

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
LAKEWAY INTERNATIONAL, L.L.C.,) CASE NO. BK00-82432
)
DEBTOR) CH. 7

MEMORANDUM

Hearing was held on Motion to Dismiss or in the Alternative to Transfer this Bankruptcy Case to the District of Oregon on February 15, 2001. Appearances: William Biggs for the involuntary debtor and Jim Powers for ConAgra Foods, Inc. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

FACTS

This matter is before the court on debtor's Motion to Dismiss or in The Alternative To Transfer This Bankruptcy Case to the District of Oregon and a Resistance by ConAgra Foods, Inc, a petitioning creditor in this involuntary Chapter 7 case.

On October 23, 2000, two creditors, Willow Island Land and Cattle and ConAgra Inc., filed this Involuntary Chapter 7 proceeding against the debtor in United States Bankruptcy Court for the District of Nebraska. Both petitioning creditors are located in Nebraska and their claims against the debtor amount to approximately \$3,230,200.00.

The debtor is an Oregon Limited Liability Company which operated a meat processing plant in Omaha, Nebraska, until January of 2000. Due to several instances of premature meat spoilation, the debtor was forced to liquidate the meat processing operation in January, 2000. All assets of the debtor were transferred to Golden Valley Meat L.L.C. except an insurance claim, a lawsuit and a small amount of cash on hand.

After January, 2000, the debtor had no assets in Nebraska, had no place of business in Nebraska and maintained no books or records in the State of Nebraska.

Presently, and since January of 2000, the debtor's operating headquarters have been located in Oregon and that is where all books and records are stored. The remaining assets of the debtor are being administered from Oregon and there is a lawsuit being tried in Illinois. Additionally, two of the debtor's former owners and operators reside in Oregon.

The debtor still has some contact with Nebraska. The debtor has appointed an individual in Nebraska who has the authority to accept service of process on behalf of the debtor. Additionally, the debtor has a listing in the Omaha, Nebraska, Yellow Pages for the year(s) 2000/2001. The listing reads: "Lakeway International, 3301 G St., Omaha, Nebraska 68107" and also includes a phone number. Finally, a former owner of the debtor, Michael O'Neill, continues to reside in Omaha.

LAW

Venue is Improper Pursuant to 28 U.S.C. § 1408

The venue statute, 28 U.S.C. § 1408, states that venue is proper in any district where; (1) the debtor was domiciled, (2) where the debtor resided, (3) where the debtor maintained his principal place of business or, (4) where the principal asset of the debtor is located. The four tests are independent, satisfying any one of them will render jurisdiction proper. *In re Blumeyer*, 224 B.R. 218 (Bankr. M.D. Fla. 1998); *Mitchell v. Fukuoka Daiei Hawks Baseball Club (In re Mitchell)*, 206 B.R. 204, 207 (Bankr. C.D. Calif. 1997). The test is performed at the time of filing, referencing back 180 days before filing of the petition. 28 U.S.C. § 1408. The court's duty is to consider all the facts existing during the 180 days preceding the commencement of the case in order to determine proper venue. *In re Blumeyer*, 224 B.R. at 220, *Micci v. Bank of New Haven (In re Micci)*, 188 B.R. 697, 699 (S.D. Fla.1995).

The involuntary petition was filed in October of 2000. The debtor had sold all of its assets in January of 2000. At that time, the debtor's operations were moved to Oregon and administered from that location. The books and records were also relocated then. The assets of the debtor have been administered from Oregon. The small amount of cash the debtor has is also located in Oregon. Although prior to the sale, venue would most likely have been proper in Nebraska, evidence

was presented that in the 180 days preceding the filing of the involuntary petition, the proper venue for bankruptcy of the debtor is Oregon.

The petitioning creditors have failed to show how any of their evidence proves that the debtor was located in Nebraska for 180 days prior to the bankruptcy filing. No evidence was presented to determine when the 2000/2001 Yellow Page listings are compiled and printed. The creditors do not claim that any assets are being administered from Nebraska. Further, the petitioning creditors failed to show how the existence of "contacts" with a state alone is sufficient to prove venue. The creditors have only shown that, prior to the 180-day period, venue would have been proper here. However, at the bench-mark date, venue is improper in the State of Nebraska.

Transfer is Proper According to Rule 1014

Bankruptcy Rule of Procedure 1014 provides that if a petition is filed in the wrong district a court may not retain the case but may either 1.) dismiss the case or 2.) transfer the case. Fed. R. Bankr. P. 1014 (a)(2). See *Bryan v. Land (In re Land)*, 215 B.R. 398 (8th Cir. BAP. 1997)(holding that if a case is filed in an improper district and an objection is timely filed a bankruptcy court may NOT retain jurisdiction of the case.) (emphasis added); *HSBC Bank v. Handel (In re Handel)*, 240 B.R. 798 (1st Cir. BAP 1999). When determining whether to dismiss or transfer the bankruptcy case, the court must consider the interest of justice and convenience of the parties. Fed. R. Bankr. P. 1014(a)(2).

The petitioning creditor argues that it is in the interest of justice and for the convenience of the parties that this court 1) not dismiss the case or in the alternative 2) to retain jurisdiction over the case. As stated in the Bankruptcy Rule and according to case law, this court may not retain jurisdiction of a case filed in an improper venue. Fed. R. Bankr. P. 1014(a)(2); *In re Land*, 215 B.R. at 399.

Dismissing this case would not further the interest of justice. Time plays an extremely important role in most bankruptcy cases and most of the relevant time periods center around the date of the filing of the petition as is obvious from the above discussion concerning venue. Preference actions, fraudulent conveyance actions and many other actions that may benefit the estate are extremely time sensitive. For the foregoing reasons, it is not in the interest of justice to

dismiss the case, the case is transferred to the district of Oregon.

The alternative motion to transfer venue is granted. The Clerk of the Bankruptcy Court shall take appropriate action to transfer this case after the expiration of ten days from the date this Memorandum and the accompanying Journal Entry are filed.

DATED: March 19, 2001

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

64 BIGGS, WILLIAM
14 POWERS, JAMES

Copies mailed by the Court to:

Michael Redden, 4370 NE Halsey Street, Portland, OR 97213
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.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
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LAKEWAY INTERNATIONAL, L.L.C.,)	CASE NO. BK00-82432
)	A
<u>DEBTOR(S)</u>)	
)	CH. 7
)	Filing No. 3, 6
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	DATE: March 19, 2001
<u>Defendant(s)</u>)	HEARING DATE: February 15, 2001

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Dismiss or in the Alternative to Transfer this Bankruptcy Case to the District of Oregon, Resistance by ConAgra Foods, Inc.

APPEARANCES

William Biggs, Attorney for the involuntary debtor
Jim Powers, Attorney for ConAgra Foods, Inc.

IT IS ORDERED:

The motion to dismiss is denied and the alternative motion to transfer venue is granted. The Clerk of the Bankruptcy Court shall take appropriate action to transfer this case after the expiration of ten days from the date this Memorandum and the accompanying Journal Entry are filed. See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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