The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed October 07, 2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
	§	**CHAPTER 11**
TEXAS RANGERS BASEBALL PARTNERS,	§	
DEBTORS.	§	**CASE NO. 10-43400 (DML)**
	§	
	§	
PARADIGM AIR CARRIERS, INC., d/b/a	§	
PARADIGM AIR OPERATORS, INC. and	§	
SPORTSJET AIR OPERATORS, LLC.	§	
PLAINTIFFS,	§	
	§	
V.	§	**ADVERSARY 11-04017-DML**
	§	
TEXAS RANGERS BASEBALL PARTNERS,	§	
DEFENDANT	§	
	§	
and	§	
	§	
RANGERS BASEBALL EXPRESS, LLC	§	
DEFENDANT-IN-INTERVENTION	§	
	§	

REPORT AND RECOMMENDATION

To Hon. Terry R. Means, United States District Judge:

Now comes D. Michael Lynn, Bankruptcy Judge, and makes this, his report and recommendation, respecting the Plaintiffs's *Motion to Withdraw the Reference and Brief in Support* (the "Motion"), in the above-captioned adversary (the "Adversary").

It is my conclusion that the reference should not be withdrawn as to the Adversary for the reasons I explain in more detail below. Plaintiffs have failed to meet their burden of proof and have not shown cause for the reference to be withdrawn. As an initial matter, Plaintiffs' reliance on *Stern v. Marshall*, ___ U.S. ___, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), is misplaced. In my opinion, that decision does not affect the bankruptcy court's jurisdiction over this matter. Second, Plaintiffs should not be allowed to invoke and then escape the bankruptcy court's jurisdiction. Third, all claims that have been presented to the bankruptcy court are almost certainly core claims that are properly decided in the bankruptcy court. Fourth, other equitable factors weigh against withdrawal. Finally, to the extent that Plaintiffs do assert a claim that falls outside of the core jurisdiction of the bankruptcy court, the bankruptcy court should be allowed to preside over all pre-trial matters related to that claim.

I. BACKGROUND

The Adversary arises out of the bankruptcy of the Texas Rangers Baseball Partners ("TRBP"). TRBP filed a voluntary petition under Chapter 11 of the Bankruptcy Code on May 24, 2010, styled *In re Texas Rangers Baseball Partners*, Case No. 10-43400, (the "Main Case"). TRBP filed with its petition a plan of reorganization that contemplated a sale of the Texas Rangers Baseball Club (the "Rangers"), but that met with significant resistance from TRBP's bank creditors. The bankruptcy court ordered an auction that resulted in the sale of the Rangers, the principal asset of TRBP, to Express. The events leading up to TRBP's chapter 11 filing are

discussed in *In re Texas Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010), familiarity with which is assumed. The post-petition negotiations and auction are described in *In re Texas Rangers Baseball Partners*, 431 B.R. 706 (Bankr. N.D. Tex. 2010), familiarity with which is also assumed. The bankruptcy court confirmed the *Debtor's Fourth Amended Plan of Reorganization*, (the "Plan"), on August 5, 2010, and the Plan became effective on August 12, 2010.

The Adversary concerns a contract between Plaintiffs, Paradigm Air Carriers, Inc. d/b/a Paradigm Air Operators, Inc., and Sportsjet Air Operators, LLC (collectively "Paradigm"), and HSG Sports Group, LLC (formerly known as Hicks Sports Group, LLC) ("HSG"), TRBP's ultimate parent. On June 21, 2007, the two parties entered into an agreement (the "2007 Aircraft Agreement") whereby Paradigm leased a Boeing 757-236 aircraft (the "Aircraft") to HSG. Plaintiffs' Ex. 3 at 1. The Aircraft was used by both the Rangers and the Dallas Stars Hockey Team, owned by another HSG subsidiary.

TRBP was not a party to the 2007 Aircraft Agreement. Rather through an informal arrangement with HSG, TRBP reimbursed HSG for costs related to the Rangers' use of the Aircraft. *Rangers Baseball Express LLC's Brief in Support of Opposition to Plaintiffs' Motion to Withdraw the Reference* ("Brief in Opposition"), ¶ 3.

This informal arrangement continued until late May of 2010, when TRBP formalized the agreement between HSG and TRBP in connection with the contemplated chapter 11 filing and plan by which it hoped to sell the Rangers to Express. The purpose of formalizing the agreement was to assure that the Rangers would have continued access to the Aircraft after the sale by means of the pre-existing contract between HSG and Paradigm. Brief in Opposition, ¶ 4. The formalized agreement, the Shared Charter Service Agreement (the "SCSA"), was entered into on

May 23, 2010, on which date Paradigm also signed a consent to the SCSA. Plaintiffs' Ex. 4 at 1. The sale negotiated by TRBP and Express was memorialized in an Asset Purchase Agreement (the "APA") under which the SCSA was to be assigned to Express. Brief in Opposition, ¶¶ 4, 5.

However, when it became clear that the original plan would not be confirmed and an auction would occur, further negotiations took place over which liabilities would be assumed by Express as part of the APA. *Id.* at 6. Express's bid at the auction provided that it would not assume TRBP's liabilities under the SCSA as part of its potential purchase of the Rangers and would discontinue use of the Aircraft after the 2010 Major League Baseball season. *Id.* at 7. After Express prevailed at the auction, Express and TRBP entered into the Second Amendment to the APA on August 5, 2010 which made it a condition precedent to closing the Rangers' sale that TRBP would amend the SCSA. *Id.* at 9. TRBP gave notice of the Second Amendment to the APA by filing a *Notice of Amendment* in court on August 10, 2010. On August 12, 2010, HSG and TRBP entered into the First Amendment to the SCSA, which provided that the SCSA would terminate following the last game of the Texas Rangers' Major League Baseball season, that TRBP would be responsible for the October, November and December rent under the SCSA and that TRBP, rather than any successor or assignee of TRBP, would continue to be liable for that rent. Plaintiffs' Ex. 8 at 1-2.

Subsequently, Paradigm filed its proof of claim in the Main Case on August 23, 2010, alleging it had sustained $29.3 million in damages from the First Amendment to the SCSA. *Objection to Claim of Paradigm Carriers*, ¶7.

On February 2, 2011, Paradigm filed *Paradigm Air Carriers, Inc. d/b/a Paradigm Air Operators, Inc.'s and Sportsjet Air Operators, LLC's Original Complaint* (the "Complaint") commencing the Adversary. Paradigm requests damages for various breach of contract claims

related to the 2007 Aircraft Agreement and the SCSA. Complaint at 9-13. Paradigm also seeks a declaration that the First Amendment to the SCSA was invalid and did not amend the SCSA. Complaint at 11-12. TRBP's Administrator[1] (the "Administrator") filed the *Motion to Dismiss the Adversary* (the "Administrator's Motion to Dismiss") arguing that TRBP could have no liability under the SCSA. The Administrator based his argument, in part, on the fact that the SCSA, whether or not amended, had been assumed by TRBP and assigned to Express. Administrator's Motion to Dismiss at 5-6. *See* § 365(f) of the Bankruptcy Code (the "Code").[2]

Both Paradigm and the Administrator filed opposing motions for summary judgment in the Adversary. I heard argument on those motions and the Administrator's Motion to Dismiss on April 11, 2011. During the hearing, I stated that I believed that given the nature of the allegations and the Administrator's defense that TRBP was not liable to Paradigm because the SCSA had been assigned or modified, both Express and HSG were potentially necessary parties to the Adversary because the Adversary could affect their legal rights. *Transcript of Hearing*, April 11, 2011 at 11-12. I later followed up with a letter on May 16, 2011, stating that I believed that pursuant to Federal Rule of Civil Procedure 19(b)(1)(B) [sic] and (2), both Express and HSG were necessary parties and must be joined. Paradigm responded to that letter by a letter stating that it believed neither HSG nor Paradigm was a "required party" in the Adversary under Rule 19 and that Express had threatened to seek damages from Paradigm and the Administrator if involuntarily joined. I subsequently entered an *Order Respecting Joinder* on June 9, 2011 permitting either HSG or Express to intervene if it wished to protect its rights by participating in the Adversary, but declining to require either to do so.

[1] The Administrator was appointed pursuant to the Plan to oversee liquidation of claims against TRBP and disburse funds.

[2] 11 U.S.C. §§ 101 et. seq.

On June 30, 2011, Express filed a *Notice of Intervention and Brief Regarding the Aircraft Charter and Related Amendments* (the "Notice of Intervention"), seeking a declaratory judgment that it had no liability to Paradigm or TRBP in connection with the Aircraft. Paradigm filed a response to Express's Notice of Intervention asserting what it deems three compulsory counterclaims against Express: 1) for declaratory judgment under Texas's Declaratory Judgment Act, 2) for tortious interference with the SCSA, and 3) for tortious interference with the 2007 Aircraft Agreement. On the same day, Paradigm filed the Motion, and thereafter Express and the Administrator responded opposing the Motion. At a status conference on August 25, 2011, I heard argument from the parties respecting the Motion.

II. DISCUSSION

A. The standard for withdrawal of the reference.

Disposition of the motion is governed by 28 U.S. § 157(d). That provision states:

> (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.

Mandatory withdrawal of the reference is not appropriate in this case since "resolution of the [Motion does not require] consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." Thus, it is discretionary in the District Court whether "cause" has been shown that the reference should be withdrawn.

The Court of Appeals for the Fifth Circuit has adopted a non-exclusive series of factors for determining when the reference to the bankruptcy court should be withdrawn by the District Court. *See Holland America Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985). Before considering those factors as applicable to the Motion, however, I will address the

question of whether, since *Stern*, the bankruptcy court is constitutionally barred from exercising jurisdiction over the Adversary.

B. *Stern* does not require withdrawal.

In *Stern*, the Supreme Court faced the question of whether the bankruptcy court could exercise core jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(C) over a compulsory counterclaim asserted on behalf of a bankruptcy estate against a party who had filed a claim for recovery from that estate. Section 157(b)(2)(C) states:

> (2) Core proceedings include…
> (c) counterclaims *by the estate* against persons filings claims against the estate…
> (emphasis added).

The Court concluded that the statute did, indeed, grant to the bankruptcy court the jurisdiction to hear the counterclaim asserted by the estate representative in *Stern*, but held that such a grant of jurisdiction, at least respecting counterclaims the adjudication of which was not necessary to disposition of the counter-defendant's claim, was unconstitutional where the counterclaim involved only questions of state law. *See Stern*, 131 S.Ct. at 2599. Chief Justice Roberts, speaking for the five man majority, pointedly noted that the Court's holding was a limited one.[3] *Id.*

In the instant Adversary, section 157(b)(2)(C) is simply not applicable. The counterclaim on which Paradigm bases its contention that the reference must, according to *Stern*, be withdrawn was made not by or on behalf of the estate but rather by Paradigm itself. While statements in the court's majority opinion can be used to support an argument that the bankruptcy court may not exercise jurisdiction over any state law based claim, those statements are necessarily taken out of context and must be considered at most as dicta.

[3] Four of the justices in the majority declined the opportunity to join Justice Scalia's concurrence, a broader refutation of bankruptcy court jurisdiction.

Numerous other courts have noted that the holding in *Stern* was narrow. *See Kelley v. JPMorgan Chase and Co.*, 2011 WL 4403289, at *5 (D. Minn. Sep. 21, 2011)(noting that the Supreme Court defined its ruling as narrow and as not changing the law very much, and rejecting a motion to withdraw the reference in a fraudulent conveyance action); *In re Safety Harbor Resort and Spa*, --- B.R. ----, 2011 WL 3849639, at *1 (Bankr. M.D. Fla. Aug. 30, 2011)(noting that "[t]he Supreme Court's holding was very narrow" and rejecting a jurisdictional challenge); *In re Salander O'Reilly Galleries*, 453 B.R. 106, 116 (Bankr. S.D.N.Y. 2011)(concluding that the holding in *Stern* was limited to the very particular procedural circumstances surrounding the estate's counterclaim in that case); *In re Ambac Financial Group, Inc.*, --- B.R. ----, 2011 WL 4436126, at *8 (Bankr. S.D.N.Y. Sep. 23, 2011)(discussing the narrow scope of *Stern* and lamenting that "[u]nfortunately, *Stern v. Marshall* has become the mantra of every litigant, who, for strategic or tactical reasons, would rather litigate somewhere other than the bankruptcy court").[4]

[4] I recognize that some courts considering bankruptcy court jurisdiction since *Stern* have tended to read the Supreme Court's opinion broadly, applying the Court's reasoning to situations beyond the Chief Justice's narrow holding. *See, e.g., In re AIH Acquisitions, LLC*, 2011 WL 4000894, at*8 (N.D. Tex. Sep. 7, 2011) (McBryde, District Judge, holding that "a petition in intervention that asserts only state law claims…is not entitled to any greater bankruptcy status [sic] than the counterclaim filed in *Stern*"). Under the reasoning of *AIH* and other similar cases, even if Paradigm's state law counterclaims are utterly frivolous, the bankruptcy court probably cannot address them. I respectfully consider such decisions to be an overbroad application of *Stern*.

Moreover, if the broadest reading of the reasoning of *Stern* is adopted, the result is necessarily to conclude that reference to the bankruptcy court for that court to enter judgment in *any* dispute is unconstitutional. The heart of the reasoning in *Stern* is Article III, section 1 of the Constitution, which states:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

It is clear that the bankruptcy court is an "inferior Court[]"(28 U.S.C. §§ 151 and 152 establish the bankruptcy courts as "units" of the district courts to be known as bankruptcy courts). It is further clear that, by virtue of 28 U.S.C. §§ 1334 and 157 (b)(1) and the standing order of reference, (Miscellaneous Rule No. 33, Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc (N.D.Tex. Aug. 3, 1984)), the bankruptcy courts exercise the "judicial Power of the United States." Yet bankruptcy judges lack the life tenure required by Article III, section 1, and so, by a strict reading of the Constitution impermissibly exercise the jurisdiction granted them.

As *Stern* does not affect whether or not the bankruptcy court may hear Paradigm's counterclaim, the existence of bankruptcy jurisdiction will turn on the law as it existed prior to *Stern*. I accordingly will turn next to whether the District Court would have been required to grant the Motion because of a failure of bankruptcy court jurisdiction under otherwise applicable law.

C. Paradigm should not be able to invoke and then destroy the bankruptcy court's jurisdiction.

I recommend denial of the Motion because Paradigm invoked the bankruptcy court's jurisdiction in filing the Adversary and now argues that, based on its own claims against Express, it may escape that jurisdiction. Given the reputation and ability of Paradigm's counsel, I am not prepared to deem the Motion an effort at forum shopping. But there are certainly sufficient indicia to infer such a motive, as does Express in its Brief in Opposition.

Paradigm essentially argues that it should not be penalized for its initial choice of the bankruptcy forum as it could not have foreseen that its claims against Express would become part of this Adversary proceeding. Yet the Administrator early signaled his view that Express

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I recognize that there is considerable precedent for allowing Congress, under Article I of the Constitution, to create adjudicators lacking life tenure to decide limited types of cases and controversies. *See, e.g., Commodity Futures Trading Comm'n v. Schor*,478 U.S. 833 (1986). Most of these cases involve administrative law judges acting as part of an executive department. *See Schor*, 478 U.S. at 839,840; *Thomas v. Union Carbide Agr. Products Co.* 473 U.S. 568 (1985). However, despite the language of Article III, section 1, courts have also approved of the creation of Article I courts as units of Article III courts. *See, e.g., In re Parklane/ Atlanta Joint Venture*, 927 F.2d 532, 537 (11th Cir. 1991)(noting that Congress's vesting of bankruptcy jurisdiction in Article III district courts in 1984 had addressed the previous lack of constitutional jurisdiction). Yet, I submit that a broad reading of *Stern* (and Justice Scalia's concurring opinion in *Stern*) suggests that the constitutionality of Article I courts as part of the federal judiciary requires a fresh examination given the language of Article III, section 1 of the Constitution.

As to the apparent limit of the effect of *Stern* to state law claims, Article III, section 1 makes no reference to state law claims. Rather, it refers to the vesting of the *judicial power of the United States*, making no distinction as to whether the power is exercised as to state or federal law.

In sum, while I do not believe the Supreme Court intended that *Stern* would void the entire jurisdictional scheme governing bankruptcy cases, I respectfully submit that adoption of Paradigm's arguments respecting withdrawal of the reference leads inexorably to that result.

was potentially liable for any damages incurred by Paradigm through non-performance of the 2007 Aircraft Agreement. During oral argument in April, I made it clear that I questioned whether Paradigm's claims could be fully disposed of in Express's absence, a view I confirmed in my letter of May 16, 2011. Yet Paradigm failed then to raise the issue of the bankruptcy court's jurisdiction to resolve its disputes with Express.

I further do not believe there is merit to the argument that Paradigm could not have foreseen Express's assertion through its intervention that it had no liability to Paradigm and therefore could not have known until the filing of the intervention that it would have to pursue in the Adversary all its claims against Express. The very purpose of the Adversary is to establish Paradigm's claims against TRBP, and the addition of Express to the mix necessarily added the determination of what, if any, parallel claims Paradigm had against it.[5] Indeed, once it was clear Express might be a party to the Adversary, it would have been clear Paradigm would have to raise all its claims against Express or, potentially, lose them. If Paradigm had lost in the Adversary, it might have been barred from litigating many of the issues necessary for it to prove its tortious interference counterclaims in a later suit against Express under, inter alia, the doctrine of non-mutual defensive collateral estoppel.[6]

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[5] The Plan and confirmation order reserved the bankruptcy court's jurisdiction to determine claims assumed by Express as TRBP's successor. As admitted by Paradigm, even its tortious interference claim asserts damages duplicative of those arising from the alleged breach of the 2007 Aircraft Agreement or the SCSA. *See* TR 12:54:32-12:54:40.

[6] *See U.S. v. Mollier*, 853 F.2d 1169, 1175 & n.7 (5th Cir. 1988)(stating that, "[e]ssentially, the principle of non-mutual collateral estoppel is that if a litigant has fully and fairly litigated an issue and lost, then third parties unrelated to the original action can bar the litigant from re-litigating that issue in a subsequent suit.")(citing *Blonder-Tongue Laboratories, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 321-25, 91 S.Ct. 1434, 1439-46, 28 L.Ed.2d 788 (1971). Several issues would have been necessarily decided in the Adversary, even if Express had not intervened: 1) the validity of the SCSA; 2) the validity of the First Amendment to the SCSA; 3) whether the SCSA had been assumed and assigned to Express. If these issues had been decided against Paradigm, it would have likely been unable to re-litigate them in a later proceeding against Express. *See also Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 330-31, 99 S.Ct. 645, 651, 58 L.Ed.2d 552 (1979) (stating that "defensive collateral estoppel gives plaintiff a strong incentive to join all potential defendants in the first action if possible.").

If, indeed, the purpose of Paradigm's claims against Express were to impair bankruptcy court jurisdiction and so obtain a change in forum, the situation would be analogous to the party that improperly seeks to destroy a federal court's diversity jurisdiction. Joinder of a party for such a purpose has been held *not* to divest the court of jurisdiction. *See* Wright, Miller and Cooper, 14B *Federal Practice and Procedure: Jurisdiction 3d, §3723*, pp. 625-638 (1998); *see also Rodriguez v. Sabatino*, 120 F.3d 589, 591 (5th Cir. 1997). Thus, claims filed solely to effect jurisdictional ends should not destroy a court's jurisdiction.

D. The counterclaims against Express are most likely core claims.

It is unlikely that the counterclaims brought against Express are other than core claims. "[T]he starting point in evaluating the merits of a motion for withdrawal is a determination of whether the proceeding is core or non-core." *Mirant Corp. v. The Southern Co. (In re Mirant Corp.)*, 337 B.R. 107, 115 (N.D. Tex. 2006).[7]

While 28 U.S.C. § 157 (b)(2) provides a list of core proceedings, the list is not exclusive. *See, e.g., In re Mansker*, 60 B.R. 803, 805 (Bankr. D. Mass. 1986). One area not listed which clearly falls within the bankruptcy court's jurisdiction is that of matters pertaining to estate property in the custody of the court. *See, e.g., In re Lorax Corp.*, 307 B.R. 560, 563, 564, 568 (Bankr. N.D. Tex. 2004)(relying, in part, on *Katchen v. Landy*, 382 U.S. 323, 336, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966)). Clearly, the SCSA, and by extension the rights transferred by it running to the 2007 Aircraft Agreement were property of TRBP's estate in the custody of the bankruptcy court. *See, e.g., In re Mirant Corp.*, 440 F.3d 238, 252 (5th Cir. 2006)(finding that an executory contract of the debtor in possession was estate property under the bankruptcy court's administration). Any action by Express, after commencement of TRBP's chapter 11 case, to

[7] 28 U.S.C. § 157 (b)(3) assigns to the bankruptcy court the responsibility to determine in most circumstances whether a claim is core.

tortiously interfere with the SCSA or the 2007 Aircraft Agreement would therefore be subject to the bankruptcy court's core jurisdiction.[8]

Although it is theoretically possible that Express tortiously interfered with the SCSA or the 2007 Aircraft Agreement in the few hours between execution of the SCSA and commencement of the Main Case, at least in the absence of specifically alleged facts, the small likelihood that that is so does not warrant withdrawal of the reference in preference to a determination by the bankruptcy court under 28 U.S.C. § 157(b)(3) of whether Paradigm's counterclaims are core proceedings. To the extent that Paradigm argues that Express's misconduct antedated execution of the SCSA, it is impossible to see how Paradigm could have been harmed: if the SCSA were in fact modified by the First Amendment to the SCSA, then Paradigm is in the exact same situation as it would have faced had the SCSA never existed, with the formal contractual obligation[9] only of HSG; if, on the other hand the First Amendment to the SCSA was ineffective, Paradigm would still be able to hold HSG liable as well as TRBP (or, perhaps, Express) for breach of the SCSA and the 2007 Aircraft Agreement. As the latter scenario leaves Paradigm in a better position than it was before execution of the SCSA and the former in no worse a spot, I do not see how Paradigm can logically claim damages for anything done by Express before the SCSA became effective. Thus, any damages to Paradigm caused by Express's tortious conduct must have occurred (a) during the chapter 11 case, and so give rise to a core proceeding, or (b) have occurred in the brief interval between when the SCSA became effective and the filing of TRBP's chapter 11 petition.

E. The other *Holland* factors weigh against withdrawal.

[8] Indeed, tortious interference with a contract of a chapter11 debtor would be a violation of the automatic stay of Code § 362(a). *See* section 362(a)(3). *Cf. Mirant*, 440 F.3d at 253.

[9] I express no opinion as to whether, in the absence of the SCSA, Paradigm could assert a claim for contractual damages other than against HSG.

Notwithstanding whether jurisdiction is proper in the bankruptcy court, the Motion must also be considered in light of the *Holland* factors. In *Holland*, the Court identified seven factors that a court should weigh: 1) whether the matter involves core, non-core or mixed issues; 2) whether or not there has been a jury demand; 3) the effect of withdrawal on judicial economy; 4) reduction in forum shopping; 5) uniformity in bankruptcy administration; 6) fostering the economical use of the debtor's and creditor's resources; and 7) expediting the bankruptcy process. *Holland*, 777 F.2d at 999. I have already addressed the first and fourth of these factors; the first does not favor withdrawal of the reference and the fourth is at best neutral.

As to the second *Holland* factor, as I have pointed out above, almost certainly Paradigm has only counterclaims relating to the post-petition conduct of the debtor in possession and Express, its successor entity, that are within the bankruptcy court's core jurisdiction. Consequently, the claims fall within the bankruptcy court's equitable jurisdiction. As such, a Seventh Amendment right to jury trial in this case does not exist, inasmuch as Paradigm's counterclaims are founded in equity, not law. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 & n.4 (1989)(stating that "[t]he Seventh Amendment protects a litigant's right to a jury trial only if a cause of action is legal in nature and it involves a matter of "private right."); *In re Childs*, 342 B.R. at 827.

Also, it has been stated, (albeit in *dicta*,) by the Second Circuit that when a jury demand is made, the District Court "might also decide that a case is unlikely to reach trial, that it will require protracted discovery and court oversight before trial, or that the jury demand is without merit, and therefore might conclude that the case at that time is best left in the bankruptcy court." *In re Orion Pictures Corp.*, 4 F.3d 1095, 1102, (2nd Cir. 1993). The Second Circuit's concerns about the merits of the jury demand are particularly significant in this case. Given the state of

the pleadings at present, the issues presented by Paradigm are almost entirely issues of law related to the interpretation of the SCSA, the 2007 Aircraft Agreement and the Bankruptcy Code. Paradigm's pleadings, at this point, are not sufficiently detailed to determine whether triable issues of fact exist. In sum, the second *Holland* factor weighs against granting the Motion.

Concerns of judicial economy, cited by *Holland*, also weigh against withdrawal. The bankruptcy court has already held a hearing on the motions for summary judgment and the Administrator's Motion to Dismiss and is intimately familiar with the facts underlying Paradigm's claims; in fact, the bankruptcy court supervised the sale and approved the Plan that are at the root of Paradigm's claims. The bankruptcy court's knowledge of the proceedings giving rising to Paradigm's claims and counterclaims would likewise foster economical use of the debtor's and creditor's resources.

The legal issues presented by this Adversary deeply implicate the rights of a debtor in possession to administer its estate in chapter 11. If every jilted creditor were allowed to assert as a sort of collateral attack the types of state law claims that Paradigm asserts here against Express, bankruptcy law would have little practical effect. Therefore, resolution of the issues arising in the Main Case which underlie the Adversary would promote uniformity in the bankruptcy laws under *Holland.* Finally, under the last *Holland* factor, withdrawal of this Adversary would not expedite the bankruptcy process, insofar as it would likely require more time for the District Court to familiarize itself with the litigation and so withdrawal of the reference would result in delay in disposition of Paradigm's claims and closure of the Main Case.

F. If core jurisdiction is lacking as to some of Paradigm's claims, those claims should be bifurcated.

Even assuming, however, that Paradigm can demonstrate the existence of pre-petition claims of tortious interference with the SCSA or the 2007 Aircraft Agreement, those claims may be bifurcated from Paradigm's other claims. Under § 157(d), it is in the District Court's discretion to withdraw the reference in whole, or in part. *See, e.g., Siegel v. F.D.I.C.*, 2011 WL 2883012 (C.D. Cal. July 15, 2011).

To the extent in the instant case that the reference should be withdrawn, it can be only with respect to Paradigm's tortious interference claims. Unquestionably, the balance of the Adversary clearly falls within the bankruptcy court's core jurisdiction. Further, it is likely that disposition of Paradigm's claim as originally asserted in the Adversary will dispose of the dispute between Paradigm and Express: if either TRBP or Express is liable to Paradigm for contractual damages, Paradigm's other claims against Express are moot.[10]

Should it become necessary to reach Paradigm's claim of tortious interference by Express, and should Paradigm demonstrate a claim on that basis founded on Express's prepetition conduct, that claims may be later addressed by the District Court. Leaving the claim now in the bankruptcy court allows the latter to determine initially whether such claim is core or, as argued by Express, so frivolous as to warrant summary dismissal.

CONCLUSION

For the reasons stated above, I recommend that the Motion be denied.

[10] Paradigm's counsel stated at the status conference that Paradigm does not seek double-recovery in this case; it is seeking recovery for breach of contract from TRBP, or, alternatively, in tort from Express. *See* TR 12:54:32-12:54:40.