

IT IS SO ORDERED.

Dated: May 16, 2016
04:22:58 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

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CASE NUMBER 15-40842

CHAPTER 7

HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING
MOTION TO TRANSFER CASE TO PROPER VENUE

Before the Court is Motion to Transfer Case to Proper Venue ("Motion to Transfer") (Doc. 154) filed by Debtor Virginia Duncan on April 7, 2016.

The facts before the Court appear to be unique. Ms. Duncan, who is currently representing herself *pro se*, filed a Voluntary Petition (Doc. 1 at 1-3) pursuant to chapter 13 of the Bankruptcy Code on May 8, 2015 ("Petition Date"). Despite representing, under penalty of perjury, that the Northern District of Ohio was the

proper venue for her bankruptcy case, Ms. Duncan now moves to transfer her case to the Southern District of Florida on the basis that venue in this District is improper.

The Court held a hearing on the Motion to Transfer on May 6, 2016 ("Transfer Hearing"), at which appeared (i) Ms. Duncan; (ii) Andrew W. Suhar, Chapter 7 Trustee ("Trustee"); (iii) Scott R. Belhorn, Esq. on behalf of Daniel M. McDermott, United States Trustee for Region 9 ("UST"); and (iv) James G. Floyd, Esq., on behalf of Robert G. Birrell, Jr., the purchaser of the Florida Property.¹ At the conclusion of the Transfer Hearing, the Court issued an oral ruling denying the Motion to Transfer. The Court enters this Memorandum Opinion and accompanying Order to memorialize that ruling.²

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

¹ "Florida Property" is defined *infra* at 5.

² To the extent the Court's oral ruling is inconsistent with this Memorandum Opinion and accompany Order, the Memorandum Opinion and Order control.

I. BACKGROUND

In setting forth the facts of this case, the Court has provided as much detail as possible because the Motion to Transfer cannot be and has not been considered in a vacuum.

A. Original Petition and Schedules

Ms. Duncan was represented by T. Robert Bricker, Esq. when she filed her Petition. In the Petition,³ Ms. Duncan listed her address as 4538 Lockwood Boulevard, Youngstown, Ohio 44511 ("Lockwood Boulevard"), but left blank the section captioned "Mailing Address of Debtor (if different from street address)." (Pet. at 1.) In the section captioned "Information Regarding the Debtor - Venue," Ms. Duncan stated that she had been "domiciled or has had a residence . . . in this District for 180 days immediately preceding the date of the petition or for a longer part of such 180 days than in any other District." (*Id.* at 2.) In the section captioned "All Prior Bankruptcy Cases Filed Within Last 8 Years," Ms. Duncan disclosed Case No. 12-41184 filed in this District on May 10, 2012 ("2012 Ohio Case"). (*Id.*)

In Schedule A - Real Property (Doc. 1 at 8), Ms. Duncan did not disclose any real property. (Sched. A at 1.) In the Statement of Financial Affairs ("SOFA") (Doc. 1 at 31-38), Ms. Duncan

³ The Court takes judicial notice of the fact that each of the Petitions, Schedules, and SOFAs filed in this case were signed by Ms. Duncan under penalty of perjury.

responded "none" to the following question: "If the debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case." (*Id.* at 5.)

B. Prior Bankruptcy Cases

By way of background, Ms. Duncan had actually filed three bankruptcy cases in the eight years preceding the Petition Date, as follows:

1. 2012 Ohio Case

Ms. Duncan, by and through Mr. Bricker, voluntarily filed the 2012 Ohio Case pursuant to chapter 13. Ms. Duncan listed her address as 5911 Parkland Avenue, Youngstown, Ohio. (2012 OH Case, Doc. 1 at 1.) Ms. Duncan did not list a separate mailing address. The only real property Ms. Duncan disclosed was the Parkland Avenue property. (*Id.*, Doc. 6 at 3.) The 2012 Ohio Case was dismissed on August 1, 2012 (*id.*, Doc. 61) because Ms. Duncan had failed to make her proposed chapter 13 plan payments (*id.*, Doc. 45).

2. 2013 Florida Case

Ms. Duncan filed a voluntary petition pursuant to chapter 13 in the Southern District of Florida on July 31, 2013, which was denominated Case No. 13-28017 ("2013 Florida Case"). Ms. Duncan listed her address as the Florida Property. (2013 FL Case, Doc. 1 at 1.) Ms. Duncan did not disclose any bankruptcy cases filed in

the previous eight years. (*Id.* at 2.) The 2013 Florida Case was dismissed on September 4, 2013 because Ms. Duncan had failed to file schedules and other required documents. (*Id.*, Doc. 21.)

3. 2014 Florida Case

Ms. Duncan filed a voluntary petition pursuant to chapter 13 in the Southern District of Florida on May 29, 2014, which was denominated Case No. 14-22387 ("2014 Florida Case"). Ms. Duncan disclosed her address as the Florida Property. Ms. Duncan disclosed the 2012 Ohio Case, but not the 2013 Florida Case. (2014 FL Case, Doc. 1 at 2.) Ms. Duncan did not disclose ownership of or an interest in any real property. (2014 FL Case, Doc. 11 at 3.) The 2014 Florida Case was dismissed on December 2, 2014 (*id.*, Doc. 57) because Ms. Duncan had failed to make her proposed chapter 13 plan payments (*id.*, Doc. 55). The order of dismissal barred Ms. Duncan from filing a bankruptcy petition in any jurisdiction for 180 days thereafter.⁴

C. Motions to Convert Case to Chapter 7

On September 11, 2015, the UST moved to convert this case from chapter 13 to chapter 7 ("UST Motion") (Doc. 31) on the basis that Ms. Duncan had (i) failed to disclose all assets, including real property located at 27970 Lobstertail Trail, Little Torch Key, Florida 33042 ("Florida Property"); (ii) failed to explain

⁴ Ms. Duncan filed this case prior to expiration of the 180-day bar.

how she had disposed of \$104,435.88 received from the sale of real property in 2011; and (iii) filed her bankruptcy case in bad faith.

That same day, The Home Savings & Loan Company of Youngstown, Ohio ("Home Savings") also moved to convert this case to chapter 7 ("Home Savings Motion") (Doc. 33) on the basis that Ms. Duncan had failed to comply with the Judgment Entry of Sentence entered by the Mahoning County Court of Common Pleas ("State Court") on June 19, 2013. The Judgment Entry of Sentence, which is attached to the Home Savings Motion as Exhibit H, set forth Ms. Duncan's conviction for passing bad checks and ordered Ms. Duncan to pay Home Savings restitution in the amount of \$70,312.31 within one year. Home Savings alleged that Ms. Duncan failed to disclose all assets and manipulated the bankruptcy process by filing multiple bankruptcy cases in the Northern District of Ohio and the Southern District of Florida.

Ms. Duncan filed responses to the UST Motion (Doc. 41) and the Home Savings Motion (Doc. 42) on October 2, 2015, and the motions were scheduled for hearings to be held on October 7, 2015.

D. First Amended Schedules on October 2, 2015

On October 2, 2015, Ms. Duncan filed Amended Schedule A (Doc. 40 at 3), Amended Schedule F (*id.* at 4-11), and Amended SOFA (*id.* at 13-20) (collectively, "First Amended Schedules"), but did not amend her Petition. Amended Schedule A listed the previously undisclosed Florida Property with the following notation:

"Property Titled to Debtor in [sic] 10/19/11. Debtor signed Quit Claim deed to transfer property to Scott Daugherty on January 3, 2012. It is unknown at this time why deed was not recorded." (Am. Sched. A at 1.) Amended Schedule F - Creditors Holding Unsecured Nonpriority Claims added previously undisclosed creditor Scott M. Daugherty with a claim of \$95,000.00 for "contribution" to the purchase of the Florida Property. (Am. Sched. F at 7.) The Amended SOFA continued to state that Ms. Duncan had not occupied any premises other than Lockwood Boulevard in the three years preceding the Petition Date. (Am. SOFA at 5.)

E. Conversion from Chapter 13 to Chapter 7

On the same date that she filed the Amended Schedules, Ms. Duncan moved to dismiss her chapter 13 case (Doc. 39).⁵ The Court scheduled Ms. Duncan's motion to dismiss for a hearing to be held in conjunction with the hearings on the motions to convert. At the hearings on the motion to dismiss and the motions to convert, as well as a motion to dismiss filed by the Chapter 13 Trustee,⁶ the Court determined that an evidentiary hearing on all of the

⁵ Because the motions to convert were pending, the Court deemed Ms. Duncan's notice of voluntary dismissal to be a motion to dismiss. (See Doc. 45.)

⁶ On July 29, 2015, Michael A. Gallo, Chapter 13 Trustee, moved to dismiss this case (Doc. 15) on the basis that he could not recommend Ms. Duncan's proposed Chapter 13 Plan (Doc. 2) for confirmation. The UST opposed the Chapter 13 Trustee's motion (Doc. 26) on the basis that this case should be converted to chapter 7, rather than dismissed, to allow for the administration of Ms. Duncan's assets.

motions was necessary and scheduled such hearing for November 13, 2015.

The day prior to the evidentiary hearing, on November 12, 2015, Ms. Duncan voluntarily converted this case to chapter 7 (Doc. 63). Mr. Suhar was appointed Chapter 7 Trustee (Doc. 65).

F. Yacht and First Order to Appear and Show Cause

Ms. Duncan's Schedule B - Personal Property listed a "2002 Tiara Yacht Value based on hours of boat, NADA value and extent of engine issues. 3000 hours on boat. Boat needs overhaul/tuneup estimated to cost \$20,000.00" ("Yacht") (Doc. 1, Sched. B at 2). Ms. Duncan valued the Yacht at \$25,000.00, but failed to list the location of the Yacht.

On November 24, 2015, U.S. Bank National Association ("U.S. Bank") filed Second Amended Motion for Relief from Stay and Abandonment ("Motion for Relief") (Doc. 69), which sought relief from stay and abandonment regarding the Yacht. Ms. Duncan (Doc. 72), Home Savings (Doc. 78), and the Trustee (Doc. 88) each opposed the Motion for Relief. The Court held a hearing on the Motion for Relief on February 4, 2016, at which appeared (i) Milos Gvozdenovic, Esq. on behalf of U.S. Bank; (ii) the Trustee; (iii) Mr. Bricker on behalf of Ms. Duncan; (iv) Ms. Duncan; and (v) Michael J. McGee, Esq. on behalf of Scott Daugherty a/k/a Scott Dougherty. The Trustee represented that Ms. Duncan had not provided any information concerning the location of the Yacht,

except to state that it was located at an unknown address in Geneva, Ohio. Ms. Duncan represented that she did not have the exact location of the Yacht because it had been stored by Mr. Daugherty. The Court directed Mr. McGee to obtain the Yacht's exact location from Mr. Daugherty and give it to the Trustee by the close of business the following day.⁷

Because Ms. Duncan and Mr. Daugherty failed to disclose the location of the Yacht, on February 8, 2016, the Court issued Order for (i) Debtor Virginia Duncan; (ii) T. Robert Bricker, Esq.; (iii) Scott Dougherty; and (iv) Michael J. McGee, Esq. to Appear and Show Cause on February 18, 2016 ("First OSC") (Doc. 102), which ordered those parties to appear before the Court and provide information concerning the Yacht's location.

The Court held a hearing on the First OSC on February 18, 2016, at which the Trustee, Ms. Duncan, Mr. Bricker, and Mr. McGee appeared. The Trustee reported that, the prior day, Mr. Bricker had provided him with an address in Niagara Falls, New York where the Yacht was allegedly located. After being sworn in, Ms. Duncan testified that she (i) did not have firsthand knowledge of the Yacht's location; (ii) obtained the Niagara Falls address from a man she knew only as DJ; and (iii) knew DJ from a marina in Olcott,

⁷ The Motion for Relief was resolved by an agreed order entered on March 3, 2016 (Doc. 117), which provided U.S. Bank with relief from stay, with the Trustee and U.S. Bank agreeing to jointly attempt to procure the Yacht and coordinate its sale.

New York, which is where she last knew the Yacht to be located two years earlier. Ms. Duncan further testified that only Mr. Daugherty, who had been her business partner for the previous five years, knew the Yacht's whereabouts.

Upon examination by the Trustee, Ms. Duncan stated that she did not have a set of keys to the Florida Property, but she represented that Mr. Daugherty had such keys. Ms. Duncan also stated that the Florida Property was vacant and that there was no reason anyone should be at the Florida Property.

At the conclusion of the hearing on the First OSC, the Court issued Order (i) Finding Scott Dougherty, a/k/a Scott Daugherty, in Contempt for Failing to Appear and Show Cause on February 18, 2015; and (ii) Sanctioning Scott Dougherty for Such Contempt (Doc. 109).

To date, neither U.S. Bank nor the Trustee has been able to obtain possession of the Yacht.⁸

G. Motion to Employ Real Estate Agent

On January 22, 2016, the Trustee filed Motion to Employ Real Estate Agent ("Motion to Employ") (Doc. 92), in which he sought to employ a real estate agent to market and sell the Florida Property. On February 1, 2016, Mr. Daugherty objected to the Motion to Employ (Doc. 97) on the basis that he was the equitable owner of the

⁸ On April 1, 2016, the Trustee commenced Adversary Proceeding No. 16-04019 against Bennett Industries, Ltd. and Goblin Custom Cycle Inc. in an attempt to obtain turnover of the Yacht.

Florida Property. The Court held a hearing on the Motion to Employ on February 4, 2016, at which appeared (i) the Trustee; (ii) Mr. McGee on behalf of Mr. Daugherty; and (iii) Mr. Bricker on behalf of Ms. Duncan.

The Trustee represented that (i) the title work and Ms. Duncan's Schedule A indicated that Ms. Duncan was the vested owner of the Florida Property; (ii) Ms. Duncan had testified at her meeting of creditors that the Florida Property was presently vacant; and (iii) although Ms. Duncan had agreed to provide the Trustee with proof of insurance and keys for the Florida Property, she had failed to do so. As a result, the Trustee represented that the real estate agent would be required to change the locks on the Florida Property in order to secure it.

Mr. McGee represented that Mr. Daugherty provided "well over 50 percent" of the funds for the purchase of the Florida Property, had lived at the Florida Property, and was in possession of an unrecorded quitclaim deed from 2011 transferring the Florida Property from Ms. Duncan to Mr. Daugherty.

The Court determined that the ownership of the Florida Property was not an issue that needed to be resolved in conjunction with the Trustee's Motion to Employ, but could be addressed in connection with any motion to sell the Florida Property. The Court granted the Motion to Employ and entered an order to that effect on February 10, 2016 (Doc. 103).

H. Adversary Proceedings Regarding Discharge and Dischargeability

On February 22, 2016, Home Savings filed Adversary Proceeding No. 16-04008, which seeks to have the debt Ms. Duncan owes to it deemed nondischargeable. On that same date, the UST filed Adversary Proceeding No. 16-04009, which reiterates many of the same allegations in the UST Motion and seeks an order denying Ms. Duncan a discharge pursuant to 11 U.S.C. § 727(a) and (c).⁹ Both of these adversary proceedings allege fraudulent conduct and bad faith on the part of Ms. Duncan.

I. Second Order to Appear and Show Cause

On February 29, 2016, the Trustee filed Motion for Order to Appear and Show Cause ("Show Cause Motion") (Doc. 111), in which he alleged that Ms. Duncan was interfering with his efforts to market and sell the Florida Property by prohibiting access to the Florida Property by the real estate agent. Ms. Duncan allegedly told the real estate agent that the Florida Property "was not included in her bankruptcy, that she owned the property free and clear, and that a mistake was made because she had a homestead exemption." (Show Cause Mot. ¶ 6.)

Based on the allegations in the Show Cause Motion, on February 29, 2016, the Court issued Order for (i) Debtor Virginia Duncan; and (ii) T. Robert Bricker, Esq., Debtor's Counsel, to

⁹ On May 6, 2016, the Court granted the UST's oral motion for leave to amend its complaint to add a count under 11 U.S.C. § 727(a)(6)(A) (Adv. No. 16-04009, Doc. 18).

Appear and Show Cause on March 8, 2016 ("Second OSC") (Doc. 114). The Court held a hearing on the Second OSC on March 8, 2016, at which the Trustee, Ms. Duncan, and Mr. Bricker appeared in person. Appearing by telephone were (i) Mr. Belhorn on behalf of the UST; and (ii) Mr. Daugherty.

After being sworn in, Ms. Duncan admitted that she (i) was at the Florida Property on the date in question; (ii) had observed the real estate agent putting up a for sale sign; and (iii) had asked the real estate agent to leave. She further testified that she did not know that the Trustee was going to sell the Florida Property.¹⁰ Ms. Duncan stated that she did not want the Florida Property sold in her chapter 7 case, but wanted it to be "homesteaded."

On March 9, 2016, the Court entered Order (i) Finding Virginia Duncan in Contempt for Interference with the Administration of the Bankruptcy Estate; and (ii) Sanctioning Virginia Duncan for Such Contempt ("Contempt Order") (Doc. 123). In the Contempt Order, the Court stated:

This Court finds Virginia Duncan in contempt of Court for her interference with the administration of property of the estate. As a consequence, the Court prohibits Virginia Duncan, including anyone acting at her direction or on her behalf, from entering into or upon

¹⁰ At the hearing on the Second OSC, the Court explained to Ms. Duncan that (i) the Florida Property was property of the bankruptcy estate; (ii) the Trustee was required to administer all property of the bankruptcy estate; (iii) the Trustee was authorized to and was marketing the Florida Property for sale; and (iv) Ms. Duncan was prohibited from interfering with the Trustee in fulfilling his duties.

the [Florida Property] for any purpose. Ms. Duncan, or anyone acting at her direction or on her behalf, is further prohibited from taking any action to (i) inhibit or prevent the Trustee from administering the [Florida Property] as an asset of this bankruptcy estate; and (ii) alter, deface, remove property or fixtures from, or in any way make changes to the [Florida Property].

(Contempt Order at 7.)

J. Motion to Sell the Florida Property and Second Amended Schedules

On March 14, 2016, the Trustee filed Motion to Sell Real Property Free and Clear of All Liens, Encumbrances and Other Interests by Private Sale; Notice of Trustee's Intent to Sell Property Other than in the Ordinary Course of Business ("Sale Motion") (Doc. 127), in which the Trustee sought authority to sell the Florida Property. On that same date, the Trustee filed Motion for Expedited Hearing (Doc. 128) with respect to the Sale Motion on the basis that, because the Trustee was unable to secure insurance on the Florida Property, it was in the best interest of the bankruptcy estate to effectuate a sale of the Florida Property as soon as possible. The Court granted the Trustee's Motion for Expedited Hearing (Doc. 130) and scheduled a hearing on the Sale Motion for March 24, 2016 ("Sale Hearing").

On March 16, 2016, Ms. Duncan filed Amended Voluntary Petition (Doc. 131 at 1-7), Amended Schedules (*id.* at 8-45), and Amended SOFA (*id.* at 46-54) (collectively, "Second Amended Schedules") (Doc. 131). Ms. Duncan listed her address as the Florida Property, but listed a separate mailing address of a P.O. Box in Big Pine

Key, Florida. (Sec. Am. Scheds. at 2.) In response to the question "Why are you choosing *this district* to file for bankruptcy," rather than checking the box "Over the last 180 days before filing this petition, I have lived in this district longer than in any other district[,]" which would have been consistent with her original Petition, Ms. Duncan checked the box "I have another reason. Explain. (See 28 U.S.C. § 1408.)." (*Id.*) However, Ms. Duncan provided no explanation for her election to file in the Northern District of Ohio. In the Second Amended SOFA, Ms. Duncan stated that she had "live[d]" at the Florida Property since October 2011 "when working in Florida" and had "stay[ed]" at Lockwood Boulevard since October 2011 "when working in Ohio and visiting. Approximately 5 weeks out of the year." (*Id.* at 46.)

In Second Amended Schedule A/B: Property, Ms. Duncan listed the Florida Property with a current value of \$170,000.00, as opposed to \$74,800.00 listed in the First Amended Schedule A. Ms. Duncan also indicated in Schedule A/B that she "believed" that the Yacht was located at Bennett Industries in Geneva, Ohio. (*Id.* at 11.) In Second Amended Schedule C: The Property You Claim as Exempt, Ms. Duncan did not claim a homestead exemption or any other exemption for the Florida Property.¹¹ (*Id.* at 16-17.)

¹¹ To date, Ms. Duncan has never claimed any exemption for the Florida Property in this case.

The following parties appeared at the March 24, 2016 Sale Hearing: (i) the Trustee; (ii) Ms. Duncan; (iii) Mr. Bricker; (iv) Gary Rosati, Esq. on behalf of potential buyer Neal Rosenbaum; (v) James G. Floyd, Esq. on behalf of potential buyer Mr. Birrell; and (vi) Mr. Birrell. The Trustee represented that he had received five competing offers to purchase the Florida Property and that the highest and best offer was made by Mr. Birrell for \$202,995.00. Any liens, claims, or encumbrances against the Florida Property would attach to the sale proceeds as may be determined by the Court at a later date. Noting that no party had objected to the Sale Motion, the Trustee renewed his request that the Court grant the Sale Motion, as modified to incorporate the offer by Mr. Birrell.

Although she had not filed an objection to the Sale Motion, Ms. Duncan stated that she wished to be heard, but only after the Court heard from her counsel, Mr. Bricker. At the time of the Sale Hearing, pending before the Court was Mr. Bricker's Motion to Withdraw as Counsel (Doc. 112). The Court had not yet granted the Motion to Withdraw because it did not know if Mr. Bricker had complied with the Court's condition precedent for the withdrawal.¹²

¹² Mr. Bricker had moved to withdraw as counsel on February 29, 2016 on the grounds that communications between Mr. Bricker and Ms. Duncan had broken down and Mr. Bricker did not believe that further representation was possible. Ms. Duncan did not file a response to Mr. Bricker's Motion to Withdraw. The Court held a hearing on the Motion to Withdraw on March 8, 2016, at which it ordered Mr. Bricker to amend certain documents prior to being permitted to withdraw as counsel.

After Mr. Bricker represented that he was in compliance, the Court granted Mr. Bricker's Motion to Withdraw, effective immediately.

The Court then allowed Ms. Duncan to proceed *pro se* and address the Court. Ms. Duncan objected to the Sale Motion on the basis that she had (i) filed a motion for change of venue;¹³ (ii) filed a chapter 13 bankruptcy petition in the Southern District of Florida the day before the Sale Hearing,¹⁴ in which she had requested a stay of the Sale Motion and claimed the homestead exemption for the Florida Property; and (iii) sold the Real Estate to Scott Daugherty in October or November 2011 even though the quit claim deed was not recorded.¹⁵ Ms. Duncan further argued,

If it is this Court's opinion that that property is still mine and I have proof that I have lived there during that time – and I do have proof – and I submitted that to the Florida bankruptcy court as well, then it is my opinion and my objection to the sale of this, that I be allowed to file under Florida which I have obtained an attorney down there.

(Sale Hr'g at 10:29:14.) Despite her testimony, the docket and petition in the 2016 Florida Case indicate that Ms. Duncan filed her petition *pro se*. To date, Ms. Duncan has no attorney of record in the 2016 Florida Case.

¹³ No such motion was filed until the Motion to Transfer presently before the Court.

¹⁴ Although Ms. Duncan was unable to provide the Court with the case number for her Florida case, the Court was able to locate Case No. 16-14077 in the Southern District of Florida ("2016 Florida Case") through PACER.

¹⁵ Second Amended Schedule A/B states, "Debtor signed Quit Claim deed to transfer property to Scott Daugherty on January 2, 2012." (Sec. Am. Schedules. at 10.)

The Court stated that the Bankruptcy Court for the Southern District of Florida would not have jurisdiction to stay the Sale Motion and that Ms. Duncan could not have two pending bankruptcy cases because this case remained open with no discharge having been entered.

At the Sale Hearing, the Court took judicial notice of the Judgment Entry of Sentence entered on June 19, 2013 in the State Court by Judge Maureen A. Sweeney in *Ohio v. Duncan*, Case No. 2012 CR 1104.¹⁶ Pursuant to the Judgment Entry of Sentence, the State Court imposed on Ms. Duncan "TWO (2) YEARS community control sanctions to be monitored by the Adult Parole Authority." (Judg. Entry of Sentence at 2.)

As a further condition of community control, [Ms. Duncan] shall abide by all laws and shall not leave the State of Ohio without the permission of his [sic] probation officer. [Ms. Duncan] is permitted to travel to Florida for work purposes however must provide documentation of travel plans to probation officer **PRIOR** to travel.

(*Id.*) When asked by the Court if she had complied with the Judgment Entry of Sentence, Ms. Duncan stated, "And I have done that." (Sale Hr'g at 10:30:18.) This testimony was in direct conflict with Ms. Duncan's testimony minutes earlier that she had proof of her residency in Florida.

¹⁶ As set forth *supra* at 6, the Judgment Entry of Sentence was attached to the Home Savings Motion as Exhibit H.

Because the Judgment Entry of Sentence ran through June 2015, Ms. Duncan was not permitted to leave Ohio absent prior permission during the 180 days prior to the Petition Date. As a result, the Court concluded that, pursuant to Ms. Duncan's own testimony, Ms. Duncan resided in Ohio on the Petition Date. Accordingly, Ms. Duncan's objection to the Sale Motion on the basis of any purported Florida homestead exemption was overruled.

Ms. Duncan also objected to the Sale Motion on the basis that she had sold the Florida Property to Mr. Daugherty, but that such deed was never recorded. The Court found that, if that representation was true, it provided no basis for Ms. Duncan to object to the Sale Motion because it negated her own alleged interest in the Florida Property. Moreover, Mr. Daugherty had not objected to the Sale Motion on his own behalf.

The Court ruled on the record that Ms. Duncan had failed to assert a valid basis to object to the Sale Motion. Later that day, the Court entered Order Overruling Oral Objection of Debtor Virginia Duncan to Motion to Sell Real Property Free and Clear of All Liens, Encumbrances and Other Interests by Private Sale ("Order Overruling Debtor's Objection") (Doc. 144) to memorialize that ruling. Prior to the Court issuing the Order Overruling Debtor's Objection, the 2016 Florida Case was dismissed *sua sponte* by Judge A. Jay Cristol of the Bankruptcy Court for the Southern District of Florida because this case was pending. Judge Cristol referred

the matter of potential sanctions due to Ms. Duncan filing the 2016 Florida Case to this Court.¹⁷

The Court granted the Sale Motion and entered Order Authorizing the Sale of Real Property Located at 27970 Lobstertail Trail, Little Torch Key, Monroe County, Florida Free and Clear of All Liens, Encumbrances and Other Interests ("Sale Order") (Doc. 150) on March 29, 2016 to memorialize that ruling. The Sale Order incorporated by reference the Contempt Order's prohibition on Ms. Duncan entering the Florida Property and stated:

The Debtor Virginia Duncan shall be and is hereby enjoined from entering the [Florida Property], or the premises of the [Florida Property]. This injunction shall continue as a permanent order of this Court and will not be extinguished by closing of the sale transaction, or the closing of this bankruptcy case.

(Sale Order ¶ 4.)

On April 7, 2016, Ms. Duncan filed Notice of Appeal and Statement of Election (Doc. 155), in which she appealed the Sale Order. Ms. Duncan did not seek a stay of the Sale Order pending appeal.

On May 3, 2016, the Trustee filed Report of Sale (Doc. 166), in which he reported that the sale of the Florida Property had been consummated for gross sale proceeds of \$202,995.00.

¹⁷ The Order Dismissing Case entered in the 2016 Florida Case is attached to the Order Overruling Debtor's Objection.

K. Motion to Transfer

On April 7, 2016, the same day that Ms. Duncan filed the Notice of Appeal, she filed the Motion to Transfer currently before the Court. Although Ms. Duncan references the venue provisions in 28 U.S.C. §§ 1408 and 1409, she provides very little factual basis in her Motion to Transfer. Ms. Duncan's arguments for transfer are as follows:

1. On March 14, 2016, Mr. Bricker, as counsel for Ms. Duncan, prepared a change of address per the Court's request on March 8, 2016.¹⁸ (Mot. to Transfer ¶ 1.)
2. The Bankruptcy Court for the Northern District of Ohio does not have jurisdiction over this case because Ms. Duncan's legal address and principal place of business are in Florida. Thus, this case must either be dismissed or transferred to the Southern District of Florida, Miami Division. (*Id.* ¶ 2.)
3. Cases that involve real property must be heard by the same court as the county of the real property.
4. "Given the Debtor's legal address and principal place of business, keeping this case in Northern District Ohio would make it an extreme burden for the debtor to participate in the case. Continued travel 1,438 miles each way, 25 hours of

¹⁸ On March 16, 2016, Ms. Duncan filed her Amended Voluntary Petition, which listed the Florida Property as her address and a separate P.O. Box in Florida as her mailing address.

driving time, plus loss of wages due to excessive travel time., [sic] for a case not within the Debtor's control."
(*Id.* ¶ 6.)

5. "Having no legal representation, in Ohio, in this matter places a significant burden on the Debtor as well, with limited knowledge of the Bankruptcy codes and laws, which are complicated, mistakes can be costly and waive or destroy the Debtor's rights out of ignorance or procedure or substantive law. This was not by choice of the debtor, it was so ordered by Judge Kay Woods. I have attached a copy of all legal offices called, there is no hope to retain legal advise [sic] in the State of Ohio, Document 2. Allowing this to stay in the Bankruptcy Court in Ohio would be EXTREEMLY [sic] PREDJUDICIAL [sic] to the Debtor, myself, Virginia Duncan. At this time, the pattern of disdain shown towards the Debtor, myself, Virginia Duncan, is certainly in favor of the creditors and a DISQUALIFICATION MOTION is requested as well, of the Ohio Bankruptcy Court, the Court's impartiality is reasonable [sic] questioned. This request has already been delayed/hindered by the Debtor's inability of [sic] file documents due to lack of legal advise [sic]. See attached example Document 1." (*Id.* ¶ 7.)

"Document 2" referenced by Ms. Duncan is attached to the Motion to Transfer and is a two-page, hand-written document

captioned "List of Law Offices I contacted – Will NOT take my case." Each of the pages of Document 2 contains 3 columns of 27 names, for a total of 162 names.

L. Motion for Sanctions and Sanctions Hearing

On May 3, 2016, the Trustee filed Motion to Assess Sanctions for Debtor's False Police Report to the Monroe County Sheriff's Office ("Motion for Sanctions") (Doc. 163). The Trustee requested that the Court sanction Ms. Duncan for interfering with the administration of the Florida Property as an asset of the bankruptcy estate, as expressly prohibited by the Contempt Order, which was further incorporated in the Sale Order. Specifically, the Trustee alleged that, on April 14, 2016, Ms. Duncan falsely reported a burglary in progress at the Florida Property while the real estate agent's cleaning crew was at the premises. The Trustee requested appropriate sanctions against Ms. Duncan, including "monetary sanctions (\$1,000.00 per day for each event of interference)" as set forth in the Contempt Order. (Mot. for Sanctions ¶ 10 (quoting Contempt Order).)

Upon the request of the Trustee (Doc. 164), the Court scheduled the Motion for Sanctions for an expedited hearing to be held on May 6, 2016 ("Sanctions Hearing") (Doc. 165). The following parties appeared at the Sanctions Hearing: (i) the Trustee; (ii) Ms. Duncan; and (iii) James G. Floyd, Esq. on behalf of Mr. Birrell, the current owner of the Florida Property.

On May 10, 2016, the Court entered Memorandum Opinion Finding Debtor Virginia Duncan in Contempt (Doc. 171) and Order Finding Debtor Virginia Duncan in Contempt (Doc. 172), which (i) found Ms. Duncan in willful violation of the Contempt Order and the Sale Order; (ii) granted the Motion for Sanctions; and (iii) sanctioned Ms. Duncan \$1,000.00. At the Sanctions Hearing, Ms. Duncan admitted that she knew that the Florida Property had been sold by the Trustee and that she was enjoined from taking any action with respect to the Florida Property. She further admitted that she had reported the burglary in progress at the Florida Property. Accordingly, the Court found that Ms. Duncan knowingly and willfully violated the Contempt Order, as incorporated in the Sale Order, by interfering with Mr. Birrell's ownership of the Florida Property.

II. THE HEARING ON THE MOTION TO TRANSFER

As set forth above, the Court held the Transfer Hearing on May 6, 2016. Ms. Duncan proffered evidence and was cross-examined by the Trustee and Mr. Belhorn. Each party also made a closing statement. The following constitutes the material elements of Ms. Duncan's proffer of evidence and testimony on cross-examination.

A. Ms. Duncan's First Proffer

After reading a long definition of the word "domicile," Ms. Duncan stated that, following the death of her husband in 2010, she did not want to continue to live in Ohio and decided to live

in Florida. She emphasized that domicile includes the concept of intending to return to a place to live. She stated that she purchased the Florida Property in 2011 and Florida is where she received mail, worked, voted, banked, had a driver's license, and paid taxes. She stated that, even while she was under the supervision of the Ohio State Court, she was domiciled in Florida. She claimed that all of her assets were in Florida. Ms. Duncan stated that Mr. Bricker, while still representing Ms. Duncan, would not file a motion to transfer the case, despite her three requests for him to do so. Ms. Duncan stated that she has limited ties to the Northern District of Ohio "now." (Transfer Hr'g at 10:11:38.)

B. Trustee Cross-Examination

Upon cross-examination by the Trustee, Ms. Duncan admitted that she filed for bankruptcy protection in the Northern District of Ohio in 2012 and did not list the Florida Property as an asset. She also acknowledged that she did not list the Florida Property as an asset in either the 2013 Florida Case or the 2014 Florida Case. Ms. Duncan also admitted that she neither scheduled the Florida Property when she filed the current case in May 2015 nor upon the conversion of this case from chapter 13 to chapter 7 in November 2015.

Upon questioning by the Trustee, Ms. Duncan admitted that she testified at her meeting of creditors that, although she transferred the Florida Property to Scott Daugherty in 2012, the

transfer was never recorded because she was holding the property pending the conclusion of Mr. Daugherty's divorce, which did not become final until December 2015. She also acknowledged that Mr. Daugherty had purchased a 2008 Lincoln MKZ for her, which was titled and registered in her name in Ohio, using Mr. Daugherty's address in Austinburg, Ohio. She further acknowledged that, when she was in an automobile accident in 2014 in New York, she gave her address on the police report as Mr. Daugherty's address in Austinburg, Ohio. In addition to her car being registered in Ohio, Ms. Duncan admitted that, in 2014, she registered the Yacht in Ohio. She stated that Mr. Daugherty "paid money in towards property, upkeep, and maintenance" for the Florida Property.

Ms. Duncan disputed the Trustee's assertion that she had never claimed the homestead exemption in this case, by stating that she had gone to Mr. Bricker's office three times in March 2016, at which time she and Mr. Bricker went over the amendments "line by line by line." (Transfer Hr'g at 10:25:12.) Based on this review, Ms. Duncan said that she had claimed the homestead exemption. Ms. Duncan admitted that she had not filed an adversary proceeding, as required by the Sale Order, to assert any claim to the proceeds of the sale of the Florida Property or to assert a homestead exemption.¹⁹

¹⁹ Paragraph 3 of the Sale Order provides, "Any claim to the net sale proceeds of sale by debtor Virginia Duncan or, [sic] by Scott Daugherty aka Scott Dougherty or any other party must be brought by filing an adversary proceeding

C. UST Cross-Examination

Upon questioning by Mr. Belhorn, Ms. Duncan admitted that she not only did not list the Florida Property as an asset in her 2012 Ohio Case, 2013 Florida Case, or 2014 Florida Case, but she did not disclose the transfer of the Florida Property to Mr. Daugherty in any of those cases. Ms. Duncan acknowledged that she was never able to confirm a chapter 13 plan in any of her prior bankruptcy cases. Ms. Duncan blamed most of her problems with her 2013 Florida Case and 2014 Florida Case on her attorney in those cases, the same way she attributes the problems with this case to failings on the part of Mr. Bricker.

D. Ms. Duncan's Second Proffer

Ms. Duncan stated that she had trusted Mr. Bricker, as her attorney, to do what was necessary. She claims that Mr. Bricker "missed obvious things" – things that she didn't need to tell him because she alleged he already knew. Ms. Duncan stated that, in filing this bankruptcy case, it was not her intention to get out of paying taxes that she owed or restitution to Home Savings. She said that she filed the current bankruptcy case to resolve issues involving the Yacht, which she admitted was always located on Lake Erie, and tax issues related to Duncan's Collision and Restoration,

for said claim in this Court within thirty (30) days from the date of this Order." (Sale Order ¶ 3.)

Inc.²⁰ Ms. Duncan believed that those tax issues had been resolved, but she received mail in Ohio regarding such tax issues in March 2015. Ms. Duncan said that she told Mr. Bricker that she could get loans against the Florida Property and the Yacht. She also represented that the Yacht was "repossessed" while she was in Florida.²¹ Ms. Duncan stated that she listed the Florida Property as an asset of her estate only after Mr. Daugherty obtained his divorce in December 2015.

III. LEGAL ANALYSIS

The governing statute regarding venue of bankruptcy cases is 28 U.S.C. § 1408, which provides:

Except as provided in section 1410 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

²⁰ In Second Amended Schedule H: Your Codebtors, Ms. Duncan listed "Duncan Collision" as a codebtor for 15 debts to various creditors and included the notation "Defunct Company Previously ran by Debtor and deceased Husband." (Sec. Am. Schedules. at 37-39). In Second Amended Schedule E/F: Creditors Who Have Unsecured Claims, Ms. Duncan listed both the IRS and the Ohio Department of Taxation with the notation that she does not believe she has "any remaining" personal liability. (*Id.* at 20-21.) The record is otherwise devoid of any mentions of tax issues that may have led to the filing of this case.

²¹ Possession of the Yacht is still in question based on Adversary Proceeding No. 16-04019. See *supra* at 10 n. 8.

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

28 U.S.C. § 1408 (2016). 28 U.S.C. § 1406 addresses improperly venued cases and provides, in pertinent part:

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

28 U.S.C. § 1406 (emphasis added). Federal Rule of Bankruptcy Procedure 1014(a) addresses the transfer of properly venued cases and the dismissal or transfer of improperly venued cases, as follows:

(a) Dismissal and Transfer of Cases.

(1) Cases Filed in Proper District. If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) Cases Filed in Improper District. If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

FED. R. BANKR. P. 1014(a) (2016) (emphasis added). Because Ms. Duncan is the moving party, she bears the burden of proof to establish that venue is not proper in the Northern District of Ohio. *Bavelis v. Doukas (In re Bavelis)*, 453 B.R. 832, 867 (Bankr. S.D. Ohio 2011) (quoting *In re Peachtree Lane Assocs.*, 150 F.3d 788, 792 (7th Cir. 1998)) (“[T]he party challenging venue bears the burden of establishing by a preponderance of the evidence that the case was incorrectly venued.”).

For the reasons set forth below, the Court finds that (i) Ms. Duncan has waived any objection to venue in the Northern District of Ohio; (ii) venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1408(1); and (iii) neither the interest of justice nor the convenience of the parties supports permissive transfer of this case to another venue. The Court will address each of these rulings in sequence.

A. Ms. Duncan Waived Any Objection to Venue

It is well-settled that venue is non-jurisdictional and, thus, a party may consent to venue or waive any challenge to venue through its conduct. In addition, both 28 U.S.C. § 1406(b) and Federal Rule of Bankruptcy Procedure 1014(a) require a challenge to venue to be timely. The Court finds that Ms. Duncan (i) waived any objection to venue in the Northern District of Ohio by

voluntarily filing and actively prosecuting this case; and (ii) failed to timely move for a transfer of venue.

First, Ms. Duncan consented to venue in this District by voluntarily filing a bankruptcy petition. *In re Golembiewski*, No. 15-30107, 2015 Bankr. LEXIS 695, *5 (Bankr. N.D. Ohio Mar. 6, 2015) (“[T]he Debtor has waived any objection to venue in this court by conduct – the filing of the case in the forum of her choice.”); *In re Fishman*, 205 B.R. 147, 149 (Bankr. E.D. Ark. 1997) (“By filing his bankruptcy case in this district the debtor waived any right to assert the impropriety of venue.”) (citations and parentheticals omitted).

Second, Ms. Duncan failed to timely object to venue in this District and waived any such objection based on her active participation in this case. *See Lebbos v. Schuette*, No. EC-07-1163, 2007 Bankr. LEXIS 4939, *14 (B.A.P. 9th Cir. Nov. 14, 2007) (“Given the timing of [the debtor’s] motion and her extensive participation in her case, her conduct falls squarely within the parameters of a clear and unequivocal waiver”). The Motion to Transfer was filed on April 7, 2016, which was nearly 11 months after the May 8, 2015 Petition Date. Prior to filing the Motion to Transfer, Ms. Duncan (i) appeared at multiple meetings of creditors; (ii) appeared and testified at numerous hearing; (iii) amended her schedules on two occasions; (iv) opposed two motions to convert her case from chapter 13 to chapter 7;

(v) voluntarily converted her case from chapter 13 to chapter 7; (vi) opposed a motion for relief from stay; (vii) opposed a motion to sell real property; (viii) was held in contempt for violating an order of this Court; and (ix) filed answers in two adversary proceedings. Ms. Duncan actively prosecuted this case for nearly 11 months without seeking a transfer of venue. Moreover, Ms. Duncan's creditors, the Trustee, and the UST have actively participated in this case. It is no coincidence that Ms. Duncan chose to file the Motion to Transfer on the same date that she appealed the Sale Order granting the Trustee the authority to sell the Florida Property. Ms. Duncan cannot attempt to sidestep adverse rulings by seeking a transfer of venue. As a consequence, the Court finds that (i) the Motion to Transfer was not timely pursuant to 28 U.S.C. § 1406(b) and Rule 1014(a); and (ii) Ms. Duncan waived any objection to venue. For this reason, the Court will deny the Motion to Transfer.

B. Venue Is Proper in the Northern District of Ohio

The Court's determinations that Ms. Duncan consented to venue, waived any challenge to venue through her conduct, and failed to timely seek a transfer of venue are dispositive of the Motion to Transfer. The Court will nevertheless address the merits of the Motion to Transfer due to Ms. Duncan's litigious posture in this case and the 2016 Florida Case.

This case presents an unusual set of facts because, since a debtor chooses the place to file a bankruptcy petition, it is usually a creditor or other party in interest that objects to venue. By moving to transfer this case, Ms. Duncan has the burden of proof to establish that the statements she made under oath in her Petition regarding venue are not true.

1. Ms. Duncan Voluntarily Chose this District

Ms. Duncan voluntarily chose the Northern District of Ohio as the proper venue for her bankruptcy case in May 2015. In filing her Petition, Ms. Duncan swore, under penalty of perjury, that she not only resided in the Northern District of Ohio, but that she had resided in the Northern District of Ohio either for the 180-day period prior to the Petition Date or for a longer portion of such 180-day period than anywhere else.²² As a consequence, Ms. Duncan's statement that maintaining this case in the Northern District of Ohio is "not within the Debtor's control" (Mot. to Transfer ¶ 6) is factually not true; the case is here because Ms. Duncan chose this District as the venue for her bankruptcy case.

²² As set forth *supra* at 3, in her original Petition, Ms. Duncan listed her address as Lockwood Boulevard in Youngstown, Ohio. (Doc. 1, Pet. at 1.) Ms. Duncan left blank the section captioned "Mailing Address of Debtor (if different from street address)." (*Id.*) In addition, in the section captioned "Information Regarding the Debtor - Venue," Ms. Duncan checked the box "Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District." (*Id.* at 2.)

2. Ms. Duncan's Change of Address Does Not Affect Venue

Ms. Duncan accurately notes that a debtor may amend her petition at any time. FED. R. BANKR. P. 1009(a) (2016) ("A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed.") In fact, a debtor is required to provide any change of address so that all notices, orders, and other documents will be received by the debtor. FED. R. BANKR. P. 4002(a)(5) (2016) ("In addition to performing other duties prescribed by the Code and rules, the debtor shall: . . . file a statement of any change of the debtor's address.") However, neither amending the petition nor filing a change of address changes the petition date, which is the applicable date for all information in a debtor's petition and schedules. Indeed, even conversion of a case from chapter 13 to chapter 7 does not affect the petition date.

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C. § 348(a) (2016) (emphasis added).

Ms. Duncan may amend – and, indeed, may under certain circumstances, be required by the Code and the Bankruptcy Rules to amend – her Petition and Schedules if they are inaccurate. Such

amendments, however, are supposed to reflect Ms. Duncan's assets and liabilities as of the Petition Date. Ms. Duncan's post-petition change of address did not divest this Court of venue. Instead, the change of address simply ensured that Ms. Duncan would receive notices, orders, and other documents.

3. Ms. Duncan Resided or Was Domiciled in this District

Ms. Duncan's Motion to Transfer takes as a given that her residence is within the Southern District of Florida based on her change of address. At the Transfer Hearing, however, Ms. Duncan asserted that it was her domicile, rather than her residence, that was in Florida during the 180 days preceding the Petition Date.²³

As stated *supra* at 18-19, pursuant to the Judgment Entry of Sentence, Ms. Duncan was not allowed to leave the State of Ohio absent prior permission from her probation officer – including going to the State of Florida for work purposes – from the period June 2013 to June 2015. Ms. Duncan testified at both the Sale Hearing and the Transfer Hearing that she resided in Ohio during that period in compliance with the Judgment Entry of Sentence. At the Transfer Hearing, the Court had the following exchange with Ms. Duncan:

The Court: You indicated in your statement to the Court that even when you were under the supervision of your Ohio Probation Officer that you were domiciled in Florida. Is that correct?

²³ Ms. Duncan currently does not have her own residence in Florida. When she is in Florida, Ms. Duncan resides with a friend who lives "three doors up" from the Florida Property. (Transfer Hr'g at 10:24:41.)

Ms. Duncan: That is correct. And he did know that. And he knew that I was traveling back and forth to Florida for work. And I did record it every time I went there with him.

The Court: And you got his prior approval for every time you went to and from Florida. Is that correct?

Ms. Duncan: Yes, ma'am.

The Court: Despite your domicile being in Florida, were you residing in Ohio at the time that you passed the bad checks and the . . .

Ms. Duncan: I was. Yes.

The Court: And you were under the authority of the Mahoning County Court of Common Pleas when that Judgment Entry of Sentence was issued. Is that correct.

Ms. Duncan: Correct.

(Transfer Hr'g at 10:22:30.) Although Ms. Duncan testified that she considered Florida her domicile beginning in 2011, she admitted that she resided in Ohio and merely traveled "back and forth to Florida" for work from June 2013 to June 2015. Thus, there is no dispute that Ms. Duncan resided in Ohio during the 180 days preceding the Petition Date. Accordingly, venue in this District is not improper.

Ms. Duncan has repeatedly contradicted, under oath, her self-serving testimony the she has been domiciled in Florida since 2011. In the 2012 Ohio Case, Ms. Duncan listed a residence in Youngstown, Ohio, failed to list a separate mailing address, and failed to disclose both the Florida Property and any other premises occupied

by her during the previous three years. Yet, Ms. Duncan now asserts that she considered Florida and, particularly, the Florida Property, her domicile at that time. Similarly, in this case, Ms. Duncan's original Petition, Schedules, and SOFA listed her residence as Lockwood Boulevard, failed to list a separate mailing address, and failed to disclose both the Florida Property and any other premises occupied during the three years preceding the Petition Date. It was not until Ms. Duncan filed her Second Amended Schedules on March 16, 2016 – *i.e.*, more than ten months after the Petition Date – that Ms. Duncan listed the Florida Property as her address and disclosed that she had lived there prior to the Petition Date. In her Second Amended SOFA, Ms. Duncan alleged that she “live[d]” at the Florida Property since October 2011, but “stay[ed]” at Lockwood Boulevard during the same time period “[a]pproximately 5 weeks out of the year.”²⁴ (Sec. Am. SOFA at 1.) This position is inconsistent with Ms. Duncan's testimony that she resided in Ohio from June 2013 to June 2015. This position is also inconsistent with Ms. Duncan's testimony at the February 18, 2016 hearing on the First OSC that the Florida Property was vacant at that time.

²⁴ Ms. Duncan disclosed her residence as 5911 Parkland Avenue, Youngstown, OH 44512 in the 2012 Ohio Case, which was filed on May 10, 2012. (2012 OH Case, Doc. 1, Pet. at 1.) Yet, in her Second Amended SOFA, Ms. Duncan stated that she ceased living at that address in October 2011 – *i.e.*, when she claims to have begun her domicile in Florida.

Ms. Duncan first claimed the Florida Property as her residence eight days before the Sale Hearing, at which hearing Ms. Duncan testified that she had claimed the Florida Property as exempt in the 2016 Florida Case filed the day prior.²⁵ It is apparent to the Court that, much like filing the 2016 Florida Case, Ms. Duncan changed her address in this case in an attempt to thwart the Sale Motion. Based on Ms. Duncan's numerous, wholly inconsistent positions concerning her residence and domicile, the Court finds that Ms. Duncan has failed to demonstrate by a preponderance of the evidence that she was domiciled in Florida during the 180 days preceding the Petition Date.

In addition, the statute regarding venue is in the disjunctive and permits a debtor to choose the place where she has resided or been domiciled for the greater portion of the 180 days preceding the filing of a bankruptcy petition. As stated above, the evidence does not support Ms. Duncan's assertion that she was domiciled in Florida on the Petition Date. Even assuming *arguendo* that Ms. Duncan did intend to return to Florida and, thus, could claim Florida as her domicile, Ms. Duncan expressly testified at the Transfer Hearing that she resided in Ohio during the 180 days preceding the Petition Date. Ms. Duncan also swore in her Petition

²⁵ At the Transfer Hearing, Ms. Duncan testified that she was under the impression that she had also claimed the Ohio homestead exemption in her Second Amended Schedules - *i.e.*, eight days prior to the Sale Hearing. Despite having reviewed the Second Amended Schedules with Mr. Bricker "line by line by line," Ms. Duncan has never claimed any homestead exemption in this case.

that she resided in this District for the greater part of the 180 days preceding the Petition Date. Thus, venue in this District is proper.

4. Ms. Duncan Presented No Evidence of a Business

In the Motion to Transfer, Ms. Duncan summarily states that this District is not the proper venue "due to the Debtor's . . . principal place of business." (Mot. to Transfer ¶ 2.) However, Ms. Duncan has neither identified nor presented evidence of a business that she operates. See *In re Golembiewski*, No. 15-30107, 2015 Bankr. LEXIS 695, *2 (Bankr. N.D. Ohio Mar. 6, 2015) (citations omitted) ("The strong majority of courts that have addressed this issue have held that a salaried individual's workplace is not a 'principal place of business' for purposes of 28 U.S.C. § 1408(1)."). In her original Schedule I: Your Income, Ms. Duncan listed her occupation as "Freedom Fighters Sport Fishing," but did not list the name or address of her employer. (Doc. 1, Sched. I at 1.) Ms. Duncan stated that she was employed in that occupation for "3 Year [sic] Winter Season Only." (*Id.*) Moreover, Schedule I did not include a statement "showing gross receipts, ordinary and necessary business expenses, and the total monthly net income," as instructed if a debtor has income from operation of a business. (*Id.* at 2.) In the Schedule I: Your Income included in her Second Amended Schedules, Ms. Duncan listed her occupation as "Charter Boat Captain" for "Freedom Fighters

Sport Fishing" in Summerland Key, Florida. (Sec. Am. Scheds. at 40.) Ms. Duncan stated that she had been employed there for five years. (*Id.*) Ms. Duncan also disclosed that she had been employed as a "Sales Rep" for "American Edge Outfitters" for 18 months and as an "Insurance/Auto Collison [sic] Estimate" at "American Edge Estimating" for 6 months, both in Summerland Key, Florida. (*Id.* at 42.) Again, Ms. Duncan did not attach a statement showing gross receipts, business expenses, and total monthly net income from operation of a business. As a consequence, the Court finds that there is no evidence that Ms. Duncan operated a business with its principal place of business in Florida.

In fact, the only mention of business operations at the Transfer Hearing suggests that Ms. Duncan may have utilized the Yacht in business operations in Ohio: "I filed bankruptcy in 2013 in Florida. Once again, to save a boat that I was trying to use, not for pleasure, not for the purpose of enjoying it, but for the purpose of working in Ohio during the summer months that we could have it on Lake Erie." (Transfer Hr'g at 10:31:25.) Thus, the only evidence concerning the operation of a business suggests that any such business had both its principal place of business and its principal business assets in Ohio.

5. Real Property Does Not Dictate Venue

Ms. Duncan makes the cursory argument that this case must be transferred to the Southern District of Florida because "[c]ases

that involve real estate must be heard by the same court as the county of the real estate of the governing county.” (Mot. to Transfer ¶ 3.) This argument is without merit and totally misses the mark. Section 541 of the Bankruptcy Code, which defines property of the bankruptcy estate, provides that “[s]uch estate is comprised of all the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541 (2016) (emphasis added). Upon the filing of Ms. Duncan’s case in the Northern District of Ohio, a bankruptcy estate was created, which included the Florida Property. It is of no moment that the Florida Property was located outside the Northern District of Ohio; it was property of the bankruptcy estate and the Trustee was required to administer it for the benefit of Ms. Duncan’s creditors.

6. Conclusion: No Basis for Mandatory Transfer of Venue

The weight of the evidence overwhelmingly supports that venue is appropriate in this District. Ms. Duncan consented to venue in this District by filing her voluntary bankruptcy petition here and waived any challenge to venue by actively participating in this case and failing to timely file the Motion to Transfer. Even assuming *arguendo* that Ms. Duncan had not consented to venue or waived any challenge thereto, the evidence establishes: (i) Ms. Duncan voluntarily filed her Petition in the Northern District of

Ohio and swore under oath that venue was proper in this District, despite having filed two prior bankruptcy cases in Florida in 2013 and 2014;²⁶ (ii) in her original Petition and Schedules, Ms. Duncan listed her address as Lockwood Boulevard, failed to list a separate mailing address, and did not disclose any other premises that she occupied during the previous three years; (iii) Ms. Duncan did not schedule the Florida Property until forced to do so after the UST and Home Savings filed the Motions to Convert; (iv) even after disclosing the Florida Property, Ms. Duncan disclaimed that she had any interest in the Florida Property because she alleged that she had transferred the Florida Property to Scott Daugherty; (v) Ms. Duncan did not claim the Florida Property as her residence until after the Court scheduled the hearing on the Trustee's Sale Motion; and (vi) in her Amended Petition, Ms. Duncan provided no explanation as to why she had chosen this District to file for bankruptcy, despite indicating that the reason was something other than having lived in this District longer than any other district during the 180 days preceding the Petition Date.

²⁶ Ms. Duncan may be too clever for her own good. The 2014 Florida Case was dismissed on December 2, 2014. The dismissal of the 2014 Florida Case included a 180-day bar regarding refiling in any bankruptcy court. (2014 FL Case, Doc. 57.) As set forth *supra* at 3, in the original Petition, Ms. Duncan failed to disclose the 2013 Florida Case and the 2014 Florida Case, although she disclosed the 2012 Ohio Case. It appears that Ms. Duncan attempted to escape the 180-day refiling bar imposed in the 2014 Florida Case by filing in the Northern District of Ohio and not disclosing the previous Florida bankruptcy cases.

At the Sale Hearing and the Transfer Hearing, Ms. Duncan testified that she resided in Ohio during the 180 days preceding the Petition Date. It was not until the Transfer Hearing that Ms. Duncan alleged that she was domiciled in Florida. In support of that assertion, Ms. Duncan testified that she banked, voted, and paid taxes in Florida, in addition to having a Florida Driver's license. However, Ms. Duncan did not provide any dates for such acts or provide any documentary evidence in support thereof. On cross-examination, Ms. Duncan admitted that her vehicle and the Yacht are currently registered in Ohio. Based on the evidence, the Court finds that Ms. Duncan (i) resided in Ohio during the 180 days preceding the Petition Date; and (ii) provided insufficient evidence that she was domiciled in Florida during the 180-day period preceding the Petition Date.

In conclusion, Ms. Duncan has failed to demonstrate by a preponderance of the evidence that her bankruptcy case is improperly venued in the Northern District of Ohio. Accordingly, the mandatory dismissal or transfer provisions in 28 U.S.C. § 1406(a) and Rule 1014(a)(2) do not apply in this case.

C. Discretionary Transfer Is Not in the Interest of Justice

Although Ms. Duncan does not base her Motion to Transfer on any statutes other than 28 U.S.C. §§ 1406 and 1408, the Court will address whether permissive transfer is appropriate under 28 U.S.C. § 1412. Section 1412 states, "A district 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." 28 U.S.C § 1412 (2016). The procedure for seeking permissive transfer of venue is set forth in Rule 1014(a)(1). As with mandatory transfer, the burden of proof is on Ms. Duncan. Ms. Duncan advances two arguments for permissive transfer of venue to the Southern District of Florida: (i) the undue burden of travel on her; and (ii) her lack of legal representation in this District.

The seminal case analyzing whether transfer of venue is appropriate based on the convenience of the parties is *Puerto Rico v. Commonwealth Oil Refining Co. (In re Commonwealth Oil Refining Co.)*, 596 F.2d 1239 (5th Cir. 1979), which set forth six factors to consider:

- (1) The proximity of creditors of every kind to the Court;
- (2) The proximity of the bankrupt (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.

Id. at 1247. These factors support venue in the Northern District of Ohio.

Regarding proximity of creditors, in this case, only 13 creditors (other than Ms. Duncan)²⁷ have filed proofs of claims, of which 4 were filed by creditors with addresses in the Northern District of Ohio and 2 were filed by creditors with addresses in the Southern District of Ohio. The only creditor (other than Ms. Duncan) with an address in the Southern District of Florida is Monroe County, Florida, which has filed two proofs of claims for real estate taxes against the Florida Property. Those claims would have been paid from the proceeds of the sale of the Florida Property, as directed in the Sale Order, and, thus, will be disallowed. The second factor is Ms. Duncan's proximity to the Court. To the extent Ms. Duncan is no longer residing within the Northern District of Ohio, her absence is totally by her own volition. Regarding witnesses, other than Ms. Duncan, the plaintiffs and defendants in each of the three adversary proceedings are all located in this District. The fourth factor, which is the location of assets, favors this District because the lone remaining asset of significance - *i.e.*, the Yacht - is purportedly located in the District. Finally, the Trustee represented at the Transfer Hearing that he has nearly completed the administration of Ms.

²⁷ On April 28, 2016, Ms. Duncan filed a proof of claim in her own bankruptcy case, which was denominated Claim No. 14-1, in the amount of \$190,000.00 (i) based on "monies paid & improvements made" to the Florida Property; (ii) secured in the amount of \$170,000.00 by real estate perfected by "warranty deed title"; and (iii) as a priority claim based on 11 U.S.C. § 507(a)(2). (Claim No. 14-1 at 2-3.)

Duncan's bankruptcy estate. The final factor is not applicable. As a result, each of the factors set forth in *Commonwealth Oil*, except the location of Ms. Duncan, favors keeping venue in the Northern District of Ohio.

The Court will next address Ms. Duncan's arguments that she is burdened by this Court maintaining venue because of travel and her inability to retain counsel.

Ms. Duncan asserts that maintaining her bankruptcy case in the Northern District of Ohio is "an extreme burden for the debtor to participate in the case." (Mot. to Trans. ¶ 6.) She states that she has to travel 1,438 miles and 25 hours between Florida and Ohio to attend hearings. To date, Ms. Duncan has made all appearances required by the Court and has even attended hearings where her attendance was not required.²⁸ Ms. Duncan was even at the Sale Hearing on March 24, 2016, after having filed the 2016 Florida Case "over the counter" as a *pro se* debtor the prior day. Any burden of travel to Ms. Duncan is ultimately due to her voluntary choices to file a bankruptcy petition in this District and subsequently relocate to the Southern District of Florida. Ms. Duncan's voluntary conduct is not a valid basis to transfer venue in this case, which has been substantially administered.

²⁸ Ms. Duncan attended the hearing on February 4, 2016 regarding U.S. Bank's Motion for Relief, at which her appearance was not required.

By her own admission, Ms. Duncan continues to stay at Lockwood Boulevard when in Youngstown, which she testified is her father's house. Thus, it appears that she still has a place to reside in the Northern District of Ohio. In addition, Ms. Duncan testified at the Sale Hearing that she does not have a residence of her own in Florida, but stays with a friend. The last residence provided by Ms. Duncan in this case was the Florida Property, which she is enjoined from entering and is now owned by and in the possession of Mr. Birrell. Thus, there is no factual basis to Ms. Duncan's statement in the Motion to Transfer that (i) the Florida Property is her current address; and (ii) she is required to travel from Florida in order to attend hearings in this Court.

In addition to the burden of travel, Ms. Duncan states that she is prejudiced because she cannot obtain legal counsel in this District. However, Ms. Duncan has neither alleged that she has retained or is able to retain counsel in Florida. Although she claims to have had an attorney who filed the 2016 Florida Case, as set forth *supra* at 17, that is simply false. To date, Ms. Duncan has no attorney of record in the 2016 Florida Case.

Moreover, Document 2 attached to the Motion to Transfer, which is captioned "List of Law Offices I contacted - Will NOT take my case," is yet another example that Ms. Duncan is a stranger to the truth or, at most, has only passing familiarity with the truth. The Court has no idea how many, if any, attorneys Ms. Duncan has

contacted in an attempt to obtain representation in this case, but the Court does know that Document 2 does not and cannot represent a true list of attorneys contacted by Ms. Duncan. For example, the Court is aware and takes judicial notice of the fact that, of the attorneys Ms. Duncan listed: (i) at least three of the attorneys are deceased – *i.e.*, James Beck, Warren Pritchard, and Ralph Zuzolo; (ii) several of the attorneys are known to be retired from the practice of law (many of whom have relocated outside of this District) or otherwise are on inactive status; (iii) several of the attorneys work for government entities or companies as in-house counsel,²⁹ each of whom would not be able to take private clients; and (iv) at least one person is not an attorney at all, although she works in a law office. Additionally, one of the attorneys listed is Brent Baker, who has filed a notice of appearance on behalf of the State of Ohio, Department of Taxation, in this case (Doc. 25). Ms. Duncan is aware that Mr. Baker represents one of her creditors – and, thus, would have a conflict and be unable to represent her – because Ms. Duncan listed Mr. Baker as one of six parties on whom she served the Motion to Transfer. Despite Ms. Duncan's statement that she has contacted all of the attorneys on Document 2, this statement cannot be true.

²⁹ Indeed, Daniel Syphard, whose name appears on page two, is one of the Court's former law clerks. The Court has personal knowledge that Mr. Syphard resides in the Southern District of Ohio, works as an in-house corporate attorney, and was not contacted by Ms. Duncan.

Having found that transfer of this case would not be to the convenience of the parties, the Court also finds that is not in the interest of justice because prejudice to other parties would occur. Both the UST and Homes Savings have filed adversary proceedings, respectively, to deny Ms. Duncan's discharge and to have her debt determined nondischargeable. The plaintiffs in both of those adversary proceedings are located in the Northern District of Ohio and have asked for and obtained leave to file motions for summary judgment. In fact, Home Savings has filed its motion for summary judgment (Adv. No. 04008, Doc. 24).

Likewise, the Trustee has filed an adversary proceeding seeking turnover of the Yacht as property of the bankruptcy estate. In her Second Amended Schedules, Ms. Duncan stated that she "believes boat is located at Bennett Industries, 6708 North Ridge Road West, Geneva [sic] Ohio," which is within this District. The Trustee and each of the defendants in that adversary proceeding, including Bennett Industries, Ltd., are located in this District.

This Court is in the best position to evaluate the merits of each of the three adversary proceedings. Moreover, the Trustee represented that, because the sale of the Florida Property has occurred, the assets of this case have been substantially administered.

In addition, Ms. Duncan has already attempted to file a separate bankruptcy case in the Southern District of Florida, which

was dismissed by the Bankruptcy Court for the Southern District of Florida.³⁰ As a consequence, this Court finds that there is no basis to transfer this case to the Southern District of Florida.

Neither the convenience of the parties nor the interest of justice would be served by transferring this case to the Southern District of Florida. The Court will not grant permissive transfer pursuant to either 28 U.S.C § 1412 or Rule 1014(a)(1). The Motion to Transfer will be denied on this basis.

D. Motion to Disqualify

Although Ms. Duncan has not properly filed a motion to recuse, Ms. Duncan may believe that she has filed such a motion since she states that "a DISQUALIFICATION MOTION is requested as well." (Mot. to Transfer ¶ 7.) Ms. Duncan states that the Court's "impartiality is reasonable [sic] questioned." (*Id.*) Ms. Duncan states that she has been treated with a "pattern of disdain" and the Court "ordered" her to proceed *pro se*. (*Id.*) To the contrary, this Court permitted Ms. Duncan to proceed *pro se*, while at the same time encouraging her to obtain legal counsel. In addition, this Court has treated Ms. Duncan with respect, despite Ms. Duncan being a difficult witness whose testimony has been replete with

³⁰ Ms. Duncan filed a motion for reconsideration of the order of dismissal in the 2016 Florida Case, which was denied. (2016 FL Case, Docs. 16-17.) Ms. Duncan appears to have attempted to appeal the dismissal of the 2016 Florida Case.

internal contradictions, as well as contradictions with her written sworn statements.

28 U.S.C. § 455, which sets forth the standard for when a judge must recuse herself, states, in pertinent part:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

28 U.S.C. § 455(a) and (b)(1) (2016). "The standard is an objective one; hence, the judge need not recuse himself based on the 'subjective view of a party' no matter how strongly that view is held." *United States v. Sammons*, 918 F.3d 592, 599 (6th Cir. 1990) (quoting *Browing v. Foltz*, 837 F.2d 276, 279 (6th Cir. 1988)).

This Court finds that (i) the Court has at all times acted impartially; (ii) no reasonable person would question the Court's impartiality; and (iii) the Court has no bias or prejudice against Ms. Duncan. Ms. Duncan has presented no evidence to the contrary. As a consequence, the Court finds no basis to recuse itself from this case. To the extent Ms. Duncan has pled a motion to recuse or disqualify, such motion will be denied.

IV. CONCLUSION

Ms. Duncan consented to venue in the Northern District of Ohio by voluntarily filing a bankruptcy petition here. Ms. Duncan has also waived any right to challenge venue in this District by actively prosecuting her case and failing to timely challenge venue. As a consequence, Ms. Duncan's Motion to Transfer will be denied as untimely pursuant to 28 U.S.C. § 1406(b) and Federal Rule of Bankruptcy Procedure 1014(a).

Ms. Duncan swore in her original Petition, under penalty of perjury, that this District was the proper venue because she had resided here, been domiciled here, or had her principal place of business here for the greater period of the 180 days preceding the Petition Date. Ms. Duncan testified that she resided in this District during the 180-day period preceding the Petition Date. Finally, Ms. Duncan has failed to demonstrate by a preponderance of the evidence that she was domiciled in Florida during that time period. Accordingly, Ms. Duncan is not entitled to mandatory dismissal or transfer of this case pursuant to 28 U.S.C. § 1406(a) and Federal Rule of Bankruptcy Procedure 1014(a)(2).

Ms. Duncan has also failed to demonstrate by a preponderance of the evidence that permissive transfer of this case is in the interest of justice or for the convenience of the parties. Two adversary proceedings are pending against Ms. Duncan; both plaintiffs are located in the Northern District of Ohio. Likewise,

the Trustee has filed an adversary proceeding against two defendants located in the Northern District of Ohio seeking turnover of the Yacht, which Ms. Duncan has testified is and at all times was located in the Northern District of Ohio. Finally, Ms. Duncan's decision to move to the Southern District of Florida following the Petition Date does not support transfer of venue, particularly when the Bankruptcy Court for the Southern District of Florida dismissed her 2016 Florida Case less than two months ago. Accordingly, the Court finds that permissive transfer of venue is not warranted pursuant to 28 U.S.C. § 1412 or Federal Rule of Bankruptcy Procedure 1014(a)(1).

For the reasons set forth above, the Court will deny the Motion to Transfer.

To the extent that the Motion to Transfer is deemed to contain a motion to disqualify or recuse, the Court will deny such request. Ms. Duncan has failed to set forth any facts that would cause a reasonable person to question the Court's impartiality, and the Court has no bias or prejudice against Ms. Duncan.

An appropriate order will follow.

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IT IS SO ORDERED.

Dated: May 16, 2016
04:23:07 PM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

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CASE NUMBER 15-40842

CHAPTER 7

HONORABLE KAY WOODS

ORDER DENYING
MOTION TO TRANSFER CASE TO PROPER VENUE

Before the Court is Motion to Transfer Case to Proper Venue ("Motion to Transfer") (Doc. 154) filed by Debtor Virginia Duncan on April 7, 2016.

The facts before the Court appear to be unique. Ms. Duncan, who is currently representing herself *pro se*, filed a Voluntary Petition (Doc. 1 at 1-3) pursuant to chapter 13 of the Bankruptcy Code on May 8, 2015 ("Petition Date"). Despite representing, under penalty of perjury, that the Northern District of Ohio was the

proper venue for her bankruptcy case, Ms. Duncan now moves to transfer her case to the Southern District of Florida on the basis that venue in this District is improper.

The Court held a hearing on the Motion to Transfer on May 6, 2016, at which appeared (i) Ms. Duncan; (ii) Andrew W. Suhar, Chapter 7 Trustee; (iii) Scott R. Belhorn, Esq. on behalf of Daniel M. McDermott, United States Trustee for Region 9; and (iv) James G. Floyd, Esq., on behalf of Robert G. Birrell, Jr., the purchaser of the Florida Property.

For the reasons set forth in the Court's Memorandum Opinion Regarding Motion to Transfer Case to Proper Venue entered on this date, the Court hereby:

1. Finds that Ms. Duncan consented to venue in the Northern District of Ohio by voluntarily filing a bankruptcy petition in this District.
2. Finds that Ms. Duncan waived any right to challenge venue in this District by actively prosecuting her case and failing to timely challenge venue.
3. Finds that Ms. Duncan resided in the Northern District of Ohio during the 180-day period preceding the Petition Date or for a longer part of such 180-day period than in any other district.
4. Finds that venue in the Northern District of Ohio is proper.

5. Finds that Ms. Duncan is not entitled to mandatory dismissal or transfer of this case pursuant to 28 U.S.C. § 1406(a) and Federal Rule of Bankruptcy Procedure 1014(a)(2).
6. Finds that Ms. Duncan has failed to demonstrate by a preponderance of the evidence that she was domiciled in the Southern District of Florida during the 180-day period preceding the Petition Date.
7. Finds that Ms. Duncan has failed to demonstrate by a preponderance of the evidence that permissive transfer of this case is in the interest of justice or for the convenience of the parties.
8. Finds that permissive transfer of venue is not warranted pursuant to 28 U.S.C. § 1412 or Federal Rule of Bankruptcy Procedure 1014(a)(1).
9. Finds that Ms. Duncan has failed to set forth any facts that would cause a reasonable person to question the Court's impartiality, and the Court has no bias or prejudice against Ms. Duncan.
10. To the extent that the Motion to Transfer is deemed to contain a motion to disqualify or recuse, denies such request.

Accordingly, the Court hereby denies the Motion to Transfer.

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