

2023 WL 10449674

Only the Westlaw citation is currently available.
United States Bankruptcy Court, S.D. Alabama.

IN RE: Lisa Michelle COLLINS, Debtor.

Lisa Michelle Collins, et al., Plaintiffs,

v.

Rushmore Loan Management
Services, LLC, et al., Defendants.

Case No. 22-12152

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Adversary Case No. 22-1025

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Signed August 8, 2023

Attorneys and Law Firms

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REPORT AND RECOMMENDATION TO THE DISTRICT COURT TO WITHDRAW THE REFERENCE

HENRY A. [CALLAWAY](#), UNITED STATES
BANKRUPTCY JUDGE

*1 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 October 18, 2022. On December 16, 2022, the plaintiff filed this adversary proceeding against the defendants alleging the wrongful management of her home mortgage loan. The complaint contains a federal law claim for violations of the Fair Debt Collections Practices Act (FDCPA) and state law claims for “breach of mortgage and note” and “wrongful foreclosure.” The plaintiff does not allege any violation of the Bankruptcy Code or seek any relief under the Bankruptcy Code.


On February 7, 2023, 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 multiple hearings on the order to show cause, and the parties represented that they were trying to resolve this case. At the most recent hearing, the parties advised that settlement was not possible.

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.” But 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). Still 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.

*2 *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 mandatory abstention. There is no allegation of any violation of the Bankruptcy Code. The district court has federal question jurisdiction under 28 U.S.C. § 1331 based the FDCPA claim, and resolution of that claim will mainly 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 judge currently has over 3,500 bankruptcy cases on his docket. The undersigned does not have any particular expertise in the FDCPA, and to handle this adversary proceeding will require judicial resources that could be better used in regular bankruptcy matters. Claims under federal consumer protection statutes such as the FDCPA are typically brought in the district court, and the district court has particular expertise in deciding these claims.

Resolution of the claims in this adversary proceeding will not affect uniformity of bankruptcy administration. While the claims appear to be property of the bankruptcy estate, resolution of the claims 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, as no scheduling order has been entered and no formal discovery has been conducted. Withdrawal of the reference at this point would not be burdensome on the parties and 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 plaintiff’s claims 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.

All Citations

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