U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
ELIZABETH C. SMITH d/b/a TWO BLONDE LIZZARDS,	§	CASE NO. 02-36967-SAF-13
DEBTOR(S).	§	
	§	
ELIZABETH C. SMITH,	§	
PLAINTIFF,	§	
	§	
VS.	§	ADVERSARY NO. 02-3730
	§	
JAMES F. WIMPRESS, et al.,	§	
DEFENDANTS.	§	

MEMORANDUM OPINION AND ORDER

Elizabeth C. Smith, the plaintiff, moves the court to remand this adversary proceeding to state court. In the alternative, Smith requests that the court abstain from hearing the matter. James F. Wimpress, et al., the defendants, oppose the motion. The court conducted a hearing on the motion on March 12, 2003.

On August 12, 2002, Smith filed a petition for relief under Chapter 13 of the Bankruptcy Code. After commencing her bankruptcy case, on August 30, 2002, Smith filed her complaint against the defendants in state court alleging fraud, breach of fiduciary duty, conspiracy, negligent misrepresentation and breach of contract based on a failed business venture known as

Two Blonde Lizzards. Smith's causes of action pre-date the bankruptcy case and constitute property of the bankruptcy estate. The defendants, except Duane A. Harris and Harris & Meyers, referred to as the Lizzard defendants, removed the litigation to federal court. The Lizzard defendants represent that Harris and Harris & Meyers do not oppose the removal.

The Lizzard defendants filed proofs of claims in the bankruptcy case. Their claims mirror counter-claims they assert against Smith in this litigation. Smith's claims against the Lizzard defendants and the Lizzard defendants' claims in the bankruptcy case stem from the same underlying business dispute. The allowance of a claim against a bankruptcy estate and the corresponding determination of a counter-claim from the same underlying acts or transactions constitute core matters over which the bankruptcy court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(B) and (C) and 1334.

Smith requests a jury trial, does not consent to the bankruptcy judge conducting the jury trial, and asserts, therefore, that the court must abstain from hearing this adversary proceeding. 28 U.S.C. § 1334(c)(2). The court notes parenthetically the anomaly of Smith seeking relief from this court for the restructuring of her debts and the ultimate discharge of her liability on those debts but resists this court liquidating property of the voluntarily-created bankruptcy

estate. That notwithstanding, the bankruptcy claims allowance process obviates any ground for mandatory abstention.

The mere filing of a bankruptcy case by Smith does not forfeit or waive the right to a jury trial. In re Jensen, 946 F.2d 369 (5th Cir. 1991). When a creditor files a proof of claim, the creditor submits to the equitable claims allowance process under the Bankruptcy Code. Langenkamp v. C.A. Culp, et al., 498 U.S. 42, 44-45 (1990). The creditor's claim and an ensuing counter-claim from the same underlying acts or transactions become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction. When the dispute is part of the claim's allowance process, the legal dispute has been transformed into an equitable issue. Germain v. Connecticut Nat. Bank, 988 F.2d 1323, 1327 (2nd Cir. 1993). Thus, the filing of the proof of claim eliminated the jury trial in this case. Jensen, 946 F.2d at 374.

Without the jury trial, this adversary proceeding involves the bankruptcy claims allowance process. The court must determine claims by and against the bankruptcy estate. The determination of those claims will facilitate the restructuring of the debtor-creditor relationship. The determination may have a significant impact on the debtor's ability to confirm a Chapter 13 plan. Also, the Chapter 13 trustee may seek to control or participate in the liquidation of the bankruptcy estate's claims

against the defendants through a Chapter 13 plan or an order confirming a plan. 11 U.S.C. § 1306(b). Against these overriding bankruptcy matters, the determination of the claims and counter-claims based on non-bankruptcy law does not constitute cause to either abstain or remand the case. The state law issues are neither novel nor unique. Thus, comity does not require abstention or remand. The prevailing bankruptcy matters, on the other hand, compel that the motion to remand and the alternative motion to abstain be denied.

Based on the foregoing,

IT IS ORDERED that the motion to remand is **DENIED.**

IT IS FURTHER ORDERED that the alternative motion to abstain is **DENIED.**

IT IS FURTHER ORDERED that the jury demand of Elizabeth C. Smith is **DENIED.**

Signed this 10th day of April, 2003.

Steven A. Felsenthal
United States Bankruptcy Judge