

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

SEAWAY PAINTING, INC. : MISC. ACTION  
: :  
v. : :  
: :  
CORNELL & COMPANY, INC., et al. : NO. 98-158

**MEMORANDUM AND ORDER**

BECHTLE, J.

NOVEMBER 16, 1998

Presently before the court is Seaway Painting, Inc.'s ("Seaway") motion to withdraw the reference of an adversary proceeding in a bankruptcy case and Cornell & Company, Inc. (the "Debtor") and Delbert L. Smith Company, Inc.'s ("Smith Co.") response thereto. For the reasons set forth below, the court will deny Seaway's motion to withdraw.

**I. BACKGROUND**

Seaway filed this motion to withdraw the reference of Adversary Proceeding No. 98-374 in the Chapter 11 bankruptcy case of In re Cornell & Co.<sup>1</sup> Seaway alleges the following facts. Seaway was hired by the Debtor as a painting subcontractor for the Debtor's project restoring a section of the Southeastern Pennsylvania Transportation Authority ("SEPTA") rail line.

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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, Seaway moves the court to withdraw that reference.

(Seaway Brf. at 1.) National Union Fire Insurance Company of Pittsburgh ("National Union") issued the labor and materials bond to the Debtor. Id. During the performance of Seaway's contract with the Debtor, Seaway contracted with Smith Co. to complete the project on Seaway's behalf. Id. at 2. Although Smith Co. completed some of the work, the Debtor ceased its payments to Smith Co., whereupon Smith Co. terminated its work. Id. Seaway resumed the work until completion of its contract with the Debtor. Id. The Debtor then filed for Chapter 11 voluntary bankruptcy. Id.

Seaway filed a proof of claim in the bankruptcy case against the Debtor for \$571,026.08 for unpaid work under the contract at issue and additional contracts. Id. Seaway also filed Civil Action No. 98-0062 in the Federal Court for the Eastern District of Pennsylvania against National Union and Smith Co. Id. Smith Co. also filed a proof of claim against the Debtor. Id. On July 7, 1998, the Debtor filed its Objection and Counterclaim to Seaway's and Smith Co.'s Proofs of Claim, asserting that Seaway and/or Smith Co. are only entitled to \$80,525.85 and that it is unsure of which claimants are entitled to that amount. Id. at 3.

The parties completed discovery related to the adversary proceeding on October 30, 1998. (Seaway Supp. to Mot. at 1.) A trial will commence on November 18, 1998. Id. In the district court proceeding, the parties completed discovery on

October 30, 1998. Id. at 2. That case will be placed in the trial pool on December 18, 1998. Id.

## **II. DISCUSSION**

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 (3d Cir. 1990) (quoting Holland America Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)). The court will first answer the threshold question of whether the matter to be withdrawn is a "core" issue. Then, the court will weigh additional factors in determining whether to withdraw the reference. Seaway argues that the following two factors weigh in favor of withdrawing the reference: (1) the bankruptcy court can only render a judgment against the Debtor, not National Union or Smith Co. and (2) the trial of the issues will be long and complex and involve non-bankruptcy law.

### **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 "allowance or disallowance of claims against the [bankruptcy] estate" and "counterclaims by the estate against persons filing claims against the estate." 28 U.S.C. § 157(b)(2)(B) & (C).

The court finds that the adversary proceeding is a core proceeding. The adversary proceeding requires the adjudication of two issues. The first issue is whether the contract balance of \$80,525.85, being held by the Debtor, is properly owed to Seaway or to Smith Co. The administration of claims by two competing creditors over the same asset of a debtor is exactly the sort of controversy which the bankruptcy court is capable of resolving. The second issue is whether Seaway is entitled to additional amounts from the Debtor's estate for its performance of the contract with the Debtor. The resolution of a contract claim by a creditor over the estate is equally within the capabilities of the bankruptcy court. Both issues involved in the adversarial proceeding go directly to the resolution of outstanding debt which is possibly owed by the Debtor to Seaway. As part of the claims allowance and disallowance process, these

issues are fundamental and core to the bankruptcy process. As the adversarial proceeding is a core proceeding, this factor weighs against withdrawal of the reference.

**B. Additional Factors**

**1. Interests of Judicial Economy**

As noted above, "fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process" are factors which the court should evaluate in determining whether to withdraw the reference of an adversarial proceeding. In re Pruitt, 910 F.2d at 1168. Seaway argues that because the bankruptcy court can only render a judgment against the Debtor and not against National Union or Smith Co., the related claims by Seaway against National Union and Smith Co. would remain unresolved. Seaway argues that the resolution of the remaining claims by a second judicial proceeding in the district court would be "inefficient and [a] waste of judicial resources." (Seaway Mot. at 5.)

Seaway contends that its claims against National Union and Smith Co. are independent of the bankruptcy proceeding involving the Debtor. However, those claims are already within the civil action in the district court and are not contemplated to be in the bankruptcy court proceeding. Seaway has submitted a proof of claim against the Debtor in the bankruptcy proceeding. As noted above, Seaway's claim against the Debtor and the Debtor's Objection and Counterclaim thereto is a core proceeding involving the allowance and disallowance of claims properly handled in the bankruptcy court. Seaway does not argue that a jury trial is necessary for the resolution of its claim against the Debtor. Seaway does not argue that the bankruptcy court may

not issue a decision regarding its claim against the Debtor, as well as Smith Co.'s claim against the Debtor, which would be binding in the district court. In sum, Seaway fails to show cause why its claim against the Debtor should be withdrawn from the bankruptcy court. Rather, Seaway argues that its claims against National Union and Smith Co., already filed as a separate action in the district court, warrant the withdraw of Seaway's claim and the Debtor's Objection and Counterclaim before the bankruptcy court. However, any claim which Seaway has against National Union is wholly derivative of its claim against the Debtor. Seaway's claim regarding Smith Co. is similarly contingent, in part, on the resolution of its claim against the Debtor's estate. The fact that the district court action will be affected by the outcome of the bankruptcy court proceeding does not show that the bankruptcy proceeding would waste judicial resources or duplicate efforts of resolving Seaway's claims at issue. In fact, as the bankruptcy court proceeding has completed discovery and is scheduled for trial shortly, judicial efficiency would best be served by allowing that proceeding to continue through trial, thereby expediting the bankruptcy process rather than disrupting it. The rulings in that proceeding may well resolve many of the issues involved in the district court action, thereby fostering the economical use of party and court resources. Also, Seaway fails to show how withdrawing the claims between Seaway and the Debtor from the bankruptcy proceeding, thereby involving yet further proceedings in this matter, would

promote uniformity in bankruptcy administration and reduce forum shopping and confusion.<sup>2</sup> This factor weighs against withdrawal of the reference.

**2. Length of Trial Time and Whether Complex Non-Bankruptcy Law Is Involved**

The extent of discovery, length of trial time and possible involvement of complex non-bankruptcy law are all factors which courts may consider 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").

Seaway argues that the length of the trial and the extent of discovery contrasts with the sort of disputes resolved by the bankruptcy court. Seaway notes that it will take the depositions of SEPTA, Smith Co. and the Debtor's employees on the project and that "paint experts" may have to testify at trial. However, the court finds that it is not unusual for the trustee of a bankruptcy estate to dispute the claims made against the estate. Seaway fails to cite any issue which would not typically arise in the course of a commercial bankruptcy case. The court

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2. If the court were to withdraw the reference of the adversary proceeding, Seaway would then have to move to consolidate the two pending district court actions, delaying and complicating the matter even further.

has previously noted the bankruptcy court's familiarity with the parties, the factual background of the case and the legal issues involved. The court finds that Seaway puts forth no adequate reason why the bankruptcy court would not be the more appropriate forum for the resolution of the claims involved.

In sum, the present course more efficiently resolves the claims regarding the Debtor in the proper forum of a bankruptcy proceeding. The remaining claims against Smith Co. and National Union can be properly resolved in an equally efficient manner in the district court. At the close of discovery and on the eve of trial in both the bankruptcy court and the district court of the matters before them, this court finds no reason to disturb the present course and it declines to withdraw the reference.

**III. CONCLUSION**

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

An appropriate Order follows.

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SEAWAY PAINTING, INC. : MISC. ACTION  
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**ORDER**

AND NOW, TO WIT, this 16th day of November, 1998, upon consideration of Seaway Painting, Inc.'s motion to withdraw the reference of an adversary proceeding in a bankruptcy case and Cornell & Company, Inc. and Delbert L. Smith Company, Inc.'s response thereto, IT IS ORDERED that said motion is DENIED.

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LOUIS C. BECHTLE, J.