

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
HIDEAWAY APARTMENTS I, L.P.,) CASE NO. BK99-81871
)
DEBTOR.) CH. 11

MEMORANDUM

Hearing was held on September 9, 1999, on Motion to Dismiss this Bankruptcy Case, or, in the Alternative, Transfer this Bankruptcy Case to the District of Oklahoma filed by Goldman Sachs Mortgage Company, L.P. Appearances: William Biggs and Jennifer Harms for the debtor and John Jay Jolley and P. Glen Smith for Goldman Sachs Mortgage Company, L.P. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and (C).

Background

Hideaway Apartments I, L.P. ("Hideaway") obtained an \$800,000.00 loan from Archon Financial L.P. ("Archon") in order to refinance a real estate mortgage on property located in Tulsa, Oklahoma. The loan, which closed on June 30, 1999, is secured by a mortgage on the property. Additionally, an assignment of rents and leases was executed simultaneously with the mortgage. The assignment stated that all leases and rents from the property were immediately assigned to Archon. Further, Archon granted a license to Hideaway to collect the rents and hold them in trust for Archon. Archon later assigned the loan to Goldman Sachs Mortgage Corporation ("GSMC"). The first payment on the loan came due on August 1, 1999. Hideaway did not make this payment. On August 16, 1999, GSMC called the loan and demanded payment in full by August 19, 1999. On August 18, 1999, GSMC terminated Hideaway's license to collect rents. On August 20, 1999, Hideaway filed under Chapter 11 of the Bankruptcy Code. On September 3, 1999, GSMC moved to dismiss the case or, in the alternative, transfer the case to the District of Oklahoma, Tulsa Division. Additionally, GSMC moved to prohibit the use of cash, rents, incomes and profits, alleging that, according

to Oklahoma law, the aforementioned are not property of the estate.

Hideaway I is a limited partnership organized under the laws of Oklahoma. The partnership consists of Douglas Hiner ('Hiner"), a Nebraska resident, as the sole limited partner, and general partner Retro Development of Oklahoma, Inc., ("Retro"), an Oklahoma corporation. The sole and primary asset of Hideaway is a forty-one unit apartment complex located in Tulsa, Oklahoma.

Decision

1. The motion for change of venue is granted.
2. The motion to prohibit use of the rents is left to decision by the Oklahoma court.

Facts, Applicable Law and Discussion

The federal venue statute, 28 U.S.C. § 1408(1), states that proper venue in a bankruptcy case is in the district in which the domicile, residence, principal place of business in the United States or principal asset in the United States of the entity that is the subject of the case have been located for the 180 days immediately preceding commencement of the case. It has been widely held that a partnership does not have a domicile or residence. Rather, when evaluating proper venue for a partnership one must determine, (1) where it's principal place of business is located or, (2) where its principal asset is located. See generally, *In re Commonwealth Oil Refining Co., Inc.*, 596 F.2d 1239 (5th Cir. 1979). Thus, it is possible to have proper venue in two districts. *In re Washington, Perito & Dubuc*, 154 B.R. 853, 859 (Bankr. S.D.N.Y. 1993).

The principal asset in this case is located in Tulsa, Oklahoma. However, the debtor's principal place of business is located in Omaha, Nebraska. The principal place of business is where a debtor makes its major business decisions. *In re Washington, Perito & Dubuc*, 154 B.R. at 859. All bank accounts of the partnership are located in Nebraska, and Hiner resides in Omaha and appears to be vested with authority to make the business decisions. Therefore, according to the information on the record, the principal place of business of Hideaway is Omaha, Nebraska, and venue is proper in Nebraska

or in Oklahoma. This does not end the venue inquiry, however, because a change of venue from the original filing district may be appropriate in certain circumstances.

Change of venue is governed by 28 U.S.C. § 1412 which states that although venue may be proper in the court where the case is filed, a court may transfer the case to another district in the interest of justice or for convenience of the parties. In order to determine whether the transfer is in the interest of justice, courts have formulated a six-part test. The test inquires into, (1) the proximity of the creditors to the court, (2) the proximity of the debtor to the court, (3) the proximity of witnesses necessary to the administration of the estate, (4) the location of the assets, (5) the economic administration of the estate, and (6) the necessity for ancillary administration if liquidation should result. *In re Commonwealth Oil Refining Co.*, 596 F.2d at 1247; *In re Midland Associates*, 121 B.R. 459, 460 (Bankr. E.D. Pa. 1990); *In re Pavillion Place Associates*, 88 B.R. 32, 35 (Bankr. S.D.N.Y. 1988).

The Proximity of Creditors, the Debtor
and Witnesses to The Court

In determining the proximity of creditors to the court, it is vital to consider both the number of creditors in each location and the size of their claims. Neither is more important than the other. *In re Commonwealth Oil Refining Co.*, 596 F.2d at 1248. The largest claim is that of GSMC, the moving party, located in New York. Of the fifty unsecured creditors, forty-seven are located in Oklahoma, one is located in Arizona; one, with a claim in the low hundreds of dollars, in Nebraska; and one in Ohio. Although the largest creditor is located in New York, there are a significant number of creditors with smaller claims that are located in Oklahoma. Therefore, considering number of claims, venue in Oklahoma is preferred to that of Nebraska where only one unsecured creditor resides.

The proximity of the debtor to the Oklahoma court also weighs in favor of a change in venue. Although the partnership's major business decisions take place in Nebraska, the day-to-day business functions, such as management of the apartment complex, maintenance of the real estate and supervision of the property, take place in Oklahoma.

Additionally, although the debtor's general partner is located in Omaha, Nebraska, the debtor purposely opened itself to the prospect of lawsuits in Oklahoma by forming a partnership under its laws and purchasing real estate there. See, *In re Oklahoma City Associates*, 98 B.R. 194, 199-200 (Bankr. E.D. Pa. 1989). Therefore, venue in the District of Oklahoma is appropriate.

Finally, the proximity of witnesses necessary to the administration of the estate weighs in favor of the transfer. In a partnership in which real estate is the primary asset, it is generally accepted that the estate is best administered in the state where the asset is located. *In re Pavillion Place Associates*, 88 B.R. at 36, *In re Greenridge Apartments*, 13 B.R. 510,513 (Bankr. D. Haw. 1981), *In re Macon Uplands Venture*, 2 B.R. 44 (Bankr. D. Md. 1980). In this case, the debtor is a partnership formed for the sole purpose of operating the apartment complex at issue; the sole asset located in Oklahoma. Many of the witnesses necessary for administration of the estate are located in Oklahoma. These witnesses may include: people necessary to value the property, the onsite manager, and creditors. Most of these potential witnesses are located in Oklahoma.

The Location of the Assets, the
Economic Administration of the Estate,
and the Necessity for Ancillary Administration
if Liquidation Should Result

The sole asset is real property located in Tulsa, Oklahoma. Transferring the case to the district where the real property is located facilitates an economic and efficient administration of the estate. *In re PineHaven Associates*, 132 B.R. 982, 988 (Bankr. E.D.N.Y. 1991); *In Re Oklahoma City Associates*, 98 B.R. at 199; *In re Eleven Oak Tower Ltd. Partnership*, 59 B.R. 629, 630 (Bankr. N.D. Ill. 1986). Additionally, because the real property is located in Oklahoma, if liquidation should result, a court and Trustee located in Oklahoma would be better suited to supervision. A Trustee located in Omaha would face a substantial hardship in supervising a single asset liquidation several hundred miles away.

Interest of Justice

Finally, it is in the interest of justice to transfer the case. The primary asset is real property located in Oklahoma, and Oklahoma law will govern a majority of the issues which arise. A federal bankruptcy court sitting in Oklahoma is better suited to resolve issues of Oklahoma law. There already has been raised an issue peculiar to Oklahoma law concerning the assignment of rent. This exemplifies the need for an adjudicator familiar with the vagaries of Oklahoma law.

Conclusion

Although venue is appropriate in both Nebraska and Oklahoma, the case shall be transferred to Oklahoma in the interest of justice.

The Clerk of the Bankruptcy Court shall transfer the file to the Bankruptcy Court for the Northern District of Oklahoma at Tulsa, Oklahoma.

Separate journal entry filed contemporaneously.

DATED: September 29, 1999.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

64 BIGGS, WILLIAM
29 JOLLEY, JOHN JAY

Copies mailed by the Court to:

United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
HIDEAWAY APARTMENTS I, L.P.,) CASE NO. BK99-81871
) A
DEBTOR(S))
)
) CH. 11
) Filing No. 5
Plaintiff(s))
vs.) JOURNAL ENTRY
)
)
)
) DATE: September 29, 1999
Defendant(s)) HEARING DATE: September 9, 1999

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Dismiss this Bankruptcy Case, or, in the Alternative, Transfer this Bankruptcy Case to the District of Oklahoma filed by Goldman Sachs Mortgage Company, L.P

APPEARANCES

William Biggs and Jennifer Harms for the debtor
John Jay Jolley and Glen Smith for the movant

IT IS ORDERED:

Motion to change venue to the Northern District of Oklahoma is granted. All other pending motions may be determined by a judge of the Oklahoma court. See memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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