

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

Jonathan Bennett Simmons and Mary Alicia Simmons, Case No. 24-11191

Debtors.

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Bryant Bank,

Plaintiff,

v.

Adversary Case No. 25-1002

Jonathan Bennett Simmons, et al.,

Defendants.

ORDER TO SHOW CAUSE

The second amended complaint in this adversary proceeding contains the following causes of action: (1) exception to discharge under Bankruptcy Code §§ 523(a)(2) and (a)(6) against debtors Jonathan Bennett Simmons and Mary Alicia Simmons (Counts 1, 2, and 3); (2) objection to discharge under Code § 727 against the debtors (Counts 4 and 5); (3) declaratory judgment related to §§ 523 and 727 against the debtors (Count 6); and (4) Alabama state law claims for fraudulent transfer and civil conspiracy, as well as alter ego liability, against John E. Tompkins and JET Inceptus, LLC (Counts 7, 8, 9, 10, and 11<sup>1</sup>). Defendants John E. Tompkins (“Tompkins”) and JET Inceptus, LLC (“JET”) have demanded a jury trial.

Generally, a defendant does not have a jury trial right with respect to claims brought under Code §§ 523 and/or 727. *See, e.g., In re Avila*, 621 B.R. 53, 56 n.4 (Bankr. N.D. Ga. 2020); *In re Smith*, No. 17-56312-WLH, 2019 WL 2386108, at \*3 (Bankr. N.D. Ga. June 4,

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<sup>1</sup> Count 11 is against JET Inceptus only. It is unclear whether the debtors are included in Counts 7, 8, 9, and 10.

2019). But that is not the case for the state law claims in the second amended complaint, Counts 7, 8, 9, 10, and 11.

Tompkins and JET request that the court refer this adversary proceeding to the United States District Court for the Southern District of Alabama to conduct a jury trial of those counts. But it does not appear that the federal district court would have either federal question or diversity jurisdiction over the state law claims. And even if all parties consented to a jury trial in this court, this district's standing order of reference for bankruptcy matters (available at <https://www.alsd.uscourts.gov/general-orders-court>) does not allow this court to conduct a jury trial. *See* 28 U.S.C. § 157(e) and Fed. R. Bankr. P. 9015(b) (district court must authorize jury trial by bankruptcy court and all parties must expressly consent). The court cannot remand the state law claims to state court, either, because the adversary proceeding originated in this court.

At the reset scheduling conference set on April 15, 2025, the parties should thus be prepared to show cause why the court should not abstain from hearing Counts 7, 8, 9, 10, and 11 and dismiss those claims, as well as defendants Tompkins and JET, in favor of an action to be brought in state court. *See* 28 U.S.C. § 1334(c); *see also generally* *Vision Bank v. Platinum Invs., L.L.C.*, 2011 WL 2144547 (S.D. Ala. May 11, 2011); *In re Taylor Agency, Inc.*, 281 B.R. 94 (Bankr. S.D. Ala. 2001); *Caterpillar Fin. Servs. Corp. v. JRD Contracting & Land Clearing, Inc. et al.*, AP No. 17-86 (Callaway, J. Oct. 19, 2017).

Dated: April 2, 2025

  
HENRY A. CALLAWAY  
U.S. BANKRUPTCY JUDGE