UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Quebecor World (USA), et al.,.

Debtors,

Eugene L Davis, *as Litigation Trustee for the Quebecor World Litigation Trust,*

Plaintiff,

-v-

All Points Packaging and Distribution, Inc.,

Defendant.

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12 Civ. 0888 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Defendant in the above-captioned case moves for withdrawal of the reference to the Bankruptcy Court pursuant to 28 U.S.C. § 157(d), Bankruptcy Rule 5011 and Local Bankruptcy Rule 5011-1(a). For the reasons discussed below, the motion to withdraw the reference is DENIED.

I. BACKGROUND

The Chapter 11 proceeding underlying this matter was commenced on January 21, 2008 by Quebecor World (USA). On July 2, 2009, the bankruptcy court approved the Third Amended Joint Plan of Reorganization of Quebecor World (USA) Inc., pursuant to which the Quebecor World Litigation Trust was established and the right to prosecute and settle certain claims was transferred to Plaintiff. On January 11, 2010, Plaintiff commenced an adversary proceeding against Defendant by filing a Complaint to Avoid Transfers and Recover Property pursuant to 11 U.S.C. §§ 502, 547, 548, 549, and 550. On March 15, 2010, Defendant filed its Answer and made a jury trial demand. On February 3, 2012, with discovery set to close on February 15, 2012, Defendant filed the instant motion to withdraw the bankruptcy reference. Plaintiff opposes the motion. The parties are now in the midst of briefing summary judgment motions before the bankruptcy court.

II. DISCUSSION

Pursuant to 28 U.S.C. §157(d), a party may move to withdraw the reference to the bankruptcy court "for cause." Although §157 does not define "cause," the Second Circuit has identified a number of factors (the "*Orion* factors") that should be considered by a Court when determining whether "cause" exists. *Orion Pictures Corp. v. Showtime Networks, Inc.*, 4 F.3d 1095, 1101 (2d Cir. 1993). These factors include (1) whether the claim or proceeding is core or non-core; (2) whether the claim or proceeding is legal or equitable; and (3) consideration of efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law. *Id.*

Prior to the Supreme Court's decision in *Stern v. Marshall*, 131 S.Ct. 2594 (2011), the core/non-core distinction was a threshold inquiry because it was largely determinative of the other *Orion* factors. *Lyondell Chem. Co. v. Blavatnik,* 2012 WL 1038749, at *5 (S.D.N.Y. Mar. 29, 2012). However, in *Stern*, the Supreme Court held that even some core proceedings are outside a bankruptcy court's adjudicative authority. *Stern*, 131 S.Ct. at 2608. Specifically, a bankruptcy court does not have final adjudicative authority (1) if the claim does not fall within the public rights exception, (2) if the claim would not necessarily be resolved on a creditor's proof of claim, or (3) if the parties did not unanimously consent to final adjudication by a non-Article III tribunal. *Lyondell*, 2012 WL 1038749, at *6 (citing *Stern*, 131 S.Ct. at 2614, 2608, 2618).

Thus, although courts still take into consideration the core/non-core distinction post-*Stern*, this inquiry no longer holds "a privileged position among the *Orion* factors." *Id.* at *5. Instead, courts should more generally consider the bankruptcy court's adjudicative authority, particularly in light of *Stern*. *Id.* The Court now turns to the *Orion* factors and construes them in light of *Stern*.

A. The Bankruptcy Court's Adjudicative Authority

Bankruptcy courts may enter final judgments in core proceedings, 28 U.S.C. §157(b)(1), subject to the constitutional limits established by *Stern*. Plaintiff's central claims involve avoidance of preference transfers pursuant to 11 U.S.C. § 547, avoidance of fraudulent conveyances pursuant to 11 U.S.C. §548, and recovery of post-petition transfers pursuant to 11 U.S.C. §549. Pursuant to the 1984 Act, these are "core" claims. *See* 28 USC §157(b)(2)(A),

(B), (F) and (H); *In re Extended Stay*, 466 B.R. 188, 205 (Bankr. S.D.N.Y. 2011); *In re Sattler's, Inc.* 73 B.R. 780, 785, n. 4 (Bankr. S.D.N.Y. 1987).

Although these claims are "core" claims, in light of *Stern* they are nonetheless likely outside of the bankruptcy court's final adjudicative authority. First, fraudulent conveyance claims and actions to recover preferential transfers are considered matters of private right. *Granfinanciera v. Nordberg*, 492 U.S. 33, 43, 56 (1989). Consequently, they likely do not fall within the public rights exception and are therefore beyond the bankruptcy court's final adjudicative authority. *Stern*, 131 S.Ct. at 2611. Second, Defendant has a Seventh Amendment right to a jury trial on at least its fraudulent conveyance and preferential transfer claims. *Granfinanciera*, 492 U.S. at 49-50. However, consent is required in order for a bankruptcy court to enter a final judgment on core matters that do not fall within the public rights exception, *Stern*, 131 S.Ct. at 2614, and Defendant does not consent to a jury trial before the bankruptcy court. Finally, all three of Plaintiff's central claims could be beyond the bankruptcy court's final adjudicative authority because, given that Defendant did not a file a proof of claim, they will not be resolved though a creditor's proof of claim. *Stern*, 131 S.Ct. at 2616-18. Thus, in light of *Stern*, it is possible that all of Plaintiff's central claims are outside of the bankruptcy court's adjudicative authority.

B. Efficiency

The bankruptcy court's authority to enter final judgment on claims is not determinative in deciding whether to withdraw the reference. *Orion* also requires that the court take into account whether this matter is legal or equitable as well as considerations of "efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law." *Orion*, 4 F.3d at 1101. In this case, efficiency is decisive.

Withdrawal here would be inefficient. The bankruptcy court's knowledge and expertise, including the fact that it has presided over this adversary proceeding since January 2010, make it particularly well-situated to rule on the outstanding motions. By contrast, this Court was only made aware of these proceedings in February 2012, and has not performed any work on the outstanding motions, presided over any pretrial proceedings, or overseen any discovery or motions practice. Thus, the bankruptcy court is well positioned to issue proposed findings of fact and conclusions of law or final orders or judgments on the outstanding motions, as appropriate.

C. Legal v. Equitable (Jury Right), Forum Shopping, Uniformity of Bankruptcy Administration

The other *Orion* factors do not weigh in favor withdrawal of the reference at this time. Defendant relies entirely on its jury trial right in support of its request for withdrawal. However, as previously discussed, although Defendant has a jury trial right on at least some of Plaintiff's claims, there is no reason that the bankruptcy court cannot continue to preside over this matter until such time as it is trial ready. *See In re Extended Stay*, 466 B.R. at 198. Neither party addresses forum shopping or uniformity of bankruptcy administration in their papers, and the Court sees no reason why these factors would require withdrawal at this time.

III. CONCLUSION

Pursuant to the factors in *Orion Pictures Corp. v. Showtime Networks, Inc.*, 4 F.3d 1095, 1101 (2d Cir. 1993), as amended by *Stern v. Marshall*, 131 S.Ct. 2594 (2011), the motion to withdraw the reference is denied in order to allow the bankruptcy court to issue opinions on the pending motions. This denial is without prejudice to any motions to withdraw once the case is ready for trial.

SO ORDERED.

Dated: July 6, 2012
New York, New York

ALISON J. NATHAN
United States District Judge