Rethinking *Granfinanciera*: May the Bankruptcy Court Retain Pre-trial Jurisdiction After Finding a Valid Jury Trial Right?

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Introduction

Bankruptcy courts are vested with authority under Article I of the U.S. Constitution to deal with the assets of a debtor and to provide relief to a debtor in a summary fashion.[1] In 1978, Congress attempted to expand the jurisdiction of the bankruptcy courts by granting them original jurisdiction over "all civil proceedings arising under title 11 of the Bankruptcy Code, or arising in or related to cases under title 11."[2] In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, the Supreme Court declared these jurisdictional provisions unconstitutional because Congress had essentially vested Article III powers in a non-Article III adjunct.[3] Such powers included the authority to conduct jury trials.[4]

Congress responded to *Marathon* by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("1984 Amendments").[5]

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1. Katchen v. Landy, 382 U.S. 323, 327 (1965); *see also* Loan Co. v. Hunt, 292 U.S. 234, 240 (1934); Pepper v. Litton, 308 U.S. 295, 304 (1939).

2. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 1471, 92 Stat. 2549, 2688 (1979), *repealed by* Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, Title I, §§ 114, 122(a), 98 Stat. 343, 346 (1984). "Title 11" refers to the Title 11 of the U.S. Code and is known as the "Bankruptcy Code."

3. N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 87 (1982) (plurality opinion).

4. *Id.* at 85.

5. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified as amended in various sections of Title 11 and Title 28 of the U.S. Code).

Although Congress could have decided to provide bankruptcy judges with Article III status, Congress instead vested original jurisdiction over bankruptcy cases in the district courts.[6] The district courts then had the option of referring cases to the bankruptcy courts.[7] Of the referenced matters, bankruptcy judges may hear and finally determine only "core" matters, but as to "non-core matters," the bankruptcy court may only submit proposed findings of fact and conclusions of law to the district court.[8] The district court may then, after reviewing such findings de novo, enter a final judgment or order.[9] The 1984 Amendments, however, largely left unanswered what would happen in proceedings, whether designated core or non-core, where the Constitution guarantees a party a jury trial right.

Nearly twenty years ago, the U.S. Supreme Court recognized that despite Congress's goal to provide swift resolution of bankruptcy proceedings, a party in bankruptcy litigation may demand a jury trial under certain circumstances.[10] In *Granfinanciera, S.A. v. Nordberg*, the Court stated that although Congress may assign adjudication of public rights to the bankruptcy court, Congress lacks the power to strip parties who contest matters of "private right" of their Seventh Amendment right to a jury trial.[11] The *Granfinanciera* Court, however, expressly declined to determine whether a bankruptcy court, a non-Article III tribunal, may conduct a jury trial, leaving that issue for future decisions.[12]

In 1994, Congress responded to *Granfinanciera* by amending 28 U.S.C. § 157 to add subsection (e).[13] Still currently in force, 28 U.S.C. § 157(e) authorizes bankruptcy courts to conduct jury trials if the court has consent of all parties.[14] *Marathon*, *Granfinanciera*, and 28 U.S.C. § 157(e)

6. 28 U.S.C. § 1334 (2007).

7. 28 U.S.C. § 157(a) (2007).

8. 28 U.S.C. § 157(b)–(c) (2007).

9. 28 U.S.C. § 157(c) (2007).

10. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 63–64 (1989) (the Court exclusively held that the creditors were "entitle[d]" to a jury trial to determine whether the Chapter 11 trustee could avoid allegedly fraudulent conveyances).

11. *Id.* at 52 (citing Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442, 457–58 (1977)).

12. *Id.* at 50 ("We are not obliged to decide today whether bankruptcy courts may conduct jury trials in fraudulent conveyance suits. . . . Nor need we decide whether, if Congress has authorized bankruptcy courts to hold jury trials in such actions, that authorization comports with Article III when non-Article III judges preside over the actions subject to review in, or withdrawal by, the district courts.").

13. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, sec. 143, § 112, 108 Stat. 4106, 4117 (1994).

14. 28 U.S.C. § 157(e) (2007).

together suggest that where a party makes a valid jury demand and does not consent to the jurisdiction of the bankruptcy court, a bankruptcy court's determination that the demanding party is entitled to a jury trial mandates withdrawal of the jurisdictional reference to the district court for trial.[15] However, Congress and *Granfinanciera* left unanswered whether a bankruptcy court may retain jurisdiction over pre-trial matters once the right to jury trial has been determined.[16] In September of 2007, the Ninth Circuit tackled the issue.[17]

In *Sigma Micro Corp. v. Healthcentral.com*, a Chapter 11 debtor brought an adversary action to avoid and recover preferential payments made to Sigma Micro Corporation ("Sigma Micro").[18] In response to the action, Sigma Micro filed an answer and a demand for a jury trial.[19] Because Sigma Micro would not consent to a trial in the bankruptcy court, Sigma Micro demanded that the action be transferred to the district court for further proceedings.[20] The bankruptcy judge denied the request. The Ninth Circuit upheld the bankruptcy court's decision, concluding that a bankruptcy court may retain pre-trial jurisdiction, including the power to hear dispositive motions.[21] As a result, however, the Ninth Circuit invalidated a local rule of the U.S. Bankruptcy Court of the Northern District of California, which mandated the *immediate* withdrawal of the jurisdictional reference once the bankruptcy court found that a party was entitled to a jury trial.[22]

This note will discuss the intersection of Article III limitations on bankruptcy courts and the Seventh Amendment right to jury trial, an area of law fraught with overwhelming complexity and confusion. The note begins by discussing the general background of bankruptcy jurisdiction and related cases. It then argues that the Ninth Circuit did not properly consider Article III analysis in determining whether a bankruptcy court may retain pre-trial jurisdiction, and therefore the decision is flawed. The Ninth Circuit's decision is not surprising, however, because Congress has not provided adequate guidance as to this issue. This, combined with

15. Growe v. Bilodard, Inc., 325 B.R. 490, 491–92 (Bankr. D. Me. 2005).

16. City Fire Equip. Co. v. Ansul Fire Prot. Wormald U.S., Inc., 125 B.R. 645, 646–50 (Bankr. N.D. Ala. 1989).

17. Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 783–88 (9th Cir. 2007).

18. *Id.* at 780.

19. *Id.*

20. *Id.* at 781.

21. *Id.* at 788.

22. *Id.* at 785.

uncertainty over the current bankruptcy jurisdiction scheme, has (1) created inconsistent court procedures, some violating Article III; and (2) created more inefficiency in bankruptcy proceedings by promoting settlement leverage and protraction of litigation through delay tactics. Congress should either grant Article III status to bankruptcy judges to ultimately resolve these recurring problems in bankruptcy proceedings or at the least provide clear procedural guidelines as to how a bankruptcy judge is to preside over a proceeding subject to a valid jury trial demand where parties have not consented to a jury trial in the bankruptcy court.

I. The Historical Background of Bankruptcy Jurisdiction

Article I, Section 8, Clause 4 of the U.S. Constitution authorizes Congress to enact "uniform laws on the subject of bankruptcies throughout the United States."[23] Congress exercised its authority under Article I to adopt the Bankruptcy Act of 1898, which designated district courts as courts of bankruptcy.[24] Federal district judges had specialized officials called "referees" whom they appointed to help make everyday decisions in bankruptcy matters.[25] The referees exercised summary jurisdiction.[26] Summary proceedings included those relating to administration of the bankrupt debtor's estate, those relating to estate property in the actual or constructive possession of the debtor at the time of bankruptcy, and those in which the parties had consented to the bankruptcy court's jurisdiction.[27] If a proceeding did not fall within the bankruptcy court's summary jurisdiction, it had to be tried in the court that had plenary jurisdiction—that is, a district court or a state court.[28] Plenary proceedings included actions to recover preferential payments and fraudulent conveyances.[29] As a result of the summary versus plenary jurisdiction scheme, litigation over a bankruptcy case would be dispersed among several courts.[30]

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23. U.S. CONST. art. I, § 8, cl. 4.

24. Bankruptcy Act of 1898, § 2, 30 Stat. 544, 545, *repealed by* Bankruptcy Reform Act of 1978, 92 Stat. 2549 (1979).

25. ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS: TEXT, CASES, AND PROBLEMS 112 (5th ed. 2006). The 1973 Rules of Bankruptcy Procedure redesignated referees as "judges." N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 53 n.2 (1982).

26. *Marathon*, 458 U.S. at 53.

27. 2 JAMES WM. MOORE & ROBERT STEPHEN OGLEBAY, COLLIER ON BANKRUPTCY ¶ 23.02[2], at 439–442.1 (14th ed. 1974).

28. *Id.*

29. *Id.*

30. *Id.*

A. The Bankruptcy Reform Act of 1978

The Bankruptcy Reform Act of 1978 ("1978 Act") attempted to reduce the confusion and expense of bankruptcy litigation by ending the summary and plenary dichotomy.[31] Newly established bankruptcy courts were given comprehensive jurisdiction to deal with the main bankruptcy case as well as related matters, encompassing both summary and plenary proceedings.[32] The Act eliminated the referee system and established special bankruptcy courts as adjuncts to the district court.[33] However, Congress stopped short of granting the bankruptcy courts Article III status, opting instead to provide bankruptcy judges under Article I with an appointment of fourteen years, rather than a life-term.[34] On appeal to the district court, all bankruptcy court findings would be reviewed under a deferential clearly erroneous standard.[35]

B. The *Marathon* Decision

The Supreme Court did not take the new jurisdiction scheme well. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, a Chapter 11 debtor filed suit in a U.S. Bankruptcy Court against a creditor, seeking damages for breaches of contract and warranty, misrepresentation, coercion, and duress.[36] The creditor sought dismissal of the suit on the ground that the 1978 Act unconstitutionally vested jurisdiction over these state-created claims in a non-Article III court.[37] The United States intervened to defend the validity of the statute.[38] The bankruptcy judge denied the motion to dismiss.[39] On appeal, the district court entered an order granting the motion on the ground that to the extent the 1978 Act authorizes bankruptcy judges to try cases otherwise relegated under the Constitution to Article III judges, the Act was unconstitutional.[40]

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31. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, sec. 241(a), § 1471, 92 Stat. 2549, 2668 (1979) (repealed 1984). 28 U.S.C. § 1471, as enacted in the 1978 Act, vested bankruptcy courts with jurisdiction over all civil proceedings arising under Title 11 of the Bankruptcy Code or arising in or *related to* cases under Title 11.

32. *Id.*

33. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, sec. 201(a), § 151, 92 Stat. 2549, 2657 (1979) (amended 1984).

34. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, sec. 201(a), § 153, 92 Stat. 2549, 2657-58 (1979) (amended 1988).

35. N. Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 55 n.5 (1982).

36. *Id.* at 56.

37. *Id.* at 56–57.

38. *Id.* at 57.

39. *Id.*

40. *Id.*

A plurality of the Supreme Court in an opinion by Justice Brennan held that the 1978 Act's grant of broad jurisdiction to bankruptcy judges was unconstitutional because Congress impermissibly vested most, if not all, of the "essential attributes of judicial power" of an Article III district court in a non-Article III adjunct.[41] The doctrine of separation of powers implicit in the structure of the Constitution requires that courts who exercise such Article III powers must be independent and presided by judges with secured life tenure and compensation.[42] Because bankruptcy judges under the 1978 Act were appointed for a limited term and their salaries were subject to diminution by Congress, the Court concluded that the bankruptcy judges were not Article III judges who could exercise the essential attributes of judicial power.[43]

Justice Brennan recognized that despite Article III requirements, Congress had the authority to create "legislative" courts which are limited to adjudicating cases involving "public rights."[44] The 1978 Act's conferral of broad adjudicative powers to bankruptcy judges could therefore only be upheld if Congress intended to create such "legislative" courts limited to public rights adjudication.[45] The *Marathon* plurality noted that the public rights doctrine draws upon the principle of separation of powers, and therefore the doctrine is grounded in a historically recognized distinction between matters that could be conclusively determined by the executive and legislative branches and matters that are inherently judicial.[46] Public rights only encompass matters arising between the government and others.[47] In contrast, distinctly "private rights" involve the liability of one individual to another under the law as defined.[48] Justice Brennan noted that

41. *Id.* at 87.

42. *Id.* at 58–59. Article III, Section 1 provides: "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." U.S. CONST. art III, § 1.

43. *Marathon*, 458 U.S. at 60–61, 87.

44. *Id.* at 63–64.

45. *Id.* at 67.

46. *Id.* at 67–68.

47. *Id.* at 69–70; *see also* Crowell v. Benson, 285 U.S. 22, 50 (1932).

48. *Marathon*, 458 U.S. at 69–70. The public rights doctrine analysis changed after *Marathon*. In *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 593–94 (1985), the Court expanded the public rights doctrine to include seemingly private rights "so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary." After *Thomas*, any right encompassed within a congressionally created scheme could arguably be deemed a public right, even if that right would otherwise exist outside the congressional scheme. *See id.* at 600 (Brennan, J., concurring) (stating that the challenged provision involves public rights because "the dispute arises in the context of a federal regulatory scheme that virtually occupies the field").

although the restructuring of debtor-creditor relations is at the core of federal bankruptcy power, this must be distinguished from adjudication of state-created rights, such as the right to recover contract damages.[49] The plurality concluded that the contractual claims brought by the debtor in *Marathon* were more accurately characterized as private rights, which could be adjudicated in another court—specifically, a state court—and therefore must be heard by an Article III judge who possesses the essential attributes of judicial power.[50]

The plurality also rejected the argument that the bankruptcy court was merely an "adjunct" of the district court, like a special master or a magistrate judge, and was therefore properly delegated certain adjudicative functions, including fact-finding.[51] The subject-matter jurisdiction of the bankruptcy courts provided by the 1978 Act encompassed traditional matters of bankruptcy, but also all *related* civil proceedings. Because the 1978 Act granted broad jurisdiction and conferred all the ordinary powers of Article III courts—including the power to preside over jury trials—to non-Article III courts, the "adjunct" bankruptcy courts were not proper

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The Court also set forth a new balancing test for reviewing Article III challenges in *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). Under the balancing test, courts weigh the values of Article III against a number of factors, including "the extent to which the 'essential attributes of judicial power' are reserved to Article III courts, and, conversely the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of Article III." *Id.*

As a result of *Thomas* and *Schor*, the categorical approach of the public rights doctrine as applying to claims only involving the government as a party no longer applies. *See* Robert G. Skelton & Donald F. Harris, *Bankruptcy Jurisdiction and Jury Trials: The Constitutional Nightmare Continues*, 8 BANKR. DEV. J. 469, 484 (1991) (arguing that *Schor* eviscerated the notion that the public rights doctrine had any constitutional significance). However, even under the balancing test promulgated by *Schor*, the 1978 Bankruptcy Reform Act would seem to fail. Under the Act, bankruptcy courts were not limited to a particularized area of law, their findings were subject to review under the clearly erroneous standard, and, more importantly, bankruptcy judges were authorized to exercise ordinary powers of district courts, especially the power to preside over jury trials. Both *Schor* and *Marathon* note that the power to conduct jury trials is one of the essential attributes of judicial power, although neither expressly held that non-Article III courts may not conduct jury trials absent consent of the parties. *Marathon*, 458 U.S. at 85; *Schor*, 478 U.S. at 853. On balance, the large grant of Article III powers to bankruptcy judges in 1978 weigh heavily against the values of Article III and the separation of powers doctrine. Thus, although the cases following *Marathon* gave considerably more deference to congressional purpose in forming adjudicatory agencies, cases involving Article III challenges reveal that administrative agencies and Article III adjuncts have strictly limited roles in the judicial process, and final disposition of a case should ultimately rest upon an Article III judge.

49. *Marathon*, 458 U.S. at 71.

50. *Id.* at 71–72.

51. *Id.* at 86 ("In short, the 'adjunct' bankruptcy courts created by the Act exercise jurisdiction behind a facade of a grant to the district courts . . . .").

"adjuncts" at all, and the Court accordingly struck down the jurisdictional provisions of the Act.[52]

C. The Bankruptcy Amendments and Federal Judgeship Act of 1984

The Supreme Court issued several stays of its opinion in order to allow Congress some time to respond to *Marathon*.[53] In the meantime, the bankruptcy courts continued to operate based on an Emergency Interim Rule promulgated by the Judicial Conference of the United States, which the district courts adopted.[54] In 1984, Congress finally responded to *Marathon* with amendments to the 1978 Act, allowing bankruptcy courts to retain broad federal jurisdiction, but giving more control and responsibility to district courts over the bankruptcy courts.[55] Congress conferred original, but not exclusive, jurisdiction of all "civil proceedings arising under title 11, or arising in or related to cases under title 11" to the district court.[56] The district court had the option to refer, as a matter of course, these cases to the bankruptcy courts, which were then considered "units" of the district court.[57] The bankruptcy courts "hear and determine" proceedings "arising under" or "arising in a case" under the Bankruptcy Code and enter final and binding judgments in these proceedings subject to traditional appellate review.[58] These cases have been deemed "core proceedings."[59] However, the bankruptcy judge can only make recommendations on findings of fact and conclusions of law in "non-core proceedings" or cases "related to" the Bankruptcy Code.[60] The district court then reviews the findings de novo and enters the final order.[61]

As perhaps an added precaution to insulate bankruptcy jurisdiction against constitutional attack, the 1984 Amendments also provided for withdrawal of the reference to the bankruptcy court upon the district court's

52. *Id.* at 84–85.

53. WARREN & WESTBROOK, *supra* note 25, at 796.

54. *See id.*

55. 1 HENRY J. SOMMER & ALAN N. RESNICK, COLLIER ON BANKRUPTCY ¶ 3.01 (15th ed. rev. 2007).

56. 28 U.S.C. § 1334 (2007).

57. 28 U.S.C. §§ 151, 157(d) (2007).

58. 28 U.S.C. § 157(b)(1) (2007).

59. A "core proceeding" has also been defined as one that invokes a substantive right provided by the Bankruptcy Code or that by its nature could only arise in the context of a bankruptcy case. *See In re* Wood, 825 F.2d 90, 97 (5th Cir. 1987); *see also In re* Wolverine Radio Co., 930 F.2d 1132, 1144 (6th Cir. 1991).

60. 28 U.S.C. § 157(c)(1) (2007).

61. *Id.*

own motion or a timely motion by the parties if cause is shown.[62] This is known as permissive or discretionary withdrawal.[63] The district court *must* also withdraw the reference if a case involves both issues of bankruptcy law and some other federal law regulating interstate commerce upon motion by any party.[64] Clearly, Congress wanted to send the message that the district court retains ultimate control over bankruptcy cases and that the jurisdiction scheme complies with Article III.

The distinction between "bankruptcy" and "non-bankruptcy" achieves particular significance in the context of a jury trial right. First, the 1984 Amendments did not address which proceedings could develop into a jury trial—such as those arising under the Bankruptcy Code, those arising under a case under the Bankruptcy Code, or those that are related to a case under the Bankruptcy Code. Second, the 1984 Amendments further left unanswered whether the bankruptcy court has the power to conduct a jury trial after a valid entitlement has been found. The Supreme Court answered the first issue in *Granfinanciera,* but expressly declined to address the second issue.[65]

II. The Seventh Amendment and *Granfinanciera*

The Seventh Amendment to the U.S. Constitution is as follows:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.[66]

"Suits at common law" refer to actions where legal rights are to be ascertained and determined according to English common law in 1791, the year the Seventh Amendment was adopted.[67] Suits at common law therefore refer to actions in law, as opposed to proceedings in equity, which were never tried by jury.[68] The Seventh Amendment also applies to actions brought to enforce statutory rights that are analogous to common law

62. 28 U.S.C. § 157(d) (2007).

63. *See* 1 SOMMER & RESNICK, *supra* note 55, ¶ 3.04.

64. *Id.*

65. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 53 (1989).

66. U.S. CONST. amend. VII.

67. Dimick v. Schiedt, 293 U.S. 474, 476 (1935).

68. Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830).

causes of actions heard by English courts of law at the time it was adopted.[69]

It is well accepted that bankruptcy relief is equitable in nature.[70] The Constitution therefore does not guarantee the right to jury trial in the bankruptcy case itself.[71] At one point in time, the Supreme Court recognized that one of the main purposes of bankruptcy law is to provide expedient administration of the bankruptcy estate through summary disposition "without regard to usual modes of trial attended by some necessary delay."[72] Despite this acknowledgement, the Supreme Court held that such policies of expediency do not trump a Seventh Amendment right to jury trial.[73]

In *Granfinanciera*, Chase & Sanborn Corporation filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in 1983.[74] The Chapter 11 trustee in bankruptcy brought an action against Granfinanciera, S.A. ("Granfinanciera") and Medex, Ltda. ("Medex") in district court, seeking to avoid allegedly fraudulent monetary transfers made to them by Chase & Sanborn Corporation's predecessor within one year of the bankruptcy filing.[75] The district court referred the proceedings to the bankruptcy court.[76] Granfinanciera and Medex then requested a jury trial

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69. Curtis v. Loether, 415 U.S. 189, 193 (1974); *see also* Markman v. Westview Instruments, 517 U.S. 370, 376 (1996).

70. Pepper v. Litton, 308 U.S. 295, 304 (1939). In *Pepper*, the Supreme Court considered whether bankruptcy courts were conferred the power to disallow an equitable subordination claim and noted the following:

> Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of controversies in relation thereto; the rejection in whole or in part 'according to the equities of the case' of claims previously allowed; and the entering of such judgments 'as may be necessary for the enforcement of the provisions' of the [Bankruptcy] Act. In such respects the jurisdiction of the bankruptcy court is exclusive of all other courts.
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> The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done.

Id. at 304–05 (footnotes omitted) (citation omitted); *see also* Katchen v. Landy, 382 U.S. 323, 327 (1966) ("[Bankruptcy courts] are essentially courts of equity . . . .").

71. *Katchen*, 382 U.S. at 329.

72. *Id.*

73. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 63 (1989).

74. *Id.* at 36.

75. *Id.*

76. *Id.*

pursuant to the Seventh Amendment.[77] The bankruptcy judge denied the request, deeming a suit to recover a fraudulent transfer "a core action" which he understood to be a "non-jury issue."[78] The district court affirmed without discussing the jury trial issue.[79] The Court of Appeals for the Eleventh Circuit also affirmed, finding that the Seventh Amendment supplied no right to a jury trial because actions to recover fraudulent conveyances are equitable in nature, and Congress had recognized this by including it in the list of core proceedings in 28 U.S.C. § 157(b)(2)(H).[80] The Eleventh Circuit further noted, "bankruptcy itself is equitable in nature and thus bankruptcy proceedings are inherently equitable."[81] The Supreme Court reversed.[82]

In a five-to-four majority opinion by Justice Brennan, who also authored *Marathon*'s plurality opinion, the Court held that the Seventh Amendment entitles a person, who has not submitted a claim against a bankruptcy estate, to a jury trial when sued by the bankruptcy trustee attempting to recover an allegedly fraudulent monetary transfer.[83] The Court acknowledged that Congress may devise novel causes of action involving public rights and assign them to non-Article III tribunals lacking statutory authority to employ juries as fact-finders.[84] However, Congress cannot strip a party's right to a jury trial when entitled to one, nor can it "conjure away" the Seventh Amendment by mandating that traditional claims must be taken to an administrative tribunal.[85] Thus, a cause of action involving a "private right" as opposed to a "public right" may not be adjudicated in a specialized non-Article III court lacking the essential attributes of the judicial power.[86] Using Article III adjunct-public rights analysis as a proxy, the Court classified public rights for Seventh Amendment purposes as those that involve instances when "Congress,

77. *Id.* at 37.

78. *Id.*

79. *Id.*

80. Granfinanciera, S.A. v. Nordberg, 835 F.2d 1341, 1349 (11th Cir. 1988), *rev'd*, 492 U.S. 33, 36 (1989).

81. *Granfinanciera*, 835 F.2d at 1348.

82. *Granfinanciera*, 492 U.S. at 75.

83. *Id.* at 37. If a creditor submits a claim against the bankruptcy estate, the creditor subjects itself to the jurisdiction of the bankruptcy court and the bankruptcy judge's equitable power to disallow those claims, even if such claims are legal in nature. *Id.* at 57 (citing Katchen v. Landy, 382 U.S. 323, 336 (1966)). Waiver of a creditor's Seventh Amendment entitlement to a jury trial by filing a proof of claim against the estate was affirmed in *Langenkamp v. Culp*, 498 U.S. 42, 45 (1990), a case heard by the Court after *Granfinanciera*.

84. *Granfinanciera*, 492 U.S. at 51.

85. *Id.* at 52.

86. *Id.* at 53.

acting for a valid legislative purpose pursuant to its constitutional powers under Article I, has created a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary."[87] In contrast, a statutory right that is not closely intertwined with a federal regulatory program which Congress is empowered to enact is a private right that must be adjudicated by an Article III court.[88]

Applying the classifications between public and private rights, the Court stated that the fraudulent conveyance action brought by the trustee seems "more accurately characterized as a private rather than a public right."[89] Justice Brennan then compared fraudulent conveyance actions to state law contract claims, asserting that state law causes of actions are paradigmatic private rights, entitled to jury trial.[90] Furthermore, fraudulent conveyance actions resemble state law contract claims brought by a bankrupt corporation to augment the bankruptcy estate more than the restructuring of debtor-creditor relations.[91] Regardless of whether Congress has designated such actions as "core proceedings" under the purview of bankruptcy litigation, the Court held that Congress may not deprive parties litigating over a private right their Seventh Amendment guarantee to a jury trial by reclassifying pre-existing common law causes of action, and placing exclusive jurisdiction of the claim in an non-Article III court lacking "the essential attributes of the judicial power."[92] Thus, Granfinanciera was entitled to a jury trial it rightfully demanded.[93]

Granfinanciera ultimately established that a party in bankruptcy litigation may assert that it is entitled to a jury trial right guaranteed by the Seventh Amendment if the party asserts a claim of "private right" that is equitable in origin and not a Congressional creation of a statutory right embedded in the Bankruptcy Code.[94] The Court laid out a three-step analysis to determine whether a valid jury trial right exists:

87. *Id.* at 54 (citing Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 593–94 (1985)).

88. *Id.*

89. *Id.* at 55.

90. *Id.* at 56.

91. *Id.* Justice Brennan, however, cautioned that although the *Marathon* plurality suggested in dictum that the restructuring of debtor-creditor relations is a public right, the Court will not bind itself to that determination. *Id.* at 56 n.11.

92. *Id.* at 59–61 n.14.

93. *Id.* at 63.

94. In addition, the party seeking a jury trial may waive the right by filing a claim against the bankruptcy estate. *See supra* note 83.

> First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature. The second stage of this analysis is more important than the first. If, on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as a factfinder.[95]

The *Granfinanciera* Court left unanswered whether bankruptcy courts may conduct jury trials at all, expressly declining to decide the issue.[96]

The largest barrier against having the bankruptcy judge conduct a jury trial is the Reexamination Clause of the Seventh Amendment, declaring that "no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."[97] Under suits at common law, a trial court usually reexamines the jury's findings upon a motion for new trial and may only grant a new trial if the weight of the evidence is against the jury's verdict.[98] An appellate court may not consider the weight of the evidence at all, except to determine that no substantial evidence exists to support the jury verdict.[99] This re-examination scheme works to protect against impartial adjudication by the jury. In contrast, bankruptcy judges in non-core proceedings may only make proposed findings of fact and conclusions of law to the district court.[100] Because the district court reviews these findings de novo,[101] a district court's de novo review of a jury verdict in a non-core proceeding of the bankruptcy court would clearly contravene the Seventh Amendment's Reexamination Clause.[102]

Following *Granfinanciera*, the Second Circuit held that a bankruptcy judge may not conduct a jury trial in non-core proceedings, but the Seventh Amendment does not limit the bankruptcy judge from doing so in core

95. *Granfinanciera*, 492 U.S at 42 (footnote omitted) (citations omitted) (internal quotation marks omitted).

96. *Id.* at 50.

97. U.S. CONST. amend. VII.

98. JAMES OLDHAM, TRIAL BY JURY: THE SEVENTH AMENDMENT AND ANGLO-AMERICAN SPECIAL JURIES 32–44 (N.Y. Univ. Press 2006).

99. Slocum v. N.Y. Life Ins. Co., 228 U.S. 364, 379–80 (1913).

100. 28 U.S.C. § 157(c) (2007).

101. *Id.*

102. For an excellent discussion of this topic, see Skelton & Harris, *supra* note 48, at 501.

proceedings.[103] In *Ben Cooper, Inc. v. Insurance Co. of the State of Pennsylvania*, the Second Circuit noted that a bankruptcy judge finally disposes of a core proceeding under the Bankruptcy Code, and the district court reviews the bankruptcy judge's final determinations of a core proceeding upon traditional appellate review, rather than de novo.[104] Furthermore, jury verdicts in bankruptcy courts do not implicate Article III concerns because "[i]f anything, jurors are less likely to feel pressure from the executive and legislative branches than are bankruptcy judges, who depend on the other branches for reappointment to office."[105] The Second Circuit therefore concluded that bankruptcy judges may constitutionally conduct jury trials in core proceedings.[106]

The Eighth, Tenth, Sixth, Seventh, Fourth, and Ninth Circuits respectfully disagreed with *Ben Cooper*.[107] These courts noted that there is no express statutory provision conferring the power to conduct jury trials to bankruptcy judges, and, historically, jury trials were not held in bankruptcy courts save two narrow exceptions.[108] These courts explained that such power could not be inferred from the Bankruptcy Code given the constitutional ambiguity of the bankruptcy court's jurisdiction.[109]

In 1994, Congress responded to *Granfinanciera* by amending 28 U.S.C. § 157 to add subsection (e).[110] Still currently in force, 28 U.S.C. § 157(e) authorizes bankruptcy courts to conduct jury trials if (1) the matter

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103. Ben Cooper, Inc. v. Ins. Co. of Penn. (*In re* Ben Cooper, Inc.), 896 F.2d 1394, 1403–04 (2d Cir. 1990), *reinstated on remand*, 924 F.2d 36 (2d Cir. 1991), *cert. denied*, 500 U.S. 928 (1991).

104. *Id.* at 1403.

105. *Id.*

106. *Id.* 1403–04.

107. *See In re* United Mo. Bank of Kan. City, N.A., 901 F.2d 1449, 1456–57 (8th Cir. 1990); Kaiser Steel Corp. v. Frates (*In re* Kaiser Steel Corp.), 911 F.2d 380, 392 (10th Cir. 1990); Rafoth v. Nat'l Union Fire Ins. Co. (*In re* Baker & Getty Fin. Servs., Inc.), 954 F.2d 1169, 1173 (6th Cir. 1992); *In re* Grabill Corp., 967 F.2d 1152, 1158 (7th Cir. 1992); Official Comm. of Unsecured Creditors v. Schwartzman (*In re* Stansbury Poplar Place, Inc.), 13 F.3d 122, 128 (4th Cir. 1993); Taxel v. Elec. Sports Research (*In re* Cinematronics, Inc.), 916 F.2d 1444, 1451 (9th Cir. 1990).

For extensive commentary on this subject, see generally Skelton & Harris, *supra* note 48; S. Elizabeth Gibson, *Jury Trials and Core Proceedings: The Bankruptcy Judge's Uncertain Authority*, 65 AM. BANKR. L.J. 143 (1991); Elmer Dean Martin, *Consent: The Constitutional Basis for Bankruptcy Judge Authority*, 19 CAL. BANKR. J. 1 (1991); Matthew F. Herman, *Jury Trials in Bankruptcy: "Give 'Em What They Want."* 57 ALB. L. REV. 1157 (1994).

108. *See* S. Elizabeth Gibson, *Jury Trials in Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment*, 72 MINN. L. REV. 967, 972–73 (1988) (the two statutory exceptions were determining questions of insolvency and the dischargeability of a debt).

109. *See, e.g., Grabill Corp.*, 967 F.2d at 1157.

110. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 112, 108 Stat. 4106, 4117 (1994).

is otherwise within the bankruptcy court's jurisdiction, (2) the district court expressly authorized it, and (3) the court has the consent of all parties.[111] The amendment was also intended to resolve the conflicting opinions among the different circuits.[112] However, the statute only slightly altered the analysis. Where parties do not consent to a jury trial, the circuits' precedents on the issue remain intact. Furthermore, Congress did not provide any procedure to follow when a party is entitled to a jury trial and does not consent to trial in a bankruptcy court, leaving courts to fill the gaps with local rules and standing orders. The result is an overwhelming lack of uniformity in procedure among the courts.

III. Withdrawing the Reference and *Sigma Micro Corp. v. Healthcentral.com*

A party who wishes to preserve its Seventh Amendment jury trial right must make a timely demand in the bankruptcy court.[113] Federal Rule of Civil Procedure 38(b), as incorporated by Federal Rule of Bankruptcy Procedure 9015(a), provides that any party must demand a jury trial within ten days after the service of the last pleading directed to such issue.[114] Generally, the "last pleading" is the answer or reply on a case-by-case basis.[115] If a timely demand is made, the bankruptcy judge then determines whether the demanding party is entitled to a jury trial under the guidelines of the three-part test in *Granfinanciera*.[116] The Federal Rules of Bankruptcy Procedure provide guidance as to how parties may consent to have the jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157.[117] The Federal Rules of Bankruptcy Procedure do not, however, provide the procedure for transferring the proceeding to the district court upon a valid jury trial demand. Most courts have therefore used a motion to withdraw the reference as the proper and logical avenue to transfer the proceeding to a district court judge who may then conduct the jury trial.[118]

111. 28 U.S.C. § 157(e) (2007).

112. 140 CONG. REC. H10752-01, H10766 (1994).

113. *See, e.g.*, *In re* Hassan 375 B.R. 637, 644 (Bankr. D. Kan. 2006).

114. FED. R. CIV. P. 38(b)(1).

115. Kaiser Steel Corp v. Frates (*In re* Kaiser Steel Corp.), 911 F.2d 380, 388 (10th Cir. 1990).

116. *See supra* text accompanying note 95.

117. FED. R. BANKR. P. 9015.

118. *See generally Kaiser Steel*, 911 F.2d at 392 (directing the district court to withdraw the bankruptcy reference and conduct a jury trial); *see also In re* United Mo. Bank of Kan. City, N.A., 901 F.2d 1449, 1457 (8th Cir. 1990); *In the Matter of* Grabill Corp., 967 F.2d 1152, 1158–59 (7th Cir. 1992); Official Comm. of Unsecured Creditors v. Scwartzman (*In re* Stansbury

Section 157(d) of Title 28 of the United States Code provides the following:

> 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.[119]

That the statute only authorizes a *district court* to withdraw the reference is significant. Section 157 is part of the 1984 Amendments' attempt to cure the jurisdictional defects described in *Marathon* by subjecting the authority of the bankruptcy court to the control and review of the district court and the consent of the parties.[120] This system of oversight was largely based in part on the Federal Magistrate Act, which was upheld against Article III attacks in the Supreme Court.[121] *Thomas v. Union Carbide Agricultural Products Co.* and *Commodity Futures Trading Commission v. Schor* upheld jurisdictional schemes of non-Article III courts on the basis that the district courts have utmost control over the proceedings heard by non-Article III judges.[122] With proper control over the proceedings in the non-Article III courts, the threat to any independence of the non-Article III court comes from within, rather than without the judicial department.[123] The judicial power to withdraw the reference initially granted to bankruptcy courts is pivotal in complying with Article III, and Federal Rule of Bankruptcy Procedure 5011, as promulgated by the Supreme Court, specifically provides that a *district court judge* must determine whether to withdraw the reference from the bankruptcy court.[124]

Poplar Place, Inc.), 13 F.3d 122, 129 (4th Cir. 1993); Taxel v. Elec. Sports Research (*In re* Cinematronics, Inc.), 916 F.2d 1444, 1451 (9th Cir. 1990).

119. 28 U.S.C. § 157(d) (2007).

120. 130 CONG. REC. 13064 (1984) (remarks of Sen. Henflin).

121. 130 CONG. REC. 6045 (1984) (remarks of Rep. Kastenmeier).

122. *See supra* note 48. Furthermore, the 1978 Magistrates Act was upheld on the grounds that the magistrate's proposed findings and recommendations were subject to de novo review and the magistrate only considered motions upon reference from the district court. N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 79 (1982) (citing United States v. Raddatz, 447 U.S. 667, 676–77 (1980)) ("In short, the ultimate decisionmaking authority respecting all pretrial motions clearly remained with the district court.").

123. *Raddatz*, 447 U.S. at 685.

124. FED. R. BANKR. P. 5011.

However, because *Granfinanciera* held that a jury trial right is preserved under bankruptcy in 1989 *after* Section 157 was enacted, the lack of connection between a motion to withdraw the reference and a jury trial right caused a procedural uncertainty. A bankruptcy case and related adversary proceedings are all filed initially in the bankruptcy court pursuant to blanket orders issued by the district courts.[125] As such, the district court does not really know the status of a bankruptcy case because no papers have passed the district court clerk's desk during the course of litigation. Without receiving some sort of transmittal or notice by the parties, the district court does not know that a jury trial right has been properly demanded. Neither Congress nor the Supreme Court has provided any guidance on how a case subject to a valid jury trial right must be handled, compelling some bankruptcy courts to generate their own rules on the matter. Not surprisingly, given the jurisdictional complexity of the bankruptcy scheme, the courts have overwhelmingly inconsistent procedures.

A. Lack of Guidance from Congress Caused Overwhelming Inconsistency in Local Rules on Withdrawal of the Reference

In the jurisdictions which hold that a bankruptcy court may not conduct a jury trial absent consent, some bankruptcy courts allow parties to move for withdrawal of the jurisdictional reference.[126] Other bankruptcy courts require parties to move for withdrawal of the reference after a jury right has been found within a certain time period or else the right to jury trial is deemed waived.[127] The Tenth Circuit, for example, requires a party demanding a jury trial to file a motion for withdrawal of the reference simultaneously, or else the right to jury trial is deemed waived.[128] Some bankruptcy courts, after the motion for withdrawal has been filed in their court or *sua sponte* made by the bankruptcy judge, make recommendations to the district court to withdraw the reference.[129] This way, the district court is alerted to the fact that a valid jury trial right may be pending before

125. 1 SOMMER & RESNICK, *supra* note 55, ¶ 3.02.

126. *See* U.S. Bankruptcy Court, District of Northern Texas, Local Bankruptcy Rule 5011.1 (1997).

127. *See, e.g.*, U.S. Bankruptcy Court, District of Vermont, Local Bankruptcy Rule 9015-1 (failure to make timely demand for removal constitutes a waiver of the jury trial right).

128. Stainer v. Latimer, 918 F.2d 136, 137 (10th Cir. 1990); *see also In re* Hassan 375 B.R. 637, 645–46 (Bankr. D. Kan. 2006).

129. *See, e.g.*, Local Bankruptcy Rule 83.8.6 of the U.S. Bankruptcy Court for the District of Kansas (bankruptcy judge may *sua sponte* make recommendation to the district court to withdraw the reference, considering certain factors, including a demand for jury trial).

it, and may itself withdraw the reference pursuant to Section 157(d). Some bankruptcy courts do not have any rules regarding the matter at all.

In 2007, within the U.S. Bankruptcy Court for the Northern District of California, Local Rule 9015-2 provided that the bankruptcy judge certify to the district court that the proceeding is to be tried by a jury and that the parties have not consented to a jury trial in the bankruptcy court.[130] Upon certification by the bankruptcy judge, the reference of the proceeding would be "automatically withdrawn," and the proceeding assigned to a judge of the district court. The rule ensured that the district court receives notice that a jury trial may be pending in its court and that the message does not get lost in transmission. Otherwise, it would leave the responsibility on the party who successfully demands a jury trial. If the party does not file the motion, the district court will not know about the status of the case. The party could in effect sit on its demand for jury trial and delay the proceedings. The local rule thus made practical sense.

In the recent decision of *Sigma Micro Corp. v. Healthcentral.com*, however, the Ninth Circuit invalidated Local Rule 9015-2 on the grounds that it squarely conflicted with 28 U.S.C. § 157(d) and Federal Rule of Bankruptcy Procedure 5011(a), which both state that a *district judge* shall hear a motion for withdrawal of a case or proceeding.[131] Furthermore, Local Rule 9015-2 permitted a party to obtain a withdrawal of the reference upon a "Motion for Certification," while both 28 U.S.C. § 157 and Federal Bankruptcy Rule of Procedure 5011(a) make clear that the withdrawal may only be obtained upon a "Motion for Withdrawal."[132]

The Ninth Circuit then considered the jurisdictional question presented: whether the bankruptcy court may retain jurisdiction over the proceeding for pre-trial matters or whether the reference must be "automatically withdrawn." The Ninth Circuit held that a bankruptcy court, without violating a party's Seventh Amendment right to a jury trial, could retain jurisdiction over the proceedings for pre-trial matters, including dispositive motions.[133]

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130. Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 785 (9th Cir. 2007).

131. *Id.*

132. *Id.*

133. *Id.* at 788. The U.S. Bankruptcy Court for the Northern District of California subsequently amended Local Rule 9015-2 to address the Ninth Circuit's decision in *Sigma*. Local Rule 9015-2(b) now reads:

> **(b) Motion and Certification to District Court.** If the Bankruptcy Judge determines that the demand for a jury trial was timely made and the party has a right to a jury trial, and if all parties have not filed written consent to a jury trial before the Bankruptcy

B. The Ninth Circuit's Rationale Behind the *Sigma* Decision

In *Sigma*, Healthcentral.com, the debtor, had contracted with Sigma Micro for Sigma Micro to provide computer hardware, software, and maintenance services for Healthcentral.com's business.[134] Shortly before filing for bankruptcy, Healthcentral.com made payments to Sigma Micro for past due accounts. The trustee in bankruptcy brought an action to recover these payments as preferential pursuant to 11 U.S.C. § 547(b) in the bankruptcy court.[135] Sigma Micro then filed both an answer and a demand for a jury trial.[136] The parties conceded that Sigma Micro properly demanded a jury trial right.[137] However, Sigma Micro demanded that the action be automatically transferred to the district court for further proceedings, and, pursuant to the Local Bankruptcy Rule 9015-2, it filed a

> Judge, the Bankruptcy Judge shall, after having resolved all pre-trial matters, including dispositive motions, certify to the District Court that the proceeding is to be tried by a jury and that the parties have not consented to a jury trial in the Bankruptcy Court, and shall include in such certification, a report of the status of the proceeding and a recommendation on when the matter would be suitable for withdrawal from the Bankruptcy Court. Upon such certification, the party who has demanded a jury trial shall promptly file a motion in accordance with B.L.R. 5011-2(a) for withdrawal of the reference of the proceeding to be tried to a jury. The motion and the certification shall thereafter be handled in the District Court in accordance with B.L.R. 5011-2(c), (d) and (e).

U.S. Bankruptcy Court, Northern District of California, Local Bankruptcy Rule 9015-2 (2008), *available at* http://www.canb.uscourts.gov/rules/dist/bankruptcy-local-rules#PartIX.

134. *Sigma*, 504 F.3d at 788.

135. *Id.* at 780. A preferential transfer is a transfer made (1) to or for the benefit of a creditor, (2) during the preference period (90 days or, in the case of insiders, one year) preceding the filing of the bankruptcy petition, (3) on account of an antecedent debt, (4) at a time when the debtor was insolvent, (5) which permits the creditor to receive more than the creditor would receive from a distribution made in a Chapter 7 liquidation in the absence of such transfer. 11 U.S.C. § 547 (2007). The purpose of this statutory cause of action is to recover payments the debtor submitted to a creditor right before the debtor filed for bankruptcy, which are preferentially given over other debts owed to other creditors. The idea is that the payments should be returned to the bankruptcy estate to distribute to all creditors since had the preferential payments not been made, the bankruptcy "pot" would have been larger, and other creditors would receive more of their claims, rather than just one creditor who is preferred over others by the debtor (many times, an insider). This runs along one of the main aims of bankruptcy law: to provide even-handed treatment of all creditors by distributing the bankruptcy estate equitably and efficiently. *See* 5 SOMMER & RESNICK, *supra* note 55, ¶ 547.01.

136. *Sigma*, 504 F.3d at 780.

137. The *Granfinanciera* Court decided that fraudulent transfers involved a private right, which provided an "entitlement" to a jury trial. It also noted that preferential transfers may involve a private right because these are also similar to state law contract transactions. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 43–44 (1989). *Langenkamp v. Culp*, 498 U.S. 42, 45 (1990), affirmed that preferential avoidance actions may entitle some creditors to a valid jury trial right. Notably, both fraudulent conveyance actions and actions to avoid payments as preferential are listed by Congress as "core" proceedings under 28 U.S.C. § 157(b)(2).

Motion for Certification to the district court.[138] Sigma Micro cited *Granfinanciera* and argued the bankruptcy court could no longer maintain jurisdiction and the entire action therefore needed to be instantly transferred.[139] The bankruptcy judge disagreed and certified the action to the district court, but stayed the effective date of the certification in order to retain jurisdiction over all pre-trial proceedings.[140] Healthcentral.com then filed a motion for summary judgment, which the bankruptcy judge granted, eliminating the possibility of trial altogether.[141]

On appeal, the Ninth Circuit invalidated the local rule and reached the issue of whether allowing the bankruptcy judge to hear pre-trial matters abridges Sigma Micro's Seventh Amendment right to a jury trial.[142] Without deciding more, the court noted that this issue was one of "first impression" in the circuit.[143] The court rejected Sigma Micro's argument that *Granfinanciera* required the instant transfer to an Article III court on the ground that *Granfinanciera*'s holding was limited to preserving the Seventh Amendment jury trial right in bankruptcy.[144] Citing a number of court decisions in other jurisdictions, the Ninth Circuit stated that these courts "universally" reached the same conclusion: a Seventh Amendment jury trial right does not mean the bankruptcy court must instantly give up jurisdiction and that the case must be transferred to the district court.[145] The Ninth Circuit explained that these courts reasoned that having the bankruptcy court manage discovery matters, pre-trial conferences, and routine motions does not diminish the right to a jury trial.[146] Furthermore, the Ninth Circuit concluded that a bankruptcy court may rule on a dispositive motion, such as a summary judgment motion, without affecting a party's Seventh Amendment right to a jury trial because such motions "merely address whether trial is necessary at all."[147]

The second basis for the Ninth Circuit's decision was that Congress empowered bankruptcy courts to "hear" bankruptcy actions and, in most cases, enter relevant orders.[148] This system "promotes judicial economy

138. *Sigma*, 504 F.3d at 781.
139. *Id.*
140. *Id.*
141. *Id.* at 781–83.
142. *Id.* at 785–86.
143. *Id.* at 786.
144. *Id.*
145. *Id.* at 787.
146. *Id.*
147. *Id.*
148. *Id.*

and efficiency by making use of the bankruptcy court's unique knowledge of the Bankruptcy Code and familiarity with the actions before them."[149] Thus, an immediate transfer to a district court would "effectively subvert this system."[150] The court noted that the bankruptcy system is carried out by allowing the bankruptcy court to retain jurisdiction over the action "until trial is actually ready."[151] Thus, the court held that the bankruptcy judge did not err in retaining jurisdiction over pre-trial matters.[152] However, the court did reverse in part the bankruptcy court's grant of summary judgment and remanded the action, finding that there was a sufficiently triable issue of fact as to whether Sigma Micro had a valid defense against the trustee's claim to avoid preferential transfers.[153]

Although *Sigma* appeals to the burden and beauty of judicial economy and practicality, there are some ironies and analytical gaps in its decision.

C. *Sigma* Did Not Acknowledge Article III Concerns

The Ninth Circuit upheld a bankruptcy judge's decision to retain pre-trial jurisdiction, and this implicates Article III as well as the Seventh Amendment. *Marathon* and Supreme Court decisions following *Marathon* acknowledge that Congress has the power to institute Article I adjuncts, but emphasize that this power is limited by Article III and the doctrine of separation of powers.[154] The *Marathon* plurality noted that

> [d]rawing the line between permissible extensions of legislative power and impermissible incursions into judicial power is a delicate undertaking, for the powers of the Judicial and Legislative Branches are often overlapping. . . . The interaction between the Legislative and Judicial Branches is at its height where courts are adjudicating rights wholly of Congress' creation.[155]

But, the Court went on, where the claim before the Article III court does not involve a public right created by Congress, but is a private, state law claim, Congress's authority to control the manner in which that right is adjudicated through a non-Article III adjunct "plainly must be deemed at a

149. *Id.* at 787–88.

150. *Id.* at 788.

151. *Id.*

152. *Id.*

153. *Id.* at 792.

154. *See supra* note 48 and accompanying text.

155. N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 84 n.35 (1982) (citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610 (1952)).

minimum."[156] Congress, in other words, may employ Article III adjuncts, but only if an Article III court retained "essential attributes of judicial power" over cases involving private rights.[157]

The test for whether an action at law must be heard by an Article III judge is the same for determining whether a litigant is entitled to a jury trial right.[158] Thus, where a claim involving a private right, rather than a public right, is being litigated, it follows that the litigant is entitled to both a jury trial right and a right to an Article III court.[159] The Ninth Circuit dismissed Sigma Micro's "jurisdictional argument" that the case should be automatically heard before an Article III court only on the grounds that Local Rule 9015-2 was invalid and that *Granfinanciera* did not itself support the conclusion that once a jury right is found, a bankruptcy court must instantly give up jurisdiction and the case must be transferred to an Article III court.[160] The Ninth Circuit then discussed whether allowing the bankruptcy judge to retain pre-trial jurisdiction would abridge Sigma Micro's Seventh Amendment right to a jury trial;[161] however, the court failed to address whether having the bankruptcy court hear pre-trial matters would infringe upon Sigma Micro's right to an Article III court. The Ninth Circuit's specific ruling as to the underlying case infringes upon that right for three reasons: (1) a bankruptcy court does not have *sua sponte* authority to determine whether it may hear pre-trial matters; (2) a bankruptcy court does not have power to hear dispositive matters without consent of the parties or an Article III court; and (3) efficiency concerns do not trump constitutional rights.

1. The Ninth Circuit Failed to Clarify that Bankruptcy Judges May Not Determine Whether They May Hear Pre-trial Rights

In holding that the bankruptcy court is permitted to retain jurisdiction over the action for pre-trial matters, the Ninth Circuit followed the rationale used in other court decisions in different jurisdictions.[162] The other decisions the Ninth Circuit relied upon, however, considered the issue when a motion to withdraw the reference was before it or when an

156. *Id.* at 84.

157. *Id.* at 81.

158. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 53 (1989); *see also In re* Clay, 35 F.3d 190, 194 (6th Cir. 1996).

159. *Clay*, 35 F.3d at 194.

160. Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 785–86 (9th Cir. 2007).

161. *Id.* at 787–88.

162. *Id.* at 786–87.

appellate court had reviewed a lower court's rulings on that motion.[163] Noting two classifications of withdrawal in Section 157(d), these courts found that a right to jury trial does not fall under mandatory withdrawal unless the claims involved a federal question related to commerce (such as anti-trust law) as well as matters related to bankruptcy.[164] Section 157 also allows permissive withdrawal for "cause shown."[165] "Cause" is not defined under the statute. Thus, the courts have developed certain factors to consider in granting the motion, including judicial economy, uniform bankruptcy administration, reduction of forum shopping, economical use of debtor and creditor resources, expediting the bankruptcy process, and the presence of a jury demand.[166] Determining the validity of a bankruptcy court's pre-trial jurisdiction was deemed a matter of discretion by the district court.[167] Notably, in all of these cases, a federal judge empowered by Article III decided whether the bankruptcy court below could retain jurisdiction over certain pre-trial matters.[168] *None* of the jurisdictions authorized the bankruptcy court itself to make that determination.[169]

As noted above, the district court's exclusive power to grant a motion for withdrawal of the reference is significant for Article III purposes. The 1984 Amendments attempted to cure the jurisdictional defects of the 1978 Reform Act by enacting analogous statutes conferring jurisdiction to other non-Article III adjuncts, such as federal magistrates.[170] The Supreme Court in *United States v. Raddatz* upheld the constitutionality of the Federal Magistrates Act because Article III courts sufficiently controlled and supervised the magistrate judges.[171] Furthermore, the district courts determined what pre-trial motions may be heard before the magistrate judges; the magistrate judges did not have any discretion as to what appeared before it absent consent of the parties.[172] The *Raddatz* Court

163. City Fire Equip. Co., Inc. v. Ansul Fire. Prot. Wormald U.S., Inc., 125 B.R. 645, 646–50 (Bankr. N.D. Ala. 1989); Official Comm. of Unsecured Creditors v. Scwartzman (*In re* Stansbury Poplar Place, Inc.), 13 F.3d 122, 128 (4th Cir. 1993); Orion Pictures Corp. v. Showtime Networks (*In re* Orion Pictures Corp.), 4 F.3d 1095, 1101–02 (2d Cir. 1993).

164. *See* cases cited *supra* note 163.

165. 28 U.S.C. § 157(d) (2007).

166. *See* Growe v. Bilodard, Inc. (*In re* Great N. Paper, Inc.), 325 B.R. 490, 492 (Bankr. D. Me. 2005).

167. *See, e.g., id.*

168. *See* cases cited *supra* note 163.

169. *See* cases cited *supra* note 163.

170. *See supra* notes 114–18 and accompanying text.

171. United States v. Raddatz, 447 U.S. 667, 681 (1980).

172. *Id.* at 685 (Blackmun, J., concurring) (cited with approval in N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 79 (1982)).

stressed, "[t]he authority—and responsibility—to make an informed, final determination . . . remains with the [district court] judge."[173]

The validity of the current bankruptcy jurisdiction scheme therefore rests on the supervisory role of the district court over the bankruptcy courts. Dismissing the option to grant bankruptcy courts Article III status, Congress implemented this supervisory scheme using the Federal Magistrates Act as a proxy.[174] The 1984 Amendments were intended to impose responsibility over bankruptcy proceedings on district courts by giving the district court the option to refer the case to the bankruptcy court, but also the option to withdraw the reference *sua sponte* or upon motion by any party.[175] Furthermore, if a proceeding is a "non-core" matter, then the bankruptcy court merely makes a recommendation and proposal of findings to the district court, which then enters a final order upon a de novo review.[176] The bankruptcy judges may enter final orders only for "core" matters, which are then subject to the traditional appellate process and reviewed under a clearly erroneous basis.[177] With these procedures in place, the validity of bankruptcy jurisdiction may arguably withstand an Article III challenge. But for that very reason, giving bankruptcy judges *actual* power above and beyond these procedures would unconstitutionally encroach on the powers reserved for an Article III judge.[178] In *Marathon*, the Supreme Court indicated that unwarranted encroachments upon the Article III courts constitute encroachments upon the independent judicial power of the United States itself.[179] Jurisdictional grants to bankruptcy courts must therefore be delicately supervised by Article III district courts.

The *Sigma* decision pulled the bankruptcy jurisdiction into a system of greater constitutional uncertainty by overriding the supervisory role of the district court. Even though the Ninth Circuit relied on a large number of other court decisions which allowed a bankruptcy judge to retain pre-trial jurisdiction, the decisions of the other courts were made based upon the discretion of *district court* judges.[180] Conversely, the Ninth Circuit in

173. *Id.* at 682 (citing Mathews v. Weber, 423 U.S. 261, 271 (1976)).

174. *See supra* notes 120–24 and accompanying text.

175. *See id.*

176. 28 U.S.C. § 157(c)(1) (2008).

177. 28 U.S.C. § 157(b)(1) (2008).

178. *See Marathon*, 458 U.S. at 86 ("In short, the 'adjunct' bankruptcy courts created by the [1978] Act exercise jurisdiction behind a facade of a grant to the district courts . . . .").

179. *Id.* at 84. Indeed, the Supreme Court has stated that "the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine . . . an issue [of agency jurisdiction] upon its own record and the facts elicited before it." Crowell v. Benson, 285 U.S. 22, 64 (1932).

180. *See* cases cited *supra* note 163.

Sigma upheld the bankruptcy judge's *sua sponte* decision to retain jurisdiction.[181] The court upheld the bankruptcy judge's own action even though such power belonged exclusively to the district court, stripping the supervisory role of the district court. Any expansion of the bankruptcy court's power to control proceedings involving public rights—that is, those rights that are provided special protection by both the Seventh Amendment and Article III—would constitute an encroachment upon the judiciary function of Article III courts.[182]

Ironically, the Ninth Circuit invalidated Local Rule 9015-2 because it was "squarely" at odds with the provisions of Federal Rule of Bankruptcy 5011 and 28 U.S.C. § 157, which required that a district court judge decide the motion to withdraw. The Ninth Circuit's reasoning stumbled because it did not consider the constitutional significance of that fact. Local Rule 9015-2, which provided for *immediate* withdrawal of the bankruptcy reference, facially violated Article III because it stripped one of a district court's main supervisory functions over a bankruptcy proceeding: the determination to withdraw the bankruptcy reference and essentially transfer the case to the district court. Similarly, in upholding the bankruptcy judge's *own* decision to retain jurisdiction, the Ninth Circuit thereby unconstitutionally broadened the scope of a non-Article III adjunct's power by creating case precedent on the issue.

The greater irony is that after the *Sigma* decision, the U.S. Bankruptcy Court for the Northern District of California amended its local rule to expressly retain jurisdiction over "pretrial matters, including dispositive motions" until the *bankruptcy court* deems the case ready for trial.[183]

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181. Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 788 (9th Cir. 2007).

182. *See supra* note 179 and accompanying text.

183. *See supra* note 133 and accompanying text. Another bankruptcy court's local rule also appears to facially violate Article III. Bankruptcy Local Rule 9015-3 for the U.S. Bankruptcy Court of the Northern District of Georgia provides:

> **(a) Transfer to District Court.** If the parties do not consent to jury trial in Bankruptcy Court and if a timely demand has been made in a case triable by jury, the Bankruptcy Judge shall transfer the adversary proceeding to the District Court when the Bankruptcy Judge determines that the case is ready for trial. Prior to transferring the case, the Bankruptcy Judge shall Rule on all discovery motions, other pretrial motions, and summary judgment motions, as provided by law, and shall enter the pretrial order.
>
> **(b) Remand Upon Withdrawal of Jury Demand.** When an adversary proceeding is transferred to the District Court pursuant to BLR 9015-3(a), and the parties then withdraw the jury demand, the adversary proceeding will be returned to the Bankruptcy Court for a bench trial, unless the District Judge orders otherwise.

2. *A Bankruptcy Court's Jurisdiction over Dispositive Motions May Abridge Constitutional Rights*

The Ninth Circuit affirmatively stated that decisions on pre-trial matters do not abridge a party's Seventh Amendment right to a jury trial, with emphasis on the word "trial."[184] In other words, pre-trial proceedings do not result in findings of fact, but matters of law.[185] However, the Ninth Circuit again failed to incorporate into its analysis the complexity of the bankruptcy jurisdictional scheme, which limits the powers of a non-Article III judge.

As noted above, Congress is authorized to employ Article III adjuncts, but only if an Article III court retains the "essential attributes of judicial power."[186] In *Marathon*, the Supreme Court held that the powers conferred to bankruptcy judges in the 1978 Bankruptcy Reform Act were in excess of Article III limits because chief among the "essential attributes of judicial power" granted to the bankruptcy courts was the power to conduct a jury trial.[187] Later, in *Granfinanciera*, the Supreme Court essentially pronounced that the test for whether an action at law must be heard by an Article III judge is the same for determining whether a litigant is entitled to a jury trial right.[188] Where a claim involving a private right, rather than a public right, is being litigated, the litigant is entitled to both a jury trial right and a right to an Article III court.[189] Although summary judgment motions may not abridge a litigant's jury trial right,[190] that does not mean that a right to an Article III court is similarly not abridged.

U.S. Bankruptcy Court, Northern District of Georgia, Local Bankruptcy Rule 9015-3 (2005), *available at* http://www.ganb.uscourts.gov/cmecf/research/lrulesusbc.html. Here, the bankruptcy court itself decides when a case is "ready for trial" and on its own discretion rules on pre-trial matters, including summary judgment motions, and enters pre-trial orders. It further states that the *bankruptcy judge* shall transfer the case. This appears inconsistent with the Federal Rules of Bankruptcy Procedure and, moreover, overrides the discretionary function of the district court to control the bankruptcy case, extending beyond the limitations placed by Article III.

184. *Sigma*, 504 F.3d at 787.

185. City Fire Equip. Co., Inc. v. Ansul Fire. Prot. Wormald U.S., Inc., 125 B.R. 645, 648 (Bankr. N.D. Ala. 1989).

186. *Marathon*, 458 U.S. at 81.

187. *Id.* at 84–86.

188. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 53–54 (1989); *see also In re* Clay, 35 F.3d 190, 194 (5th Cir. 1994).

189. *Clay*, 35 F.3d at 194.

190. At least one commentator, however, argues that summary judgment is indeed unconstitutional. *See generally* Suja A. Thomas, *Why Summary Judgments are Unconstitutional*, 93 VA. L. REV. 139 (2007) (arguing that since the Supreme Court has held that "common law" in the Seventh Amendment refers to the common law of England in 1791, summary judgment violates core principles of English common law, and therefore violates the Seventh Amendment).

One may argue that federal magistrate judges may constitutionally hear dispositive motions; however, a Congressional Act prescribes the exact procedure for doing so. Magistrate judges may only perform adjudicatory duties assigned by a district court judge.[191] Absent consent of the parties, federal magistrates may only hear dispositive motions when specifically authorized by a district court in a "Referral of Summary Judgment Motion."[192] Furthermore, on considering the motion for summary judgment, the magistrate judge merely makes recommendations to the district court to grant or deny the motion for summary judgment. Then the district court reviews the magistrate's findings de novo.[193]

In contrast, Congress has not prescribed a method for how a district court should control the proceedings in a bankruptcy court. Granted, a bankruptcy judge may hear and *finally determine* "core" proceedings—those cases and proceedings so intertwined in the Bankruptcy Code that the rights involved may arguably be deemed as "public rights" subject to the adjudication of a non-Article III court.[194] Fraudulent conveyances and preference avoidance actions are listed under 28 U.S.C. § 157(b)(2) as "core proceedings." However, in *Granfinanciera*, the Supreme Court held that *regardless* of whether an action is listed as a core proceeding, a litigant may have a valid jury trial right.[195] Thus, fraudulent conveyance actions and actions to avoid and recover preferential payments may ultimately have to be decided by an Article III judge, not the bankruptcy judge, because a litigant with a valid jury trial demand has the right to have that claim heard in an Article III court.[196] A bankruptcy judge who disposes of a preference or fraudulent conveyance action by summary judgment would enter a final, binding order without first receiving authorization of a district court to do so, thus exceeding Article III limitations.

3. *Efficiency Concerns Do Not Trump Basic Constitutional Rights*

Finally, the Ninth Circuit in *Sigma* reasoned that allowing a bankruptcy court to retain pre-trial jurisdiction promotes judicial economy and efficiency by making use of the bankruptcy court's unique knowledge

191. 28 U.S.C. § 636(b)(1)(A) (2008).

192. *See* Katz v. Molic, 128 F.R.D. 35, 39 (S.D.N.Y. 1989) (order referring "all further pretrial proceedings" to magistrate served only to allow magistrate to preside over discovery; magistrate had no authority to decide motion for summary judgment in absence of an additional order from the court, specifically authorizing consideration of dispositive motions).

193. 28 U.S.C. § 636(b)(1)(C) (2008).

194. *See supra* note 48 and accompanying text. However, note well, the Supreme Court has never determined the validity of the current bankruptcy jurisdictional scheme.

195. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 63–64 (1989).

196. *See supra* notes 186–90 and accompanying text.

of Title 11 and familiarity with the actions before it.[197] As noted above, the Ninth Circuit did not make this consideration in the context of a motion to withdraw the bankruptcy reference where a district court is given discretion to withdraw the motion "for cause."[198] Therefore, there was no statutory basis to appeal to efficiency concerns as a matter of court discretion.

It is further questionable on a practical level whether allowing a bankruptcy judge to retain jurisdiction promotes efficiency in certain circumstances. For example, if the bankruptcy court enters a summary judgment order, an appellate court or bankruptcy appellate panel reviews that order under de novo review.[199] However, the bankruptcy judge does not make recommendations of law and fact to the district court under core proceedings, including fraudulent conveyance actions and actions to recover preferential payments; rather, it enters a final order.[200] The party adversely affected by the bankruptcy judge's ruling must go through appellate procedures to "overturn" the decision, increasing costs and delay on a claim that ironically seeks to recover money on behalf of the debtor's estate or creditors.[201] Allowing a bankruptcy court to retain pre-trial jurisdiction over non-core proceedings would similarly not serve judicial economy because a district court would have to hear the case de novo or during a jury trial in the first instance.[202]

On a constitutional basis, the efficiency argument is also unavailing. The Ninth Circuit's acknowledgement of the bankruptcy judge's specialized knowledge, however, was not foolhardy. After reviewing the complex background of bankruptcy jurisdiction, the tension between the congressional goal of bankruptcy law to quickly provide debtors a "fresh start" in life[203] and the values recognized in the Constitution is evident. This jurisdictional tension between the legislative and judicial branches of our government is especially heightened in the context of bankruptcy law.

197. Sigma Micro Corp. v. Healthcare.com (*In re* Healthcare.com), 504 F.3d 775, 788 (9th Cir. 2007).

198. *See supra* notes 162–69 and accompanying text.

199. *See, e.g.*, Hope v. Walker (*In re* Walker), 48 F.3d 1161, 1163 (11th Cir. 1995).

200. 28 U.S.C. § 157(b)(1) (2007).

201. FED. R. BANKR. P. 8001.

202. 28 U.S.C. § 157(c); *see also* Travelers Ins. Co. v. Goldberg, 135 B.R. 788, 792 (Bankr. D. Md. 1992) (refusing to refer to the bankruptcy court for pre-trial jurisdiction in a non-core proceeding because it would "require substantial duplication of judicial effort and needlessly burden an already overcrowded docket in the Bankruptcy Court").

203. It is well established that one of the primary purposes of bankruptcy is to relieve the honest debtor from the weight of indebtedness and permit him to have a fresh start in business or commercial life. Wetmore v. Markoe, 196 U.S. 68, 77 (1904); *see also* Segal v. Rochelle, 382 U.S. 375, 380 (1966); Kokoszka v. Belford, 417 U.S. 642, 646 (1974); Grogan v. Garner, 498 U.S. 279, 286 (1991).

One author noted the unique nature of bankruptcy as opposed to common jurisprudence:

> [Bankruptcy law] has been truthfully characterized as the most intricate and complex clause of the *Constitution*. The fact can be readily explained. One must realize, to begin with, that it regulates a most serious human relation, that which concerns man's material welfare. The principles of bankruptcy laws are a departure from the common law, a comparatively modern creation developed in response to commercial demands and embracing concurrently elements of both the civil law and the criminal code. The relief measures which are bound up in this legislation are unorthodox in the realm of jurisprudence and are opposed to the basal principles of legal justice.[204]

Despite the unique nature of bankruptcy litigation and that the need for bankruptcy laws were recognized since the ratification of the U.S. Constitution,[205] the U.S. Supreme Court has consistently held that Congress's efforts to implement bankruptcy and other commercial laws are limited by other values inherent in the Constitution.[206] For example, the plurality opinion in *Granfinanciera* considered the aims of bankruptcy and concluded that the Seventh Amendment trumps any of those policies. The Court declared that swift resolution of bankruptcy proceedings and increase in the expense of Chapter 11 reorganizations are insufficient considerations to "overcome the clear command of the Seventh Amendment."[207]

Perhaps the Ninth Circuit's decision reflects the knowledge that jury trial demands in these cases are often utilized only as a means to obtain settlement leverage by protracting costly litigation and create more uncertainty with an unpredictable jury result than with a seasoned bankruptcy judge who has seen many similar actions before it.[208] Because of the constitutional limits placed on bankruptcy jurisdiction and the lack of procedural guidance from Congress, many bankruptcy litigants have seized the opportunity for gainful advantage from this uncertainty in the law.

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204. REGIS NOEL, A HISTORY OF THE BANKRUPTCY LAW 7 (William S. Hein & Co. 2003) (1919).

205. The Constitutional Convention of 1787 recognized that creation of bankruptcy laws was vital to the needs and wants of the people in a commercial society. *Id.* at 102.

206. New York v. United States, 505 U.S. 144, 156 (1992) ("Congress exercises its conferred powers subject to the limitations contained in the Constitution.").

207. *Granfinanciera*, 492 U.S. at 63 (citing Curtis v. Loether, 415 U.S. 189, 198 (1974)).

208. *See* Edward Rothberg, *Utilizing a Jury Demand to Obtain Leverage in a Preference Case*, Bankruptcy Litigation Committee – ABI Committee News, Vol. 2, No. 1 (May 2005), *available at* http://abiworld.net/newsletter/litigation/vol2num1/jury.html.

The *Sigma* decision itself is telling. There, Sigma Micro used constitutional and jurisdictional arguments to escape an adverse ruling against it. The bankruptcy judge granted summary judgment against Sigma Micro.[209] The bankruptcy judge's decision was affirmed on appeal by a bankruptcy appellate panel consisting of three bankruptcy judges.[210] On appeal of the bankruptcy appellate panel's decision, the Ninth Circuit reversed, concluding there was a triable issue of fact rendering summary judgment improper and remanded for further proceedings.[211]

Sigma Micro obtained *three* opportunities to present its facts and arguments on a "new basis" and, after the Ninth Circuit's decision, received a possible fourth opportunity.[212] Ultimately, Sigma Micro achieved a more favorable result than an adverse summary judgment. Upon remand, the parties eventually settled before reaching trial.[213] Although the primary significance of the *Sigma* decision was the Ninth Circuit's conclusion that a bankruptcy court may hear pre-trial and dispositive matters, the constitutional issues raised by Sigma Micro provided an end-around to avoid a bankruptcy judge's decision on a preference action. Without clear guidance on procedure after a valid jury trial right is found, swift resolution of the underlying bankruptcy case was not achieved and furthermore provided Sigma Micro a means to leverage for settlement.

Conclusion

Bankruptcy laws are meant to effectuate fast relief to the debtor and equitably distribute the debtor's estate to creditors. However, the Supreme Court has consistently upheld constitutional values over these goals. Because bankruptcy courts are presided by non-Article III judges, Article III compels district courts to retain the essential attributes of judicial power, and therefore district courts must exercise supervision and control over bankruptcy proceedings. *Granfinanciera* established that jury trial rights

209. Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 783 (9th Cir. 2007).

210. *Id.*

211. *Id.* at 792.

212. *See id.* at 783 ("[The Ninth Circuit] reviews decisions of the [bankruptcy appellate panel] *de novo,* and thus reviews the bankruptcy court's decision[] under the same standards used by the [bankruptcy appellate panel]." (quoting Arrow Elecs., Inc. v. Justus (*In re* Kaypro), 218 F.3d 1070, 1073 (9th Cir. 2000))).

213. On remand, Sigma Micro filed a motion to withdraw the bankruptcy reference in the bankruptcy court, and nine days later, the parties stipulated to dismiss the case after reaching settlement. Telephone Interview with Tobias Keller, Partner, Jones Day, and Counsel to Healthcentral.com in the Ninth Circuit appeal (Sept. 26, 2008).

exist within bankruptcy litigation and implicated the lack of oversight by the district courts. If a party with a valid jury trial right does not consent to the bankruptcy judge conducting the jury trial, then that party may appropriately assert that it has a right to be heard in an Article III court. Because Congress did not provide clear guidance as how to handle a bankruptcy proceeding after a valid jury trial right is found, various courts implemented overwhelmingly inconsistent—and some invalid—local rules. The uncertainty has allowed some parties to obtain settlement leverage by utilizing a jury trial demand to their advantage to delay the proceedings and disperse litigation to various courts.

Because bankruptcy laws are intended to effectuate quick relief to debtors, Congress should either grant Article III status to bankruptcy judges to ultimately resolve these recurring problems in bankruptcy proceedings, or Congress should at least provide clear procedural guidelines as to how a bankruptcy judge is to preside over a proceeding subject to a valid jury trial demand where parties have not consented to jury trial in the bankruptcy court. Until then, district courts have the burden and responsibility to oversee bankruptcy proceedings with delicate supervision in order to meet the standards under Article III.

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