

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 04-15482)
)
INTERIORS BY PRISCILLA & PERRY, INC.)
)
Debtor)
)
)
YVETTE GAFF KLEVEN, TRUSTEE)
)
Plaintiff)
)
vs.) PROC. NO. 06-1194
)
)
GARY A. FRICK, ET. AL.)
)
Defendants)

DECISION AND ORDER ON MOTION TO CONSOLIDATE

At Fort Wayne, Indiana, on October 6, 2006.

Following conversion of the underlying bankruptcy case from chapter 11 to chapter 7, the chapter 7 trustee initiated this adversary proceeding on June 15, 2006, in order avoid what she believes to be fraudulent transfers. Shortly after initiating this proceeding, the trustee initiated two additional proceedings – one against Gary and Rebecca Frick and the other against Priscilla Walgram, who are also defendants in this proceeding. Two of the defendants in this proceeding, Gary and Rebecca Frick, have asked that this proceeding be consolidated with the two other proceedings brought by the trustee. The motion is premised on Rule 42(a) of the Federal Rules of Civil Procedure, which is made applicable to bankruptcy proceedings by Rule 7042 of the Federal Rules of Bankruptcy Procedure. Though the trustee does not object to consolidation, two of the other defendants in this proceeding, American General Finance and Priscilla Walgram, do. It is this

motion and the responses filed thereto which are presently before the court.

Rule 42(a) of the Federal Rules of Civil Procedure allows the court to consolidate various actions pending before it which “involve[] a common question of law or fact” The opportunity for consolidation is designed to promote not only judicial economy, Johnson v. Manhattan Railway Co., 289 U.S. 479, 496-97, 53 S.Ct. 721 (1973), but also the expeditious and efficient conduct of litigation for all concerned. The party seeking consolidation bears the burden of proving that it is appropriate. In re Repetitive Stress Injury Litigation, 11 F.3d 368, 373 (2d Cir. 1993); Prudential Ins. Co. v Marine Nat’l Exchange Bank, 55 F.R.D. 436, 437 (D. E.D. Wis. 1972). Whether or not the court does so is a matter committed to its discretion. Young v. City of Augusta, 59 F.3d 1160, 1168-69 (11th Cir.1995); United States v. Knauer, 149 F.2d 519, 520 (7th Cir. 1945), aff’d, 328 U.S. 654, 66 S.Ct. 1304 (1946). In exercising this discretion, the court must necessarily “balance the savings of time and effort gained through consolidation against the inconvenience, delay or expense that might result from the simultaneous disposition of the separate actions.” Rohm and Haas Co. v. Mobile Oil Corp., 525 F. Supp. 1298, 1309 (D. Del. 1991). See also, 9 Charles Allen Wright and Arthur R. Miller, Federal Practice and Procedure § 2383 (2nd ed. 1995). In addition, the court should not consolidate proceedings where the interests of any party would be prejudiced by the consolidated. United States v. Knauer, 149 F.2d 519 (7th Cir.1945); Vallero v. Burlington N. R. Co., 749 F. Supp. 908, 913 (C.D. Ill. 1990).

In this instance, the parties to each of the suits are not identical. Though the plaintiff in each proceeding is the same, the defendants differ. This proceeding was brought against a number of people and/or entities, including those not named in either of the other two proceedings. Thus, consolidation may prejudice or inconvenience those defendants not made a party to the other two

proceedings, and the court sees no reason why, particularly this early in the litigation, defendants which have not been made a party to the other two proceedings, should be forced to become involved in those disputes. Furthermore, these proceedings are in their earliest stage while issues are still being sorted out. After the parties complete discovery and have proceeded closer to trial, it may be more appropriate to consolidate the matters. At that time, defendants are welcome to raise the issue again.

The Motion to Consolidate Actions Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure filed by defendants, Gary and Rebecca Frick, is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court