UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITYNATIONAL MORTGAGE COMPANY, Movant, -against- LEHMAN BROTHERS HOLDINGS INC., Respondent.	20mc00027 (LAK) (DF) **REPORT AND RECOMMENDATION**
LEHMAN BROTHERS HOLDINGS INC., Plaintiff, -against- SECURITYNATIONAL MORTGAGE COMPANY, Defendant.	Adv. Pro. No. 18-01819 (SCC)

TO THE HONORABLE LEWIS A. KAPLAN, U.S.D.J.:

Lehman Brothers Holdings Inc. ("LBHI"), a debtor in a Chapter 11 case pending before the Honorable Shelley C. Chapman, U.S.B.J., in the United States Bankruptcy Court for the Southern District of New York (Case No. 08-13555(SCC)), has brought an adversary proceeding in that same court against defendant SecurityNational Mortgage Company ("SNMC") (the "Adversary Proceeding"), seeking contractual indemnification for losses relating to the purchase and sale of residential mortgage-backed securities (Adv. Pro. No. 18-01819 (SCC)).

SNMC has now commenced a separate miscellaneous civil action in this Court (reflected in the caption above, as Case No. 20mc00027), by filing a motion pursuant to Rules 12(b)(1), 12(c), and 12(h)(3) of the Federal Rules of Civil Procedure (herein "FRCP"), seeking to dismiss

the Adversary Proceeding in the Bankruptcy Court on the grounds of lack of subject-matter jurisdiction and standing. (Dkt. 1.) LBHI opposes this motion, arguing that it is both procedurally improper and lacking in merit, and the disposition of this motion has been referred to this Court for a report and recommendation.

As a preliminary matter, this Court denies SNMC's request for oral argument on the motion (Dkt. 12), as the parties' arguments have been laid out in extensive briefing, and, upon review of that briefing, this Court finds that further argument is not necessary to understand and resolve the issues before it. Based on its review of the parties' submissions and the relevant law, and for the reasons discussed below, this Court finds that SNMC's motion to dismiss is procedurally improper, as it has been filed in the wrong court, and that, under 28 U.S.C. § 157(d), "cause" does not exist for the District Court, upon its own motion, to withdraw the bankruptcy reference in order to decide the merits. Accordingly, I respectfully recommend that SNMC's motion to dismiss (Dkt. 1) be denied in its entirety.

BACKGROUND[1]

A. Factual Background

LBHI was once one of the largest investment banks in the country. For years, LBHI was in the business of, among other things, acquiring residential mortgage loans from mortgage originators and then selling those loans, frequently to the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together,

[1] As SNMC has not filed a "pleading" in this miscellaneous action, the facts described herein are taken from the Adversary Complaint filed by LBHI against SNMC (Adversary Complaint, dated Dec. 4, 2018 (Adv. Pro. No. 18-01819, Dkt. 1) ("Compl.")), which is attached as Exhibit A to the declaration submitted in this miscellaneous action by SNMC's counsel in support of the motion to dismiss (*see* Declaration of Gifford W. Price in Support of [SNMC's] Motion to Dismiss, dated Jan. 9, 2020 ("Price Decl.") (Dkt. 2), Ex. A).

as government-sponsored enterprises, the "GSEs"), or securitizing them in residential mortgage-backed securities ("RMBS"). (Compl. ¶¶ 10-12.) LBHI acquired loans through an affiliate, Lehman Brothers Bank, F.S.B. ("LBB"),[2] which initially acquired the loans pursuant to agreements with mortgage originators, such as SNMC. (*Id.* ¶ 10.) These agreements generally consisted of one or more Loan Purchase Agreements ("LPAs"), and in some cases, Broker Agreements. (*Id.* ¶ 12.) The LPAs and the Broker Agreements incorporated the terms of a separate "Seller's Guide" (together with the LPAs and the Broker Agreements, the "Governing Agreements"). (*Id.* ¶¶ 12-14.)

According to the Adversary Complaint, SNMC sold over 500 residential mortgage loans (the "SNMC Loans") to LBB pursuant to multiple LPAs and one Broker Agreement. (*Id.*, Exs. A & B.) In selling these loans to LBB, SNMC allegedly made a number of representations, including representations that the SNMC Loans complied with various underwriting standards and applicable laws. (*Id.* ¶¶ 23-26.) LBHI also alleges that, pursuant to the terms of the Governing Agreements, SNMC agreed to provide contractual indemnification, including attorneys' fees, for losses related to breaches of the Governing Agreements, including breaches of loan representations and warranties. (*Id.* ¶¶ 28-33.)

Between August 2003 and January 2008, LBB allegedly sold the SNMC Loans to LBHI, and those loans were then packaged for securitization. (*Id.* ¶ 34; *see also* Price Decl., Ex. Q, at ECF 38.[3]) According to the Adversary Complaint, when LBB sold the SNMC Loans to LBHI, LBB assigned to LBHI all of LBB's rights and remedies under the Governing Agreements,

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[2] In 1999, LBHI acquired LBB. *See Lehman Bros. Bank, FSB v. State Bank Com'r*, 937 A.2d 95, 98 (Del. 2007).

[3] As used herein, citations to page numbers with an "ECF" prefix refer to the page numbers affixed to filed documents by this Court's Electronic Case Filing ("ECF") system.

including the rights and remedies related to the SNMC Loans. (*Id.* ¶ 20.) More specifically, as alleged by LBHI, the Governing Agreements between SNMC and LBB expressly allowed LBB to assign its rights under them, and otherwise extended or transferred those rights to affiliates and subsequent purchasers of the loans, thereby facilitating LBB's sale of the loans to LBHI. (*Id.* ¶¶ 17-21.)

LBHI alleges that, in connection with the securitizations, LBHI relied on the information that SNMC had provided to LBB, and LBHI, in turn, made representations and warranties to securitization trusts that were based, in part, on SNMC's representations. (*Id.* ¶ 35.) According to the Adversary Complaint, LBHI's agreements governing the securitizations provided that the applicable RMBS Trustees could seek contractually defined repurchases of the loans in the event that certain breaches of representations or warranties occurred. (*Id.* ¶ 36.)

LBHI alleges that RMBS Trustees discovered breaches of representations, warranties, and/or covenants in "defective" SNMC Loans, causing "LBHI to incur losses, judgments, costs, expenses, attorneys' fees, and liability to the RMBS Trustees." (*Id.* ¶ 39.)

B. Procedural History

1. LBHI's Bankruptcy and the Chapter 11 Plan

LBHI collapsed during the 2008 financial crisis. On September 15, 2008, LBHI and its affiliates (the "Debtors") commenced a voluntary Chapter 11 bankruptcy case before Judge Chapman in the Bankruptcy Court for this District. (*Id.* ¶ 4.) By order dated December 6, 2011 (the "Confirmation Order"), the Bankruptcy Court confirmed the Plan, which became effective on March 6, 2012. (*See* Declaration of Brant D. Kuehn in Opposition to [SNMC's] Motion to Dismiss for Lack of Subject Matter Jurisdiction and Standing ("Kuehn Decl.") (Dkt. 31), Ex. C ("Confirmation Order"); *see also* Kuehn Decl., Ex. D (the "Plan").)

The Plan provides for the orderly liquidation of all of the Debtors' property. (*See* Plan.) LBHI was appointed the Plan Administrator, charged with liquidating the assets of all of the Debtors' estates in accordance with the Plan. (*See id.*) As relevant here, the Plan states that "the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to," the bankruptcy case, in order "[t]o determine any and all adversary proceedings, applications, and contested matters related to" the case (*id.* § 14.1(b)), and in order "[t]o hear and determine any actions brought to recover all assets of the Debtors and property of the estates" (*id.* § 14.1(k)).

The Plan also "fully preserve[s] to the fullest extent permitted by applicable law" LBHI's "rights to assert or prosecute Litigation Claims for reimbursement, indemnification, recoupment or any other similar right" (*id.* § 8.14(b)), and specifies that LBHI retains all "Litigation Claims . . . that the Debtors had prior to" the Plan's effective date (*id.* § 13.8). As defined by the Plan, "Litigation Claims" include any and all "[c]laims," as that term is defined by the Bankruptcy Code, whether those claims are "fixed or contingent, matured or unmatured." (*Id.* §§ 1.17, 1.22, 1.102.)

2. LBHI's First Set of Adversary Proceedings Relating to the GSEs

In September 2009, the GSEs filed proofs of claim against LBHI, asserting that LBHI had breached its representations and was required to indemnify the GSEs for their mortgage-backed-security-related losses.[4] In January 2014, the GSEs settled their claims against LBHI.

[4] The facts in this section of the Report & Recommendation are taken from Judge Chapman's August 13, 2018 Order, which is discussed in greater detail below. *See* Background, *infra*, at Section (2)(a)); *see also In re Lehman Brothers Holdings Inc.*, No. 08-13555 (SCC), 2018 WL 3869606, at *2-3 (Bankr. S.D.N.Y. Aug. 13, 2018).

Pursuant to the settlements, Fannie Mae received an allowed claim against LBHI for $2.15 billion, and Freddie Mac received an allowed claim against LBHI for $767 million.

Shortly after, LBHI commenced adversary proceedings against more than 100 loan sellers and originators, including SNMC (the "GSE Adversary Proceedings"). In this first set of adversary proceedings, LBHI alleged that those entities had breached their representations when selling LBHI mortgage loans and, consequently, that they were required to indemnify LBHI for the GSEs' claims. Although LBHI brought each of these claims as a separate adversary proceeding, the Bankruptcy Court put them all on a single, coordinated schedule for motions and other pretrial matters.

In or around March 2017, approximately 70 of the 100-plus sellers and originators that LBHI had sued for indemnification, including SNMC (collectively, the "GSE Defendants"), moved to dismiss the GSE Adversary Proceedings for lack of subject-matter jurisdiction and improper venue. As relevant here, with respect to subject-matter jurisdiction, the GSE Defendants argued that (1) the Bankruptcy Court needed to apply the more stringent "close nexus" test rather than the "conceivable effects" test to determine whether it had "related to" jurisdiction over LBHI's indemnification claims pursuant to 28 U.S.C. § 1334(b); and (2) under the "close nexus" test, "related to" jurisdiction did not exist because LBHI's indemnification claims were predicated on the GSE settlements that occurred years after confirmation of the Plan, and, thus, they did not have a connection to the Plan. LBHI opposed these motions.

a. The Bankruptcy Court's August 13, 2018 Order (*Lehman I*)

On August 13, 2018, the Bankruptcy Court denied the GSE Defendants' motions to dismiss for lack of subject-matter jurisdiction and improper venue. *See In re Lehman Brothers Holdings Inc.*, 2018 WL 3869606, at *13 ("*Lehman I*"). The Bankruptcy Court first

acknowledged the split in authority within the Second Circuit between courts' use of the "close nexus" and the "conceivable effects" tests, but found that it did not need to resolve which test applied because LBHI's indemnification claims satisfied the more stringent "close nexus" test. *See id.* at *5-6. The Bankruptcy Court thus found that it had "related to" jurisdiction over those claims pursuant to 28 U.S.C. § 1334(b). *See id.* at *10. The Bankruptcy Court also concluded that it was the proper venue for the GSE Adversary Proceedings. *See id.* at *10-12.

Following the Bankruptcy Court's denial of the motions to dismiss in *Lehman I*, the GSE Defendants (including SNMC) filed motions in the District Court seeking leave to appeal, pursuant to 28 U.S.C. § 158(a)(3).

b. Judge Caproni's May 8, 2019 Order Denying Leave to Appeal (*Lehman II*)

In a highly-detailed Opinion and Order, dated May 8, 2019, the Honorable Valerie E. Caproni, U.S.D.J., denied the GSE Defendants' motions for leave to appeal. *See In re Lehman Brothers Holdings Inc.*, 18cv8986 (VEC), 18cv9006 (VEC), 18cv9176 (VEC), 18mc392 (VEC), 2019 WL 2023723 (S.D.N.Y. May 8, 2019) ("*Lehman II*").[5]

As relevant here, Judge Caproni held that leave to appeal the Bankruptcy Court's subject-matter-jurisdiction ruling in *Lehman I* was not warranted because, even without deciding which test applied, the Bankruptcy Court was correct that LBHI's indemnification claims "easily satisf[ied] the 'close nexus' test." *Id.* at *5. Judge Caproni specifically found that LBHI's claims satisfied the first part of that test "because [the claims] affect[ed] the execution and administration of the confirmed bankruptcy plan," *id.*, and that the second part of that test was

[5] Many of the GSE Defendants, including SNMC, had moved, in the alternative, for the District Court to treat the August 13 Order in *Lehman I* as proposed findings of fact and conclusions of law and to subject that Order to immediate *de novo* review. Judge Caproni also denied this motion in *Lehman II*. *See Lehman II*, 2019 WL 2023723, at *11-12.

satisfied because "LBHI's Bankruptcy Plan 'provide[d] for the retention of jurisdiction'" over adversary proceedings, *id.* at *6. Judge Caproni looked to the language of the Plan for support, noting that, because LBHI's indemnification claims fell within federal "related to" jurisdiction, those claims fell within the Plan's jurisdiction provisions. *See id.* Moreover, Judge Caproni reasoned that, although LBHI's indemnification claims did not mature, and therefore could not be asserted, until a covered loss had occurred, those claims nevertheless arose at the time of the execution of the relevant agreements. *See id.* at *7. Judge Caproni therefore agreed with the Bankruptcy Court that LBHI's indemnification claims arose prior to the Plan's effective date, and, accordingly, that those claims were preserved by the Plan. *See id.*[6]

3. LBHI's Second Set of Adversary Proceedings Relating to the RMBS

While the GSE Adversary Proceedings were pending before the Bankruptcy Court and later in the District Court, RMBS Trustees for hundreds of trusts filed claims against LBHI in the bankruptcy case for losses suffered due to alleged breaches of representations, warranties, and/or covenants in the defective loans. (Compl. ¶¶ 37-38.) On March 15, 2018, the Bankruptcy Court entered an Order entitled "Order Estimating Allowed Claim Pursuant to RMBS Settlement," which resolved the majority of these claims against LBHI. (*Id.* ¶ 2.) LBHI also settled several other RMBS Trustee claims as permitted by the Plan. (*See id.*)

Thereafter, on or around December 4, 2018, LBHI initiated a second series of adversary proceedings in the Bankruptcy Court (again, before Judge Chapman) against over 100 mortgage

[6] With respect to venue, Judge Caproni concluded that, although the Bankruptcy Court's ruling in *Lehman I* arguably provided a "substantial ground for difference of opinion," leave to appeal from that ruling was not warranted because the GSE Defendants' appeal did not involve a "controlling question of law," would not "materially advance the ultimate termination of the litigation," and "would have a negative impact on judicial economy." *Lehman II*, 2019 WL 2023723, at *7.

sellers and originators (including SNMC), which had sold loans that LBHI later securitized and then sold to third-party investors (collectively, the "RMBS Adversary Proceedings"). In these suits, including the adversary proceeding brought against SNMC (the particular Adversary Proceeding at issue here), LBHI has sought contractual indemnification arising out of the RMBS Trustee settlements. (*See id.* ¶¶ 48-52.)

SNMC filed its Amended Answer in the Adversary Proceeding on June 3, 2019, raising, among numerous other defenses, an alleged lack of both subject-matter jurisdiction and standing. (*See* Price Decl., Ex. B.)

a. Motions To Dismiss in the RMBS Adversary Proceedings

Throughout the course of the underlying bankruptcy case, Judge Chapman has resolved numerous motions and discovery disputes and has issued comprehensive case management orders, including the operative Amended Case Management Order entered March 13, 2019 (the "CMO"). (Kuehn Decl., Ex. E (the "CMO").)

Pursuant to the CMO, numerous sellers and originators that are defendants in the RMBS Adversary Proceedings (but not including SNMC) (hereinafter, the "RMBS Defendants") filed, on May 13, 2019, an omnibus motion to dismiss for lack of standing and subject-matter jurisdiction. (Adv. Pro. No. 16-01019 (SCC), Dkt. 915.) In their omnibus motion, the RMBS Defendants have argued that any assignment to LBHI occurred after the Bankruptcy Petition, and, therefore, that the Bankruptcy Court lacks subject-matter jurisdiction over the claims. In addition, the RMBS Defendants have asserted that LBB never assigned its indemnification rights to LBHI, and, thus, that LBHI lacked standing to seek contractual indemnification. This motion

has been fully briefed, and Judge Chapman heard argument on October 16, 2019. To date, the RMBS Defendants' omnibus motion to dismiss remains pending.[7]

b. Motions by RMBS Defendants To Withdraw the Order of Reference

In addition, four sets of sellers and originators that are defendants in the RMBS Adversary Proceedings (but again, not including SNMC) have filed motions in the District Court pursuant to 28 U.S.C. § 157(d), to withdraw the reference that had been made to the Bankruptcy Court under a Standing Order of this Court.[8] In these motions, the defendants have argued, among other things, that the bankruptcy reference should be withdrawn because (i) LBHI's claims are governed by state law and, therefore, litigating the adversary proceedings in Bankruptcy Court would not provide uniformity; (ii) given that LBHI has demanded a jury trial, its claims will eventually be heard in District Court; and (iii) LBHI engaged in impermissible forum-shopping. *See Lehman Bros. Holdings Inc. v. Standard Pac. Mortg., Inc.*, No. 19cv4080 (WHP), 2019 WL 7593628, at *3 (S.D.N.Y. Aug. 23, 2019) ("*Standard Pacific*"); *Lehman Bros. Holdings, Inc. v. iFreedom Direct Corp.*, 16cv423 (VEC), Dkt. 29 (S.D.N.Y. Mar. 7, 2017) ("*iFreedom*"); *Lehman Bros. Holdings, Inc. v. Hometrust Mortg. Co.*, No. 15cv304 (PAE), 2015 WL 891663 (S.D.N.Y. Feb. 25, 2015) ("*Hometrust*"); *accord Lehman Bros. Holding Inc. v. LHM*

[7] Judge Chapman has also decided motions related to statute of limitations and venue, and has presided over issues related to discovery, which is ongoing in RMBS Adversary Proceedings. *In re Lehman Bros. Holdings Inc.*, 530 B.R. 601 (Bankr. S.D.N.Y. 2015), *aff'd by aff'd sub. nom., Hometrust Mortg. Co. v. Lehman Bros. Holdings, Inc.*, No. 15cv4060, 15cv4061, 2015 WL 5674899, at *2 (S.D.N.Y. Sept. 25, 2015); *In re Lehman Bros. Holdings Inc.*, 593 B.R. 166 (Bankr. S.D.N.Y. 2018).

[8] *See* Amended Standing Order of Reference, dated Jan. 31, 2012, 12 Misc.00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.) (described in Discussion, *infra*, at Section I(A)).

Fin. Corp., No. 15cv300 (GHW), 2015 WL 2337104, at *2 (S.D.N.Y. May 12, 2015) ("*LHM*") (adopting the reasoning applied in *Hometrust*).

Each of the four district judges of this Court to address these motions denied the requested relief. Most recently, in *Standard Pacific*, the Honorable William H. Pauley III, U.S.D.J., noted that, "[o]n its face," the defendants' "position border[ed] on the absurd – and it [was] especially unfounded in this district, where it has been rejected time and again." *Standard Pacific*, 2019 WL 7593628, at *3. As described by Judge Pauley, each of the previous motions to withdraw the reference had been denied "on grounds that efficiency and uniformity would be best served by keeping [LBHI's] Indemnification Claims in the Bankruptcy Court." *Id.* After reviewing those decisions, Judge Pauley stated that he agreed with their reasoning, where:

> '[t]here [were] obvious efficiencies to be gained by centralizing the [I]ndemnification [Claims] in the Bankruptcy Court' because 'Judge Chapman[ ] is intimately familiar with the facts of the *Lehman* cases and the legal theories involved.' *iFreedom*, ECF No. 29, at 6. Moreover, '[t]he Bankruptcy Court may be able to streamline or centralize discovery across the various indemnification actions.' *Hometrust*, 2015 WL 891663, at *3. And while the Indemnification Claims are 'contractual in nature and do not raise substantive issues of bankruptcy law,' there is value in the uniform 'adjudication of [the] similar issues that [will] recur in [the] multiple disputes.' *Hometrust*, 2015 WL 891663, at *4.

Id. (brackets in original); *see also id.* at *3 n.1 (stating, further, that "[t]he interest in preventing forum shopping slightly favor[ed] LBHI" where the defendants' "timing in filing their motion to withdraw the bankruptcy reference arguably signal[led] an attempt to avoid resolving the merits of the [RMBS] Adversary Proceedings before what they view[ed] as an unfavorable forum"). Thus, based on a multi-factor analysis, and as had been articulated by the other judges who had confronted similar motions, Judge Pauley denied the latest motion to withdraw the bankruptcy reference.

4. SNMC's Commencement of This Miscellaneous Action

On January 15, 2020, SNMC initiated this miscellaneous civil action by filing a "Notice of Motion of [SNMC] to Dismiss [LBHI's] Complaint in Bankruptcy Court for Lack of Subject Matter Jurisdiction and Standing Pursuant to Fed. R. Civ. P. 12(b)(1), 12(c), and 12(h)(3)." (Dkt. 1, at ECF 1.) In support of its motion to dismiss, SNMC filed an accompanying memorandum of law (*see* Memorandum of Law in Support of [SNMC's] Motion to Dismiss [LBHI's] Action for Lack of Subject Matter Jurisdiction and Standing (Dkt. 4) ("SNMC Mem.")), as well as a declaration by counsel, with exhibits (*see* Price Decl.).

SNMC first argues that its motion to dismiss the Adversary Proceeding is procedurally proper and, therefore, the District Court has the power to entertain it, because "an article III district court must determine subject matter jurisdiction now and not at the end of the proceeding" in the Bankruptcy Court. (*Id.*, at ECF 17.) To SNMC, this "only makes practical sense," as "[c]ourts and parties should be spared the time, inconvenience and expenses related to litigation if the court does not have jurisdiction, *per se*, or if there is a lack of standing." (*Id.*, at ECF 19 n.10.)

SNMC then states that several principles reinforce its position, including the general proposition that "[q]uestions relating to the court's subject matter jurisdiction must be addressed before moving on to the merits of a claim" (*id.*, at ECF 18 (internal quotation marks and citation omitted)), the fact that the Supreme Court has rejected the doctrine of "hypothetical jurisdiction," which allowed federal courts to hear and determine a dispute on the merits without first resolving whether subject-matter jurisdiction exists (*see id.*, at ECF 18-19); and the fact that only the District Court, not the Bankruptcy Court, can ultimately "resolve" the issues of subject-matter jurisdiction and standing in a non-core proceeding such as the one at issue (*id.*, at ECF 21).

SNMC also argues that, as a policy matter, a determination of SNMC's motion now would help to "avoid the continued expenditure of time and resources on merit-based issues" in the Adversary Proceeding. (*Id.*, at ECF 22.) Moreover, as an apparent explanation as to why SNMC has filed this motion to dismiss, as opposed to filing a motion to withdraw the reference (like some of the other RMBS Defendants described above), SNMC suggests that it could not move to withdraw the reference because that reference was *void ab initio* with respect to the Adversary Proceeding because, according to SNMC, subject-matter jurisdiction has never existed in the Bankruptcy Court, for that specific proceeding. (*See id.*, at ECF 10.)

Turning to the merits, SNMC argues that the Adversary Proceeding does not belong in Bankruptcy Court[9] because "LBHI's claim cannot satisfy the 'close nexus' test" for "related to" jurisdiction under 28 U.S.C. § 1334(b). (*Id.*, at ECF 22-23.) In addition, SNMC contends that LBHI lacks standing "because LBHI has no injury 'fairly traceable' to SNMC." (*Id.*, at ECF 37.)

a. <u>The February 5, 2020 Hearing Before Judge Chapman</u>

Prior to LBHI's stipulated deadline to file its opposition to SNMC's motion to dismiss, the same parties appeared before Judge Chapman in the Bankruptcy Court on February 5, 2020,

[9] Although SNMC writes somewhat vaguely in one of the subject headings of its memorandum of law that the Adversary Proceeding does not belong in "Federal Court Based on Bankruptcy Law" – which could be read as suggesting that the Adversary Proceeding does not belong in *either* bankruptcy court or a federal district court – the substance of SNMC's argument is that "there is no subject matter jurisdiction, and thus no basis to hale SNMC, a non-New York corporation, without New York as its principal place of business, a non-creditor, a non-participant in the bankruptcy, into the *Bankruptcy Court*." (SNMC Mem., at ECF 37 (emphasis added).)

to discuss the status of the Adversary Proceeding. (Hearing Transcript, dated Feb. 5, 2020, Kuehn Decl., Ex. F ("Hrg. Tr.").)[10]

From the outset of the hearing, Judge Chapman noted that SNMC has presented the courts in this District with "a pretty unusual set of circumstances." (*Id.* at 6.) In her opening colloquy, Judge Chapman observed that SNMC has "commenced a miscellaneous proceeding . . . asking the [D]istrict [C]ourt to dismiss the pending adversary proceeding" on the basis that the Bankruptcy Court does not have subject-matter jurisdiction, "notwithstanding the fact that there's a comprehensive [CMO] that [was] filed" in the Bankruptcy Court, and "notwithstanding the fact that the issue of subject matter jurisdiction had previously been determined by [the Bankruptcy] Court, and District Judge Caproni had declined to grant leave to appeal and had expressed a view in that regard." (*Id.*)

In an initial question to counsel, Judge Chapman asked SNMC whether, in its view, it had "violated the [CMO]," and SNMC responded that it had not. (*Id.*at 7.) Without deciding that issue, Judge Chapman then asked for SNMC to explain the merits of its position. SNMC stated in response that, because "a bankruptcy court cannot determine and make a final resolution with respect to jurisdiction" (*id.*), it was SNMC's position that it should be permitted to commence a separate miscellaneous action to raise the issue of jurisdiction with the District Court (*see id.*, at 11-12 (SNMC's counsel stating that "if there's a good faith basis and there's a serious question on jurisdiction, I think that [SNMC is] allowed to sort that out with the district court")).

In presenting this argument, SNMC, through its counsel, made several notable concessions: first, SNMC agreed that there was "no question that the bankruptcy itself was

[10] The February 5, 2020 Hearing Transcript has consecutive page numbering, and, when referencing this transcript herein, this Court will cite to the pages on the transcript themselves, rather than to the ECF system's page numbering.

properly referred" to the Bankruptcy Court (*id.*, at 8-9); second, SNMC conceded that it never made a motion to withdraw the bankruptcy reference (*id.*, at 13-14); and third, SNMC admitted that it had found no case from any Circuit (and thus cited to no case) "where a district court has heard a motion to determine that a bankruptcy court does not have subject matter jurisdiction to preside over an adversary proceeding brought in conjunction with a [main bankruptcy] case [over] which it's presiding" (*id.*, at 15-16 (SNMC's counsel also conceding that he found no case where a district court had "granted relief similar" to what SNMC seeks here)). Despite these concessions, SNMC maintained that it had the right to commence this miscellaneous action, and had done so appropriately, because "any bankruptcy court cannot fully determine the [issues] of subject matter jurisdiction and standing . . . because [those issues are] in the province of an Article III court." (*Id.*, at 13.)

Without asking for LBHI to respond (as LBHI's written submissions were not yet due), Judge Chapman closed the hearing by stating that while she did not agree with SNMC that the Bankruptcy Court "has nothing to say about adversary proceedings pending before it," the Bankruptcy Court would wait for the District Court to render a decision. (*Id.*, at 18.)

b. LBHI's Opposition to SNMC's Motion To Dismiss

On March 6, 2020, LBHI filed a memorandum of law in opposition to SNMC's motion to dismiss (*see* Memorandum of Law of Plaintiff [LBHI] in Opposition to [SNMC's] Motion to Dismiss for Lack of Subject Matter Jurisdiction and Standing, dated Mar. 6, 2020 (Dkt. 30) ("LBHI Mem."), along with a declaration from counsel, with exhibits (*see* Kuehn Decl.).

In its memorandum of law, LBHI first argues that SNMC's miscellaneous action and motion to dismiss are procedurally improper. (*See* LBHI Mem., at ECF 21.) Noting that SNMC has premised its motion on FRCP 12, LBHI explains that:

> nothing in FRCP 12 contemplates presenting defenses to a pleading by way of a separate action. To the contrary, Rule 12 provides responding to a pleading in the action in which the pleading is pending, whether the response is an answer (FRCP 12(a)) or a motion presenting defenses (FRCP 12(b)).

(*Id.*) LBHI contends that, for this reason alone, SNMC's motion must be denied. (*Id.*)

As its second procedural challenge, LBHI argues that SNMC has ignored the several established procedural rules that are available to a party seeking dismissal of an adversary proceeding. (*See id.* at ECF 21-22.) LBHI initially calls attention to the fact that, under the Federal Rules of Bankruptcy Procedure (herein, "FRBP") 7012, a defendant in an adversary proceeding may answer the complaint or may present by motion the defenses specified in FRCP 12(b)-(i). *See* FRBP 7012(b). According to LBHI, "[n]o exception to this procedural regime permits a different procedure for a motion challenging subject matter jurisdiction under FRCP 12(b)(1), 12(c), or 12(h)." (LBHI Mem., at ECF 22.) Relatedly, with respect to the underlying bankruptcy case, LBHI observes that the "CMO explicitly contemplates that parties may file motions to dismiss in the Bankruptcy Court and establishes governing procedures, timeframes, and restrictions applicable to them." (*Id.*) LBHI then notes that "[o]ther defendants in the [RMBS Adversary Proceedings] have availed themselves of those procedures, and a motion to dismiss pursuant to FRCP 12(b)(1) is pending before Judge Chapman." (*Id.*)

Turning to the Bankruptcy Code, LBHI highlights that "[t]he Code provides that a party may appeal a bankruptcy judge's decision to the district court." (*Id.* (citing 28 U.S.C. § 158(a)).) According to LBHI, this is particularly notable, as "SNMC and other [sellers and originators] previously moved to dismiss [the GSE Adversary Proceedings] for lack of subject matter jurisdiction, and then unsuccessfully sought leave to appeal to the district court." (*Id.*) In addition, LBHI notes that the Code provides that "[t]he district court may withdraw . . . any case

or proceeding referred [to the Bankruptcy Court], on its own motion or on timely motion of any party, for cause shown." (*Id.* (quoting 28 U.S.C. § 157(d)).) Again, LBHI points out that this was another procedural measure that "several defendants in the [RMBS Adversary Proceedings have] also availed themselves of" in the litigation. (*Id.*) Yet, instead of following any of "these well-worn patterns" to challenge subject-matter jurisdiction and standing, LBHI argues that "SNMC has conjured its own procedure entirely outside of, and in fact contrary to, the FRCP, FRBP, and the Code." (*Id.*) Indeed, according to LBHI, SNMC has improperly commenced this miscellaneous action to "mount a collateral attack on Judge Chapman and Judge Caproni's orders," which "seriously undercuts the orderly process of the law" (*id.*, at ECF 23 (citation and brackets omitted)).

LBHI then disputes SNMC's assertion that the District Court must determine subject-matter jurisdiction and standing "now and not at the end of the proceeding." (*Id.*, at ECF 24; *see also id.*, at ECF 33 (discussing standing).) LBHI points out that SNMC has not identified "any case standing for the proposition that after a court has found subject matter jurisdiction, a litigant may (without complying with applicable procedures and rules) seek review in another court to prevent the trial court from considering the merits." (*Id.*, at ECF 25.) Further, LBHI observes that SNMC's cited cases "do not hold that a bankruptcy court lacks the ability to initially determine its own jurisdiction, subject to an Article III court's ultimate review under the procedures set forth in the FRCP, FRBP[,] and the Code." (*Id.*) LBHI suggests that SNMC cannot identify a case supporting its current procedural stance because, under well-settled law, "[i]f a bankruptcy court has subject matter jurisdiction on a noncore matter [such as the Adversary Proceeding against SNMC], parties must participate in front of the bankruptcy judge through the entire proceeding even though the district court may ultimately decide that the

plaintiffs have no claim as a matter of law." (*Id.*, at ECF 27.) According to LBHI, SNMC's attempt to evade "the statutory scheme that the 1984 Act[11] and the FRBP set out for resolving non-core matters," does not lead to another result. (*Id.*, at ECF 28.)[12]

As for the substance of SNMC's subject-matter-jurisdiction challenge, LBHI argues that, in the event this Court considers the merits, this Court should find that the Bankruptcy Court has subject-matter jurisdiction over LBHI's indemnification claim, as it satisfies the more stringent "close nexus" test because the claim affects the execution and administration of the confirmed Plan, and because the Plan provides for that Court's retention of jurisdiction over the claim. (*See id.*, at ECF 29-30.) With regard to SNMC's challenge to standing, LBHI contends that it has constitutional standing because it suffered an "injury in fact" and, more particularly, it is a real party in interest under FRCP 17. (*See id.*, at ECF 33.)

c. SNMC's Reply

On April 8, 2020, SNMC filed a reply memorandum of law, in which it argues that its motion to dismiss simply hinges on the issue of "timing" – in other words, according to SNMC, the dispute in this miscellaneous action "is not whether the District Court must *resolve* jurisdiction, but the *timing* of when the District Court must resolve it." (Reply Memorandum in

[11] The 1984 Act refers to the Bankruptcy Amendments and Federal Judgeship Act of 1984. *See generally* 28 U.S.C. § 1334; *see* E1 Collier on Bankruptcy Scope (16th 2020) ("In addition to establishing a new system of jurisdiction, the [1984 Act] made extensive amendments to the Bankruptcy Code and the Judicial Code (28 U.S.C.) which contained other provisions of the Bankruptcy Reform Act of 1978 covering a variety of subjects. The legislation was largely a result of the . . . Supreme Court's ruling in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), invalidating the jurisdiction features of the 1978 Bankruptcy Reform Act.").

[12] As an additional critique, LBHI points out that SNMC has not explained "why this Court should take up the standing issue in the first instance" when it is "already the subject of a motion pending before the Bankruptcy Court." (LBHI Mem., at ECF 33.)

Support of [SNMC's] Motion to Dismiss [LBHI's] Action for Lack of Subject Matter Jurisdiction and Standing, dated Apr. 8, 2020 (Dkt. 36) ("SNMC Reply Mem."), at ECF 7 (emphasis in original).)

As to the timing of its subject-matter-jurisdiction and standing challenges, SNMC objects to the "purported options" put forward by LBHI, which would require SNMC either to "move to withdraw [the] reference under 28 U.S.C. § 157(d), or [to] seek interlocutory review if the Bankruptcy Court denies its motion to dismiss for lack of jurisdiction." (*Id.*) SNMC objects to these options because neither "assures that the District Court will *resolve* subject matter jurisdiction at the outset," which SNMC maintains must happen here. (*Id.* (emphasis in original).) SNMC then suggests that it is the District Court's responsibility to resolve, at the outset, whether there is subject-matter jurisdiction in the Adversary Proceeding because the District Court is "charged with referring matters to the Bankruptcy Court." (*Id.*, at ECF 9 (citing to *In re EMMC Corp.*, 909 F.3d 589, 595-96 (3d Cir. 2018).)

SNMC also disputes LBHI's contention that the motion to dismiss constitutes a "collateral attack" on the prior orders issued by Judge Chapman and Judge Caproni, arguing that "a collateral attack requires the entry of a final order or judgment," and noting that there has been "no final resolution of subject matter jurisdiction" here. (*Id.*, at ECF 11.) Lastly, on the merits, SNMC reiterates its assertions that LBHI's claim does not meet the "close nexus" test, and that LBHI has not met, and cannot meet, its burden to establish standing. (*See id.*, at ECF 11-12.)

DISCUSSION

I. APPLICABLE LEGAL STANDARDS

A. Jurisdiction and Adjudicative Power of the Bankruptcy Court

With certain exceptions not relevant here, district courts have original jurisdiction over bankruptcy cases, 28 U.S.C. § 1334(a), and all civil proceedings "arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a), however, a district court may refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy courts of that district. The Southern District of New York has a standing order in place that provides for automatic reference of bankruptcy cases to the bankruptcy court. *See Amended Standing Order of Reference*, signed by Chief Judge Loretta A. Preska dated Jan. 31, 2012, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) ("Pursuant to 28 U.S.C. Section 157(a) any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.").

There are two types of bankruptcy proceedings delineated in Section 157:

> 'core proceedings,' which the bankruptcy court may 'hear and determine' and on which the court 'may enter appropriate orders and judgments,' § 157(b)(1), [and] 'non-core proceedings,' which the bankruptcy court may hear, but for which the bankruptcy court is only empowered to submit proposed findings of fact and conclusions of law to the district court for *de novo* review, § 157(c)(1).'

Kirschner v. Agoglia, 476 B.R. 75, 78 (S.D.N.Y. 2012) (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1100-01 (2d Cir. 1993); *see also* 28 U.S.C. § 157(b)(2) (providing a non-exhaustive list of examples of core proceedings).[13]

As relevant here, with respect to non-core proceedings[14] that are "related to" a bankruptcy proceeding – generally proceedings involving claims arising under private or state law – bankruptcy courts may hear and determine such proceedings, and enter appropriate orders and judgments, only with the consent of all the parties. 28 U.S.C. § 157(c)(2); *see Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1940 (2015). Absent consent, bankruptcy courts in non-core proceedings may only submit proposed findings of fact and conclusions of law, which the district court reviews *de novo*. 28 U.S.C. § 157(c)(1); *see Kirschner*, 476 B.R. at 81.

The Bankruptcy Code also provides that "[t]he district court may withdraw . . . any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d); *see Picard v. Flinn Invs., LLC*, 463 B.R. 280, 287 n.3 (S.D.N.Y. 2011) (noting that, under Section 157(d), a district court "has full discretion to withdraw the reference, on its own initiative, for 'cause shown'"). Section 157 does not define

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[13] In 2011, the Supreme Court issued an opinion in *Stern v. Marshall*, 564 U.S. 462, 487-88 (2011), holding that the state-law tortious interference counterclaim before it could be finally adjudicated only by an Article III court and not by the bankruptcy court, even though the counterclaim was listed as "core" under 28 U.S.C. § 157. In reaching this conclusion, the Court relied "on the distinction between 'private rights' claims, the 'stuff of common law, on which only an Article III court can render final judgment, and 'public rights' claims that assert claims 'derived from' or 'closely intertwined' with a federal regulatory scheme and that therefore can be fully adjudicated by an Article I bankruptcy court without first intruding on the separation of powers set out by Article III." *Kirschner*, 476 B.R. at 80 (citing *Stern*, 564 U.S. at 464).

[14] The parties do not appear to dispute that the Adversary Proceeding involves a non-core claim for contractual indemnification. (*See* SNMC Mem., at ECF 23; LBHI Mem., at ECF 27 (describing that SNMC, as a defendant in a "non-core matter" is "not without remedies").) For the purposes of this motion, this Court will assume, but not decide, that the Adversary Proceeding is a non-core proceeding within the meaning of 28 U.S.C. § 157(c)(1).

"cause," but "the Second Circuit has directed district courts to consider several factors in evaluating a motion to withdraw a bankruptcy reference." *Standard Pacific*, 2019 WL 7593628, at *1 (citing *In re Orion Pictures Corp.*, 4 F.3d at 1101).[15]

Further, under Section 158(a), a party may appeal a bankruptcy judge's decision to the district court. 28 U.S.C. § 158(a). The Code also specifically provides for interlocutory appeals from the bankruptcy court to the district court. 28 U.S.C. § 158(a)(3) ("The district courts . . . shall have jurisdiction to hear appeals with leave of the court, from other interlocutory orders and decrees of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under [S]ection 157.").

B. Relevant Federal Bankruptcy Rules of Procedure

Under FRBP 7012, the defendant in an adversary proceeding may answer the complaint or may present by motion the defenses specified in FRCP 12(b)-(i), including the defenses of lack of subject-matter jurisdiction and lack of standing. FRBP 7012(b). The defendant's "responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court." *Id.*; *see* FRBP 7012(b) advisory committee's note (the amended rule "calls for the pleader to make a statement regarding consent, whether or not a proceeding is termed non-core. . . .The bankruptcy judge's subsequent determination of the appropriate course of proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended [FRBP] Rule 7016.").

[15] These factors will be discussed in greater detail below. (*See* Discussion, *infra*, at Section III.)

II. SNMC'S MOTION TO DISMISS IS PROCEDURALLY IMPROPER.

SNMC has commenced this miscellaneous civil action by filing a motion that seeks to dismiss the Adversary Proceeding currently pending before Judge Chapman in the Bankruptcy Court. (Dkt. 1.) As Judge Chapman aptly noted during the February 5 hearing, SNMC presents the courts in this District with an "unusual set of circumstances." (Hrg. Tr., at 6.) In fact, the parties have not identified any case that squarely addresses the procedural scenario raised here – namely, whether this motion to dismiss is properly before the District Court, despite the ongoing Adversary Proceeding in the Bankruptcy Court (where a motion to dismiss by other RMBS Defendants remains pending), and despite Judge Chapman's and Judge Caproni's prior orders addressing the Bankruptcy Court's subject-matter jurisdiction. Upon this Court's review and consideration of the Bankruptcy Code, established rules, and the case law regarding district court and bankruptcy court jurisdiction, this Court finds that SNMC's motion is procedurally improper as it is before the wrong court.

Although not discussed by the parties, this Court acknowledges that, pursuant to 28 U.S.C. § 157(d), the District Court, upon its own motion, may *sua sponte* determine whether the bankruptcy order of reference should be withdrawn as to this specific proceeding based upon "cause" shown. As set forth below, this Court has engaged in this discretionary analysis and finds that, under the relevant factors set forth by the courts in this Circuit, "cause" does not exist, and, therefore, withdrawal of the reference cannot be a means by which the District Court can decide the merits of SNMC's motion.

Accordingly, as there is no procedural basis for SNMC's motion in this miscellaneous action, this Court recommends that the motion to dismiss be denied.

A. The Bankruptcy Court Is Entitled To Determine Whether It Has Subject Matter Jurisdiction Over LBHI's Claim and Whether LBHI Has Standing.

SNMC insists that its motion to dismiss is procedurally proper because the Bankruptcy Court lacks the authority to determine, in the first instance, whether it has subject-matter jurisdiction over LBHI's indemnification claim in the Adversary Proceeding and whether LBHI has standing. (*See* SNMC Mem., at ECF 17-22; SNMC Reply Mem., at ECF 7-11.) SNMC's argument is not persuasive for the several reasons discussed below.

1. Even If the Bankruptcy Court Lacks Constitutional Authority To Enter a Final Judgment on LBHI's Indemnification Claim, It Is Not Prohibited From Entering an Interlocutory Order Regarding That Claim.

SNMC cites to a number of decisions from the Supreme Court and the Second Circuit to support its contention that, because bankruptcy courts cannot ultimately "resolve" subject-matter jurisdiction and standing in non-core proceedings, it is incumbent upon the district courts to decide these issues at the "outset" of such proceedings. (SNMC Mem., at ECF 17-20.) This appears to be the same argument that SNMC advanced before Judge Caproni in *Lehman II*. (Case No. 18mc00392 (VEC), Dkts. 1, 4.) Just as Judge Caproni found in *Lehman II*, SNMC's cited cases here "pertain to the entry of final judgments by the bankruptcy court; they do not apply to the entry of a non-final judgment." *Lehman II*, 2019 WL 2023723, at *12 n.13 (citing *Stern*, 564 U.S. at 501 (discussing the Article III "limitations on the authority of bankruptcy courts to enter *final* judgments" (emphasis added)); *Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1941 ("In *Stern*, the Court held that Article III prevents bankruptcy courts from entering *final* judgment on [certain] claims . . . ." (emphasis added)); *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 28 (2014) (*Stern* held that "Article III of the Constitution prohibits bankruptcy courts from *finally* adjudicating certain . . . claims" (emphasis added))).

As Judge Caproni rightly described in *Lehman II*:

> The constitutional limitations discussed above prevent a bankruptcy court only from entering a final judgment in a non-core proceeding; as to non-final matters, the bankruptcy court has full power to enter all appropriate orders, subject to the district court's review at the end of the case. Put differently, until a non-core bankruptcy case is ready to be submitted to an Article III district court for *de novo* review and entry of final judgment, the Article I bankruptcy court is entitled to enter any interlocutory rulings that are required.

2019 WL 2023723, at *12. Like in the GSE Adversary Proceedings, SNMC's argument here centers on whether the Bankruptcy Court should be permitted to issue an interlocutory ruling as to the issue of its own jurisdiction, and SNMC's reliance on cases pertaining to the bankruptcy court's power to enter final judgments is again misplaced.

SNMC openly concedes that its motion to dismiss in this miscellaneous action revolves around the question of "timing" (SNMC Reply Mem., at ECF 7), as opposed to the bankruptcy court's inherent power to issue an interlocutory order or its ability to submit proposed findings of fact and conclusions of law. On the assumption that LBHI's state-law indemnification claim against SNMC is a non-core matter (*see supra*, at n.14), pursuant to 28 U.S.C. § 157(c)(1), the District Court will review the Bankruptcy Court's findings after the Bankruptcy Court fully hears the Adversary Proceeding and submits proposed findings of fact and conclusions of law. *See In re Petrie Retail*, 304 F.3d 223, 228 (2d Cir. 2008); *In re Extended Stay, Inc*., 466 B.R. 188, at 204-05 (S.D.N.Y. 2011) ("[A] bankruptcy court may still propose findings of fact and conclusions of law to the district court where it lacks authority to enter a final judgment."). At that time, the District Court will be required to review the matter *de novo*, without deference to the Bankruptcy Court's proposed findings of fact and conclusions of law – thus assuring that the issues of subject-matter jurisdiction and standing are "resolved" by the District Court. *See* FRBP

9033(d) (*de novo* standard); *Arkison*, 573 U.S. at 34; *see also Cent. Vermont Pub. Serv. Corp. v. Herbert*, 341 F.3d 186, 189-90 (2d Cir. 2003); *In re Crysen/Montenay Energy Co.*, 226 F.3d 160, 166-67 (2d Cir. 2000).

SNMC is well acquainted with this procedure. In the GSE Adversary Proceedings, SNMC, along with several other GSE Defendants, moved to dismiss in the Bankruptcy Court, challenging that court's subject-matter jurisdiction. After the Bankruptcy Court denied those motions, SNMC joined its fellow GSE Defendants to seek leave to appeal to the District Court. Now, in the RMBS Adversary Proceedings, SNMC raises essentially the same jurisdictional challenge but in a separate forum and intentionally outside the strictures set forth in the CMO, the Code, and FRBP 7012. SNMC, however, fails to explain why this change in procedure is constitutionally required, instead only evidencing its dissatisfaction with Judge Chapman's and Judge Caproni's previous jurisdictional analyses.[16] Ultimately, it appears that SNMC seeks to construct a constitutional argument regarding "timing," yet SNMC cannot identify what makes the Bankruptcy Court's ability to issue an interlocutory ruling regarding its own jurisdiction and standing constitutionally flawed. Thus, this Court finds that, even if the Bankruptcy Court lacks constitutional authority to enter a final judgment on LBHI's indemnification claim, it is not prohibited from entering an interlocutory order regarding that claim.

[16] To clarify, although LBHI suggests that SNMC's motion to dismiss constitutes a "collateral attack" on Judge Chapman's and Judge Caproni's prior orders, this Court does not invoke the "collateral attack" doctrine here because neither of those court orders are final. *See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) ("A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not . . . reopen the question in a collateral attack upon an adverse judgment"); *see generally Cook v. Pan Am. World Airways, Inc.*, 771 F.2d 635, 646 (2d Cir. 1985) (affirming the district court's dismissal of a claim as an "impermissible collateral attack" on a "final order")

2. Contrary to SNMC's Assertion, the District Court Is Not Required To "Resolve" Subject-Matter Jurisdiction and Standing at the "Outset" of an Adversary Proceeding Pending in Bankruptcy Court.

Although there are statutory mechanisms for review of a Bankruptcy Court's interlocutory order or its proposed findings of fact and conclusions of law, SNMC maintains that, if the Bankruptcy Court were permitted to rule on the issues of subject-matter jurisdiction and standing in the Adversary Proceeding, that ruling would run afoul of the principle that "[s]ubject matter jurisdiction is a 'threshold question that must be resolved . . . before proceeding to the merits'" of a case. (SNMC Mem., at ECF 17 (citing *United States v. Bond*, 762 F.3d 255, 263 (2d Cir. 2014) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998))). Yet as Judge Caproni explained in *Lehman II*, and as this Court likewise finds, "no constitutional principle prevent[s] the Bankruptcy Court from making" this type of threshold determination. *Lehman II*, 2019 WL 2023723, at *13 n.14.

The cases cited by Judge Caproni in *Lehman II* and those additionally found by this Court demonstrate that, as a general matter, a bankruptcy court has broad, constitutional authority to issue interlocutory rulings in non-core proceedings. *See In re Anderson News, LLC*, No. 09-10695-CSS, 2015 WL 4966236, at *2 (D. Del. Aug. 19, 2015) ("Even if the [b]ankruptcy [c]ourt lacks constitutional authority to enter a *final* judgment on . . . [a non-core] claim, there is no constitutional constraint preventing it from entering interlocutory orders . . . regarding that same claim." (footnote omitted) (collecting cases)); *In re Synergy Acceptance Corp.*, No. C-14-4891 MMC, 2015 WL 3958155, at *2 (N.D. Cal. June 29, 2015) ("A bankruptcy court hearing a non-core proceeding may . . . enter 'interlocutory decisions and orders on non-core issues,' and such decisions and orders 'need not be submitted to the district court,' as 'only the power to enter final judgment is abrogated.'" (citations omitted) (quoting *In re Bellingham Ins. Agency, Inc.*, 702

F.3d 553, 565 (9th Cir. 2012); *In Re Castro*, 919 F.2d 107, 108-09 (9th Cir. 1990))); *see also In re Trinsum Grp., Inc*., 467 B.R. 734, 738 (Bankr. S.D.N.Y. 2012) (considering case authority both before and after the Supreme Court held, in *Stern*, that the bankruptcy courts could not constitutionally make a final adjudication in certain types of proceedings (*see supra*, at n. 13), and finding that such authority made it "clear that the bankruptcy court may handle all pretrial proceedings, including the entry of an interlocutory order dismissing fewer than all of the claims in an adversary complaint . . ."); *Veyance Techs., Inc. v. Lehman Bros. Special Fin., Inc.*, No. 09cv8851(BSJ), 2009 WL 4496051, at *2 n.3 (S.D.N.Y. Dec. 3, 2009) ("Even if this action is a non-core proceeding, the [b]ankruptcy [c]ourt may still adjudicate pretrial matters not requiring the entry of final orders or judgments."); *In re Paramount Hotel Corp.*, 319 B.R. 350, 357 (Bankr. S.D.N.Y. 2005) ("[U]nless an order withdrawing the reference is obtained from the district court, this Court will continue to oversee all pre-trial matters.")

More specifically, courts in this District have acknowledged that the bankruptcy court is fully capable of determining the issue of its own jurisdiction, *see In re Lightsquared, Inc.*, 539 B.R. 232, 241-42 (S.D.N.Y. 2015) (stating that, even after a bankruptcy plan has been confirmed, it is for the bankruptcy court to determine "in the first instance," whether it has subject matter jurisdiction over a post-confirmation proceeding); *In re Fairfield Sentry Ltd.*, No. 10cv7340, 2010 WL 4910119, *4 (S.D.N.Y. Nov. 22, 2010) (declining to consider a challenge to bankruptcy court jurisdiction, and noting that "[w]hatever the merits of this argument (an issue on which the Court takes no view), the bankruptcy court is fully capable of determining its own jurisdiction, as it must to proceed") (citing *In re Motors Liquidation Co.*, 428 B.R. 43, 55 (S.D.N.Y. 2010) (affirming the principle that "the bankruptcy court ha[s] jurisdiction to determine the issue of its own jurisdiction")); *accord United States v. United Mine Workers*, 330

U.S. 258, 292 n.57 (1947) ("except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction").

This Court also notes that, not only did SNMC concede at the hearing before Judge Chapman that it could point to no case or specific principle of law that requires a district court to resolve questions of subject-matter jurisdiction or standing before a bankruptcy court can move to the merits of a claim (Hrg. Tr., at 15-16), but, on its motion, SNMC has directed this Court to no case that holds a bankruptcy court lacks the ability to make an initial determination of its own jurisdiction, subject to an Article III court's ultimate review under the procedures set forth in the FRCP, FRBP, and the Bankruptcy Code. Certainly, the cases upon which SNMC purports to rely do not support this argument.

For example, in *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25 (2014), (cited by SNMC to support the proposition that the bankruptcy court cannot ultimately "resolve the underlying question of subject matter jurisdiction" (*see* SNMC Mem., at ECF 20), the Supreme Court considered the scope of a bankruptcy court's authority to proceed on certain claims for which it lacked authority to enter a final judgment, *see Arkison*, 573 U.S. at 28. The Supreme Court first discussed the history of the Bankruptcy Amendments and the 1984 Act, which "bifurcated" the bankruptcy process by "dividing all matters that may be referred to the bankruptcy court into two categories: 'core' and 'non-core' proceedings." *Id.* at 33-34. The particular claims in *Arkison* were claims designated as "core" by the 1984 Act, but were claims as to which the Supreme Court had recently decided, in *Stern*, that the bankruptcy court did not have jurisdictional authority under the Constitution to enter a final judgment. *See id.* at 35. In *Arkison*, the Court found, in that circumstance, that such claims should effectively be treated as non-core claims, for which the Article III district court would review *de novo* the bankruptcy

court's proposed findings of fact and conclusions of law. *See id.* at 38. Nothing in *Arkison* suggests that the 1984 Act precludes the bankruptcy court from deciding issues of its own jurisdiction or the parties' standing – matters that would later be subject to review by an Article III court in the form of findings of fact and conclusions of law. In fact, in *Arkison*, the Supreme Court affirmed the bankruptcy court's authority to consider an issue for which it lacked authority to enter final judgment and allowed the bankruptcy court to propose findings of fact and conclusions of law in such a circumstance. *See id.* Thus, contrary to SNMC's suggestion, *Arkison* supports the constitutionality of the procedures that the Bankruptcy Court employed in the GSE Adversary Proceedings and apparently looks to employ again in the RMBS Adversary Proceedings, with respect to making an interlocutory ruling on the issue of its own jurisdiction.

Similarly, although SNMC cites to *Secs. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, 490 B.R. 46 (S.D.N.Y. 2013) ("*Securities Investor*"), in support of its contention that "an Article I bankruptcy court cannot resolve subject matter jurisdiction, including standing" (*see* SNMC Mem., at ECF 20), that decision, in fact, serves to confirm the Bankruptcy Court's authority to preside over all aspects of the RMBS Adversary Proceedings – including LBHI's indemnification claim against SNMC – prior to final judgment. In *Securities Investor*, the district court found that, even though the bankruptcy court could not enter judgment on the particular claims at issue, "considerations of efficiency and uniformity counsel[ed] in favor of permitting the [b]ankruptcy [c]ourt to issue proposed findings of fact and conclusions of law." *Id.* at 58.

Finally, SNMC's citations on reply fare no better to support its contention that the District Court should decide SNMC's jurisdiction motion at the "outset." (SNMC Reply Mem., at ECF 5.) In particular, this Court notes that, despite SNMC's citation to the Third Circuit's

decision in *In re EMMC Corp*., 909 F.3d 589 (3d Cir. 2018) as support for the proposition that it is proper to seek a resolution of subject-matter jurisdiction, from the outset, from the district court (*see* SNMC Reply Mem., at ECF 9), the procedural posture of that case was different than what has been presented here, and the circuit court's holding is inapposite. In that case, the bankruptcy court had held that it *lacked* jurisdiction to hear the claims asserted in an adversary proceeding because those claims did not satisfy the "close nexus" test. *See EMMC*, 990 F.3d at 591. Based on that ruling, the trustee filed a motion to withdraw the reference in the district court so that it could consider a motion to transfer the adversary proceeding. *See id.* The district court reasoned that, because of the bankruptcy court's finding that it lacked jurisdiction over the adversary proceeding, the action had not been properly referred, and, therefore, the reference could not be properly "withdrawn." *See id.* at 592. The trustee's appeal to the Third Circuit centered on whether the bankruptcy court had the power to grant the motion to transfer (the Third Circuit held that it did not), and nothing in the circuit court's opinion can be read to suggest that a district court must decide at the outset whether subject-matter jurisdiction exists in an adversary proceeding. *See id.* To the contrary, both the district court and the Third Circuit accepted as proper the bankruptcy court's determination of its own jurisdiction. *See id.* at 595.

EMMC also does not support SNMC's secondary argument that, based on SNMC's own view that the Bankruptcy Court lacks subject-matter jurisdiction here (a finding that, unlike in *EMMC*, the *Bankruptcy Court* has never actually made), the order of reference in this instance was not "effective" or *void ab initio*, rendering it improper for SNMC to seek a withdrawal of the reference. (SNMC Reply Mem., at ECF 9.) This type of argument was raised in *Fairfield Sentry*, where the district court refrained from addressing it, reasoning that "whatever the merits of [that] argument [were] (an issue on which the Court [took] no view)," the "bankruptcy court

[was] fully capable of determining its own jurisdiction, as it must to proceed." *Fairfield Sentry*, 2010 WL 4910119, at *4 (citing, *inter alia*, 28 U.S.C. §§ 151, 157). So too, the Court should find here that the "bankruptcy court is in the best practical position to decide any jurisdictional questions in the first instance." *Id.*

In short, based on the statutory scheme and relevant precedent, I recommend that the Court reject SNMC's argument that the District Court must "resolve" subject-matter jurisdiction and standing at the "outset" of the Adversary Proceeding while it is pending in the Bankruptcy Court.

B. SNMC Has Failed To Follow Proper and Available Procedures To Challenge the Bankruptcy Court's Subject-Matter Jurisdiction and LBHI's Standing.

SNMC also argues that an immediate determination of subject-matter jurisdiction by an Article III court is "necessary to avoid the continued expenditure of time and resources on merit-based issues while the Bankruptcy Court 'fully hears these cases.'" (SNMC Mem., at ECF 22 (quoting *Lehman II*, 2019 WL 2023723, at *13).) As LBHI rightly points out, however, this type of critique would apply to any dispositive motion in an adversary proceeding, whether under FRCP 12(b)(6), FRCP 12(c), or FRCP 56. (LBHI Mem., at ECF 27.) To reiterate, SNMC, as the defendant in an adversary proceeding, is not without remedies: it can seek an interlocutory appeal to the District Court, and, ultimately, the District Court will review the Bankruptcy Court's findings *de novo* after the Bankruptcy Court fully hears the proceeding and submits proposed findings of fact and conclusions of law. *See* 28 U.S.C. § 158; FRBP 9033(d). SNMC does not deny that these remedies exist; rather, it appears to be dissatisfied with the results that those remedies have produced for it in the past.

Further, as a procedural matter, for the District Court to consider SNMC's motion, it would first have to withdraw the reference to the Bankruptcy Court, as to the Adversary Proceeding, under 28 U.S.C. § 157(d). As described above (*see* Background, *supra*, at Section 3(b)), while groups of RMBS Defendants in the RMBS Adversary Proceedings have moved before the District Court to withdraw the bankruptcy reference, SNMC has not. By deciding not to make such a motion – presumably because similar motions advanced by others have failed – SNMC has deliberately skipped over the one step that, at least in theory, could have led to this Court's ability to consider the merits of its jurisdictional motion. As long as the reference remains in place, the District Court cannot decide the merits of SNMC's motion. *See In re Vescio*, No. 96-10153, 2000 WL 35723731 (Bankr. D. Vt. May 8, 2000) ("*Vescio*").

As discussed in *Vescio*:

> Since the enactment of the present system of shared jurisdiction over bankruptcy matters, a number of courts have struggled with the issue of when a bankruptcy court has jurisdiction to the exclusion of a district court. The Second Circuit . . . has specifically considered the question of the extent of jurisdiction a district court may exercise over a bankruptcy case if it has not withdrawn the reference as to the case, and held that unless the district court is sitting in its capacity as an appellate court, acting upon an appeal from a bankruptcy court decision, or has withdrawn the reference, the bankruptcy court has exclusive jurisdiction over the case and all proceedings arising in, under or related to the case. *In re Burger Boys, Inc.*, 94 F.3d 755, 762 (2d Cir. 1996) ("before deciding the merits of the third extension motion [in the main case], the district court was required to withdraw its reference from the bankruptcy court.")

Id. at *2 (brackets in original). The court, in *Vescio*, held that a creditor's motion to dismiss a Chapter 11 bankruptcy case, which had been filed in the district court rather than in the bankruptcy court, was filed in the wrong court because the order of reference had not been

withdrawn with respect to the bankruptcy case.[17] *See id.* at *1-2 (noting that "[a]s of the date the instant case was commenced the Order of Reference was in effect").

The result in *Vescio* is in accord with that reached in other cases, where district courts have declined to decide the merits of motions relating to bankruptcy proceedings where the orders of reference has not been withdrawn. *See, e.g.*, *Nisselson v. Salim*, No. 12cv92 PGG, 2013 WL 1245548, at *3 (S.D.N.Y. Mar. 25, 2013) (denying jury trial motion as improperly before the district court where it should have been filed in the bankruptcy court); *In re Hunt*, 215 B.R. 505, 508-09 n.4 (Bankr. W.D. Tex. 1997) (jury trial demand made to the district court in conjunction with motion for withdrawal of reference was "not . . . brought to the attention of the court which has the duty to rule on . . . jury demands, [that is,] the [bankruptcy] court to whom the case remains assigned . . . until the district court *rules* on a motion to withdraw the reference, not simply until such time as the district court is *presented* with such a motion"); *accord In re Paramount Hotel Corp.*, 319 B.R. at 357.

SNMC's failure to move to withdraw the reference before seeking substantive rulings from the District Court arguably lends credence to LBHI's contention that SNMC has filed the instant motion merely as a means to circumvent the Bankruptcy Court's jurisdiction. Moreover, as Judge Chapman discussed at the hearing, taking SNMC's position to its logical extreme could lead to an untenable result, as litigants could "go to the district court in the first instance and ask

[17] In *Vescio*, the district court found that the bankruptcy court had jurisdiction over the Chapter 11 case as of the date of the filing, unless and until the district court specifically withdrew the reference as to the case, or some part of it. 2000 WL 35723731, at *1. Upon a motion of the debtors, the bankruptcy reference had been withdrawn as to only one adversary proceeding that arose in the case, and not *in toto*. This proved critical to the outcome in *Vescio*, as the district court explained that, had the creditor moved to dismiss that adversary proceeding, "it would have been appropriate to file the motion in [d]istrict [c]ourt. But, since the motion clearly [sought] to dismiss the chapter 11 case, it should have been filed in the [b]ankruptcy [c]ourt, which ha[d] exclusive jurisdiction over the case" based on the reference. *Id.* at *2.

[that] court for a determination as to 'related to' jurisdiction . . . in every Chapter 11 case in which there's a similar asserted basis for jurisdiction." (Hrg. Tr., at 11-12.) Neither the Code, the federal rules, nor the case law would support that result.

For these reasons, I find that SNMC's motion to dismiss was filed in the wrong court and should be denied as procedurally improper.

III. THE RECORD WOULD NOT SUPPORT A *SUA SPONTE* RULING BY THE COURT, UNDER 28 U.S.C. § 127(d), THAT THERE IS "CAUSE" TO WITHDRAW THE ORDER OF REFERENCE.

As discussed above, absent the withdrawal of the bankruptcy reference in this case, the District Court cannot proceed to decide the merits of SNMC's motion. *See Vescio*, 2000 WL 35723731, *2. Although SNMC has not sought the withdrawal of the reference, the District Court may nevertheless act to withdraw it *sua sponte*, provided there is "cause" to do so. 28 U.S.C. § 157(d). Thus, even absent a motion by SNMC for withdrawal, this Court will proceed to consider the question of whether the underlying record is sufficient to establish the "cause" necessary to justify a withdrawal of the bankruptcy reference. For the reasons discussed below, this Court concludes that the applicable "cause" standard has not been met.

A. Applicable Legal Standard

Congress provided in Section 157(a) of Title 28 that each district court could provide that any or all cases and any or all proceedings arising in, under, or related to the case be "referred" to the bankruptcy judges in the district. Section 157(d) then provides for "permissive withdrawal,"[18] whereby a district court may withdraw the reference of any case or proceeding, in

[18] Section 157(d) also provides for mandatory withdrawal "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." 28 U.S.C. § 157(d); *see In re Global Aviation Holdings Inc.*, 496 B.R. 284, 286 (E.D.N.Y. 2013). Mandatory withdrawal is neither at issue nor relevant in this matter.

whole or in part, that has been previously referred. 28 U.S.C. § 157(d). The district court may, on a discretionary basis, withdraw the reference upon timely motion of a party, or, it may withdraw the reference *sua sponte* "on its own motion," "for cause shown." *Id*; *see Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1945 (explaining that bankruptcy courts hear matters solely on a district court's reference, which the district court may withdraw *sua sponte* or at a party's request); *see, e.g.*, *In re Burger Boys, Inc.*, 94 F.3d at 762 (on appeal from bankruptcy court order denying tenant's request for an extension of time to assume or reject a lease, district court withdrew the reference *sua sponte* to make factual findings regarding cause for extension and that *sua sponte* action was affirmed on appeal).

Although Section 157 does not define "cause," the Second Circuit "has directed district courts to consider several factors in evaluating a motion to withdraw a bankruptcy reference." *Standard Pacific*, 2019 WL 7593628, at *1 (citing *In re Orion Pictures Corp.*, 4 F.3d at 1101). First, as a threshold matter, a court must determine "whether the claim or proceeding is core or non-core." *In re Orion Pictures Corp.*, 4 F.3d at 1101. In light of the Supreme Court's 2011 decision in *Stern*, 564 U.S. at 475-476, "which held that bankruptcy courts lack constitutional authority to enter final judgment on certain claims, courts in this District have concluded that 'the relevant inquiry under [this] first prong of the *Orion* test is . . . whether the bankruptcy court has the authority to finally adjudicate the matter.'" *Lehman Bros. Holdings v. Hometrust Mortg. Co.*, 15cv304 (PAE), 2015 WL 891663, at *2 (S.D.N.Y. Feb. 25, 2015) (quoting *In re Arbco Capital Mgmt., LLP*, 479 B.R. 254, 262 (S.D.N.Y. 2012) (alteration in original)). Second, a court must ascertain "whether [the claims are] legal or equitable." *In re Orion Pictures Corp.*, 4 F.3d at 1101. "A determination as to [this factor] . . . is effectively a question of whether the defendant has a right to a jury trial on th[e] [asserted] claims." *In re Iridium Operating LLC*, 285

B.R. 822, 835 (S.D.N.Y. 2002). Lastly, a court should weigh several other considerations, including "efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law." *In re Orion Pictures Corp.*, 4 F.3d at 1101.

B. Assessment of the Factors

1. Core/Non-Core Claims

As noted above, the parties appear to agree that the contractual indemnification claim at issue is non-core and the Bankruptcy Court lacks authority to enter final judgment on the matter. (*See* SNMC Mem., at ECF 23; LBHI Mem., at ECF 27.) For the purposes of this motion, this Court has assumed that the Adversary Proceeding is a non-core proceeding within the meaning of 28 U.S.C. § 157(c)(1). (*See supra*, at n.14.) "This factor, although important, does not end the Court's inquiry." *Hometrust*, 2015 WL 891663, at *3. As the Supreme Court explained in *Arkison*, when a bankruptcy court lacks authority to enter final judgment, the "proper course is to issue proposed findings of fact and conclusions of law" that the "district court will then review . . . *de novo* and enter judgment." 134 S. Ct. at 2170; *see Lehman Bros. Holdings Inc. v. Intel Corp.*, 18 F. Supp. 3d 553, 557 (S.D.N.Y. May 10, 2014) ("While the core/non-core determination is an important factor, courts have repeatedly emphasized that this factor is not dispositive of a motion to withdraw a reference."). Thus, if the other factors weigh against withdrawing the order of reference, withdrawal will not be warranted merely because the proceeding is non-core.

2. The Right to a Jury Trial

This Court next considers the fact that a jury trial has been requested in the Adversary Proceeding. (SNMC Mem., at ECF 22 n.15.) Although a party's right to a jury, when coupled with "the court's finding that the claim is not subject to final adjudication in [b]ankruptcy

[c]ourt," might provide "sufficient cause to withdraw the reference," *Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, 462 B.R. 457, 472 (S.D.N.Y. 2011) (alterations omitted; emphasis added; internal quotation marks omitted), "such a right does not compel withdrawing the reference until the case is ready to proceed to trial," *In re Formica Corp.*, 305 B.R. 147, 150 (S.D.N.Y. 2004) (emphasis added); *see In re Kenai Corp.*, 136 B.R. 59, 61 (S.D.N.Y. 1992) ("A rule that would require a district court to withdraw a reference simply because a party is entitled to a jury trial, regardless of how far along toward trial a case may be, runs counter to the policy favoring judicial economy that underlies the statutory scheme governing the relationship between the district courts and bankruptcy courts.").

Here, it is possible that LBHI's indemnification claim against SNMC "may be resolved before the matter is ripe for a trial before a jury." *In re Arbco Capital Mgmt.*, 2012 WL 2852619, at *10. Thus, the Court must proceed to examine whether the other factors identified in *Orion* warrant the District Court's *sua sponte* withdrawal of the reference.

3. Judicial Economy/Efficiency

This Court finds that considerations of judicial economy and efficiency weigh heavily against withdrawal of the bankruptcy reference in this instance. Here, the Adversary Proceeding must be "properly viewed in its broader context." *Hometrust*, 2015 WL 891663, at *3. For more than four years, the Bankruptcy Court has overseen both the GSE Adversary Proceedings and the RMBS Adversary Proceedings, in addition to overseeing the underlying bankruptcy case "which courts in this District have described as the largest and, arguably, the most complex in the United States history." *Id.* Judge Chapman, in particular, has been deeply involved in both sets of these adversary proceedings, and an omnibus motion to dismiss remains pending before her.

"As such, the bankruptcy court is already fully immersed in the issues central to this litigation," having previously ruled on subject-matter jurisdiction in the GSE Adversary Proceedings, having decided motions related to statute of limitations and venue, and having presided over issues involving discovery, which is ongoing in RMBS Adversary Proceedings. *Lehman Bros. Holdings Inc.*, 469 B.R. at 420; *see also In re Lehman Bros. Holdings Inc.*, 530 B.R. at 601; *In re Lehman Bros. Holdings Inc.*, 593 B.R. at 166. "These efforts and involvement in the 'oversight of the pretrial proceeding' have likely provided the bankruptcy court with 'insight into the precise nature'" of the indemnification claim in this litigation "and the theories upon which [the claim is] based." *Lehman Bros. Holdings, Inc.*, 480 B.R. at 195; *see In re Lyondell Chem. Co.*, 467 B.R. 712, 726 (S.D.N.Y. 2012) (noting that, although the bankruptcy court could not enter final judgment on most of the claims at issue, "withdrawal at this stage [where the bankruptcy court had done significant work preparing the matters for trial and the district court wished to benefit from its expertise via a non-final determination of the merits] would result in significant inefficiencies and is inappropriate").

Particularly given Judge Chapman's significant involvement thus far in the litigation, this Court finds that judicial economy weighs heavily against withdrawing the reference at this time.

4. Uniformity of Bankruptcy Administration

This Court similarly finds that the policy of promoting the uniformity of bankruptcy administration also weighs against withdrawal of the bankruptcy reference.

The Bankruptcy Court's oversight of not only the Adversary Proceeding between LBHI and SNMC, but also the administration of the entire *Lehman* bankruptcy (including the GSE Adversary Proceedings and the pending RMBS Adversary Proceedings) has been "extensive." *Lehman Bros. Holdings, Inc.*, 480 B.R. at 196; *see, e.g., California v. Enron Corp. (In re Enron*

Corp.), No. 05cv4079 (GDB), 2005 WL 1185804, at *3 (S.D.N.Y. May 18, 2005) (holding that the "uniform administration of the bankruptcy court proceedings" weighed in favor of not withdrawing the reference where the bankruptcy court had presided over the bankruptcy cases for three years and was "more thoroughly familiar" with the debtors' claims).

This Court therefore finds that having the Adversary Proceeding continue before the Bankruptcy Court will help promote the uniform application of the bankruptcy laws and rules.

5. Preventing Forum Shopping and Delay

Finally, as to the Court's interests in preventing forum shopping and delay, this Court notes that LBHI has asserted that SNMC's motion "at bottom serves an illegitimate goal: forum shopping." (LBHI Mem., at ECF 10.) Considering this litigation as a whole, including the litigation strategies that SNMC pursued following the issuance of both Judge Chapman's and Judge Caproni's orders, this Court is certainly "suspicious of [SNMC's] forum shopping motivations here." *Fairfield*, 2010 WL 4910119, at *4. SNMC has not filed a motion to dismiss along with the other RMBS Defendants in the Bankruptcy Court, even though the omnibus motion there raises the same defenses. Rather, SNMC has brought the instant motion "to another court" in what appears to be the "hope of finding an audience more receptive to [its] arguments." *In re Recoton Corp.*, No. 04cv2466 (DLC), 2004 WL 1497570, at *5 (S.D.N.Y. July 1, 2004). Accordingly, the Court finds that this last factor weighs against withdrawal of the reference.

In sum, this Court finds that the balance of the factors weighs against a *sua sponte* withdrawal of the bankruptcy reference, as "cause" for withdrawal has not been shown. Given that, without the withdrawal of the reference, the District Court cannot decide the merits of SNMC's motion, I recommend that SNMC's motion to dismiss be denied.

CONCLUSION

For all of the foregoing reasons, I respectfully recommend that SNMC's motion to dismiss (Dkt. 1) be denied.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6 (allowing three (3) additional days for service by mail). Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Lewis A. Kaplan, United States Courthouse, 500 Pearl Street, Room 2240, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Kaplan. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBEJCTIONS AND WILL PRECULDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).)

As this Court has denied SNMC's request for oral argument on its motion, the Clerk of Court is directed to close Dkt. 12 on the Docket of this action.

Dated: New York, New York
July 10, 2020

SO ORDERED

DEBRA FREEMAN
United States Magistrate Judge

Copies to:

All parties' counsel (via ECF)