

DOCKET NUMBER: 96-10542

ADV. NUMBER: 96-1094

JUDGE: M. A. Mahoney

PARTIES: Steve A. Dickel, Libby P. Dickel, Army Aviation Center Federal Credit Union

CHAPTER: 7

ATTORNEYS:

DATE: 10/3/96

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

STEVEN A. DICKEL
LIBBY P. DICKEL

Case No. 96-10542-MAM-13

Debtors.

ARMY AVIATION FEDERAL CREDIT
UNION,

Plaintiff,

vs.

Adv. No. 96-1094

STEVEN A. DICKEL, a/k/a STEVE ALAN DICKEL,
CHRYSLER FINANCIAL CORPORATION f/k/a
CHRYSLER CREDIT CORPORATION, and
THEODORE L. HALL, as Trustee

Defendants.

**ORDER REGARDING REPORT AND RECOMMENDATION
OF WITHDRAWAL OF REFERENCE OF
COUNTS 1 THROUGH 6 OF DEBTORS' COUNTERCLAIM**

This matter is before the Court on the Court's own show cause as to whether the Court should abstain from hearing the adversary case, or any part of it, and as to whether there is a jury trial right as to any or all of the issues. The Court heard arguments of counsel. Based upon the arguments and the pleadings on file in this case, the Court made findings of fact and conclusions of law on the record which are incorporated by reference.

The Court finds that all of the causes of action raised in Army Aviation Center Federal Credit Union's complaint, all of the causes of action raised by the Trustee in his crossclaim and

counterclaim, and Counts 7, 8, and 9 of the Debtors' counterclaim are core proceedings pursuant to 28 U.S.C. § 157(b)(2). These actions do not entitle the parties to a jury trial. In fact none was requested by any party except as to Counts 7, 8, and 9 of the Debtors' counterclaim. As to those three counts which are for violation of the automatic stay pursuant to 11 U.S.C. § 362 and turnover pursuant to § 542, they are clearly equitable bankruptcy remedies for which a jury trial right does not exist. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26 (1989).

Counts 1 through 6 of the Debtors' counterclaim are a different matter. They are causes of action for:

- Count 1 Racketeer Influenced and Corrupt Organizations - Mail Fraud
- Count 2 Conversion
- Count 3 Intentional Misrepresentation, Deceit and/or Concealment
- Count 4 Tort of Outrage
- Count 5 Breach of Contract
- Count 6 Fraud

These claims all relate to prepetition conduct of Army Aviation Center Federal Credit Union. As to all claims, the debtors seek compensatory and punitive damages. There is a jury trial right as to these claims. *Granfinanciera, supra*. These claims are discreet matters which this Court does not view as compulsory counterclaims, but independent causes of action.

This Court does not have authority at present to try jury trial matters. Such authority must be granted to the Bankruptcy Court by the District Court. No grant of authority has been given. 28 U.S.C. § 157(e). All of the parties must consent as well. All parties but Army Aviation do consent. Army Aviation's counsel indicated he could not consent at this time since

he did not have authority to do so from his client. Therefore, no jury trial can be conducted in the Bankruptcy Court in any event at this time.

Count 1 of the Debtors' counterclaim is a claim based on federal law. This makes the District Court the proper place to try Counts 1 through 6. All of the other claims are properly attached to the federal question due to pendent jurisdiction. If the Bankruptcy Court abstains from hearing the case, it would require the debtors to file the case again in federal court.

28 U.S.C. § 1334. The proper way to deal with the case is to have the reference withdrawn as to Counts 1 through 6 of the counterclaim pursuant to 28 U.S.C. § 157(d) if the matter is not settled prior to trial. The Court will retain the matter on its docket up to the point of trial of the issues. Then, if the case is not resolved, the Court will report and recommend to the District Court that the reference be withdrawn. *City Fire Equipment Co., Inc. v. Ansul Fire Protection Wormald U.S., Inc.*, 125 B.R. 645 (N.D. Ala. 1989).

THEREFORE this Court orders that

1. All discovery and pretrial matters as to Counts 1 through 6 of Debtors' Counterclaim will be handled by this Court.
2. If the case is not resolved prior to trial, the Court will report and recommend to the District Court that it withdraw the reference as to the causes of action in Counts 1 through 6 of the Debtors' Counterclaim.
3. A pretrial conference on the issues involved in Counts 1 through 6 shall be held on **January 28, 1996 at 10:00 a.m.**

Dated: October 3, 1996

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE