

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	Bankruptcy Case No. 01-0830-MFW
STAR CREDITORS' LIQUIDATING)	
TRUST)	
)	
Debtor.)	
_____)	
)	
GORDON HUTCHINS, JR., as)	
Liquidating Trustee of the)	Adversary Proceeding No. 03-51521-MFW
STAR CREDITORS' LIQUIDATING)	
TRUST)	
)	
Plaintiff,)	Civil Action No. 03-793-KAJ
)	
v.)	
)	
APCC SERVICES, INC., JAROTH, INC.)	
d/b/a PACIFIC TELEMAGEMENT)	
SERVICES, DATA NET SYSTEMS,)	
L.L.C., DAVEL COMMUNICATIONS)	
GROUP, INC., NSC)	
TELEMAGEMENT CORPORATION)	
)	
Defendant.)	

MEMORANDUM ORDER

Before the court is Defendants' APCC Services, Inc., Jaroth, Inc. d/b/a Pacific Telemanagement Services, Data Net Systems, L.L.C., Davel Communications Group, Inc., and NSC Telemanagement Corporation (collectively the "Defendants") motion for withdrawal of the reference (Docket Item ["D.I."] 1; the "Motion"). Defendants' Motion requests that adversary proceeding number 03-51521 be withdrawn from the U.S. Bankruptcy Court for the District of Delaware and further requests a waiver of the requirement that a contemporaneous motion be filed to determine whether the matter is core or non-core, as required under Bankruptcy Court's Local Rule 5011-1. (D.I. 1at 1-

2.) For the reasons that follow, the court grants the Defendants' Motion.

On March 7, 2003, Gordon Hutchins, Jr., as Liquidating Trustee of the Star Creditors' Liquidating Trust (the "Plaintiff") commenced this action by filing a Complaint to avoid and recover preferential transfers pursuant to 11 U.S.C. §§ 547, 550. (D.I. 2 at 2.) The Plaintiff, thereafter, filed an Amended Complaint for Avoidance and Recovery of Fraudulent Transfers. (*Id.*) On May 22, 2003, the Defendants filed their Answer in which they demanded a jury trial, pursuant to Fed. R. Civ. P. 38 and Fed. R. Bankr. P. 9015, and did not consent to a jury trial before the Bankruptcy Court. (D.I. 1 at 3.) The Bankruptcy Court then conducted a scheduling conference in this matter and entered a Scheduling Order. (D.I. 2 at 3.) On July 18, 2003, the present Motion (D.I. 1) was filed.

The Plaintiff concedes that, under *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), a defendant in an adversary proceeding has the right to withdraw the reference of a fraudulent transfer action and demand a jury trial, notwithstanding the designation of the action as a core proceeding under 28 U.S.C. § 157(b)(2)(H). *Granfinanciera, S.A.*, 492 U.S. at 36. The Plaintiff, however, argues "that for efficiency and the economical use of the parties, and to reduce forum shopping, that if the Court grants the Motion, it remand the matter back to the Bankruptcy Court for all pre-trial matters, because, (1) the Bankruptcy Court has already ... established scheduling for all pretrial matters and (2) this matter is not ready for trial." (D.I. 2 at 3.) Alternatively, the Plaintiff argues that the court, again in the interest of judicial economy, should deny the Motion without prejudice because the matter is not ready for trial.

In determining whether to grant or deny a motion to withdraw the reference, "this Court will consider ... whether withdrawal would serve judicial economy, such as the

goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." *NDEP Corp. V. Handl-It, Inc. (In re NDEP Corp.)*, 203 B.R. 905, 913 (D.Del. 1996). Here, although the Plaintiff asserts that all pretrial matters in this proceeding should be remanded to the Bankruptcy Court for reasons of judicial economy, or the Motion should be denied for reasons of judicial economy, the Plaintiff provides no explanation in support of these contentions. Further, remanding the matter to the Bankruptcy Court, or denying the Motion, would not promote uniformity in the bankruptcy administration, reduce forum shopping, foster the economical use of the parties resources, or expedite the bankruptcy process. On the contrary, considerations of judicial economy favor withdrawal. Because it is essentially conceded that Defendants are entitled to a jury trial, it appears more efficient for this court to manage the case through the pretrial process. *Cf. NDEP*, 203 B.R. at 913 (quoting *Gumport v. Growth Fin. Corp. (In re Transcon Lines)*, 121 B.R. 837, 838 (C.D. Cal. 1990)) ("Due to the fact that a District Court Judge must eventually preside over the jury trial in this matter, it would constitute a tremendous waste of judicial resources to permit the bankruptcy judge to continue to maintain jurisdiction over the issues presented in this litigation.").

Accordingly, IT IS HEREBY ORDERED that Defendants' Motion (D.I. 1) is GRANTED and the reference of the above Adversary Proceeding Number 03-51521 is WITHDRAWN. IT IS FURTHER ORDERED that Defendants' need not file a motion to determine whether the matter is core or non-core.

March 3, 2004
Wilmington, Delaware

Kent A. Jordan
UNITED STATES DISTRICT JUDGE