

**In re MATTIE AIKENS, Debtor. MATTIE AIKENS and WILBERT AIKENS,
Plaintiffs, v. CHARLES OLIVER, et al., Defendants.**

NO. C 97-3875 TEH

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

1997 U.S. Dist. LEXIS 19867

December 5, 1997, Decided

December 5, 1997, Filed; December 10, 1997, Entered in Civil Docket

DISPOSITION:

[*1] Plaintiffs' motion to withdraw from Bankruptcy Court to District Court the adversary proceeding DENIED and December 8, 1997 hearing on this matter VACATED.

COUNSEL:

For MATTIE AIKENS, WILBERT AIKENS, Plaintiffs:
John Poppin, San Francisco, CA.

For MATTIE AIKENS, WILBERT AIKENS, Plaintiffs:
Matthew J. Shier, Poppin & Shier, San Francisco, CA.

For MATTIE AIKENS, WILBERT AIKENS, Plaintiffs:
John H. Erickson, Alice M. Beasley, Brenda Aguilar-Guerrero, Beatrice Liu, Erickson Beasley Hewitt & Wilson, Oakland, CA.

JUDGES:

THELTON E. HENDERSON, CHIEF JUDGE,
UNITED STATES DISTRICT COURT.

OPINIONBY:

THELTON E. HENDERSON

OPINION:

ORDER

Plaintiffs in the above-captioned matter have moved this Court to withdraw from Bankruptcy Court to District Court the adversary proceeding currently pending before the Bankruptcy Court in Case No. 97-04422 AN. The motion has been briefed fully, and is scheduled to be heard on December 8, 1997. The Court finds the issue to

be suitable for determination without oral argument, however, and hereby DENIES plaintiffs' motion.

On June 10, 1997, plaintiffs filed a complaint in Alameda County Superior Court alleging eighteen state law causes of action against the defendants. [*2] Certain of these defendants, the "Chazen defendants," removed the matter to Bankruptcy Court, which was already presiding over plaintiff Mattie Aikens' Chapter 13 petition. On September 17, 1997, Bankruptcy Judge Newsome indicated during a status conference that he would remand the preceding back to state court within thirty days unless the parties either (1) consented to allow a jury trial to proceed in Bankruptcy Court, or (2) filed a motion to withdraw the proceeding to federal district court. Although the Chazen defendants were prepared to stipulate to trying the case before a jury in the Bankruptcy Court, the "Oliver defendants" did not so agree.

On October 8, 1997, plaintiffs filed a motion before the Bankruptcy Judge to certify the matter to District Court for a jury trial. Simultaneously, plaintiffs also filed in this Court the instant motion to withdraw the proceeding from Bankruptcy Court.

On October 15, 1997, the Chazen defendants filed a motion to dismiss part of plaintiffs' first amended complaint in Bankruptcy Court, in which the Oliver defendants joined. On November 11, 1997, Judge Newsome, before whom the motion for certification and motion to dismiss were pending, [*3] took those motions off calendar, because he felt that this Court was the appropriate Court to determine those issues: Plaintiffs wish this Court to withdraw the adversary proceeding

from Bankruptcy Court, deny defendants' motion to dismiss, and set the matter for jury trial in this Court.

Plaintiffs seem to have forgotten that when they filed this lawsuit, *they* chose the Superior Court of California to be the forum. If this case cannot be tried by jury in Bankruptcy Court (as the Chazen defendants desire) because the Oliver defendants refuse to so stipulate, it must be remanded back to state court -- *plaintiffs' chosen forum* -- for trial. *B.L.R. 9015-2(b)* applies only to proceedings that previously have been referred from District Court to Bankruptcy Court pursuant to *B.L.R. 5011-1*. When the Bankruptcy Court determines that a matter that began in state court and was removed to Bankruptcy Court is not properly before the Bankruptcy Court, the matter must be remanded back to state court. *See B.L.R. 9015(2)(f)*.

Accordingly, and for good cause shown, plaintiffs' motion is DENIED, and the December 8, 1997 hearing on this matter is VACATED. If the Bankruptcy Court determines [*4] that it cannot preside over a jury trial in this matter under 28 U.S.C. § 157(e), the matter must be remanded to state court for further proceedings, during which defendants' motion to dismiss may be converted to a state law demurrer.

IT IS SO ORDERED.

DATED 12/5/97

THELTON E. HENDERSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT