

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:)	Chapter 11
)	
TWA INC. POST CONFIRMATION ESTATE,)	Case No. 01-00056 (PJW)
)	Jointly Administered
Debtors.)	
_____)	
TWA INC. POST CONFIRMATION ESTATE,)	
)	Adv. No. 02-75335 (PBL)
Plaintiff,)	
)	
v.)	
)	Related Documents: 4, 5
EXTEX LTD.,)	
)	
Defendant.)	

MEMORANDUM OPINION

Laura Davis Jones
James O'Neill
Michael P. Migliore
Pachulski Stang Ziehl Young Jones
& Weintraub P.C.
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

W. Anthony Feiock
Stinson Morrison Hecker LLP
1201 Walnut Street
Kansas City, MO 64106-2150

Co-Counsel for the Estate-Plaintiff

Dated: August 20, 2004

James E. Huggett
Morton R. Branzburg
Maggie S. Soboleski
Klehr Harrison Harvey
Branzburg & Ellers, LLP
919 Market Street, Suite 1000
Wilmington, DE 19801

Counsel for Extex Ltd.

LINDSEY, J.

Before the Court in this adversary proceeding are Plaintiff's Motion to Strike the Request for a Jury Trial ("Motion to Strike") and Defendant's Cross-Motion to Withdraw the Allegedly Filed Proof of Claim ("Cross-Motion"). Both motions have been fully briefed, and are therefore ripe for decision.¹

Plaintiff filed its Motion to Strike, relying upon Langenkamp v. Culp, 498 U.S. 42, 111 S. Ct. 330, 112 L.Ed.2d 343 (1990), in which it was held that a creditor who files a claim against the bankrupt and then is sued by the trustee in an avoidance action becomes subject to the equity jurisdiction of the bankruptcy court where there is no right to a jury trial. 498 U.S. at 44-45, 111 S. Ct. at 331-332, 112 L. Ed. 2d at 347-348.

Although the Cross-Motion filed by Defendant seeks to withdraw an "allegedly filed proof of claim," it is clear that Defendant in fact filed a proof of claim, and that the same was filed prior to the commencement of this adversary proceeding.²

In support of its Cross-Motion, Defendant asserts that it

wishes to withdraw the Claim because (a) it is likely to result in a *de minimis* distribution – at the absolute best – several years from now but (b) it may serve to deny the Defendant its right to a trial by jury in the Action. If this Court allows the Claim to be withdrawn, the Defendant is placed in the same position as if it

¹ It is noted that the motions were filed in February and March, 2003, respectively, and briefing was completed in March 2003. This adversary proceeding was transferred to this court on June 2, 2004. Inexplicably, the Notice of Completion of Briefing was not filed until July 29, 2004.

² In Section II of Defendant's cross-motion, entitled "Parties, Background Facts and Procedural History," the following appears: "The Defendant first learned of its need to withdraw the proof of claim from its counsel in late January 2003, shortly after the Plaintiff commenced the Action." (Defendant's (I) Response to Motion to Strike Request for Jury Trial and (II) Cross-Motion to Withdraw Allegedly Filed Proof of Claim, at 1)

had never filed it in the first place, and there is no waiver of the right to a jury trial. See, (e.g., Smith v. Dowden, 47 F.3d 940, 943 (8th Cir. 1995).

(Defendant's Response and Cross-Motion, at 2)

After briefing had been completed as to the Motion to Strike and the Cross-Motion herein, Judge Peter J. Walsh of this Court issued his Memorandum Opinion in EXDS, Inc. v. RK Electric, Inc., (In re EXDS, Inc.) 301 B.R. 436 (Bkrcty. D.Del. 2003). The fact situation in that case was identical to that presented here: A Chapter 11 debtor brought an adversary proceeding to set aside alleged preferential transfers to a creditor that had previously filed a proof of claim against the estate; the creditor demanded a jury trial; debtor moved to strike creditor's jury trial demand; and creditor subsequently moved to withdraw its proof of claim.

Judge Walsh undertakes an exhaustive discussion of the applicable authorities, including virtually all cases cited and relied upon by plaintiff and defendant herein, and concludes as follows:

For the reasons discussed above, I find that by filing its proof of claim RK has caused its disputes (i.e., its claim and the preference action) to be subject to the exclusive jurisdiction of this bankruptcy court and a withdrawal of the proof of claim would not change that result. Given this conclusion, I assume that RK does not wish to withdraw its proof of claim since its recovery in the chapter case would obviously be reduced, based on EXDS's lower scheduled amount of the RK obligation.

Id. at 443. Judge Walsh then granted Plaintiff's motion to strike the defendant's jury demand.

In the course of his discussion, Judge Walsh notes that Smith v. Dowden, concluded that the successful withdrawal of a claim prior to the trustee's initiation of an adversary proceeding rendered the withdrawn claim a legal nullity and left the parties as if the claim had never been brought. 47 F.3d 940, 943. Apart from the obvious and significant difference in the fact situation presented in that case, Judge Walsh notes that the Court of Appeals also found that the

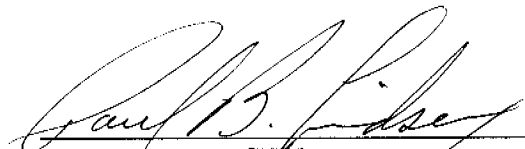
bankruptcy court could have retained jurisdiction by including specific language to that effect in its order granting the creditor's motion to withdraw its claim.

The cases relied upon by Defendant are also discussed by Judge Walsh in EXDS and are, for the most part, distinguished. Defendant further cites In re Armstrong, 215 B.R. 730 (Bkrtey. E.D. Ark. 1997), in support of its Cross-Motion.

In Armstrong, the court had stricken defendant's jury trial demand in an adversary proceeding brought by the debtor because the creditor had previously filed a proof of claim. The defendant then moved to withdraw its proof of claim "in order to assert a demand for jury trial in the adversary proceeding." Id. at 731. The motion was granted.

Armstrong contains no discussion whatsoever of the jurisdictional issue or the effect of the withdrawal of a proof of claim, and apparently assumes that the effect would be that which is sought by the defendant/claimant, i.e. to reinstate defendant's right to assert a demand for jury trial. This Court does not share that view, nor did Judge Walsh in EXDS. Having thoroughly reviewed the pleadings and briefs, along with the authorities cited therein, this Court adopts the reasoning of Judge Walsh in EXDS. Thus, this Court will grant Defendant's Cross-Motion to Withdraw the Allegedly Filed Proof of Claim. Following the teaching of Smith v. Dowden, this Court will retain jurisdiction over Defendant's claim. And further, this Court will grant Plaintiff's Motion to Strike Request for Jury Trial.

Dated: August 20, 2004
Wilmington, DE



PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

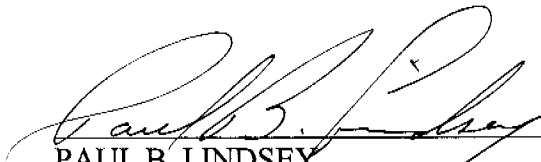
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EXTEX LTD.,)	
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Defendant.)	

ORDER

AND NOW, this 20th day of August, 2004, for the reasons set forth in the Court's Memorandum Opinion, it is hereby

ORDERED that the Plaintiff's Motion to Strike the Request for a Jury Trial is GRANTED,

ORDERED that the Defendant's Cross-Motion to Withdraw the Allegedly Filed Proof of Claim is GRANTED, the Court specifically reserving jurisdiction over the Claim.



PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE