



IT IS ORDERED as set forth below:

Date: March 12, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A09-61430-PWB
	:	
THREE RIVERS COMPANIES, LLC,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
Debtor.	:	BANKRUPTCY CODE

**ORDER GRANTING MOTIONS TO TRANSFER VENUE TO UNITED STATES
BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Before the Court are two motions to transfer venue of the bankruptcy case of Three Rivers Companies, LLC to the United States Bankruptcy Court for the Southern District of West Virginia.¹ The motions, brought by numerous creditors of the Debtor and parties against whom the Debtor asserts claims in litigation currently pending in West Virginia, contend that the interests of justice and convenience of the parties warrant transfer to the Southern District of West Virginia.

¹This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1) and 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

The Debtor, as well as the Debtor's principal member and co-defendants in the pending litigation, oppose the transfer. For the reasons stated herein, the Court grants the motions to transfer venue to the Southern District of West Virginia.

No party has alleged that venue in the Northern District of Georgia is improper under 28 U.S.C. § 1408. Even if venue is proper, however, a court "may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties" pursuant to 28 U.S.C. § 1412. The party seeking transfer of venue bears the burden of proving that a transfer is warranted. *In re Enron Corp.*, 274 B.R. 327, 342 (Bankr. S.D.N.Y. 2002).² Section 1412 is phrased in the disjunctive; thus, a court may transfer a case *either* "in the interest of justice" *or* for the convenience of the parties." The decision is fact-sensitive and in the discretion of the court. Although each basis shares some common considerations, the Court considers each separately.

Interest of Justice

In considering whether to transfer a case in the "interest of justice," a court must consider whether transfer of venue will promote efficient administration of the estate, judicial economy, timeliness, and fairness. *In re Enron*, 274 B.R. 327, 349 (Bankr. S.D.N.Y. 2002). Considerations regarding the interest of justice "are intertwined with the economic and efficient administration of the estate," a consideration also central to the "convenience of the parties" prong. *Id.*

²At a non-evidentiary hearing/status conference on the motions on February 24, 2009, the Court inquired as to whether there were disputed facts. Because the parties did not identify any disputed material facts, no evidentiary hearing is required. Thus, the Court's ruling is based on the undisputed facts as articulated by the parties in their briefs and at the February 24 hearing.

The Debtor was formed as a West Virginia limited liability company in 2005 for the purpose of acquiring real property and promoting a residential development in Fayette County, West Virginia. For reasons that are disputed (and not relevant to the venue issue), problems ensued and development stopped.

In October 2007, over forty purchasers of real property parcels sued the Debtor and others in the Circuit Court of Kanawha County, West Virginia. The Debtor filed cross claims and third party complaints against an engineering firm and various officials and agencies of Fayette County, West Virginia. Nine months after commencement of the action, the Debtor removed it to the United States District Court for the Southern District of West Virginia where the matter currently is pending.³

In addition to the litigation over the development of the West Virginia real estate and sales to purchasers, the Debtor has two other substantial ties to West Virginia. The Debtor's schedules reflect 27 unsold lots in West Virginia with an estimated value of \$1,890,000. In addition, the Debtor is also a party to litigation with KV Oil & Gas, Inc. in the Circuit Court of Fayette County, West Virginia.

Central to the administration and progress of this bankruptcy case are two things: the business issues relating to the real estate and the issues in the pending litigation. In this regard, the ultimate outcome of the case will require resolution of issues with county authorities that have halted development and resolution of the issues in the pending litigation. Both issues have their roots in West Virginia and their solution must necessarily be found there.

From a business standpoint, having a bankruptcy court in Georgia administering a case

³*Harrison v. Hosch*, Case No. 2:08-cv-00943.

involving a troubled real estate development in West Virginia makes little sense. Instead, administration should occur before a court with familiarity with the local law, practice, and customs that will govern resolution of the business issues and proximity to the real estate and the people who will be involved with it.

In a sense, few of the people with direct economic interests in the outcome of this case are in West Virginia. The Debtor's owner and management is in Georgia, and most creditors are the unhappy lot purchasers, the vast majority of whom are in states other than West Virginia. But the people who will be dealing with the property – local government officials, contractors, and the Debtor's local supervisors – are of necessity in West Virginia where the land is.

Resolution of the litigation pending in the Southern District of West Virginia, which necessarily involves West Virginia state law claims, is inextricably intertwined with the progression of this bankruptcy case. To this end, the efficient administration of the estate is promoted by having both the bankruptcy case and non-bankruptcy litigation proceeding in the same area. Further, it is in the interest of justice that the Court transfer venue to the district where litigation over local property involving state law issues has now been active and pending for seventeen months.

The Debtor and parties joining the Debtor in opposition the venue transfer contend that a transfer is unfair and not in the interest of justice. In particular, the Debtor contends that its bankruptcy forum choice should be given deference. While deference to a debtor's decision is appropriate under many circumstances, the Court is mindful that a purpose of bankruptcy administration is to achieve as equitable and economic resolution as possible for all parties in interest. To that end, the Court must consider whether another venue is more suitable given the

competing interests of all parties in the case.

The Debtor also argues that venue transfer is “unfair” in the sense that the West Virginia plaintiffs have engaged in a “trial by ambush” and have made “spurious claims.” (Doc. No. 47, Debtor’s Brief at 3, 9). These assertions have nothing to do with the administration of the bankruptcy estate by a bankruptcy court. The assertion of E. John Hosch, the original and organizing member of the Debtor, and Centre Equities, Inc., a co-defendant in the West Virginia litigation, that “West Virginia courts, even at the federal level, are notoriously ‘unfriendly’ to outsiders” (Doc. No. 48, Amicus Curiae Brief at 5) is equally unpersuasive and irrelevant.⁴ Thus, the Court concludes that transfer of venue to the Southern District of West Virginia will promote efficient administration of the estate, judicial economy, timeliness, and fairness in this case.

Convenience of the parties

The Court also concludes that the convenience of the parties in this bankruptcy case also warrants transfer of venue. Courts generally consider six factors in determining whether a case should be transferred for the convenience of the parties: (1) the proximity of creditors of every kind to the court; (2) the proximity of the debtor to the court; (3) the proximity of the witnesses necessary to administration of the estate; (4) the location of the assets; (5) the economic administration of the estate; and (6) the necessity for ancillary administration if bankruptcy liquidation results. *In re Eagle Pointe Limited Dividend Housing Assoc. LP*, 350 B.R. 84 (Bankr. N.D. Ind. 2006); *In re Enron Corp.*, 274 B.R. 327, 343 (Bankr. S.D.N.Y. 2002).

⁴The Court also received a letter from Sean Scanlon, another co-defendant in the West Virginia litigation, opposing the motions to transfer venue. The Court has directed the Clerk of the Bankruptcy Court to docket this letter.

The Debtors' schedules reflect that, of 46 scheduled creditors,⁵ only two are located in Georgia: Rockdale County, Georgia, with a priority tax claim of \$192.85; and Keith and Jerri Flinn of Savannah, Georgia, with an unsecured claim based upon the purchase of a West Virginia lot. None of the remaining 44 creditors reside in Georgia. The Debtor's secured creditor is a bank in North Carolina; the Debtor's manager in West Virginia has a priority claim for wages; and the scheduled unsecured creditors, all of whom are purchasers of West Virginia lots that are the subject of litigation, are located in ten states (including one in West Virginia) and Canada.

As discussed earlier, this bankruptcy case turns, in substantial part, on the resolution of claims in the West Virginia litigation. The fact that a substantial number of the Debtor's creditors are also plaintiffs in the pending litigation in West Virginia demonstrates that the venue of Southern District of West Virginia is more convenient for the parties.

Further, the location of other parties to the litigation, such as county agencies and licensing boards against whom the Debtor has asserted claims, is relevant. Although not listed as creditors in the Debtor's case, they are, nevertheless, potential witnesses or parties in interest in the bankruptcy case. Problems with (and claims against) county agencies will mandate local presence, attention, and familiarity with local law and practice.

The Debtor contends that its ties to Georgia warrant retention of venue in the Northern District of Georgia. Although venue is proper in the Northern District of Georgia, the question is whether another forum is more appropriate in light of all of the parties and issues involved.

⁵The Debtor lists one secured creditor, two priority unsecured creditors, and 43 non-priority unsecured creditors. Although Schedule F lists 55 potential unsecured claims, it appears some claimants listed hold multiple claims and, therefore, the actual number of creditors involved is somewhat smaller than the number listed.

The Court will assume as true that the Debtor's place of business and office is in Cobb County, Georgia; that Debtor's business records are in Cobb County, Georgia; and that most of the Debtor's officers and employees live in Cobb County, Georgia. (Debtor's Brief at 5). Ultimately, however, the Debtor operated its business, marketed its offerings, and sold West Virginia land in West Virginia. Even assuming that Debtor never had a West Virginia office as it contends (Debtor's Brief at 5), it was formed as a West Virginia limited liability company in 2005 for the purpose of acquiring real property and promoting a residential development in Fayette County, West Virginia (Debtor's Brief at 2). The Debtor is not registered to do business in Georgia, and its maintenance of an office in Georgia is insufficient to outweigh its substantial contacts and presence in West Virginia.

Consideration of the final three factors – location of assets, economic administration of the estate, and the necessity of ancillary administration if liquidation results – also favors transfer to the Southern District of West Virginia. As discussed earlier, central to the administration of this estate is the real estate and pending litigation, all of which (with the exception of a parcel of land in Rockdale County, Georgia) are located in West Virginia. In addition, the Debtor holds other assets in West Virginia: over \$400,000 in a bank account in West Virginia; over \$13,000 in machinery, equipment and supplies at the job sites in West Virginia; and its unliquidated cross-claims against other parties in the West Virginia litigation. In the event the bankruptcy estate is liquidated, administration in the Northern District of Georgia will be costly and burdensome, especially if a trustee is appointed to oversee the orderly liquidation of the estate, since the assets to be liquidated are located in West Virginia.

The Court concludes that the convenience of the parties, in light of the existing,

extensive, and active litigation, the location of the assets, and considerations of the economic administration of the estate, warrants transfer of this bankruptcy case to the Southern District of West Virginia.

Conclusion

In summary, this case is substantially, if not entirely, focused on West Virginia. It involves a West Virginia entity with troubled West Virginia real estate. All the parties involved in this case transacted the business that created their relationships with reference to West Virginia real estate. The solution to the problems must be found in West Virginia. The Northern District of Georgia is not the best place to supervise that process, and the Southern District of West Virginia is. Accordingly, the Court concludes that transfer of this bankruptcy case to the United States Bankruptcy Court for the Southern District of West Virginia is appropriate in that it is in the interest of justice and for the convenience of the parties. It is, therefore,

ORDERED that the motions to transfer venue [Doc. Nos. 6, 12] are granted. The Clerk of the Bankruptcy Court is directed to transfer this case and all related proceedings to the United States Bankruptcy Court for the Southern District of West Virginia.

The Clerk is directed to mail copies of this Order to the persons on the attached Distribution List. Chambers staff is directed to mail a courtesy copy of this Order to the United States District Judge before whom the lawsuit is pending in the United States District Court in the Southern District of West Virginia.

End of Order

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