

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

<i>NORTHWEST AIRLINES, INC.,</i>)	
)	
<i>Plaintiff</i>)	
)	
v.)	<i>Civil No. 97-385-P-H</i>
)	
<i>ALLYN J. CARUSO, et al.,</i>)	
)	
<i>Defendants</i>)	

**RECOMMENDED DECISION ON DEFENDANTS' MOTION
FOR ABSTENTION OR STAY**

Now before the court is a motion by the defendants (Docket No. 6) seeking a stay of the proceedings, or an order determining that abstention is appropriate, in light of pending proceedings in the Bankruptcy Court. The defendants in this case are alleged to have committed fraud while serving as agents of Northeast Express Regional Airlines, Inc. (“NERA”) and Precision Valley Aviation, Inc. (“Precision”), both of which are in the process of liquidation under Chapter 7 of the Bankruptcy Code. The two Chapter 7 proceedings have been consolidated and the Chapter 7 trustee has commenced adversary proceedings in the Bankruptcy Court against Northwest Airlines, Inc. (“Northwest”), the plaintiff here. Northwest, in turn, has asserted fraud as an affirmative defense to the trustee’s claims. According to the defendants, the fraud Northwest is alleging against NERA and Precision in the Bankruptcy Court is the same fraud it alleges against them here.

I am unable to agree with the defendants that these circumstances justify dismissal on abstention grounds or a stay of the proceedings. Although, as the defendants point out, the court is authorized to abstain from hearing a matter “related to a case” arising under the Bankruptcy Code “in the interest of justice, or in the interest of comity with State courts or respect for State law,” 28 U.S.C. § 1334(c)(1), section 1334 typically applies when an adversary proceeding under the Bankruptcy Code is potentially

duplicative of pending litigation outside the federal court system. Assuming, *arguendo*, that abstention could be appropriate when parallel proceedings are pending in the District Court and the Bankruptcy Court, the principle must be invoked “sparingly,” taking into account, *inter alia*, “the adequacy of the [alternate] forum to protect the parties’ rights.” *Elmendorf Grafica, Inc. v. D.S. America (East), Inc.*, 48 F.3d 46, 50 (1st Cir. 1995) (citations omitted). In this instance, although there may be numerous issues of fact common to this case and the proceedings in Bankruptcy Court, the defendants here are not parties there and, thus, limiting Northwest to pressing its fraud allegations in the bankruptcy court would deprive it of its right to seek the relief demanded in the instant complaint. Abstention and/or a stay is therefore inappropriate, and it is not necessary to consider Northwest’s additional contentions related to the Seventh Amendment and to certain proceedings that took place prior to the case’s transfer here from the District of Minnesota.

I recommend that the defendants’ motion be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated this 2nd day of April, 1998.

*David M. Cohen
United States Magistrate Judge*