

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

SUPERIOR PRECAST, INC, : MISC. ACTION  
v. :  
BUCKLEY & CO., et al. : NO. 97-218

**MEMORANDUM AND ORDER**

BECHTLE, J.

FEBRUARY 18, 1998

Presently before the court is Superior Precast, Inc.'s ("Superior") motion to withdraw the reference of an adversary proceeding in a bankruptcy case and defendants Cornell & Company, Inc. (the "Debtor") and Buckley & Company, Inc./Cornell & Company, Inc.'s (the "Joint Venture")(collectively, "Defendants") response thereto. For the reasons set forth below, the court will deny Superior's motion to withdraw.

**I. BACKGROUND**

Superior, a manufacturer of precast concrete products, filed this motion to withdraw the reference of an adversary proceeding in a bankruptcy case.<sup>1</sup> Defendants are Debtor and the Joint Venture. Debtor and Buckley and Company, Inc. ("Buckley") are the two entities which comprise the Joint Venture. thus,

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1. The District Court has original and exclusive jurisdiction over all cases arising under Title 11 of the Bankruptcy Act. 28 U.S.C. § 1334. These bankruptcy cases are automatically referred by a district court to a bankruptcy court. 28 U.S.C. § 157(a). In the instant motion, Superior moves the court to withdraw that reference.

Debtor is represented here in two capacities, individually and as one half of the Joint Venture.

The Joint Venture was hired by the Southeastern Pennsylvania Transportation Authority ("SEPTA") as the general contractor in a project to restore a section of SEPTA's rail line. On March 1, 1995, The Joint Venture and Superior entered into a materials supply contract for the project. On December 2, 1996, the Debtor filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code. On June 10, 1997, Superior filed a proof of claim in the Debtor's bankruptcy case seeking \$768,374.00 for debts Superior claims are outstanding from the Joint Venture. On September 5, 1997, the Joint Venture initiated an Adversary Proceeding in the bankruptcy case by filing an objection to the proof of claim and counterclaim for breach of contract against Superior. In response, Superior filed a motion to dismiss the objection for lack of standing and a counterclaim. Following hearings and briefings on the issue of standing, the bankruptcy court entered an order regarding the motion to dismiss. Pursuant to that order, the Joint Venture joined the Debtor as a party to the counterclaim which, the bankruptcy court reasoned, would resolve the standing issue. On October 31, 1997, Superior filed its Answer with counterclaims and affirmative defenses. In that Answer, Superior asserted the affirmative defense that the Defendants' pleadings failed to name the proper parties under Federal Rule of Bankruptcy Procedure 7017(a). On

November 13, 1997, Superior filed the instant motion to withdraw the reference.

For the reasons set forth below, the court will deny Superior's motion to withdraw.

## **II. DISCUSSION**

Superior has filed this motion to withdraw the reference of an adversary proceeding in the Debtor's bankruptcy case. A District Court may withdraw an adversary proceeding from the bankruptcy court "on timely motion of any party, for cause shown." 28 U.S.C. § 157(d). The term "for cause" is not defined in the Bankruptcy Code. However, the Third Circuit has articulated the statutory objectives which District Courts should observe when 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." In re Pruitt, 910 F.2d 1160, 1168 (3rd Cir. 1990)(quoting Holland America Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)). The court must first answer the threshold question of whether the matter to be withdrawn is a "core" issue. Then, the court weighs additional factors in determining whether to withdraw a reference. In this case, those factors include whether a jury trial is required, the extent of discovery, length

of trial time required and whether complex non-bankruptcy law is involved.

**A. Core Proceeding**

When an adversary proceeding is determined to be a "core" proceeding, courts are less likely to withdraw the reference. See, e.g., In re Pelullo, No. 96-MC-279, 1997 WL 535166, at \* 2 (E.D. Pa. Aug. 15, 1997)(noting that "keeping [a non-core] proceeding in the bankruptcy court wastes judicial resources because the district court must review the bankruptcy court's proposed findings of fact and conclusions de novo."). Core proceedings include "counterclaims by the [bankruptcy] estate against persons filing claims against the estate." 28 U.S.C. § 157(b)(2)(C). Superior filed a claim in the bankruptcy court against the Debtor's estate for debts incurred by the Joint Venture. In this case, the adversary proceeding was initiated by a counterclaim brought by the Joint Venture, which was amended to include the Debtor as a party. Because the claim is brought, in part, by the Debtor's estate against Superior's claim against the estate, the court finds that the counterclaim is a core proceeding. That the Joint Venture is also a party to the counterclaim does not affect the proceeding as being core. If successful, the counterclaim would reduce the amount that Superior could claim against the debtor's bankruptcy estate. Therefore, the counterclaim is part of the claims allowance and disallowance process and a core proceeding. As the counterclaim

is a core proceeding, this factor weighs against withdrawing the reference.

**B. Right to Jury Trial**

A bankruptcy court may not hold a jury trial absent the express consent of both parties. 28 U.S.C. § 157(e). Therefore, the right to a jury trial weighs in favor of withdrawing the reference. Superior states that it has the right to a jury trial because the counterclaim requests monetary damages. Because Superior is withholding its consent to a jury trial in the bankruptcy court, it argues that the reference should be withdrawn. Defendants argue that Superior's filing of a proof of claim precludes any request for a jury trial.

The Supreme Court has stated that a creditor who files a claim against a bankruptcy estate waives any right to a jury trial in a claim brought by the bankruptcy trustee to recover preferential transfers. Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990). The court ruled that any such counterclaims are part of the claims allowance or disallowance process, which is triable in equity without right to a jury. Id. at 44. In the case at hand, Superior filed a claim against the Debtor's estate in the bankruptcy case. Therefore, Superior has clearly waived any right to a jury trial regarding any claims by the Debtor's estate.

However, the matter is complicated by the fact that the counterclaim has been brought by the Joint Venture and the

Debtor. Superior argues that the counterclaim is actually a new lawsuit filed by the Joint Venture and the Debtor and is not part of the process of allowance and disallowance of the bankruptcy claim. Superior does not take into account that the counterclaim is directly related to the proof of claim. Superior's proof of claim alleged that the Debtor owed it payment under a contract Superior had with the Joint Venture. The Joint Venture and the Debtor allege in their counterclaim that Superior breached that contract. Clearly, any finding of liability for breach of contract against Superior would reduce the amount that Superior could recover under the contract against Debtor's estate. The proof of claim and the counterclaim are thus intertwined with the bankruptcy proceeding. Superior further argues that, under Pennsylvania state law, the proper party asserting the claim should be the Joint Venture. Superior concludes that the Debtor cannot assert the counterclaim alone, but instead must be joined by its co-venturer, Buckley. Even if Superior is correct in its conclusion, the result would not warrant withdrawal of the reference. Regardless of who the parties are, the counterclaim is still part of the claims allowance or disallowance process that the Court addressed in Langenkamp. The distinction Superior draws between Lagenkamp and the case at hand is that in this case there is a both a Debtor and a non-Debtor party asserting a counterclaim against a creditor's proof of claim. However, any claim against Superior, whether asserted by the Joint Venture, the Debtor or Buckley, would affect the allowance of the proof of

claim. The court will not carve out an exception to the bright line rule articulated in Langenkamp. See Billing v. Raven Greenberg, 22 F.3d 1242, 1249 ("Langenkamp seems to formulate a bright-line rule, holding that creditors who file proofs of claim against the estate are not entitled to a jury trial on matters affecting the allowance of those claims.") (citing Langenkamp, 498 U.S. at 45). Superior has filed a proof of claim, triggering "the process of allowance and disallowance of claims, and thus [submitting] itself to the bankruptcy court's equitable jurisdiction." Id. The court finds that Superior is not entitled to a jury trial on the counterclaim.

**C. Extent of Discovery, Length of Trial Time and Whether Complex Non-Bankruptcy Law Is Involved**

The extent of discovery, length of trial time and whether complex non-bankruptcy law is involved are all factors that courts may look to in determining whether to withdraw the reference. See, e.g., In re Pelullo, No. 96-MC-279, 1997 WL 535166, at \* 3 (E.D. Pa. Aug. 15, 1997)(noting debtor's "state law bad faith claim is not the type of action typically heard in the bankruptcy court and could require extensive discovery and instructions to the jury on the law of Pennsylvania"). Superior argues that the nature of this action involves extensive discovery in the form of expert testimony, employee depositions and document production related to engineering and construction design issues. Superior also predicts that the trial will last

as long as 14 days and that it will involve complex contract and construction law regarding design, performance, delay and damages. Superior asserts that these issues do not normally arise in a bankruptcy case.

Defendants argue that this case is not a complex contract action, as Superior asserts, but merely a dispute of the allowance of a claim, the type of which routinely occurs in a bankruptcy court. Defendants also point out that the bankruptcy court has resolved other creditors' claims against the Debtor that involved similarly complex matters and had the potential for relatively long trials. Likewise, they note that the bankruptcy court is familiar with Superior's claims, as it has resolved other of Superior's proofs of claims related to other contracts Superior made with the Debtor. Defendants point to the bankruptcy court's familiarity with the parties, related contracts and this adversarial proceeding as evidence that the bankruptcy court is able to handle the resolution of this claim of proof and the counterclaim in the most expeditious fashion.

The court agrees that the bankruptcy court is the better forum to resolve the issues of the claim against the bankruptcy estate and the counterclaim thereto. Prior to filing for bankruptcy, Debtor and the Joint Venture entered into a number of other contracts with Septa and Superior regarding the construction of the project to restore a section of SEPTA's rail line. See In re: Cornell and Co., No. 96-31650DAS, 1997 WL 695614, at \*1 n.2 (Bankr. E.D. Pa. Nov. 7, 1997)(noting that this

motion to withdraw involves "one relatively small piece of the puzzle"). The bankruptcy court has resolved many of the issues that arose as to those contracts and the bankruptcy court is no less capable of resolving the issues related to this contract. The legal issues in this case raise questions of state contract law which would typically arise in the administration of a commercial bankruptcy case and in the process of the allowance and disallowance of claims against the estate. In light of the bankruptcy court's familiarity with the parties, the factual background of the case and the legal issues involved, the court finds that the interests 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 are all served by declining to withdraw the reference and allowing the matter to proceed in the more efficient forum, the bankruptcy court.

**III. CONCLUSION**

For the reasons set forth above, the court will deny Superior's motion to withdraw.

An appropriate Order follows.

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

SUPERIOR PRECAST, INC,	:	MISC. ACTION
	:	
v.	:	
	:	
BUCKLEY & CO., <u>et al.</u>	:	NO. 97-218

**ORDER**

AND NOW, TO WIT, this 18th day of February, 1998, upon consideration of Superior Precast, Inc.'s motion to withdraw the reference of an adversary proceeding in the bankruptcy case and defendants Cornell & Company, Inc. and Buckley & Company, Inc./Cornell & Company, Inc.'s response thereto, IT IS ORDERED that said motion is DENIED.

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LOUIS C. BECHTLE, J.