

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
BRIDGEPORT DIVISION**

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In re:	:	
	:	
Connecticut Trade Company, Inc.,	:	Chapter 11
	:	Case No. 13-51044
Debtor.	:	

_____	X	
<i>Appearances:</i>		
	:	
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	:	
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Stamford, CT	:	
	:	
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**ORDER ON MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

**Introduction**

Larson Manufacturing Company of South Dakota, Inc., Larson Manufacturing of Iowa, Inc., and Larson Manufacturing Company, Inc. (collectively “Larson”) move for relief from the automatic stay to permit an action, pending in the United States District Court for the District of South Dakota (“USDC-SD”) to proceed to trial. For the reasons that follow, the motion is granted.

## Background

On January 12, 2012, Larson commenced an action against Connecticut Trade Company, Inc., d/b/a Connecticut Greenstar (“CTC”), Connecticut Greenstar, and Valentin Luca in the USDC-SD, entitled *Larson Manufacturing Company of South Dakota, Inc., et al. v. Connecticut Trade Company, Inc., et al.*, 4:12-cv-04011 (“South Dakota Action”). Larson filed an amended complaint on April 4, 2013. The amended complaint, based on a 2008 agreement between the parties, asserted South Dakota state law claims, including a breach of a purchase agreement, breach of express and implied warranties, fraud, and fraudulent transfer. See *Larson Mfg. Co. of South Dakota, Inc. v. Connecticut Greenstar, Inc.*, 929 F. Supp. 2d 924, 926 (D.S.D. 2013). On July 31, 2012, defendant Luca moved to dismiss for lack of personal jurisdiction over him, and all the defendants moved to dismiss for failure to state a claim or, in the alternative, to transfer the case to the District of Connecticut (“Motion to Dismiss”). See *id.* On March 6, 2013, the USDC-SD denied the Motion to Dismiss. See *id.* The court found that “judicial economy favors [South Dakota] since this Court has already invested resources into this case by virtue of addressing Defendants’ motions to dismiss”, “South Dakota law applies in this case because the [parties’] Agreement contains a South Dakota choice-of-law clause”, and it “is preferable to have a South Dakota court apply South Dakota law”. *Id.* at 938. The court concluded that a transfer of venue to the District of Connecticut was not warranted. See *id.* The South Dakota Action was scheduled for trial on January 28, 2014.

On July 3, 2013, CTC filed this chapter 11 case. On July 13, 2013, it commenced an adversary proceeding against Larson premised on the parties' 2008 business agreement. (*See Connecticut Trade Co., Inc. v. Larson Mfg. Co., Inc. et al.*, Adv. Pro. No. 13-5037, Complaint; ECF No.1, "Adversary Complaint".) The Adversary Complaint alleged fraudulent misrepresentation, negligent misrepresentation, breach of contract, breach of covenant of good faith and fair dealing, unjust enrichment, and tortious interference. (*See id.*) It also included counts relating to civil theft under C.G.S. §§ 53a-119(2) and unfair trade practices under C.G.S. § 42-110b *et seq.*, the Connecticut Unfair Trade Practices Act. CTC added a count objecting to Larson's claims, see Bankruptcy Rule 3007, even though Larson has not filed a proof of claim in this case, and a count for attorney's fees, see Bankruptcy Rule 7008(b).

The Adversary Complaint raises substantially the same issues as the affirmative defenses alleged in CTC's in the South Dakota Action. See South Dakota Action, No. 4:12-cv-4011, Answer, ECF No. 47 at 8, "Affirmative Defenses", ¶¶ 4-6. On August 15, 2013, Larson filed the instant motion for relief from the automatic stay under 11 U. S. C § 362(d)(1). (*See Motion for Relief from Automatic Stay ("MRFS")*, ECF No. 31.) On that date they also filed an Answer and Counterclaim, and a third-party complaint against Connecticut Greenstar, Inc. and Valentin Luca. (*See Adv. Pro. No. 13-5037*, ECF Nos. 5 and 6.) On September 3, 2013, Larson filed a motion to stay the adversary proceeding, which was granted over CTC's objection. (*See 09/17/2013 docket entry in Adv. Pro. No. 13-5037.*)

## Discussion

Section 362(d)(1) provides:

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
  - (1) for cause, including lack of adequate protection of an interest in property of such party in interest;

\* \* \*

11 U.S.C. § 362(d)(1).

In the Second Circuit, “[t]he burden of proof on a motion to lift or modify the automatic stay is a shifting one. Section 362(d)(1) requires an initial showing of cause by the movant [Larson], while Section 362(g) places the burden of proof on the debtor [CTC] for all issues other than ‘the debtor’s equity in property’.” *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990). Section 362(g) provides:

- (g) In any hearing under subsection (d) . . . of this section concerning relief from the stay of any act under subsection (a) of this section—
  - (1) the party requesting such relief has the burden of proof on the issue of the debtor’s equity in property; and
  - (2) the party opposing such relief has the burden of proof on all other issues.

11 U.S.C. § 362(g).

In determining whether Larson has made an initial showing, the court looks to the factors identified in *Sonnax*:

- (1) whether relief would result in a partial or complete resolution of the issues;
- \* \* \*
- (10) the interests of judicial economy and the expeditious

and economical resolution of litigation;  
(11) whether the parties are ready for trial in the other proceeding; and  
(12) impact of the stay on the parties and the balance of harms.

*Sonnax*, 907 F.2d at 1286. Not all twelve factors will apply in every case, and a court's analysis of them is discretionary. See *Gelinas v. Gelinas (In re Gelinas)*, 270 B.R. 88, 91 (Bankr. D. Conn. 2001).

The above, relevant *Sonnax* factors weigh in favor of granting Larson relief from stay. The parties' claims can be most effectively and efficiently resolved by the USDC-SD, which has already determined that judicial economy favors South Dakota. See *Larson Mfg.*, 929 F. Supp.2d at 938. Indeed, as noted, the USDC-SD has already invested resources into the case. Moreover, the underlying contract at issue provides that South Dakota law applies, and the USDC-SD is in the best position to interpret that law. See *id.*

Further, the USDC-SD has the power to adjudicate all the claims involving all of the parties.<sup>1</sup> In contrast, this court may not have the constitutional or statutory authority to enter final orders on the claims at issue, including Larson's state-law claims against CTC and third-parties Luca and Greenstar. See *Stern v. Marshall*, 131 S. Ct. 2594, 2616 (2011). The potential need to address *Stern v. Marshall* jurisdictional issues would likely result in a significant expenditure of judicial and party resources. Even if it

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<sup>1</sup> In denying Luca's motion to dismiss for lack of personal jurisdiction, the USDC-SD determined "jurisdiction over nonresident Defendant Val Luca is appropriate based on the totality of the circumstances and 'the relationship among the defendant, the forum, and the litigation'." *Larson Mfg.*, 929 F. Supp.2d at 930 (further citation omitted).

is determined that *Stern v. Marshall* is not implicated in this controversy, CTC concedes that its Adversary Complaint includes non-core causes of action as to which, in the absence of consent of all parties, this court may only make proposed findings of fact and conclusions of law to the District Court for the District of Connecticut. See 28 U.S.C §§ 157 (c)(1) & (2). The required consent is hardly assured.

A fundamental goal of bankruptcy policy is to promote an efficient means by which a chapter 11 plan may be proposed and confirmed. That policy will be advanced by granting the MRFS and frustrated by denying it. Larson is not seeking relief from the stay to enforce any judgment that it may obtained in the South Dakota Action. Rather, it merely seeks to reduce its claims to judgment. As the holder of more than 90% of the CTC's scheduled claims, Larson is entitled to an expeditious adjudication of those claims.

CTC's interests are also advanced by granting the MRFS. It cannot propose a confirmable plan until the controversies addressed in the South Dakota Action are resolved. Presumably, it is in CTC's best interest to have those controversies resolved quickly. The South Dakota Action has been pending since January 2012, and a trial date has been scheduled for January 28, 2014. It is noted that CTC is represented in the South Dakota Action by the same attorney that commenced this bankruptcy case.

Having made an initial showing of cause, the burden of proof shifts to CTC under § 362(g) to assert a persuasive basis for its opposition to the MRFS. CTC argues that since Larson filed an answer to the Adversary Complaint, it submitted to the jurisdiction of this court, and that, in and of itself, is a basis for denying the MRFS. The argument is unavailing. Larson does not challenge this court's jurisdiction. But more to

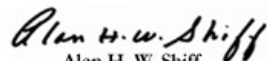
the point, the mere filing of a responsive pleading is not the same as proof of the allegations within that pleading. Moreover, given CTC's admission that its Adversary Complaint is primarily based on non-core causes of action, *see supra*, its proffer of evidence regarding the cost of litigation in South Dakota compared to the potential multiple court litigation here and the fact that this court cannot enter a final judgment eviscerates the persuasiveness of the proffer. Further, the possibility raised by CTC that the South Dakota Action may not afford it complete relief against Larson does not diminish the cumulative effect of the *Sonnax* factors weighing in favor of granting Larson relief from stay. Upon the resolution of the issues raised in the South Dakota Action, CTC will be in a position to formulate a chapter 11 plan, and the issues to be determined in CTC's adversary proceeding will likely be narrowed. Having suspended the prosecution of the adversary proceeding, this court will await further developments from the USDC-SD.

### **Conclusion**

Accordingly, IT IS ORDERED that Larson's MRFS is granted.

Dated this 22nd day of November 2013 at Bridgeport, Connecticut.

By the court

  
Alan H. W. Shiff  
United States Bankruptcy Judge