

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
THE IT GROUP, INC., et al., : Chapter 11
: Bankruptcy Case No. 02-10118 MFW
Debtors. :


OFFICIAL COMMITTEE OF UNSECURED :
CREDITORS OF THE IT GROUP, et :
al., on behalf of The Estate of :
The IT Group, Inc., et al., :
Plaintiff, : Adversary No. 04-50080
v. : Civil Action No. 05-100 JJF
ENVIROCRAFT CORPORATION, :
Defendant. :

Eric Michael Suttty, Esquire, of THE BAYARD FIRM, Wilmington,
Delaware.
Attorney for Plaintiffs.

Michael P. Morton, Esquire, of MICHAEL P. MORTON, P.A., Wilmington,
Delaware.
Of Counsel: Edward L. Paul, Esquire, of SKLAR & PAUL, P.C.,
Vorrhees, New Jersey.
Attorneys for Defendant.

MEMORANDUM OPINION

April 21, 2005
Wilmington, Delaware


Farnan, District Judge.

Pending before the Court is the Motion To Withdraw The Reference As To The Adversary Proceeding (D.I. 1) filed by Defendant Envirocraft Corporation ("Envirocraft"). For the reasons discussed, Defendant's Motion will be granted.

BACKGROUND

On January 16, 2002, the IT Group, Inc. and its affiliates filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

On January 6, 2004, the IT Group filed a complaint in the United States Bankruptcy Court for the District of Delaware ("the Bankruptcy Court proceeding") seeking to recover \$175,746.83 paid to Envirocraft for services rendered.

The contract pursuant to which Envirocraft was paid is the subject of an adversary proceeding currently pending in the United States District Court for the District of Delaware ("the District Court action"), Envirocraft v. PPG Industries, Inc., Civil Action No. 03-455-JJF. Envirocraft alleges that PPG Industries, Inc. ("PPG") owns the property at which Envirocraft provided services to IT Corporation, an affiliate of Debtor IT Group. In the District Court action, Envirocraft alleges that it is presently due the sum of \$335,486.52 in connection with a construction lien claim on PPG's property. On September 2, 2003, the Court entered an Order (D.I. 22-1) in the District Court action allowing PPG to join IT

Corporation as a third-party defendant. On September 30, 2004, IT Corporation amended its Answer in the District Court action to include challenges to Envirocraft's claim and the amounts alleged in the lawsuit, arguing that the amounts ought to be reduced as a result of the alleged preferential transfers.

Envirocraft filed the pending Motion To Withdraw The Reference As To The Adversary Proceeding (D.I. 1) in the Bankruptcy Proceeding on February 22, 2005.

PARTIES' CONTENTIONS

By its motion, Envirocraft contends that the Court should withdraw the reference of the Bankruptcy Court proceeding pursuant to 28 U.S.C. section 157(d) so as not to delay the parties or increase costs to them. Envirocraft further contends that withdrawal of the reference would permit this proceeding to be consolidated with the District Court action, resulting in the most efficient use of judicial resources.

Plaintiffs have not filed an opposition to Defendant's Motion To Withdraw the Reference.

DISCUSSION

Pursuant to 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.

Under Section 157(d), however, 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, Defendant 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." 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 Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)).

In this case, the Court finds that Defendant made the motion

to withdraw at an early stage of the Bankruptcy Court proceeding. Further, the Court finds that IT Corporation has alleged the same preferential transfers as a defense to payment to Envirocraft in the District Court action as it asserted in the preferential complaint filed in the Bankruptcy Court, and that the District Court action is at an early stage in its proceedings. Thus, the Court concludes that withdrawing the reference and consolidating the Bankruptcy Court proceeding with the District Court action would promote uniformity of bankruptcy administration and foster economical use of debtor/creditor resources. Further, the Court finds that the issue of forum shopping is not implicated in the circumstances of this case because the District Court action was filed more than one year before the Bankruptcy Court proceeding. For these reasons, the Court concludes that Envirocraft has shown cause to withdraw the reference from the Bankruptcy Court.

CONCLUSION

For the reasons discussed, the Court will grant the Motion To Withdraw The Reference As To The Adversary Proceeding (D.I. 1) filed by Defendant Envirocraft Corporation.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

IN RE: :
: Chapter 11
THE IT GROUP, INC., et al., :
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: Debtors. :
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OFFICIAL COMMITTEE OF UNSECURED :
CREDITORS OF THE IT GROUP, et :
al., on behalf of The Estate of :
The IT Group, Inc., et al., :
: Adversary No. 04-50080
Plaintiff, :
: Civil Action No. 05-100 JJF
v. :
ENVIROCRAFT CORPORATION, :
: Defendant. :

ORDER

At Wilmington, this 26 day of April 2005, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that:

(1) The Motion To Withdraw The Reference As To The Adversary Proceeding (D.I. 1) filed by Defendant Envirocraft Corporation is **GRANTED**;

(2) Official Committee of Unsecured Creditors Of the IT Group, et al. v. Envirocraft Corp., Civil Action No. 05-100, shall be consolidated into Envirocraft Corp. v. PPG Industries, Inc., et al., Civil Action No. 03-445. All further pleadings in the consolidated case shall be filed under Civil Action No. 03-445;

(3) The parties shall confer and submit by no later than

Friday, April 29, 2005, a Proposed Rule 16 Scheduling Order, using the attached form of order as a basis for the discussions.


UNITED STATES DISTRICT JUDGE

RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under
Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties [have
exchanged] [will exchange] by (date) the information required by
Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Joinder of other Parties.** All motions to join
other parties shall be filed on or before (date).

3. **Settlement Conference.** Pursuant to 28 U.S.C. §
636, this matter is referred to Magistrate Judge Thyng for the
purposes of exploring the possibility of a settlement. If the
parties agree that they would benefit from a settlement
conference, the parties shall contact Magistrate Judge Thyng to
schedule a settlement conference so as to be completed no later
than the Pretrial Conference or a date ordered by the Court.

4. **Discovery.**

(a) Exchange and completion of interrogatories,
identification of all fact witnesses and document production
shall be commenced so as to be completed by (date).

(b) Maximum of _____ interrogatories by each
party to any other party.

(c) Maximum of _____ requests for admission by

each party to any other party.

(d) Maximum of _____ depositions by plaintiff(s) and _____ by defendant(s). Depositions shall not commence until the discovery required by Paragraph 4 (a, b and c) are completed.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the plaintiff(s) by (date); from the defendant(s) by (date).

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties.

5. Discovery Disputes.

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the parties have completed briefing.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

6. Amendment of the Pleadings. All motions to amend the pleadings shall be filed on or before _____.

7. Case Dispositive Motions. Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before _____, 20____. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court.

8. Applications by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter

requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. **Pretrial Conference and Trial.** After reviewing the parties' Proposed Scheduling Order, the Court will schedule a Pretrial Conference.

The Court will determine whether the trial date should be scheduled when the Scheduling Order is entered or at the Pretrial Conference. If scheduling of the trial date is deferred until the Pretrial Conference, the parties and counsel shall anticipate and prepare for a trial to be held within sixty (60) to ninety (90) days of the Pretrial Conference.

DATE

UNITED STATES DISTRICT JUDGE