

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
Eastern Division

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In Re:

In Proceedings Under Chapter 7

MELODY JOHNSON and  
STEVEN JOHNSON

Case No.: 11-10341

Debtors.

JUDGE RANDOLPH BAXTER

**MEMORANDUM OF OPINION AND ORDER**

This matter came before the Court on this Court's Order to Appear and Show Cause upon the Debtors, Melody and Steven Johnson, why this case should not be transferred to the Bankruptcy Court for the District of Colorado, or dismissed. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) with jurisdiction further conferred by 28 U.S.C. § 1334 and General Order No. 84 of this District. After considering the responses of the Debtors and Creditor Advanced Coatings International, Inc., this Court issues the following findings of fact and conclusions of law:

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The Debtor filed their Chapter 7 petition in this District on January 17, 2011, during which time they were residing in Cuyahoga County. Creditor Advanced Coatings International, Inc. ("Advanced Coatings") filed an adversary proceeding objecting to the Debtors' discharge on April 13, 2011. The Chapter 7 Trustee filed a Report of No Distribution on April 14, 2011, indicating that there were no assets available for distribution to creditors. The adversary proceeding is still pending, although the Debtors received a discharge order on May 13, 2011. This Court's Show Cause Order issued on June 3, 2011, and the Debtors filed a change of

address listing their Colorado residence on June 6, 2011. Debtors' counsel stated at the hearing that Debtors intended to relocate to Colorado at the time of their petition filing, and such assertion is unrefuted.

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Advanced Coatings filed a Memorandum in Support of Retaining Venue in this District. It avers that Debtors' case has been fully administered here, with the exception of the adversary proceeding. Advanced Coatings claims it would be prejudiced if the matter is transferred to the District of Colorado because it would be required to retain local counsel in Colorado and file a second adversary proceeding, after expending considerable attorneys' fees up to this point.

The Debtors filed a Motion in Support of Transferring Venue to the District of Colorado. They aver that they are now residing in Colorado, and would incur considerable expense if they are forced to litigate the adversary proceeding in this District.

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The dispositive issue for the Court is whether venue is more appropriate in the District of Colorado.

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Venue of a proceeding under title 11 of the United States Code is governed by 28 U.S.C. § 1408, which provides, *inter alia*, that venue is proper in a district “in which the domicile, residence . . . 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. . . .” 28 U.S.C. § 1408(2).

Pursuant to 28 U.S.C. § 1412, “[a] district court may transfer a case or proceeding under title 11 [11 USCS §§ 101 et seq.] to a district court for another district, in the interest of justice or

for the convenience of the parties.” 28 U.S.C. § 1412. Factors a court should consider in deciding a motion to transfer venue include:

- 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 the administration of the estate;
- 4) the location of the assets;
- 5) the economic administration of the estate;
- 6) the necessity for ancillary administration if bankruptcy should result.

*In re Weatherly Frozen Food Group, Inc.*, 133 B.R. 862, 865 (Bankr. N.D. Ohio 1991) (citing *Matter of Commonwealth Oil Refining Co., Inc. (“CORCO”)*, 596 F.2d 1239, 1247 (5th Cir. 1979), cert. denied 444 U.S. 1045, 62 L. Ed. 2d 731, 100 S. Ct. 732 (1980)). It is clear in the present case that Debtors have no assets located in this District based on the Trustee’s Report of No Distribution. Debtors’ case has been fully administered, so that retaining venue in this District will not preserve economy of administration. The only creditor whose proximity to court need be considered is Advanced Coatings, as the debts with all other creditors have been administered. It is unrefuted that the Debtor is now in closer proximity to the District of Colorado. Transfer of venue is within the discretion of the court and to be determined on a case-by-case basis. *In re Weatherly Frozen Food Group, Inc.*, 133 B.R. at 866-867 (citing *In re Manville Forest Products Corp.*, 896 F.2d 1384, 1391 (2d Cir.1990)).

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Herein, it is unrefuted that the Debtors have relocated to Colorado. There are no assets remaining in this District per the Trustee’s Report of No Distribution. The adversary proceeding

is in its preliminary stages, with only an initial pretrial conference having been held. It is unrefuted that the only remaining matter in Debtors' case is the adversary proceeding with Advanced Coatings. To retain jurisdiction in this District would require the Debtors to travel here from Colorado to participate in litigation. Finally, the determination of whether a change of venue is warranted is within a court's discretion. *In re Weatherly Frozen Food Group, Inc.*, 133 B.R. at 866.

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Accordingly, pursuant to 28 U.S.C. § 1412, this case is hereby transferred to the U.S. Bankruptcy Court for the District of Colorado. Advanced Coatings' Memorandum in Support of Retaining Jurisdiction in this District is overruled. Each party is to bear its respective costs.

**IT IS SO ORDERED.**

Dated, this 11<sup>th</sup> day of  
July, 2011

  
**JUDGE RANDOLPH BAXTER**  
**UNITED STATES BANKRUPTCY COURT**

cc: Mr. Kenneth J. Hirz, Clerk of Court