

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 82C-00822
)
AMALGAMATED CONCRETE)
CORPORATION,)
)
Debtor.) Civil Proceeding No. 82PC-0728
) and
AMALGAMATED CONCRETE) Civil Proceeding No. 82PC-1187
CORPORATION,) (Consolidated)
)
Plaintiff.)
)
-vs-)
)
MAST CONSTRUCTION COMPANY,)
a Utah corporation; 500 EAST)
SOUTH TEMPLE, a partnership;)
and CHARLES W. AKERLOW,)
)
Defendants.)
)
MAST CONSTRUCTION COMPANY,)
a Utah corporation,)
)
Counterclaimant)
and Third-Party)
Plaintiff.)
)
-vs-)
)
CONCRETE SPECIALISTS, INC.;)
MIDVALLEY CONCRETE, INC.;)
VICTOR BORCHERDS;)
LA GRATITUDE, INC.; ROBERT)
YOUNG; STANSBURY MINING)
CORPORATION; THE CITIZENS)
BANK; UNION BANK; FIREMAN'S)
FUND INSURANCE COMPANY; and)
JOHN DOES NO. 1 THROUGH 10,)
)
Third-Party)
Defendants.) MEMORANDUM DECISION ON JURY
DEMAND AND MOTION TO TRANSFER

This lawsuit, which involves only issues of state law, was commenced in state court and later, on June 11, 1982, removed to this court.

On March 30, 1983, defendant Mast Construction filed a demand for a jury trial and a motion to permit the late filing of its jury demand. The demand was late under Local Rule 11(a) and Interim Rule 7004(g). At the time of removal all necessary pleadings, although amendments to certain pleadings were later made, had been served and Mast was required to file its demand within ten days after service on Mast of the notice of debtor's filing of the application for removal. Service on Mast of the application for removal was made on June 11, 1982. Thus, Mast had until June 21 of 1982 to file its demand.

Having failed to meet the deadline set by Interim Rule 7004(g), Mast is deemed to have waived trial by jury. Local Rule 11(a) permits setting aside such a waiver upon motion and for good cause shown. "Mere oversight will not be deemed good cause." Local Rule 11(a). Mast alleges that its counsel misunderstood Mast's desire for a jury trial and thus did not demand a jury trial on time. Plaintiff argues that this misunderstanding constitutes oversight deemed under Rule 11(a) not to be good cause for permitting a late jury demand. The court agrees with plaintiff. Mast's motion to permit the late filing of its jury demand is denied.

On March 21, 1983, Mast filed a motion to transfer this lawsuit to the district court for all further proceedings and for trial. The motion gives no reason why it should be granted. Moreover, under the rule adopted by the district court for the processing of bankruptcy matters, motions to withdraw a lawsuit from the bankruptcy court to the district court must be made to the district not the bankruptcy court. Rule, subsection (c)(2) (the reference may be withdrawn "by the district court"). The motion to transfer is therefore denied.

On May 18, 1983, Mast filed a motion for withdrawal of this lawsuit from the bankruptcy court to the district court. The motion was captioned in the district not the bankruptcy court. Under the district court's rule, subsection (c)(2) the motion is directed to the district not the bankruptcy court. This court will not rule on the motion for withdrawal but instead will refer the motion to the district court for disposition as required by the rule.

IT IS THEREFORE ORDERED that


1. Mast's motion to permit the late filing of its jury demand is denied.

2. Mast's motion to transfer this lawsuit to the district court is denied.

3. Mast's motion to withdraw this lawsuit is referred to the district court for disposition as required by the district court's rule.

DATED this 10 day of June, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANRUPTCY JUDGE