

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

IN RE:	)	
	)	
INNOVATIVE COMMUNICATION	)	Case No. 07-30012 (JKF)
CORPORATION,	)	Chapter 11
	)	
Debtor.	)	Adv. No. 09-03085 (JKF)
	)	
	)	
JAMES P. CARROLL,	)	
LIQUIDATION TRUSTEE OF THE	)	
LIQUIDATION TRUST FOR THE	)	
BANKRUPTCY ESTATES OF	)	
INNOVATIVE COMMUNICATION	)	
COMPANY,	)	
	)	Civil No. 2013-26
Plaintiff,	)	
	)	
v.	)	
	)	
OAKLAND BENTA,	)	
	)	
Defendant.	)	
	)	

ATTORNEYS:

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For James P. Carroll, Liquidation Trustee.

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ORDER

GÓMEZ, J.

Before the Court is the motion of Oakland Benta ("Benta") to withdraw the reference to this Court's Bankruptcy Division (the "Bankruptcy Court") in Adversary No. 09-03085.

I. FACTUAL AND PROCEDURAL HISTORY

This case arises out of the lengthy, ongoing bankruptcy of the Innovative Communication Corporation ("ICC"), a Virgin Islands telecommunications company. Stan Springel ("Springel"), acting as the Chapter 11 Trustee of the Estate of ICC, initiated adversary proceedings against the defendant in this case, Oakland Benta ("Benta"). (Bankruptcy ECF No. 1450.) In the adversary proceedings, Springel seeks to undo transactions entered into between Benta and ICC. (*Id.*) Springel claims that these transactions were either fraudulent conveyances or preferential transfers, and thus disallowed under the Bankruptcy Code. (*Id.*)

To that end, Springel filed a complaint in the Bankruptcy Court on September 21, 2009. Thereafter on August 9, 2012, Springel amended his complaint (the "Amended Complaint"). (Adv. Proc. ECF No. 49.) Benta filed his answer to the Amended Complaint on October 1, 2012. (*Id.*) Benta's October 1, 2012, answer explicitly demanded a jury trial. (*Id.*)

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On October 21, 2012, the Bankruptcy Court entered an Order vesting all claims and causes of action held by the debtors' estates in a liquidation trust (the "Liquidation Trust"). The Bankruptcy Court also approved James P. Carroll ("Carroll") as the Liquidation Trustee.

On March 15, 2013, Benta filed a motion to withdraw the reference in this Court. In his motion, Benta argues that fraudulent and preferential conveyance actions may not be considered in the Bankruptcy Court. Benta seeks to have Adversary No. 09-03085 considered in its entirety by this Court. Carroll filed an opposition to the motion to withdraw the reference, indicating that the motion to withdraw was filed out of time and that a request for withdrawal of the reference was premature as the adversary proceeding is not yet trial ready.

II. DISCUSSION

Under certain circumstances, a district court may "withdraw the reference." That is, it may take a proceeding away from the bankruptcy court and decide the matter itself. 28 U.S.C. § 157(d) (West 2013).

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

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requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 157(d).

III. ANALYSIS

Title 28, Section 157(d) ("Section 157") recognizes two circumstances under which a court may withdraw a reference to the bankruptcy court. A district court must 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." 28 U.S.C. § 157(d) ("mandatory withdrawal"). Where the issue is not subject to mandatory withdrawal, 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." *Id.*

Benta asserts that withdrawal of the reference is merited in this case because the adversary proceeding is based on claims of fraudulent or preferential conveyances. Proceedings to recover fraudulent or preferential conveyances do not implicate the laws of the United States regulating organizations or activities affecting interstate commerce; rather they require consideration under Title 11 of the United States Code. See 11 U.S.C. § 548 (fraudulent transfers and obligations). Benta does

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not contend otherwise. As this is not a case of mandatory withdrawal, but permissive withdrawal, the Court may only withdraw the reference "for cause shown." 28 U.S.C. § 157(d).

In his motion to withdraw the reference, Benta argues that the "cause" in this adversary proceeding is the Bankruptcy Court's lack of subject matter jurisdiction over the pretrial phases of the fraudulent and preferential conveyance actions.

"The manner in which a bankruptcy judge may act on a referred matter depends on the type of proceeding involved." *Stern v. Marshall*, 131 S. Ct. 2594, 2603 (2011). Bankruptcy judges have the statutory authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11." *Id.* at 2596. However, bankruptcy judges lack the constitutional authority to hear and enter final judgments on matters unless they implicate "public rights." *Id.* at 2614 ("'[i]f a statutory right is not closely intertwined with a federal regulatory program Congress has power to enact, and if that right neither belongs to nor exists against the Federal Government, then it must be adjudicated by an Article III court.'") (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 54-55 (1989)).

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In *Stern v. Marshall*, a counterclaim for tortious interference—though a core claim—could not be decided by a bankruptcy judge because it “does not fall within any of the varied formulations of the public rights exception in this Court's cases.” *Stern v. Marshall*, 131 S. Ct. 2594, 2614 (2011) (analogizing to the fraudulent conveyance claim in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), which also did not fall within the public rights exception and therefore could not be decided by a bankruptcy judge). A tortious interference counterclaim “involves the most prototypical exercise of judicial power: the entry of a final, binding judgment *by a court* with broad substantive jurisdiction, on a common law cause of action, when the action neither derives from nor depends upon any agency regulatory regime.” *Stern*, 131 S. Ct. at 2615 (emphasis in original). The *Stern* Court explained that the question before it was “a ‘narrow’ one,” and that the removal of counterclaims like Marshall’s would not “meaningfully change[] the division of labor in the current statute [28 U.S.C. § 157].” *Stern*, 131 S. Ct. at 2620.

Unlike the state law counterclaim at issue in *Stern v. Marshall* listed in 28 U.S.C. § 157(b)(2)(C), the present action involves actions enumerated in different portions of the code: 28 U.S.C. § 157(b)(2)(F) and (H). *Id.* The Court must determine

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whether the fraudulent conveyance and preference actions are core proceedings. If so, the Court must then determine whether fraudulent conveyance and preference actions involve public rights such that they may be constitutionally adjudicated in bankruptcy courts.

A. Statutory Jurisdiction

As previously stated, bankruptcy judges may hear and enter final judgments in “all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). Pursuant to Section 157(b)(2), “core” proceedings include “proceedings to determine, avoid, or recover preferences” and “proceedings to determine, avoid, or recover fraudulent conveyances.” *Id.* at § 157(b)(2)(F), (H). Thus, as a general matter, preferential transfer and fraudulent conveyance actions are core proceedings and bankruptcy courts may statutorily enter final judgments in such actions. *See generally Stern*, 131 S. Ct. at 2604-5 (explaining that § 157(b) “permits the bankruptcy court to enter a final judgment” in a proceeding listed under § 157(b)(2) as “core.”).

Benta does not challenge the statutory authority of bankruptcy courts to enter judgment in such actions. Rather, Benta argues that bankruptcy courts are devoid of the

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constitutional capacity to enter judgments in preferential transfer and fraudulent conveyance actions.

B. Constitutional Jurisdiction

Having determined that the bankruptcy court is statutorily authorized to enter final judgments in fraudulent conveyance and preference actions, the Court must next determine whether Article III permits Congress to delegate such jurisdiction to bankruptcy courts.

"[I]n general, Congress may not 'withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.'" *Stern*, 131 S. Ct. at 2609 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272 (1856)). "When a suit is made of 'the stuff of the traditional actions at common law . . . ' and is brought within the bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III courts." *Stern*, 131 S. Ct. at 2609 (quoting *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (Rehnquist, J., concurring in judgment)). "At the same time, there are matters, involving public rights, which may be presented in such form that the judicial power is capable of action on them, and which are susceptible of judicial determination, but which [C]ongress may or may not bring within

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the cognizance of the courts of the United States, as it may deem proper." *Murray's Lessee*, 59 U.S. 272, 284 (1855).

A matter may involve public rights if it "flow[s] from a federal statutory scheme" or is "completely dependent upon adjudication of a claim created by federal law." *Stern*, 131 S. Ct. at 2614 (internal quotation marks omitted). The issue here is whether fraudulent conveyance and preference actions involve public rights such that they may be constitutionally adjudicated in bankruptcy courts.

Prior to its *Stern* decision, the Supreme Court, in *Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782 (1989) had occasion to address that very issue. Indeed, the *Granfinanciera* court explained that

There can be little doubt that fraudulent conveyance actions by bankruptcy trustees-suits which, we said in *Schoenthal v. Irving Trust Co.*, 287 U.S., at 94-95, 53 S.Ct., at 51 (citation omitted), "constitute no part of the proceedings in bankruptcy but concern controversies arising out of it" - are quintessentially suits at common law that more nearly resemble state - law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res. See *Gibson* 1022-1025. They therefore appear matters of private rather than public right.

Granfinanciera, 109 S. Ct. at 2798.

Subsequently, the U.S. Court of Appeals for the Ninth Circuit, in *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553

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(9th Cir. 2012), relied on the *Granfinanciera* and *Stern* decisions in holding that the bankruptcy courts are without constitutional authority to enter final judgment in fraudulent conveyance actions.¹ In *Bellingham*, the bankruptcy trustee filed a fraudulent transfer complaint to recover commissions deposited into the account of a non-creditor as property of the Chapter 7 estate. The bankruptcy court granted summary judgment in favor of the trustee. The non-creditor appealed. The district court affirmed. The non-creditor appealed once again.

On review, the appellate court explained that "*Granfinanciera* clarified that fraudulent conveyance actions are not matters of public right, and that a noncreditor retains a Seventh Amendment right to a jury trial on a bankruptcy

¹ The Sixth Circuit has discussed the issue in dicta, stating that

Next came *Granfinanciera, S.A. v. Nordberg*, which held that the public-rights doctrine does not allow a bankruptcy court to decide a fraudulent-conveyance claim filed by a bankrupt estate's trustee against a non-creditor. 492 U.S. 33, 55 (1989). By means of such a claim, the estate seeks to recover property that the debtor transferred in anticipation of bankruptcy. Fraudulent-conveyance claims, *Granfinanciera* said, "constitute no part of the proceedings in bankruptcy." *Id.* at 56. They are "quintessentially suits at common law that more nearly resemble state-law contract claims . . . to augment the bankruptcy estate than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res." *Id.* Thus, only an Article III court can enter final judgment on such a claim. (*Granfinanciera* actually involved the limits of the bankruptcy court's equity jurisdiction for Seventh Amendment purposes, not the limits of the bankruptcy court's authority for purposes of Article III. But the Supreme Court stated that the analysis for each is the same. See *id.* at 53-54.)

Waldman v. Stone, 698 F. 3d 910, 918-19 (6th Cir. 2012).

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trustee's fraudulent conveyance claim." *Bellingham*, 702 F.3d at 562. The Ninth Circuit concluded that "[t]aken together, *Granfinanciera* and *Stern* settle the question of whether bankruptcy courts have the general authority to enter final judgments on fraudulent conveyance claims asserted against noncreditors to the bankruptcy estate. They do not." *Bellingham*, 702 F.3d at 565. The Court further articulated that

. . . Article III bars bankruptcy courts from entering final judgments in such actions brought by a noncreditor absent the parties' consent.

Bellingham, 702 F.3d at 572.

The *Bellingham* court then turned to the question of "whether bankruptcy judges may constitutionally hear such claims, and prepare recommendations for de novo review by the federal district courts." *Id.* Relying again on the holding in *Stern*, the *Bellingham* Court concluded that "bankruptcy courts have statutory authority to hear and enter proposed findings of fact and conclusions of law in a fraudulent conveyance proceeding asserted by a bankruptcy trustee against a noncreditor, subject to de novo review by a federal district court." *Id.* at 566.

Here, the complaint in the adversary proceeding seeks to recover pre-petition fraudulent and preferential transfers. Such claims are governed by the rule laid out in *Granfinanciera* and

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clarified in *Bellingham*. They may be finally adjudicated only by the district court, absent waiver or consent of the parties.

Although the bankruptcy judge may not *finally* determine such matters as are presented here, assuming *arguendo* there was no waiver in this case, a bankruptcy judge may address pre-trial matters until such time as the matter is ready for trial. See, e.g., *In re Palm Beach Finance Partners, L.P.*, 2013 WL 2036161 at *2 (S.D. Fla. May 14, 2013) (holding that, in a fraudulent conveyance action, "while the Court finds that withdrawal of the reference is appropriate for purposes of conducting the jury trial, at this point in the proceedings, the withdrawal would be premature."); *In re Big V Holding Corp.*, 2002 WL 1482392 (D. Del. July 11, 2002) ("Withdrawal of the reference based on the ground that a party is entitled to a jury trial should be deferred until the case is 'trial ready.'") (citations omitted). Accordingly, the reference shall not be withdrawn until such time as the bankruptcy judge has determined that this matter is trial ready.

The premises considered, it is hereby

ORDERED that Benta's Motion to Withdraw the Reference is **DENIED**; and it is further

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ORDERED that the Clerk of Court shall **CLOSE** this file.

S\ _____
Curtis V. Gómez
District Judge