

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

JASON CARL DYSON,

Case No. 17-4820

Debtor.

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JASON CARL DYSON,

Plaintiff,

v.

NEWREZ, LLC d/b/a  
SHELLPOINT MORTGAGE SERVICING,

Adversary Case No. 20-1053

Defendant.

REPORT AND RECOMMENDATION TO THE DISTRICT COURT  
TO WITHDRAW THE REFERENCE

This adversary proceeding came before the court for a hearing on the court's order for the parties to show cause why the court should not prepare a report and recommendation to the United States District Court for the Southern District of Alabama to withdraw the reference in this adversary proceeding. For the reasons discussed below, the court recommends that the district court withdraw the reference as to this entire adversary proceeding.

Background

The plaintiff-debtor filed a chapter 13 bankruptcy on December 27, 2017. On December 18, 2020, the plaintiff filed this adversary proceeding against the defendant alleging the wrongful management of his home mortgage loan by the defendant. Specifically, the plaintiff alleges that during the course of his bankruptcy, the defendant mortgage servicer collected inflated amounts for escrow and then failed to refund the surplus of escrow funds. The plaintiff further alleges that he

sent a Notice of Servicing Error to the defendant on or about August 12, 2020; that the defendant did not respond to the Notice of Servicing Error; and that the defendant failed to make the necessary corrections with respect to his mortgage escrow account. The only count of the complaint is a federal law claim for violation of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. §§ 2601 *et seq.*

The defendant filed an answer to the complaint on January 7, 2021 and an amended answer on January 27, 2021. On January 12, 2021, less than a month after the adversary proceeding was filed, the court entered an order for the parties to show cause why it should not recommend that the district court withdraw the reference. The court held a hearing on the show cause order on February 23, 2021. Counsel for both parties appeared at the hearing but did not oppose withdrawal of the reference or offer any reason why the court should not recommend withdrawal of the reference.

#### Applicable law

Under the district court’s standing Order of Reference entered pursuant to 28 U.S.C. § 157(a), “any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for this district.” However, with respect to cases referred to bankruptcy courts, 28 U.S.C. § 157(d) states:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

Section 157(d) provides for both mandatory and permissive withdrawal of the reference. “Mandatory withdrawal is only compelled if the current proceeding could not be resolved without substantial and material consideration of the non-Code federal law. [S]ignificant interpretation of

the non-Code statute must be required.” See *In re Small*, No. 11-00384, 2011 WL 7645816, at \*1 (Bankr. S.D. Ala. Nov. 22, 2011) (citations and quotation marks omitted), *report and recommendation adopted*, No. 12-MC-00005-CG, 2012 WL 1081080, at \*1 (S.D. Ala. Apr. 2, 2012).

Nonetheless, the

[d]istrict court may withdraw the reference ‘for cause shown.’ In making this discretionary determination, courts generally consider (1) advancing uniformity in bankruptcy administration, (2) decreasing forum shopping and confusion, (3) promoting the economical use of the parties’ resources, (4) facilitating the bankruptcy process, (5) whether the claims are core or non-core, (6) whether there has been a jury demand, and (7) the prevention of delay.

*Id.* (citation, quotation marks, and emphasis omitted).

Here, these are multiple compelling reasons for moving this adversary proceeding to district court. First, the adversary proceeding probably implicates the mandatory abstention requirement of Section 157(d). There is no allegation of any violation of the Bankruptcy Code. The district court has federal question jurisdiction over the RESPA claim under 28 U.S.C. § 1331 and resolution of that claim will primarily require consideration of a non-Code statute regulating organizations or activities affecting interstate commerce.

Second, permissive withdrawal is also appropriate. Withdrawing the reference would not frustrate judicial economy. This court has not yet made any findings of fact or conclusions of law, held an evidentiary hearing, or expended significant time and resources becoming familiar with the adversary proceeding. This is one of only two RESPA cases<sup>1</sup> on the undersigned judge’s docket of over 5,600 bankruptcy cases and adversary proceedings; the undersigned does not have any particular expertise in RESPA, and to handle this adversary proceeding will require judicial resources that could be better utilized in regular bankruptcy matters. Indeed, claims under federal consumer

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<sup>1</sup> The court recently entered an order in the second case for the parties to show cause why the court should not recommend withdrawal of the reference.

protection statutes, such as RESPA, are typically brought in the district court, and the district court has particular expertise in deciding these claims.

Resolution of the RESPA claim will not affect uniformity of bankruptcy administration. While the RESPA claim appears to be property of the bankruptcy estate, its resolution depends on nonbankruptcy law. Likewise, forum shopping is not a concern in this adversary proceeding, as the court raised the issue of whether withdrawal of the reference was appropriate.

This adversary proceeding is still in the early stages of litigation; there has been no scheduling order or discovery. Withdrawal of the reference at this point would not be burdensome on the parties. Withdrawal will not impede the bankruptcy proceedings; the plaintiff's chapter 13 bankruptcy case would continue here while the lawsuit proceeds in district court. The district court would decide the RESPA claim (the only claim in the adversary proceeding) and, upon settlement or judgment, the plaintiff's attorney or the chapter 13 trustee would hold any funds and move this court for instructions on distribution.

#### Conclusion

For the reasons stated above, this bankruptcy court recommends that the district court withdraw the reference in this adversary proceeding. The court requests that the bankruptcy clerk of court transmit this report and recommendation to the United States District Court for the Southern District of Alabama.

Dated: February 24, 2021

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE