

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DAI-TOKYO ROYAL STATE :
INSURANCE COMPANY, LIMITED and :
ROYAL STATE FINANCIAL :
CORPORATION, :
Plaintiffs, :
 :
-vs- : Civ. No. 3:01mc437 (PCD)
 :
INFORMATION MANAGEMENT :
ASSOCIATES, INC., dba IMA, :
Defendant. :

**RULING ON PETITION FOR WITHDRAWAL OF REFERENCE TO
BANKRUPTCY COURT AND FOR TRANSFER TO DISTRICT COURT**

Plaintiffs move pursuant to 28 U.S.C. § 157 to withdraw the reference to the Bankruptcy Court of claims alleging breach of contract and negligent misrepresentation. For the reasons set forth herein, the petition is denied.

I. BACKGROUND

Plaintiffs claim, inter alia, that defendant breached its contract to provide software and implementation services for a computerized call center system. Defendant is a debtor in an ongoing bankruptcy proceeding. On November 22, 2000, plaintiffs filed a proof of claim against the defendant debtor, claiming breach of contract and related claims in excess of \$2.5 million. On May 8, 2001, defendant objected to the proof of claim asserting that there was no breach of contract, the amount of the claim exceeded restitution available under the contract, and that the claim was barred by time limitations set forth in the agreement. Defendant, in its counterclaim, sought damages of \$1.466 million for failure to pay for consulting services

rendered as per the agreement. On June 28, 2001, plaintiffs denied the counterclaim and asserted that it was barred by equitable estoppel, laches, and unclean hands, that the limitations period claimed by defendant also applied to defendant's counterclaim, and that any damages were offset by plaintiffs' damages. On October 19, 2001, plaintiffs filed the present motion to withdraw the reference to the Bankruptcy Court and to transfer the case to this Court.

II. STANDARD

A reference to the Bankruptcy Court may be withdrawn "for cause shown." 28 U.S.C. § 157(d); *S. St. Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 762 (2d Cir.1996). "[I]n deciding whether to withdraw an issue from the bankruptcy court, the district court should weigh several factors, of which the first is the most important: (1) whether the claim is core or non-core, (2) what is the most efficient use of judicial resources, (3) what is the delay and what are the costs to the parties, (4) what will promote uniformity of bankruptcy administration, (5) what will prevent forum shopping, and (6) other related factors." *S. St. Seaport Ltd. P'ship*, 94 F.3d at 762.

III. DISCUSSION

Plaintiffs argue that their claim against defendant is a non-core matter which is inappropriate for Bankruptcy Court adjudication. *See N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982). Such is not the case.

Addressing the same argument, the Court of Appeals for the Second Circuit reasoned that "[w]hile it is true that the instant adversary proceeding involved a pre-petition breach of contract claim, as in *Marathon*, there is one crucial distinction which [the creditor] ignores.

Unlike the defendant in *Marathon*, [the creditor] filed a proof of claim in [the debtor's] Chapter 11 case. By filing a proof of claim, [the creditor] submitted itself to the equitable power of the bankruptcy court to disallow its claim." *In re Manville Forest Prods. Corp.*, 896 F.2d 1384, 1389 (2d Cir. 1990). Thus, such a claim was held to "clearly fall[] within the core of federal bankruptcy power." *Id.* at 1388.

As a core matter, the balance weighs heavily against withdrawal of the reference to the Bankruptcy Court. *S. St. Seaport Ltd. P'ship*, 94 F.3d at 762. Plaintiffs neither distinguish *In re Manville Forest Prods. Corp.* from the facts of their case nor present adequate justification for withdrawal of a core proceeding. The petition for withdrawal of reference, therefore, is denied.

IV. CONCLUSION

Plaintiffs' petition for withdrawal of reference to the Bankruptcy Court and for transfer to this Court (Doc. 1) is **denied**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, November ____, 2001.

Peter C. Dorsey
United States District Judge