Docket #0047 Date Filed: 4/29/2014

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In re: RESIDENTIAL CAPITAL, LLC et al.	CASE NO: **12-12020 (MG)** ADV. CASE: 12-019363-mg Chapter 11
Jennifer L. Wilson Plaintiff, v. RESIDENTIAL CAPITAL, LLC; RESIDENTIAL FUNDING COMPANY, LLC; and Does 1 – 10 inclusively, Defendants.	MOTION TO WITHDRAW THE REFERENCE Concurrently filed: Memorandum in Support of Motion to Withdraw Reference.

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U.S. BANKRUPTCY COURT
SO DIST OF NEW YORK

TO THE HONORABLE _____, UNITED STATES DISTRICT COURT JUDGE; THE HONORABLE MARTIN GLENN UNITED STATES BANKRUPTCY JUDGE; AND ALL PARTY DEFENDANTS AND THEIR ATTORNEY(S) OF RECORD:

COME NOW Plaintiff, Jennifer L. Wilson ("WILSON"), moves the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW

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YORK, pursuant to Title 28 U.S.C. § 157(d), Fed. R. Bk. P. Rules 5011, and Local Bankruptcy Rule 5011-1, to Withdraw Reference to the captioned case to United States District Court Southern District of New York.

As will be shown in the "MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW REFERENCE" grounds exist for both discretionary and mandatory withdrawal.

TIMELINESS

WILSON timely moves the Court for MOTION TO WITDRAW REFERENCE. Any allegation of untimeliness misrepresents the facts.

WILSON identified the preceding to be "non-core" in the Adversary Complaint. See Adversary Complaint ¶ 4. Additionally, WILSON objected to any final order or judgment of the Bankruptcy Court in MEMORANDUM OF POINTS AND AUTORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1), at ¶ I "JURISDICTION VENUE". (Dkt. # 15.)

WILSON voluntary participated in the Bankruptcy Court ordered Supplemental AP Procedures in an effort to avoid protracted and costly litigation for both parties. However, after the parties agreed upon set terms and conditions for a settlement in this matter, the drafts presented WILSON altered the agreed upon terms and conditions.

Despite the breakdown in the negotiated settlement, on January 23, 2014 WILSON moved the Bankruptcy Court for "IN CHAMBERS SETTLEMENT CONFERENCE" to which neither the Court nor Defendants, RESIDENTIAL CAPITAL, LLC or RESIDENTIAL FUNDING COMPANY, LLC responded.

WILSON, in open Court on February 6, 2014, lodged a standing and continual objection to the Bankruptcy Court presiding in this matter.

Therefore, WILSON sought all available remedies for settlement in an effort to avoid any protracted litigation, and accordingly this "MOTION TO WITHDRAW REFERENCE" is timely.

PERMISSIVE WITHDRAWAL

Each cause of action in the Adversary Complaint comports to "cause" for permissive withdrawal of the reference under Section 157(d) and although not defined in the statute, the Second Circuit has held that the district courts should consider several factors: (i) whether the claims involved are core or non-core; (ii) the most efficient use of judicial resources; (iii) expediting the bankruptcy process; (iv) uniformity of bankruptcy administration; (v) what will prevent forum shopping; and (vi) other related factors, including reducing confusion and a request for a jury trial. *See Orion Pictures Corp. v. Showtime Networks* (*In re Orion Pictures Corp.*), 4 F.3d 1095, 1101 (2d Cir. 1993), (and cases cited therein).

Notwithstanding the "Demand for Trial by Jury" each Adversary Complaint claim and allegation, however styled in the Adversary Complaint, demonstrate Residential Funding Company, LLC ("RFC"), by way of its agent(s), committed fraud[1] upon the State Court and by said State Court order defrauded WILSON of her equity and property to which RFC is liable.

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[1] "A **void** judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987); *Kupferman v. Consolidated Research and Manufacturing Corp.*, 459 F.2d 1072 (2nd Cir. C.I.R. 1972) ("an attorney's loyalty to the court, as an officer thereof, demands integrity and honest dealing with the Court. And when he departs from that standard in the conduct of a case he perpetrates a "fraud upon the court.""); *Hazel-Atlas Glass Co. v. Hartford-Empire Company*, 322 U.S. 238, (1944) ("even if Hazel did not exercise the highest degree of diligence Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. ... tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants.

MANDATORY WITHDRAWAL

Although "cause" exists for the Court to exercise its discretion and withdraw the reference of the Adversary Proceeding, WILSON also notes that the claims in the Adversary Proceeding mandate withdrawal pursuant to Section 157(d).

Section 157(d) authorizes district courts to withdraw the reference from the bankruptcy court:

> [t]he 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.

WILSON is not schooled in the law, however, the Adversary Complaint clearly identified the claims to be "NON-CORE proceedings pursuant to 28 U.S.C. § 157(c), 157(d), and 157(e). See Adversary Complaint ¶ 4.

On February 19, 2013 WILSON filed "OBJECTION TO BANKRUPTCY ENTRY OF FINAL ORDER AND JUDGMENT" citing, 28 U.S.C. §§ 157(c), 157(d), and 157(e).

The Bankruptcy Court has demonstrated complacency failing to, *sua sponte*, determine the claims to be either "core" or "non-core." At the February 6, 2014 hearing WILSON entered a standing and continual objection to the Bankruptcy Court presiding in this matter. The Bankruptcy Court responded it had jurisdiction until such time WILSON moves the Court.

The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.").

The distinction between "core" and "non-core" proceedings has been summarized as follows:

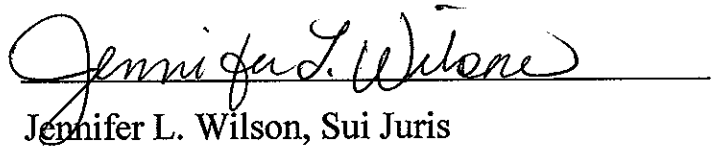
> [a] proceeding is encompassed within the bankruptcy court's core . . . jurisdiction if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case. By contrast, a proceeding is non-core if it exists independently under state law and is merely 'related to' the bankruptcy case because of a conceivable effect upon the debtor's estate. Only a district court, and not a bankruptcy court, may enter final judgment in a non-core, 'related to' proceeding.

RELIEF REQUESTED

WHEREFORE, PLAINTIFF, Jennifer L. Wilson, respectfully request this Court grant the MOTION TO WITHDRAW REFERENCE.

Date: April 28, 2014

Respectfully submitted,



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PROOF OF SERVICE

I Jennifer Wilson hereby certify that on April 28, 2014, I served a copy of the foregoing by U.S. Postal Service and email addressed to defendants' counsel of record:

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This the 28th day of April, 2014.

By: Jennifer L. Wilson

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