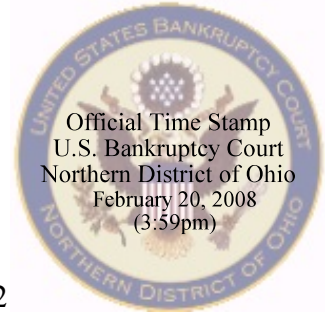


NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 07-19422
)
JAMES E. LUNDEEN, SR.,) Involuntary Chapter 7
)
Alleged Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **RE: MOTION TO CHANGE VENUE**

The alleged debtor filed a motion to change venue of this case from the Northern District of Ohio to the Southern District of Ohio.¹ The petitioning creditors responded.² The court heard oral argument on the motion on February 19, 2008.³ For the reasons stated below, the motion is denied.⁴

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

¹ Docket 8.

² Docket 12. The petitioning creditors include Parshotam Gupta, Floyd Heller, Jerold Ladin, Estelle Lukasek, Darshan Mahajan, and Mahendra Patel.

³ Docket 9.

⁴ In the court's view, the value of this opinion is solely to decide the venue issue in this case and not as an addition to the general jurisprudence. For that reason, the opinion is not intended for commercial publication.

FACTS AND DISCUSSION

Venue

Neither party disputes that the Northern District of Ohio is the proper venue for this case.

Venue for bankruptcy cases is governed by 28 U.S.C. § 1408, which provides in pertinent part:

[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

(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.

In this case, the petition lists the alleged debtor's address as 2380 Overlook Road, Cleveland Heights, OH 44106. This address is in Cuyahoga County, within the Northern District of Ohio. The alleged debtor does not dispute that this was his address at the time of filing, stating that he relocated to Columbus after the involuntary petition was filed.⁵ As the alleged debtor resided in Cuyahoga County for the applicable time-period, venue is properly located in this court.

Transfer of Venue Under 28 U.S.C. § 1412

Properly venued cases can be transferred to another district "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412; *see also* FED. R. BANKR. P. 1014(a)(1). The alleged debtor, as the party requesting transfer, must prove by a preponderance of the

⁵ Docket 8, ¶ 1.

evidence that transfer is appropriate. *See In re Weatherly Frozen Food Group, Inc.*, 133 B.R. 862, 867 (Bankr. N.D. Ohio 1991).

The requirements of § 1412 are disjunctive, and consequently, courts are required to consider whether transfer of venue would be “in the interest of justice *or* for the convenience of the parties.” 28 U.S.C. § 1412 (emphasis added); *Things Remembered, Inc. v. BGTV, Inc. (In re Things Remembered, Inc.)*, 151 B.R. 827, 832 (Bankr. N.D. Ohio 1993). The “interest of justice” prong of § 1412 “is a broad and flexible standard which must be applied on a case-by-case basis [and] [i]t contemplates a consideration of whether transferring venue would promote the efficient administration of the bankruptcy estate, judicial economy, timeliness, and fairness” *Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1391 (2d Cir. 1990). The term “interest of justice” addresses “public-interest concerns, such as systematic integrity and fairness[.]” *Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1137 (6th Cir. 1991). The convenience of the parties prong, on the other hand, considers private interests. *Id.* To determine whether a change of venue is warranted based on convenience of the parties, courts generally consider: (1) the proximity of creditors to the court; (2) the debtor’s proximity to the court; (3) the proximity of witnesses necessary to the administration of the estate; (4) the location of assets; and (5) economic administration of the estate. *In re Pinehaven Assocs.*, 132 B.R. 982, 988 (Bankr. E.D.N.Y. 1991) (citing *Puerto Rico v. Commonwealth Oil Ref. Co., (In re Commonwealth Oil Ref. Co.)*, 596 F.2d 1239, 1247 (5th Cir. 1979)). The economic administration of the estate is the most important of these factors. *See In re Gurley*, 215 B.R. 703, 709 (Bankr. W.D. Tenn. 1997).

The Alleged Debtor's Motion

The alleged debtor states two reasons for this request to change venue: (1) since the filing of the involuntary petition, he established a new personal residence in Columbus, Ohio; and (2) he travels frequently, but is rarely in the Cleveland area.⁶ At oral argument, counsel for the alleged debtor identified no additional reasons behind this request.

The alleged debtor does not address how transferring this case to the Southern District of Ohio would be in the interest of justice. This court has already ruled on a similar motion to transfer venue filed by the debtors in the related chapter 11 cases and determined that this court is the most efficient forum for these cases.⁷ A change of venue in this case would result in increased expense, duplication of effort, and delay for all concerned because a new court, United States trustee representative, and others would be required to familiarize themselves with outstanding issues and an extensive case history. *See In re Manville Forest Prods. Corp.*, 896 F.2d at 1391 (considering the court's "learning curve" as an important element in the efficient administration of the bankruptcy case). Moreover, the alleged debtor's status as an involuntary debtor does not change the court's earlier analysis. *See In re Weatherly Frozen Food Group, Inc.*, 133 B.R. at 866–67. Finally, fairness and the integrity of the bankruptcy system favor keeping the involuntary case in the same court as the alleged debtor's other bankruptcy cases, as the bankruptcy rules generally promote consistency in the administration of cases, *see, e.g.*, FED. R. BANKR. P. 1014(b); LOCAL BANKR. R. 1015-2, and transferring this case would unnecessarily create duplicate administration.

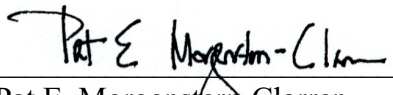
⁶ Docket 8.

⁷ Case no. 96-12660, docket 675.

As for the convenience of the parties prong, the alleged debtor's motion falls short of showing that transfer is warranted for that reason. While the alleged debtor suggests that a change in venue would benefit him, he fails to address the interests of other parties. The fact that the alleged debtor would find it more convenient to proceed in a different venue is balanced, if not outweighed, by the interests of creditors who favor this court retaining the case. *Cf. In re Weatherly Frozen Food Group, Inc.*, 133 B.R. at 865. In this case, the petitioners oppose the motion. They are represented by counsel located in the Northern District of Ohio and none of the petitioning creditors is located in the Southern District of Ohio. A change in venue would certainly inconvenience the petitioning creditors and increase their costs. Moreover, the alleged debtor did not make any arguments regarding other factors addressing the convenience of the parties that might weigh in his favor, such as the existence of creditors, witnesses, or assets located in the Southern District of Ohio. Finally, as stated above, this court is the most efficient forum for administering the estate.

CONCLUSION

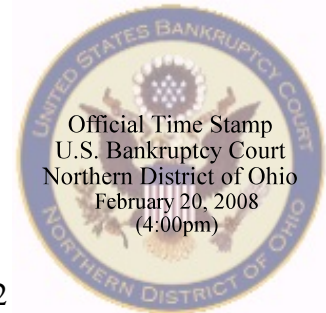
For the reasons stated, the alleged debtor's motion to change venue is denied. A separate order will be entered to memorialize this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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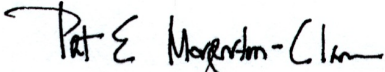
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In re:) Case No. 07-19422
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JAMES E. LUNDEEN, SR.,) Involuntary Chapter 7
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Alleged Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion entered this same date, the alleged debtor's motion to change venue to the Southern District of Ohio is denied. (Docket 8).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge