

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LINDA S. PARKS,

Plaintiff,

vs.

Case No. 11-111-JTM

PERSELS AND ASSOCIATES, L.L.C., AND
LAURA K. SIMPSON-REDMOND,

Defendants.

MEMORANDUM AND ORDER

This matter comes on defendants' Motion to Withdraw Reference and Transfer Proceedings to District Court (Dkt. No. 1). The trustee filed an Objection. Bankruptcy Judge Dale Somers filed a Report and Recommendation on the matter pursuant to D. Kan. R. 83.8.6 (Dkt. No. 3). The court has reviewed the motion and Judge Somers's recommendation. For the following reasons, the court overrules the motion as premature and adopts the Report and Recommendation.

Defendants assert the right to a jury trial under the Seventh Amendment to the United States Constitution on the several claims involved in this bankruptcy proceeding and request the court immediately withdraw the adversary case from the Bankruptcy Court. Under 28 U.S.C. § 157(d), the court "may withdraw, in whole or in part, any case or proceeding referred [to the Bankruptcy Court], on its own motion or on timely motion of any party, for cause shown." *Id.* Local Rule 83.8.13(a) further provides:

A district judge shall conduct jury trials in all bankruptcy cases and proceedings in which a party has a right to trial by jury, a jury is timely demanded, and no statement of consent to jury trial before a bankruptcy judge has been filed.

Id. In his recommendation, Judge Somers concludes this case involves both legal and equitable claims, establishing cause for withdrawing the adversary claim from the Bankruptcy Court. However, he further suggests the Bankruptcy Court retain the case for trial preparation, including all discovery and ruling on dispositive motions. After completion of trial preparation, if any legal claims remain, he suggests the reference be withdrawn for trial before the District Court. This “approach streamlines pretrial procedures and serves the interests of judicial efficiency by taking advantage of the Bankruptcy Court’s expertise and familiarity of the issues and discouraging forum shopping.” *Redmond v. Hassan*, No. 07-204, 2007 WL 677611, at *1 (D. Kan. Feb. 28, 2007). Even though defendants request immediate withdrawal, they show no prejudice and do not suggest leaving the matter with the Bankruptcy Judge for preliminary matters would be improper.

IT IS ACCORDINGLY ORDERED this 9th day of May 2011, that defendants’ Motion to Withdraw Reference and Transfer Proceedings to District Court (Dkt. No. 1), is denied as premature.

IT IS FURTHER ORDERED that this court adopts the Bankruptcy Judge’s Report and Recommendation (Dkt. No. 3). Upon completion of trial preparation, including discovery and dispositive motion rulings, defendants may re-file this motion if legal issues remain to which the parties assert a Seventh Amendment right to a trial by jury.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE