

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

|| CASE NO. 06-67436

Donna June Resendez,

CHAPTER 13

Debtor.

JUDGE MASSEY
||

ORDER

In her only remaining objection to confirmation of Debtor's plan, the Chapter 13 Trustee, Nancy Whaley, asserts that pursuant to 28 U.S.C. § 1408, this case should either be dismissed or be transferred to the Newnan Division of the Northern District of Georgia, because Debtor resides in the Newnan Division. The Trustee cites *In re Swinney*, 300 B.R. 388 (Bankr. M.D.Ga. 2003) as support for the position that the Court has no discretion to permit a case filed in the wrong venue to remain there over a properly filed objection.

At the confirmation hearing held on August 30, 2006, Debtor's counsel explained that the filing of this case in the Atlanta Division was inadvertent and was due to the fact that Debtor's residence in Spaulding County, which is in the Newnan Division, shares a zip code with a portion of Henry County, which is in the Atlanta Division. Bankruptcy petition software often uses zip codes as a means for automatically designating a division in a multi-division district. The Trustee's counsel suggested that the case should not be dismissed but should be transferred to the Newnan Division because the plan meets all requirements for confirmation and would be confirmed but for this objection. Debtor opposes the transfer and dismissal. There is no

suggestion that the case was filed in the wrong division for an improper purpose. A transfer would involve additional expense for all concerned, including the Court, except the Trustee here. If the case is transferred, a new trustee would be appointed and that trustee would then duplicate all of the expense that Ms. Whaley's office has incurred. No creditor has supported the Trustee's objection. The Court has reviewed the Schedules and believes that no creditor will be disadvantaged if the case stays here.

28 U.S.C. § 1408, entitled "Venue of cases under title 11," provides:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district-

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

Venue for purposes of section 1408 refers to the judicial *district* in which a case may be filed and not to the appropriate *division* within a district that is otherwise a proper venue. Likewise, the *Sweeney* case is inapposite because there venue was improper in the Middle District of Georgia because the debtor resided in the Middle District of Alabama. That court held that it had "no discretion to retain cases filed in the wrong venue." *In re Swinney* 300 B.R. at 392-93.

This Court's Local Rules govern the question: in which Division within this District should a case be filed? This question assumes that venue in this District is proper. B.L.R. 1071-1(b) provides that "any bankruptcy case filed in this district pursuant to 28 U.S.C. §§1408, 1409

or 1410 must be filed in the division that would also satisfy the requirements of §§ 1408, 1409 or 1410.” Notwithstanding the fact that courts may not have the power to decline to transfer or dismiss a case filed in the wrong district, our Local Rules are not so unforgiving. B.L.R. 1071-1(c) provides that “the Bankruptcy Court may transfer any bankruptcy case to another division within the district upon motion of a party in interest or sua sponte.” This rule does not limit the transferree division to one in which the case initially should have been filed pursuant to subsection (b). Hence, if the Court under BLR 1071-1 can transfer a case to a division not meeting the requirements of subsection (b), it has the authority to retain a case filed in the wrong division. Because this case should have been filed in the Newnan Division, however, I think that the question of whether it should go there is Judge Drake’s call. I am authorized to state that Judge Drake has no objection to this case remaining in the Atlanta Division. Accordingly, it is

ORDERED that the Trustee’s objection to confirmation and motion to dismiss or transfer this case are DENIED. The Clerk is directed to enter an order confirming Debtor’s plan.

Dated: August 31, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE