

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
WOODBRIDGE GROUP OF COMPANIES, LLC, et al.,)	Case No. 17-12560 (BLS)
)	(Jointly Administered)
Remaining Debtors,)	
)	
COMERICA BANK,)	
)	
Plaintiff,)	
)	
vs.)	
)	
(1) JAY BEYNON FAMILY TRUST DTD 10/23/1998, RICHARD J. CARLI, LOIS M. CARLI, ALBERT M. LYNCH, and FREDA B. LYNCH; (2) ROBERT J. PRINCE, LILLY SHIRLEY, and JOSEPH C. HULL;)	
(3) LLOYD LANDMAN and NANCY LANDMAN; (4) ALAN GORDON and MARLENE GORDON; and (5) MARK BAKER, CORNERSTONE GROWTH, LP, LEONA POMROY, DENNIS RYAN, and CAROLE RYAN,)	Adversary Proceeding No. 18-50382 (BLS)
)	
Defendants.)	
)	

CLASS PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR ABSTENTION

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INTRODUCTION

All claims against Comerica stemming from its role in the Woodbridge Ponzi scheme are pending in the Central District of California. The Class Action on behalf of investors directly harmed by Comerica is under the caption *In re Woodbridge Inv. Litig.*, No. CV-18-103-DMG (KSx) (C.D. Cal.); the Liquidation Trust's action against Comerica asserting estate claims (*see Goldberg v. Comerica Bank*, Case No. 2:19-cv-3439-DMG (C.D. Cal.)) has been noticed as a related case and assigned to the same court (*see Goldberg* ECF Nos. 9, 10). Comerica's Adversary Proceeding was and remains an attempt to prevent the district court in California from hearing claims properly before it.

This Court's oversight of the Woodbridge bankruptcy cases is now substantially complete, leaving it no interest in the Adversary Proceeding—particularly because state law governs Comerica's adversary claims and thus they can be addressed by the district court. The Court's continuing jurisdiction would be inefficient and would interfere with judicial comity, all without serving any bankruptcy purpose.

Class Plaintiffs' Abstention Motion establishes that every consideration under the relevant twelve factor test supports permissive abstention. Comerica's Opposition barely addresses and then repeatedly misapplies the test, and instead argues that the Motion is "untimely" and "misplaced" if one begins with the assumption that the Class Action claims are derivative and not direct—a conclusion that is central to the merits of the Adversary Proceeding. The district court can make that determination if and when Comerica chooses to raise it through the normal course of motion practice. The relief Comerica sought from this Court (declaring the Class Action to violate the automatic stay under 11 U.S.C. § 362 and enjoining its prosecution on that ground) is unavailable now that Debtors' bankruptcy plan has gone into effect and the automatic stay is no

longer in effect. Abstaining from the Adversary Proceeding will allow all claims against Comerica, and whatever related sub-issues may or may not be raised, to be comprehensively adjudicated in a single, appropriate forum.

STATEMENT OF FACTS

Class Plaintiffs sued Comerica in the Central District of California in early 2018, alleging that Comerica knowingly assisted the Woodbridge Ponzi scheme and is liable to investors under tort law theories, including aiding and abetting fraud, aiding and abetting breach of fiduciary duty, negligence, and violations of California's Unfair Competition Law. The district court consolidated several related lawsuits as the Class Action, appointed lead counsel for plaintiffs, and entered early case management and discovery orders. (*See Benyon* ECF Nos. 39, 42, 43, 45, 47, 50.)

On April 4, 2018, Comerica initiated the instant Adversary Proceeding by filing a complaint and simultaneously moving for a preliminary injunction to temporarily stay the Class Action. (*See Adv. Proc.* ECF Nos. 1, 3.) The complaint alleged that Class Plaintiffs had violated the automatic stay under 11 U.S.C. § 362 in the underlying bankruptcy case by asserting claims derivative of Debtors' rights, and it sought two forms of relief: a declaration that the Class Actions be stayed pursuant to § 362 and an injunction against the class actions pursuant to § 362 and this Court's powers under 11 U.S.C. § 105(a). (*See Adv. Proc.* ECF No. 1.)

This Court heard argument on May 15, 2018 and encouraged the parties to negotiate a resolution (*see* 5/15/18 H'rg Tr. at 40:2–5), and suggested Class Plaintiffs would incur no prejudice if the class action remained stayed pending confirmation of Debtors' Plan of Liquidation (*see id.* at 33:5-25). The parties negotiated a stipulated stay, which the Court entered. (*See Adv. Proc.* ECF No. 21.) The Court did not decide whether any claims in the Class Action are property of Debtors' estates, and it held the matter in abeyance as the parties agreed to seek a stay of the Class

Action in the California district court. The Adversary Proceeding remained dormant until a year later, on May 2, 2019, when Class Plaintiffs filed the instant motion for abstention.

On May 7, 2019, the Liquidation Trust filed a Statement in Support of Class Plaintiffs' Abstention Motion (*see* Adv. Proc. ECF No. 24) and described the progress made in the bankruptcy cases over the intervening year since the Class Action was temporarily stayed: (i) a plan was confirmed and has gone effective; (ii) the Liquidation Trust was created and succeeded to the rights of the estates vis-à-vis Comerica; (iii) a substantial number of creditors assigned their individual, non-estate claims against Comerica to the Liquidation Trust as part of the Plan; (iv) the Liquidation Trust elected to have those Assigned Claims prosecuted via the Class Actions; and (v) the Liquidation Trust filed its own action asserting estate claims against Comerica in the Central District of California. (*See* Adv. Proc. ECF No. 24 at 2-3.)

The Statement in Support also clarifies that, while Debtors took no position on Comerica's preliminary injunction when it was filed over a year ago and while the bankruptcy cases were in their very early stages, their successor under the Plan (the Liquidation Trust) now unequivocally support the Abstention Motion and Class Plaintiffs' active prosecution of the Class Action in the California district court. (*Id.* at 3.)

ARGUMENT

This Court considers whether to permissively abstain from exercising jurisdiction over a matter by applying a test of twelve non-exclusive factors. *See, e.g., In re Maxus Energy Corp.*, 597 B.R. 235, 247 (Bankr. D. Del. 2019) (discussing test). Accordingly, Class Plaintiffs moved for permissive abstention by discussing each factor, applying the case law to the facts of this Adversary Proceeding. (*See* Abs. Mot. at 5-19.) Comerica, seemingly aware that any genuine engagement with the twelve-factor test would reveal the weakness of its Opposition, does its best

to avoid responding to Class Plaintiffs' arguments. Instead, Comerica repeats over and over that the Class Action claims are derivative and therefore belong to Debtors' estates – even though that is an ultimate issue in the Adversary Proceeding and so not a conclusion the Court can accept before deciding whether to exercise jurisdiction.¹ Beyond these conclusory assertions, Comerica offers this Court little more than misstatements of law and mischaracterizations of Class Plaintiffs' positions.

The remainder of Comerica's Opposition is no more illuminating. Comerica affixes labels to the Abstention Motion – such as that the motion is “untimely,” “misplaced,” and “forum shopping” – that have no basis in law and while offering no citation to authority. (*See Opp.* at 1-2, 11-12.) Comerica repeats itself throughout the Opposition, rehashing its already bare-bones engagement with the twelve-factor test in a lengthy chart. (*See id.* at 3-4.) Comerica engages in other unhelpful exercises as well, such as dividing up the cases cited by Class Plaintiffs into meaningless categories that do not bear on the authorities' applicability to the Abstention Motion, and it does so as a substitute for any further analysis. (*See id.* at 14-16.) Indeed, Comerica almost never addresses the case law identified by Class Plaintiffs, as its entire discussion of the twelve factors considered by this Court contains citations to just three cases concerning permissive abstention.² (*See id.* at 17-23.)

Comerica's failure to respond seriously to the Abstention Motion speaks volumes about its credibility in bringing the Adversary Proceeding in the first place. Seeking to avoid a defeat in

¹ While the issue of whether the Class Action claims are derivative remains a defense that Comerica may raise in the district court, the relief it seeks in the Adversary Proceeding is no longer available because that prospective relief is entirely based on the purported enforcement of the automatic stay. The automatic stay is no longer in effect. (*See Bankr. ECF No. 40 ¶ 57.*)

² Comerica does cite several additional cases on the filing of proofs of claim in connection with a bankruptcy in the section purportedly addressing the existence of a right to a jury trial. (*See Opp.* at 22-23.)

district court, where it has not yet moved to dismiss the Class Action, Comerica has dressed its defenses up as bankruptcy issues and asked this Court to force the district court's hand, even though the district court is competent to determine whether Class Plaintiffs' claims are direct or derivative – a determination that turns on state law.

I. Comerica Mischaracterizes the Twelve Factors Considered by the Court, Each of Which Favors Abstention.

A. Permitting the district court to proceed with the underlying class action will not affect the efficient administration of the bankruptcy estates.

“[T]he relevant inquiry for abstention is not whether the California Action impacts the bankruptcy proceedings at all, . . . but rather, whether the California Action will negatively impact the efficient administration of the estate.” *Hopkins v. Plant Insulation Co.*, 342 B.R. 703, 711 (D. Del. 2006). In its Opposition, Comerica does not make any arguments concerning the efficient administration of Debtors’ bankruptcy estates, nor does it cite any contrary authority.

Comerica’s arguments with respect to this factor are irrelevant. First, Comerica argues that permissive abstention would amount to a waste of this Court’s resources. (*See Opp.* at 17.) Not only is this argument not germane to the administration of Debtors’ estates, but any duplication of judicial resources exists only because Comerica asked this Court to resolve an issue that would more properly have been raised in its motion to dismiss in the California district court. Second, Comerica points to its designation of the Adversary Proceeding as a “core proceeding.” (*See id.*) However, whether or not a proceeding is “core” does not determine whether a bankruptcy court should abstain. Permissive abstention is applied even to core matters. 28 U.S.C. § 1334(c)(1) (allowing the court to abstain from “hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.”). *See also In re Maxus*, 597 B.R. at 247, 249 (observing that one factor considered is “substance rather than form of an asserted ‘core’ proceeding” and that “[t]his prong does not turn on whether a claim is core”).

Third, Comerica points to its pending proofs of claim in Debtors' bankruptcy case based on Comerica's purported indemnification rights. (*See Opp.* at 17.) Even if Comerica does turn out to have a claim against Debtors for indemnification, however, whether this Court abstains from and dismisses the Adversary Proceeding will have no bearing on how those indemnification claims are resolved as part of the claims allowance process. Finally, the existence of discovery in the Class Action (*see id.* at 18) and the orders under which that discovery has occurred do not relate to the "efficient administration of the estate."

If there is any remaining doubt that the Class Action does not pose a threat to the efficient administration of the estates, the Court should consider that the Liquidation Trust, which has a fiduciary obligation to maximize value for the Liquidation Trust beneficiaries, has registered its support for the Abstention Motion. (*See* Bankr. ECF No. 24.)

B. State law issues predominate over bankruptcy issues.

Comerica does not dispute that the entire substance of this Adversary Proceeding turns on state law issues. Instead, it reasserts in a conclusory manner the merits of its underlying claim that the Class Action violates the automatic stay by asserting derivative claims. But whether Class Plaintiffs' claims are derivative – and therefore property of the estates – is ultimately a matter of state law. *See In re Touch Am. Holdings, Inc.*, 401 B.R. 107, 121 n.26 (Bankr. D. Del. 2009) (citing *Sax v. World Wide Press, Inc.*, 809 F.2d 610, 613 (9th Cir.1987)) "Where a state court proceeding sounds in state law and bears a limited connection to debtor's bankruptcy case, abstention is particularly compelling." *In re Titan Energy, Inc.*, 837 F.2d 325, 332 (8th Cir. 1988) (citing *In re Futura Indus., Inc.*, 69 B.R. 831, 835 (Bankr. E. D. Pa.1987)) (cited in *In re Montgomery Ward Holding Corp.*, No. 97-1409 (PJW), 2000 WL 33712307, at *7 (Bankr. D. Del. Sept. 1, 2000)).

Moreover, while Comerica asserts that state law issues do not predominate, it has not pointed to a single issue in this Adversary Proceeding that does not ultimately turn on state law.

C. Any difficult or unsettled issues of state law that arise may be properly resolved by the California district court.

As noted in the Abstention Motion, this factor favors abstention if there is any potential for complex or unresolved issues to arise. (*See* Abs. Mot. at 11 (citing *In re DHP Holdings II Corp.*, 435 B.R. 220, 227 (Bankr. D. Del. 2010); *In re OMNA Med. Partners, Inc.*, 257 B.R. 666, 669 (Bankr. D. Del. 2000))).) Comerica has neither cited contrary case law nor offered the Court any assurance that such issues will not arise in the Adversary Proceeding.

D. The Adversary Proceeding is directly related to the district court action previously filed and still pending in California.

As Class Plaintiffs observed in the Abstention Motion, this factor considers “presence of a related proceeding commenced in state court *or other non-bankruptcy court.*” *In re Maxus*, 597 B.R. at 247 (emphasis added) (quoted in Abs. Mot. at 12). Comerica nevertheless insists, without citation to any authority, that the Class Action does not qualify as a “related preceding” for purposes of this factor because it was commenced in district court. (*See* Opp. at 19.) Moreover, while Comerica asserts that Class Plaintiffs should have brought the Class Action in this Bankruptcy Court (*id.*), Comerica again assumes that it has already been successful in establishing that the Class Action violates the now-expired automatic stay by asserting claims derivative of Debtors’ rights. Class Plaintiffs maintain that their claims are based on torts under California law committed directly against them by Comerica, and no Debtor is a party to the Class Action – indeed, given this Court’s specialized jurisdiction, the Class Action would be dismissed *sua sponte* for lack of jurisdiction had Class Plaintiffs attempted to file suit in this Court.

E. There is no jurisdictional basis for the Adversary Proceeding other than 28 U.S.C. § 1334.

Class Plaintiffs explain in their Abstention Motion that there is no jurisdictional basis for the Adversary Proceeding other than 28 U.S.C. § 1334. (*See* Abs. Mot. at 12-13 (citing *In re RNI Wind Down Corp.*, 348 B.R. 286, 292-93 (Bankr. D. Del. 2006))). Confusingly, Comerica appears to concede this even as they assert that this factor disfavors abstention. (*See* Opp. at 19-20 (“*this* Adversary Proceeding is a *core* proceeding under 28 U.S.C. §1334, and there is no other alternate basis for federal jurisdiction of *this* Adversary Proceeding.” (emphases in original))). Comerica also asserts yet again that Class Plaintiffs’ claims are derivative of Debtors’ claims – an ultimate issue in the adversary proceeding – but it neglects to explain how even its hypothetical success in this Adversary Proceeding would somehow retroactively confer an alternate basis for jurisdiction. (*See* Opp. at 20.)

F. The Adversary Proceeding is extremely remote from the underlying bankruptcy case.

Comerica argues that the Adversary Proceeding is not remote from the earlier-filed Class Action because the Adversary Proceeding is a “core proceeding” and because the outcome of the Class Action could affect the bankruptcy estates. (*See* Opp. at 20.) Even if true, neither detail would counsel against abstention. 28 U.S.C. § 1334(c)(1); *See also In re Maxus*, 597 B.R. at 249 (explaining that a court considers the substance of an adversary proceeding rather than whether it is formally core); *Hopkins v. Plant Insulation Co.*, 342 B.R. 703, 711 (D. Del. 2006) (“the relevant inquiry for abstention is not whether the California Action impacts the bankruptcy proceedings. . . .”).

Moreover, there is no possibility of the Class Action impermissibly affecting Debtors’ estates because any property of the estates was vested in the Liquidation Trust under the Plan.

G. The substance of the Adversary Proceeding turns entirely on issues of state law, rather than bankruptcy law.

Comerica's only argument here is to insist that the Adversary Proceeding is formally a "core" proceeding. (*See* Opp. at 20-21.) However, whether this proceeding is or is not "core" has no bearing on this factor. "This prong does not turn on whether a claim is core. Instead, it is animated by the concern that plaintiffs can disguise state law actions as bankruptcy issues by cloaking them in the Code. Even indisputably core claims may involve little more than application of state law." *In re Maxus*, 597 B.R. at 249 (quoted in Abs. Mot. at 14). Even a cursory read of Comerica's Opposition demonstrates that it is a textbook attempt to shoehorn its state law defenses into the Bankruptcy Code so that it can allege a jurisdictional basis for this Court to exercise jurisdiction over a small component of a case already proceeding in the California district court. (*See, e.g.*, Opp. at 18 ("The Class Plaintiffs point out that courts look to state law to make the determination as [*sic*] whether a claim is an estate claim. While that may be true, that hardly means that state law issues *predominate* [*sic*] the determination as to what constitutes an estate claim."), 21 ("[T]he issue for this Court is whether the Court should permissively abstain from ruling in *this* Adversary Proceeding, which does not involve state law claims *per se*." (emphases in original)).)

H. This Court need not sever any claims, because the entire Adversary Proceeding turns on state law.

In instituting the Adversary Proceeding, Comerica has asked this Court to intervene in the Class Action by resolving an issue that is apparently integral to Comerica's defense against Class Plaintiffs' state law claims. With the exception of those issues hinging on the enforcement of the now-expired automatic stay, there is not a single issue in this Adversary Proceeding that cannot be resolved as part of the district court's consideration of the parties' claims and defenses. *See, e.g.*, *Hunter v. Citibank, N.A.*, No. C 09-02079 JW, 2011 WL 7462143, at *1 (N.D. Cal. May 5, 2011) (discussing district court's application of California law in denying defendants' motion to dismiss

claims for aiding and abetting breach of fiduciary where defendants had argued that those claims were derivative). Accordingly, abstention would not require this Court to sever any claims; it would simply permit the Class Action to proceed as it was before Comerica asked this Court to intervene. Comerica cites nothing contrary to this position.

I. The continuation of the Adversary Proceeding would unnecessarily burden this Court's docket.

The Adversary Proceeding imposes an unnecessary burden on this Court's docket because all of the issues raised in the Adversary Complaint will be properly adjudicated in the district court once Comerica raises them. Indeed, the only role Comerica seeks for this Court is effectively to intervene in the Class Action and either force the district court's hand on an issue that turns on state law or risk conflicting rulings and substantial judicial inefficiency.

J. There is a substantial likelihood that the Adversary Proceeding was filed in an effort to avoid the resolution of the underlying class action by the California district court in which it was properly filed.

Class Plaintiffs assert claims against Comerica for violation of duties owed to them by Comerica as a matter of California law. Accordingly, they filed complaints in the Central District of California, which were ultimately consolidated in that district. While Debtors certainly play a role in the narrative underlying their claims against Comerica, as a matter of law in terms of the claims and elements thereof, the Class Action has no connection to Debtors or their bankruptcy. For Comerica to accuse Class Plaintiffs of forum shopping because they did not file their Class Action in this Court is therefore disingenuous at best.

K. Claims asserted by Class Plaintiffs and by the Trust implicate the right to a jury trial.

Comerica argues that this factor concerns the right to a jury trial in this bankruptcy proceeding, rather than the earlier-filed Class Action in which Comerica has asked this Court to intervene. This is not correct. *See, e.g., In re Sun Healthcare Grp., Inc.*, 267 B.R. 673, 679 (Bankr. D. Del. 2000) (analyzing existence of right to jury trial based on nature of relief sought in related non-bankruptcy action in California court) (cited in Abs. Mot. at 18).

Comerica’s further arguments about proofs of claims are also unavailing. Class Plaintiffs have sued Comerica in tort for breaches of duties owed directly to them by Comerica under California law. Those claims have nothing to do with the administration of Debtors’ bankruptcy, apart from the fact that Comerica engaged in misconduct that caused independent legal harms both to Class Plaintiffs and to Debtors.³ If, as Comerica contends, Class Plaintiffs’ claims are indeed derivative of Debtors’ claims, then the effect may be that the district court will dismiss the action – not that Class Plaintiffs’ right to a jury trial is somehow affected.

L. None of the parties in the Adversary Proceeding is a bankruptcy debtor.

Class Plaintiffs agree with Comerica that this “can hardly be described as a classic non-debtor party dispute,” given the peculiar posture of the defendant in a previously-filed action asking the bankruptcy court administering the bankruptcy of a nonparty in another jurisdiction to intervene in that previously filed action. But the attenuated link between this Court and the parties and the claims in the Class Action only underscores why this Court should decline Comerica’s request to decide an issue that can be adjudicated in the California district court as soon as Comerica bears its burden of raising it there.

³ The existence of these independent legal harms is the reason that the Litigation Trust has filed a separate lawsuit alongside the Class Action.

Moreover, contrary to Comerica’s argument, the fact that the Liquidation Trust has filed an action based on factual allegations related to those underlying the Class Action does not make Debtors parties to the Class Action. Comerica, like anyone else, is capable of breaching distinct duties to multiple parties in the same series of transactions.

II. Comerica’s Other Objections to the Abstention Motion Have No Basis in Law.

A. The abstention motion is not untimely.

Comerica offers no authority to support its conclusory assertion that the Abstention Motion is “untimely.” Indeed, the Adversary Proceeding is particularly well suited to abstention now that Debtors’ bankruptcy plan has been confirmed and effectuated, and the relief sought by Comerica in the Adversary Proceeding (enjoining the Class Action pursuant to § 362) has been rendered unavailable by the termination of the automatic stay.

B. The abstention motion is not “misplaced.”

Comerica asserts that the Abstention Motion is “misplaced.” Without explanation or legal support, Comerica argues that Class Plaintiffs should have asserted their claims in the Liquidation Trust Complaint, which was filed a year-and-a-half after the Class Action. (*See* Opp. at 12.) Setting aside that early case management orders are already in place for the Class Action, the two actions assert fundamentally different claims (*compare* Class Action Complaint ¶¶ 141-170 with Liquidation Trust Complaint ¶¶ 50-63). Comerica doesn’t explain how (or why) Class Plaintiffs should have “simply pleaded” their way into the Liquidation Trust Complaint, nor does Comerica explain why doing so would not violate the voluntary stay orders entered by this Court and the California district court. In any event, Comerica’s critique that Class Plaintiffs could proceed as part of the Liquidation Trust Action pending in the district court concedes that this Adversary Proceeding is unnecessary.

III. Comerica improperly and incorrectly argues that the class claims belong to the bankruptcy estates.

Throughout the Opposition, Comerica makes the conclusory assertion that Class Plaintiffs' claims are the property of Debtors. Given that Class Plaintiffs are moving this Court to abstain from exercising jurisdiction over the Adversary Proceeding, and not arguing the underlying merits, a full discussion of the underlying merits is not appropriate.

Moreover, the Bankruptcy Plan does not "confirm[] that the Class Action alleges estate claims." (Opp. at 14.) To the contrary, the Plan's assignment scheme recognizes the existence of independent, direct claims held by creditors because it provides for the assignment of those direct claims to the Liquidation Trust to prosecute and it clearly distinguishes between assigned creditor claims and estate claims. (*See* Bankr. ECF No. 2397 at 40 §1.28 (defining "Contributed Claims"), 11 §1.76 (defining "Liquidation Trust Actions" and distinguishing between causes of action held by the Debtors or Estates and causes of action contributed to the Liquidation Trust by investors). Such provisions would be nonsensical if all investor claims were derivative and therefore property of Debtors' estates.

CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the Court abstain from exercising any further jurisdiction over and dismiss the instant adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1).

Dated: May 23, 2019

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 23rd day of May, 2019, I served a true and correct copy of the foregoing **Class Plaintiffs' Reply in Support of Their Motion for Abstention** upon the parties listed below in the manner indicated:

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