintiff's request for such other and further relief as this Court deems just and proper. The motion is **DENIED** with respect to Plaintiff's requests to determine that the damages are non-dischargeable and to enter judgment against Defendant and award damages to Plaintiff. It is further **ORDERED** that:

- Defendant must file his objection to Plaintiff's demand for a jury trial **on or before October 8, 2018**. Plaintiff must respond to the objection **on or before October 17, 2018**.
- All fact discovery must be completed by **December 12, 2018**.

s/Anita B. Brody

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ANITA B. BRODY, J.

Copies **VIA ECF** on 9/26/2018