Docket #0033 Date Filed: 3/18/2021

UNITED STATES BANKRUPTCY COURT	SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
In re STAGE STORES, INC., et al., *Debtor(s)*.[1]	§ § § § §	Bankr. Case No. 20-32654-DRJ Chapter 11 Jointly Administered
AMY STUMPF, et al., *Plaintiff(s)*, v. STAGE STORES, INC., et al., *Defendant(s)*.	§ § § § § § § § §	Adv. Proc. No. 20-03303 Jury

PLAINTIFF AMY STUMPF'S REPLY IN SUPPORT OF HER MOTION TO WITHDRAW THE REFERENCE

In accordance with Fed. R. Bankr. P. 5011, Plaintiff Amy Stumpf (referred to as "Stumpf") requests that the Court withdraw the reference to the bankruptcy court for the reasons explained below.

[1] The debtor(s) in this Chapter 11 case, along with the last four digits of each debtor's federal tax identification number are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The debtors' headquarters is: 2425 West Loop South, Houston, Texas 77027-4205.

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I. Background

Stumpf, individually and on behalf of all others similarly situated, sued Defendants Stage Stores, Inc. and Specialty Retailers, Inc. (collectively referred to as "Stage Stores") claiming that they violated the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 ("WARN Act") by failing to provide advance written notice of a plant closing or mass layoff. (*See generally*, Pl.'s First Am. Compl. (Doc. 14).) She has moved to withdraw the reference. (*See generally*, Pl. Mot. Withdraw Reference (Doc. 22).) Stage Stores oppose the motion on essentially three grounds. First, it claims that this Court may exercise jurisdiction over Stumpf's WARN Act claims. (*See*, Defs.' Resp. Pls.' Mot. Withdraw Reference (Doc. 26) ¶¶ 14-17.) Second, Stage Stores argues that it does not matter that Stumpf has demanded a jury trial (and that she might not even have the right to one). (*Id*. at ¶¶ 18-19.) Lastly, the company claims that withdrawal of the reference is not warranted because Stumpf "has not … sought leave to file a class proof of claim in the main bankruptcy case[] … or filed a motion to certify the putative class." (*Id*. at ¶ 10; *see also*, *id*. at ¶¶ 8-12.) All of those arguments, though, are misplaced. Accordingly, the Court should withdraw the reference.

II. Argument & Authorities

A. United States District Courts Have Exclusive Jurisdiction Over WARN Act Claims

"[A] person seeking to enforce … liability [under the WARN Act] … may sue either for such persons similarly situated or both, in any *district court* of the United States[.]" 29 U.S.C. § 2104(a)(5) (emphasis added). The statutory text plainly vests exclusive jurisdiction of WARN Act claims in district—not bankruptcy—courts. *In re First Magnus Fin. Corp.*, 390 B.R. 667, 678 (Bankr. D. Az. 2008) ("Congress, in the WARN Act legislation, did not see fit to expand the bankruptcy court's jurisdiction to include deciding these matters and rendering awards thereon (as opposed to merely liquidating existing claims)."). And as previously explained, the reference must be withdrawn when (1) the proceeding involves substantial and material consideration of both bankruptcy law and non-bankruptcy federal law; (2) the non-bankruptcy federal law has more than a de minimis effect on interstate commerce and (3) the motion to withdraw the reference was timely filed. *See*, *Lifemark Hosps. of La., Inc. v. Liljeberg Enters., Inc.*, 161 B.R. 21, 24 (E.D. La. 1993). Stumpf's claims in this adversary proceeding plainly involve substantial and material consideration of "non-bankruptcy federal law"—here, the WARN Act, including exceptions that are unique to it. In fact, none of the issues related to Stumpf's claims (except for issues related to the priority of WARN Act claims) have anything to do with bankruptcy law. In other words, material

considerations of non-bankruptcy federal law are not merely incidental to the resolution of Stumpf's Amended Complaint (Doc. 14) but rather essential to it. Stage Stores' claims to the contrary (Defs.' Resp. Pls.' Mot. Withdraw Reference (Doc. 26) ¶¶ 14-17) are simply wrong. This case, therefore, belongs in the district court.

B. Withdrawal of the Reference Is Mandatory Because Stumpf Has Demanded a Trial By Jury—And She Has a Right to One

It is hornbook law that "bankruptcy courts lack the statutory authority to conduct jury trials." *In re Clay*, 35 F.3d 190, 196 (5th Cir. 1994); *see also*, *id*. at 196-97. Stumpf has demanded one. (*See*, Pl.'s Jury Demand (Doc. 9) p. 1.) So without her express consent—and she does not consent (*see*, Pl.'s Notice of Non-Consent) p. 1)—the reference must be withdrawn. *See*, *Curtis v. Cerner Corp.*, No. 7:19-cv-00417, 2020 U.S. Dist. LEXIS 73227, at *10-*11 (S.D. Tex. Apr. 27, 2020) ("When a party that is entitled to a jury trial properly requests a jury and does not consent to a jury trial before the bankruptcy court, the bankruptcy court *must* recommend that the adversary proceeding be withdrawn to the district court for trial." (citations and quotations omitted) (emphasis added)); *see also*, *In re Blake*, 400 B.R. 200, 205 (S.D. Tex. 2008) ("The Fifth Circuit holds that without consent of the parties, a bankruptcy judge lacks the authority to conduct a jury trial.").

Stage Stores claims that reference should not be withdrawn because Stumpf does not have the right to a jury trial. (*See*, Defs.' Resp. Pls.' Mot. Withdraw Reference

(Doc. 26) ¶¶ 18-19.) The Fifth Circuit has not squarely addressed the issue but has affirmed a jury verdict in a WARN Act case. *See*, *Hollowell v. Orleans Reg'l Hosp.*, 217 F.3d 379, 393 (5th Cir. 2000). And other courts have expressly determined that a right to a jury trial exists. *See, e.g.*, *Calberg v. Guam Indus. Servs.*, No. 14-00002, 2017 U.S. Dist. LEXIS 164619, at *23-*30 (D. Guam Sep. 30, 2017); *Geelan v. Mark Travel, Inc.*, No. 03-6322, 2006 U.S. Dist. LEXIS 104274, at *3-*30 (D. Minn. Sep. 22, 2006). The statute's legislative history also supports that conclusion. 134 Cong. Rec. 15,763 ("Supreme Court cases … demonstrate clearly that jury trials would be available in any suit for damages claiming employer violations of [the WARN Act].") (statement of Sen. Hatch); *see also*, *id*. at 16,028 (1988) ("This action includes the right to a jury trial.") (statement of Sen. Hatch). Accordingly, the Court should withdraw the reference.

C. Stumpf Is Not Required to File a Class Proof of Claim in the Main Bankruptcy Case and Will File a Motion for Class Certification Within Fourteen Days

Stage Stores faults Stumpf for not seeking "leave to file a class proof of claim in the main bankruptcy case[] or …fil[ing] a motion seeking to certify the putative class." (Defs.' Resp. Pls.' Mot. Withdraw Reference (Doc. 26) ¶ 10.) Neither of those issues merit consideration in the context of a motion to withdraw the reference. *See*, *Lifemark Hosps. of La., Inc.*, 161 B.R. at 24; *Levine v. M&A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008); *Holland Am. Ins. Co. v. Roy*, 777 F.2d 992, 999 (5th Cir. 1985). But even if they merited some consideration, Stage Stores'

suggestion that Stumpf is or was required to file a class proof of claim in the main bankruptcy case is wrong. In fact, in *Teta v. Chow (In re TWL Corp.)*, 712 F.3d 886 (5th Cir. 2011), a WARN Act case, the Fifth Circuit considered those types arguments (and related ones) and rejected them. It explained that the bankruptcy court erred (1) in finding that the claims allowance process was superior to a Rule 23 class action; (2) in determining that the Bankruptcy Code even required for employees to individually assert WARN Act claims to share in any distribution from the debtor's estate; (3) by holding that the putative class members in the adversary proceeding were out of time to assert claims because the bar date had twice passed; and (4) by even considering the solvency of the estate in declining to certify a WARN Act class. *See*, *Teta*, 712 F.3d at 891-92. The *Teta* court also explained that individuals asserting claims against an estate my file either a proof of claim or an adversary proceeding, and, in the context of claims for class-wide relief, it expressed doubt as to "whether a class proof of claim is even permissible." *See*, *id*. at 892-93, 899; *see also*, *id*. at 901 (Graves, J., concurring) (observing that the plaintiff has the discretion to "bring his claim in a class action if he wishes[]" (citations and quotations omitted)).

Even if a class proof of claim were permissible, a class action adversary proceeding[2] is the preferable way to adjudicate WARN Act claims. *See*, *id*. at 902 (Graves, J., concurring) ("The related WARN Act class proof of claim was simply filed as a precautionary measure, and bankruptcy courts have held that the class adversary proceeding is the preferable way to adjudicate WARN Act claims, as opposed to the proof of claims process."); *see also*, *id*. at 905 ("[I]ndividually litigated WARN Act claims are simply unheard of[, and proofs of claims are seldom filed because] the average worker that has just lost his or her job does not read a bankruptcy court's notice to creditors and decide to file a WARN Act proof of claim."); *see also*, *id*. (observing that notices to creditors often do not even refer to the WARN Act and that since many employees are not familiar with it or the bankruptcy process it unreasonable to expect that WARN Act claims be resolved through proofs of claims); *see also*, *In re Taylor Bean & Whitaker Mortg. Corp*., No. 09-ap-00439, 2010 Bankr. LEXIS 3306, at *3 (Bankr. M.D. Fla. Sep. 27, 2010) ("[R]esolving the WARN Act claims collectively through a class action adversary proceeding will be more efficient than handling them in a piecemeal fashion through the claims process."); *In re First NLC Fin. Servs., LLC*, 410

[2] The filing of a class action tolls the statute of limitations as to all asserted members of the class. *Teta*, 712 F.3d at 899 (citations and quotations omitted). "Applying this reasoning in the bankruptcy context, … if a bankruptcy court denies a class certification motion, it should then establish a reasonable time within which the individual putative class members are allowed to file individual proofs of claim." *Id*. (citations and quotations omitted) (cleaned up).

B.R. 726, 730 (Bankr. S.D. Fla. 2008) ("[I]f the class is certified, the Court finds that as between an adversary proceeding and the claims process, an adversary proceeding has the potential to provide a less protracted and more efficient litigation framework."); *Conn v. Dewey & Leboeuf LLP, (In re Dewey & Leboeuf LLP)*, 487 B.R. 169, 176-78 (S.D.N.Y. 2013) (WARN Act claims should be brought by adversary proceeding under Rule 7001 because the relief is equitable in nature); *Watson v. TSC Global, LLC (In re TSC Global)*, No. 12-50119, 2013 Bankr. LEXIS 3213, at *8-*14 (Bankr. D. Del. Jun. 26, 2013) (same); *Cain v. Inacom Corp.*, No. 00-1724, 2001 Bankr. LEXIS 1299, at *2-*7 (Bankr. D. Del. Sep. 26, 2001) (same); *Burgio v. Protected Vehicles, Inc. (In re Protected Vehicles, Inc.)*, 392 B.R. 633, 2008 Bankr. LEXIS 2078, at *2-*23 (D.S.C. Jul. 31, 2008) (same). Accordingly, Stumpf will file a motion for class certification under Rule 23 within fourteen days.

III. Conclusion

For the reasons explained above and in accordance with Fed. R. Bankr. P. 5011, Stumpf requests that the Court withdraw the reference to the bankruptcy court.

Respectfully Submitted,

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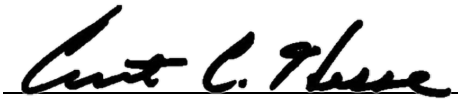
By: 
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CERTIFICATE OF SERVICE

As required by Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(a)(1), I certify that I served a copy of this document on all parties or their attorney(s) of record—who are listed below—in accordance with Fed. R. Civ. P. 5(b) as follows:

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March 18, 2021
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Curt Hesse