

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 07-11441)
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CHAD MYRDDIN SEYBOLD)
LAURA REITER SEYBOLD)
Debtors)
)
)
SALIN BANK AND TRUST COMPANY)
Plaintiff)
)
vs.) PROC. NO. 07-1255
)
)
CHAD MYRDDIN SEYBOLD)
LAURA REITER SEYBOLD)
Defendants)
)
)
CHAD MYRDDIN SEYBOLD)
LAURA REITER SEYBOLD)
Counter-Claimants)
)
)
vs.)
)
)
SALIN BANK AND TRUST COMPANY)
Counter-Defendant)

**RECOMMENDATION CONCERNING WITHDRAWAL
OF THE REFERENCE**

At Fort Wayne, Indiana on March 7, 2008.

The defendants, Chad and Laura Seybold, are debtors who filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. By this adversary proceeding, the plaintiff, Salin Bank and Trust Company, has asked the court to determine the dischargeability of their obligations to it. While the present complaint is more verbose than necessary, see, Fed. R. Civ. P. Rule 8(a)(2) (a complaint shall contain “a short plain statement of the claim . . .”), stripped to its essentials, the plaintiff’s amended complaint alleges that the defendant, Chad Seybold, obtained numerous loans from the bank, on behalf of businesses that he owned or controlled, representing that the borrower

owned or would be acquiring real property and that, in order to secure the loans, the bank would be given mortgages upon that property. In reality, however, the borrowers did not own or did not acquire the property in question, with the result that the bank has received mortgages upon real estate from someone other than the owner, making them less valuable than one might wish. The complaint also alleges that Mr. Seybold was fully aware of all of this and, yet, allowed the transactions to go forward without bothering to enlighten the bank concerning the identity of the property's true owner. Having made these factual allegations, the bank then characterizes Mr. Seybold's conduct as fraud, fraud or defalcation in a fiduciary capacity and/or a willful and malicious injury, and concludes that his obligation to it¹ should be a non-dischargeable debt under § 523(a)(2) (fraud, false pretenses and false representations), § 523(a)(4) (fraud or defalcation in a fiduciary capacity), and/or § 523(a)(6) (willful and malicious injury) of the United States Bankruptcy Code. 11 U.S.C. §§ 523(a)(2), (4), (6).

In addition to the bankruptcy derived labels for the defendant's conduct, the plaintiff has also given it another name. In Count IV of the amended complaint it labels Mr. Seybold's actions "bank fraud." That conduct is not only a crime under Indiana law, see, I.C. 35-43-5-8, but it is also one of the crimes the Indiana Legislature has determined will allow the victim to seek treble damages and attorney fees from the perpetrator. See, I.C. 34-24-3-1. As a result, the bank seeks to recover not only the amounts due it on account of the promissory notes and guarantees in question, but also treble damages and attorney fees, as well as a declaration that all of those obligations constitute non-dischargeable debts.

¹Mr. Seybold's liability to the bank arises out of the fact that he guaranteed the obligations in question. The bank also contends that, as a knowing participant in what it characterizes as a fraudulent scheme, he is personally liable to the bank for his tortious conduct. Why the co-defendant, Laura Seybold, has any liability to the bank is less clear.

The defendants responded to Count IV by filing a single motion which seeks three different things: dismissal pursuant to Rule 12(b)(6), abstention pursuant to 28 U.S.C. § 1334(c), and withdrawal of the reference.² This court can and has decided the dismissal and abstention portions of the defendants' motion. See, Fed. R. Bankr. P. Rule 5011(c)(motion for withdrawal of reference does not stay the administration of a case or proceeding); Decision dated March 5, 2008. It is not, however, able to decide whether the reference should be withdrawn: that can only be done by the District Court. N.D. Ind. L.R. 200.1(b)(1)(A). Accordingly, the bankruptcy judge is submitting this recommendation to the District Court with regard to that portion of the debtors' motion.³ N.D. Ind. L.R. 200.1(b)(1)(C).

Although bankruptcy jurisdiction is vested in the District Court, 28 U.S.C. § 1334(a), (b), this district has exercised its authority to refer that jurisdiction to its bankruptcy judges. N.D. Ind. L.R. 200.1(a)(1). Nonetheless, the District Court has the discretion to withdraw the reference "for cause" either on its own initiative or on the timely motion of any party. 28 U.S.C. § 157(d). The moving party bears the burden of persuading the court that the reference should be withdrawn. Matter of Vicars Ins. Agency, Inc., 96 F.3d 949, 953 (7th Cir. 1996). See also, In re Rimsat, Ltd., 196 B.R. 791, 795 (Bankr. N.D. Ind. 1995). Determining whether it has carried that burden can involve a number of considerations. Met-Al, Inc. v. Hansen Storage Co., 157 B.R. 993, 1002 (E.D.

²This motion fails to comply with the requirements of Local Bankruptcy Rule B-9013-1, which requires that each motion be filed separately. The defendants have made three different requests, which are properly directed to two different courts. Combining all of this in a single filing and single supporting brief makes it a bit difficult to figure out which arguments are directed to which request and to which court. The confusion that is likely to be engendered by such multiplicity amply demonstrates the purpose for this court's local rule. See also, N.D. Ind. L.R. 7.1(b)(also requiring each motion to be filed separately).

³Some aspects of the larger controversy created by the transactions at issue are pending before the District Court in case number 1:06-cv-00352, Rosenbaum et. al. v. Seybold et. al. Nonetheless, the existence of that action is not part of the basis for the defendants' motion.

Wis. 1993). Among the most common are:

[w]hether withdrawal would promote uniformity of bankruptcy administration, reduce forum shopping and confusion, conserve debtor/creditor resources and expedite bankruptcy process, and whether parties have requested jury trial. U.S. (EPA) v. Environmental Waste Control, Inc., 131 B.R. 410, 418 (N.D. Ind. 1991).

Others may include “whether the withdrawal relates to a ‘core proceeding.’” Id. In the final analysis, however, “the critical question is efficiency and uniformity.” Mishkin v. Ageloff, 220 B.R. 784, 800 (D. S.D. N.Y. 1998).

Defendants argue that cause exists to withdraw the reference as to Count IV of the plaintiff’s complaint because it constitutes a state law claim, which they do not consent to being determined by the bankruptcy court, and they are entitled to have the issues raised by that claim tried to a jury. These arguments are wrong.

Insofar as it pertains to their claimed right to a jury trial, the defendants’ arguments are foreclosed by the Seventh Circuit’s decision in Matter of Hallahan, 936 F. 2d. 1496 (7th Cir. 1991). There the Seventh Circuit not only held that a debtor had no right to a jury trial in an action to determine dischargeability but also that it was entirely appropriate – “preferable” to be precise – for the bankruptcy court to adjudicate the issues of liability and damages in connection with its determination of dischargeability. Id. at 1502-08.

Admittedly, Count IV of the amended complaint does raise issues of Indiana law; in particular, whether the defendants committed bank fraud so that the plaintiff has a right to assert a claim against them for treble damages and attorney fees. Yet, the bankruptcy court does not need the parties’ consent in order to determine the issues that it presents. This is a proceeding to determine dischargeability.⁴ It is a civil proceeding “arising under title 11,” see, In re Menk, 241

⁴In order to determine dischargeability, the bankruptcy court must, of necessity, be able to determine whether a debt exists. In the absence of a debt there is nothing which could be excepted

B.R. 896, 905 (9th Cir. BAP 1999); In re Spaulding, 131 B.R. 84, 88 (D. N.D. Ill. 1990); In re Madison, 249 B.R. 751, 755 (Bankr. N.D. Ill. 2000), and, through the order of reference, the court has jurisdiction over it by virtue of 28 U.S.C. § 1334(b). In re Gi Nam, 273 F.3d 281, 285 (3rd Cir. 2001); Menk, 241 B.R. at 907-10. Not only does the court have subject matter jurisdiction over this proceeding but dischargeability litigation is one of the types of proceedings which Congress has specifically classified as a core proceeding. See, 28 U.S.C. § 157(b)(2)(I). Thus, the bankruptcy court has the authority to finally determine the issues raised in this matter and it does not need the parties' consent in order to do so. 28 U.S.C. § 157(b)(1).

To grant the defendants' motion will result in an unnecessary duplication of judicial resources. The same actions which the plaintiff labels as fraud, fraud or defalcation in a fiduciary capacity, and/or a willful and malicious injury, in order to support the claims of non-dischargeability under §§ 523(a) (2), (4), and (6), are the very same actions it also characterizes as bank fraud in Count IV of the amended complaint. The same conduct is at issue under all four counts and the only difference is the label that has been attached to it. In view of this, if the reference is withdrawn both the District Court and the bankruptcy court would hear substantially the same evidence, concerning substantially the same transactions, for substantially the same purpose. The only difference being that the bankruptcy court would hear that evidence to determine whether the defendants' obligation to the plaintiff was non-dischargeable under §§ 523(a)(2), (4), and/or (6) of the United States Bankruptcy Code, while the District Court would hear that evidence in order to determine whether

from the scope of a debtor's discharge. As a result, in any dischargeability proceeding the bankruptcy court must first determine whether or not the debtor has any liability to the creditor; only if it does is there a need to proceed further and make the additional determination of whether or not that debt is a dischargeable one. In re Sieger, 200 B.R. 636, 639 (Bankr. N.D. Ind. 1996); In re Wilder, 178 B.R. 174, 176-77 (Bankr. E.D. Mo. 1995). Cf., Matter of Hallahan, 936 F.2d 1496, 1508 (7th Cir. 1991) ("we think it preferable to allow bankruptcy courts ruling on the dischargeability of a debt to adjudicate the issues of liability and damages also.").

the defendant's actions constituted bank fraud, giving rise to a claim for treble damages and attorney fees under I.C. 34-24-3-1, and, if so, whether that claim was excepted from discharge under §§ 523(a)(2), (4), and/or (6). The bankruptcy judge would submit that no good purpose is served by requiring the parties to present the same evidence, to two separate courts, in two separate proceedings, and that doing so would be a waste of everyone's time and resources. Instead, as the Seventh Circuit observed, it is "preferable to allow bankruptcy courts ruling on the dischargeability of debt to adjudicate the issues of liability and damages." Hallahan, 936 F.2d at 1508.

Based on the foregoing considerations, the bankruptcy judge recommends that the District Court deny the defendants' motion to withdraw the reference. Nonetheless, should the District Court be inclined to grant the motion, in order to avoid an unnecessary duplication of effort, the bankruptcy judge would then suggest that the District Court also consider withdrawing the reference as to Counts I, II and III of the plaintiff's amended complaint.

Since this litigation is concerned solely with the dischargeability of the debtors' obligation to the plaintiff, withdrawal of the reference will not have any effect upon the disposition of the underlying bankruptcy case. Additionally, in order to facilitate the possibility of settlement, the parties requested and the court approved a temporary suspension of proceedings in this matter, until September 22, 2008 when new litigation deadlines will be established. Accordingly, there is no need to expedite the disposition of the issues raised by the defendants' motion.

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