

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SOVEREIGN BANK, N.A. :
 :
 v. : C.A. No. 12-146ML
 :
 KEVIN O'BRIEN :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendant's Cross Motion to Bifurcate Claims. (Document No. 55). Plaintiff objects. (Document No. 58). For the following reasons, Defendant's Motion is DENIED.

Defendant moves to bifurcate Count I of Plaintiff's Amended Complaint from Counts II and III for purposes of pretrial discovery and trial pursuant to Fed. R. Civ. P. 42(b). Count I seeks to enforce a \$3 million contractual personal guaranty of debt executed by Defendant. (Document No. 31). Count II alleges that Defendant also breached the Guaranty by transferring assets and diminishing his net worth in violation of a non-dissipation of assets provision in the Guaranty. Id. Count III is a statutory fraudulent transfer claim alleging that Defendant has transferred assets with intent to hinder, delay or defraud Plaintiff in enforcing the Guaranty. Id. Plaintiff seeks damages in Count I, and injunctive relief, as well as damages in Counts II and III. Id.

Rule 42(b), Fed. R. Civ. P., gives the Court discretion to order "separate trials" of claims "[f]or convenience, to avoid prejudice, or to expedite and economize." Defendant argues that bifurcation would promote judicial economy and relieve him of burdensome discovery regarding Counts II and III which may prove unnecessary if Plaintiff does not prevail on Count I. Plaintiff counters that Defendant's Motion is "not at all an appeal to judicial economy, but rather a request

for judicial blessing of discovery avoidance.” (Document No. 58-1 at p. 1). Plaintiff also contends that bifurcation would result in undue delay and prejudice its rights to “meaningfully enforce the Guaranty” with the relief it seeks in Counts II and III. Id. at p. 5.

In exercising the “broad discretion to decide whether claims...should be tried separately,” “the overarching consideration is whether separate trials will facilitate the fair and efficient adjudication of the case.” Corvello v. N.E. Gas Co., Inc., 247 F.R.D. 282, 286 (D.R.I. 2008). “In deciding whether to sever claims and try them separately, a court should consider a number of factors, including:

- (1) whether separate trials will help to simplify the issues and avoid confusion;
- (2) whether separate trials will result in duplication of evidence;
- (3) whether separate trials will create a risk of inconsistent verdicts;
- (4) whether separate trials will result in an efficient use of judicial resources;
- (5) whether separate trials will expedite or delay the proceedings; and
- (6) the effect on the parties’ rights to a jury trial.

Commonwealth Land Title Ins. Co. v. IDC Prop., Inc., 482 F. Supp. 2d 203, 206 (D.R.I. 2007).

Here, Defendant’s Cross Motion to Bifurcate was filed in reaction to Plaintiff’s Motion to Compel Further Interrogatory Answers from Defendant regarding the disposition of his personal assets. Although Defendant cites generally to interests of judicial economy, it is apparent that the primary motivation of Defendant’s Motion to Bifurcate is to relieve him of the burden of responding to discovery on Counts II and III until the Court determines whether or not he has any liability to Plaintiff under Count I.¹ In actuality, Defendant is primarily seeking a stay of discovery and other pretrial proceedings on Counts II and III. Defendant is correct that Counts II and III would be moot if he prevails on his defenses to Count I. However, on the other hand, if Plaintiff prevails on Count

¹ This case will be tried to the Court as there is no jury trial demand because the Guaranty includes a broad waiver in Section 9(p) of the right to a trial by jury.

I, a stay of discovery and a separate trial on Counts II and III would substantially delay these proceedings to the prejudice of Plaintiff. In its Verified Amended Complaint, Plaintiff alleges that Defendant has fraudulently transferred assets and, since 2007, has “dissipated most of his net worth, including over eighty-three percent of his liquid assets.” (Document No. 31, ¶¶ 37-42, 65). Thus, Plaintiff’s ability to recover on the Guaranty would be unduly prejudiced if it was delayed from discovering information about Defendant’s assets and transfers of assets relevant to Counts II and III until after Count I was tried to conclusion. On balance, I conclude that Defendant has not met his burden as a movant under Rule 42(b), Fed. R. Civ. P., to establish that bifurcation would further the Rule’s stated objectives and result in a fair and efficient adjudication of the issues raised in this case by both sides. See Bartlett v. Mut. Pharm. Co., 760 F. Supp. 2d 220, 260 (D.N.H. 2011). Accordingly, Defendant’s Cross Motion to Bifurcate (Document No. 55) is DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
February 22, 2013