

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11
: :
MONTGOMERY WARD, LLC, : Bankruptcy Case No. 00-4667-RTL
et al. : :
: :
Debtors. : :

MONTGOMERY WARD, LLC, : :
: :
Plaintiff, : Adversary No. 02-10052
: :
v. : Civil Action No. 04-229-JJF
: :
SMITH PROTECTIVE SERVICES, : :
INC. d/b/a SMITH PROTECTIVE : :
PROTECTION SECURITY, : :
: :
Defendant. : :

Jason W. Harbour, Esquire of MORRIS, NICHOLS, ARSHT & TUNNELL,
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Of Counsel: Joseph L. Steinfeld, Jr., Esquire and Kelly J.
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Attorneys for Plaintiff.

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Delaware.
Attorneys for Defendant.

MEMORANDUM OPINION

November 4, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is an Amended Motion To Withdraw The Reference Of Adversary Proceeding No. 02-10052-RTL From The United States Bankruptcy Court To The United States District Court For The District Of Delaware And For Transfer To The Northern District Of Texas (D.I. 2) filed by Defendant, Smith Protective Services, Inc. ("Smith Protective"). For the reasons set forth below, the Court concludes that discretionary withdrawal and transfer of the instant adversary proceeding is not warranted, and therefore, the Court will deny Smith Protective's Motion.

STATEMENT OF FACTS

On December 28, 2000, Montgomery Ward LLC ("Montgomery Ward") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On August 20, 2002, the Third Amended Chapter 11 Plan of Liquidation Proposed By The Official Committee of Unsecured Creditors of Montgomery Ward LLC (the "Plan") was confirmed and made effective. Shortly thereafter, Montgomery Ward filed the instant Adversary Proceeding seeking the avoidance and recovery of preferential transfers totaling \$210,930.20, pursuant to Section 547 and 550 of the Bankruptcy Code.

By its Motion, Smith Protective seeks to withdraw the reference of this adversary proceeding to this Court, and if withdrawal is granted, Smith then requests the Court to transfer

this action to the United States District Court for the District of Texas. Smith Protective contends that "cause" exists for permissive withdrawal, because the Bankruptcy Court's caseload is overburdened with thousands of preference actions and there are an insufficient number of judges to handle them. In addition, Smith Protective contends that if withdrawal of the reference is granted, then transfer of this proceeding to the Northern District of Texas is appropriate, because Smith Protective is a corporation formed under Texas law and located in Texas, and the services related to the dispute underlying this adversary proceeding were rendered in Texas. Thus, Smith Protective contends that the bulk of discovery, including the location of document and witnesses, is in Texas.

DISCUSSION

Under 28 U.S.C. § 1334(b), district courts "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Pursuant to 28 U.S.C. § 157(a), each district court may refer cases under title 11 to the Bankruptcy Court for disposition. However, under Section 157(d), the referred proceeding can be withdrawn from the Bankruptcy Court and returned to the district court. Section 157(d) provides for both mandatory withdrawal and discretionary withdrawal. In this case, Smith Protective seeks withdrawal only under the standards for

discretionary withdrawal.

In providing for discretionary withdrawal, Section 157(d) states: "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." This Court has acknowledged that the requirement that cause be shown "creates a 'presumption that Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court, unless rebutted by a contravening policy.'" Hatzel & Buehler, Inc. v. Central Hudson Gas & Elec., 106 B.R. 367, 371 (D. Del. 1989) (citations omitted).

The Court of Appeals for the Third Circuit has set forth five factors that a district court should consider in determining whether "cause" exists for discretionary withdrawal. These factors include: (1) promoting uniformity of bankruptcy administration; (2) reducing forum shopping and confusion; (3) fostering economical use of debtor/creditor resources; (4) expediting the bankruptcy process; and (5) timing of the request for withdrawal. In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990) (adopting Holland America Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)).

Evaluating these factors in the context of this case, the Court concludes that Smith Protective has not established cause for withdrawal of the reference. The instant adversary proceeding is a core proceeding under the Bankruptcy Code

involving relatively uncomplicated claims and defenses and relatively basic discovery. In re Philadelphia Training Center Corp., 155 B.R. 109 (E.D. Pa. 1993) (declining permissive withdrawal in similar circumstances). The amount in controversy in this case is relatively small, and the parties have not yet conducted any discovery. Thus, it is entirely possible that this case may be resolved prior to the need for any extensive proceedings before the Bankruptcy Court, and in any event, if proceedings are needed before the Bankruptcy Court, the Court is persuaded that they will be of a routine nature. Further, the Debtor has several hundred similar proceedings before the Bankruptcy Court in its Chapter 11 case, and therefore, the Court is persuaded that maintaining this action in the Bankruptcy Court will contribute to the orderly and efficient administration of the Debtor's estate.¹ Because the Court declines to withdraw the reference, transfer to the Northern District of Texas will not be discussed. Accordingly, the Court, in its discretion, will deny Smith Protective's Motion for withdrawal of the reference and transfer to the Northern District of Texas.

CONCLUSION

For the reasons discussed, the Amended Motion To Withdraw

¹ The Court is aware of the large volume of cases burdening this district's Bankruptcy Court; however, the Bankruptcy Court is actively addressing the overload problem with, for example, visiting judges and a successful mediation program.

The Reference Of Adversary Proceeding No. 02-10052-RTL From The United States Bankruptcy Court To The United States District Court For The District Of Delaware And For Transfer To The Northern District Of Texas filed by Smith Protective will be denied.

An appropriate Order will be entered.

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INC. d/b/a SMITH PROTECTIVE :
PROTECTION SECURITY, :
: :
Defendant. : :

O R D E R

At Wilmington, this 4th day of November 2004, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the Amended Motion To Withdraw The Reference Of Adversary Proceeding No. 02-10052-RTL From The United States Bankruptcy Court To The United States District Court For The District Of Delaware And For Transfer To The Northern District Of Texas (D.I. 2) filed by Defendant, Smith Protective Services, Inc. is **DENIED**.

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE