

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Case No. 02-3113-8G7

THE HARMAN MARKETING GROUP, INC.

Debtor.

Chapter 7

V. JOHN BROOK, TRUSTEE,

Plaintiff,

vs.

Adv. No. 02-798

SUTHERLAND & WILCOX, INC.
and SHARON M. WILCOX

Defendants.

ORDER ON PETITION FOR REMOVAL

THIS ADVERSARY PROCEEDING came before the Court for hearing on the "Demand for Trial by Jury and Petition for Removal" filed by the Defendants, Sutherland & Wilcox, Inc. and Sharon M. Wilcox. The complaint was filed by V. John Brook, the Chapter 7 Trustee, on October 1, 2002, and an answer was filed by the Defendants on November 4, 2002. On November 8, 2002, the Defendants filed the "Demand for Trial by Jury and Petition for Removal." The hearing was conducted on January 28, 2003.

At the hearing, the Defendants reiterated the request made in their filing: that this Court "order this action be removed to the United States District court in and for the Middle District of Florida."

Discussion

Each District Court may provide that any or all cases under title 11 of the United States Code (the Bankruptcy Code), and any or all proceedings arising under the Bankruptcy Code or arising in or related to a case under the Bankruptcy Code shall be referred to the bankruptcy judges for the district. 28 U.S.C. §157(a).

Pursuant to this authority, on July 11, 1984, the District Court for the Middle District of Florida entered a standing order of referral to the bankruptcy courts. *In re: Assignment of Cases Arising Under Title 11, United States Code*, No. 84-MISC-152 (M.D. Fla. 1984).

Transfer of a case, a contested matter, or an adversary proceeding from the Bankruptcy Court to the District Court is accomplished by withdrawing this reference. A succinct explanation of the background and procedural means with regard to "transferring" a proceeding from the Bankruptcy Court to the District Court is set forth by the United States District Court in the Central District of California in *In re First Alliance Mortgage Company*, 282 B.R. 894, 901 (C.D. Cal. 2001):

Responding to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982), Congress enacted a new bankruptcy code. Pertinent here are three facets of the new code. First, district courts, rather than bankruptcy courts, have original jurisdiction over all bankruptcy matters. Second, the district courts may automatically "refer" all bankruptcy matters to the bankruptcy court... Third, 28 U.S.C. §157(d) provides a mechanism whereby matters pending in a bankruptcy court may be transferred to the district court.

A transfer to the district court is accomplished by "withdrawing" the "reference." A litigant who believes that a certain proceeding pending in the bankruptcy court should be litigated in the district court may make such a motion. [footnote omitted] Such a motion is heard by the district court. Fed. R. Bankr. 5011(a).

Id.

The procedures for requesting withdrawal of the reference are set out in the United States Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the United States Bankruptcy Court for the Middle District of Florida.

Section 157(d) of the United States Code provides:

28 U.S.C. §157. Procedures

(d) 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 district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

Rule 5011 of the Federal Rules of Bankruptcy Procedure provides:

Rule 5011. Withdrawal and Abstention from Hearing a Proceeding

(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.

Rule 5011-1 of the Local Rules of the United States Bankruptcy Court for the Middle District of Florida provides:

Rule 5011-1 WITHDRAWAL OF REFERENCE

(a) Briefing requirements; generally.

(1) Every written (i) motion for withdrawal of the reference of a case or proceeding pursuant to 28 U.S.C. §157(b)(5) or (d), (ii) response thereto and (iii) any other motion, application, objection, or response that statute, the Federal Rules of Bankruptcy Procedure, these rules, an order, or the circumstances require be filed with the Clerk of this Court, but be heard and determined by the District Court, shall be accompanied upon filing and service by a legal memorandum with citation of authorities in support of, or in opposition to, the relief requested.

(2) Absent prior permission of the District Court, no party shall file any legal memorandum in excess of twenty (20) pages in length.

(3) The motions and matters within the scope of this rules shall not be deemed complete for purposes of transmittal to the Clerk of the District Court for hearing and determination until the parties have complied with the briefing requirements of this rule.

(b) Motions for withdrawal of the reference; special provisions.

...

(2) A motion for withdrawal of the reference of a proceeding . . . arising in, under or related to a case that is a subject of the Order of General Reference must be filed with the Clerk not later than thirty (30) days after the filing of the initial pleading or other paper commencing the proceeding

(3) A motion for withdrawal of a proceeding . . . shall be served together with a legal memorandum on counsel of record for all parties to the proceeding . . . and on counsel of record for the debtor, the debtor, and the United States Trustee. The opposing parties shall have ten (10) days after service of the motion to file a responsive pleading and legal memorandum with the Clerk.

(4) After expiration of the time allowed for a response, the Clerk shall transmit to the Clerk of the District Court copies of the motion and legal memorandum, response and legal memorandum, if any, and such other pleadings as the parties request in the motion and in the response, if any.

(5) Until and unless the Court or the District Court orders otherwise, the Court shall continue to hear the . . . proceeding while the motion for withdrawal is under consideration in the District Court.

(6) Upon entry of an order by the District Court withdrawing the reference, the Clerk shall forward a copy of the entire . . . proceeding file to the Clerk of the District Court.

(Emphasis supplied.)

The Bankruptcy Court does not have the ability to transfer or "remove" cases to the District Court. The District Court has referred cases to the Bankruptcy Court, and a request for withdrawal of the reference must be determined by the District Court. Further, the request must be made according to the procedures above. See Centrust Savings Bank v. Love, 131 B.R. 64, 66 (S.D. Tex. 1991) and

Benchic v. Century Entertainment Corp. (In re Century Entertainment Corp.), 20 B.R. 126 (Bankr. S.D. Ohio 1982).

Accordingly, the Petition for Removal should be considered as a motion for withdrawal of the reference. The motion is not complete, however, since there is no accompanying legal memorandum with citation of authorities in support of the relief requested, as required by M.D.Fla.L.B.R. 5011-1(a)(1). Therefore, the motion cannot be transmitted to the Clerk of the District Court. See M.D.Fla. L.B.R. 5011-1(a)(3).

The Defendants should file (with the Clerk of the Bankruptcy Court) and serve their legal memorandum with citation of authorities within 10 days of the date of entry of this order. If the Defendants do not file and serve such a memorandum, the motion for withdrawal of the reference shall be deemed abandoned. If the Defendants do file and serve such a memorandum, then the opposing parties shall have ten days after service of the memorandum to file a responsive pleading and legal memorandum with the Clerk. After the expiration of the time allowed for a response, the Clerk of this Court shall transmit to the Clerk of the District Court copies of the motion and legal memorandum, response and legal memorandum, if any, and such other pleadings as the parties request in the motion and in the response, if any.

Accordingly:

IT IS ORDERED that:

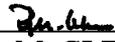
1. Within 10 days of the date of entry of this order, the Defendants should file with the Clerk of the Bankruptcy Court and serve on appropriate parties their legal memorandum with citation of authorities.

2. If the Defendants do not file and serve such a memorandum, the request for withdrawal of the reference shall be deemed abandoned.

3. If the Defendants file and serve such a memorandum, then the opposing parties shall have 10 days after service of the memorandum to file a responsive pleading and legal memorandum with the Clerk of the Bankruptcy Court. After the expiration of the time allowed for a response, the Clerk of the Bankruptcy Court shall transmit to the Clerk of the District Court copies of the motion and legal memorandum, response and legal memorandum, if any, and such other pleadings as the parties request in the motion and in the response, if any.

DONE AND ORDERED at Tampa, Florida, on **MAR 19 2003**.

BY THE COURT



PAUL M. GLENN
United States Bankruptcy Judge