

In the United States Bankruptcy Court

for the Northern District of Iowa

GIL J. SEMPRINI

Bankruptcy No. 94-11309KC

Debtor(s).

Chapter 7

ORDER RE MOTION FOR CHANGE OF VENUE

On September 15, 1994, the above-captioned matter came on for hearing pursuant to assignment. Hearing was held by telephone conference call pursuant to the record made. Debtor appeared by Attorney Steven E. Gill. The Chapter 7 Trustee, Eric Lam, participated in the hearing. The Movant, Robert J. Hurlbutt, a creditor in these proceedings, represented himself. The factual matters are not in dispute. The parties argued their respective positions after which the Court entered its ruling.

FINDINGS OF FACT

1. Debtor lists his address in the Schedules as 219 Arlington, Van Meter, Iowa. Van Meter, Iowa is located in Dallas County which is in the Southern District of Iowa.
2. Des Moines, the Southern District Court point nearest Debtor's residence, is located in Polk County which adjoins Dallas County. To reach the Court point in Cedar Rapids, Iowa, Debtor must pass within several miles of the Des Moines Court point and then proceed another 130 miles to get to Cedar Rapids.
3. Creditor Robert Hurlbutt filed his Motion for Change of Venue on September 2, 1994. On the same date, the matter was scheduled for hearing at the earliest possible date.
4. Though Debtor did not file a formal resistance to this Motion, Debtor, through counsel, did resist the change of venue at the time of hearing.

ANALYSIS

Proper venue for bankruptcy purposes is controlled by 28 U.S.C. § 1408 which states:

Except as provided in section 1410 of 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
2. in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

An examination of the schedules establishes, without dispute, that the domicile or residence of Debtor is in Dallas County which is located in the Southern District of Iowa. Creditor made the allegation, which is un rebutted, that Debtor has lived at this residence for more than 180 days immediately preceding the commencement of this bankruptcy filing. Therefore, it is clear that Debtor's filing is in an improper district.

The case law provides that a Court may retain a case in an improper district in the interest of justice and for the convenience of the parties. However, if a case is improperly venued, as here, the burden shifts to the debtor to show "compelling reasons" why the case should be retained. In re Leonard, 55 B.R. 106, 110 (Bankr. D.D.C. 1985); In re Cole, No. 86-00018C, slip op. 2 (Bankr. N.D. Iowa May 1, 1986).

Three criteria are particularly significant in making this determination:

1. The distance from the residence of the debtor to the nearest court point.
2. The convenience of the creditors.
3. Whether major creditors are located in the district where the action was filed.

See Leonard, 55 B.R. at 110.

As indicated, 28 U.S.C. § 1408 compels the finding that this matter has been filed in an improper venue. The burden is upon Debtor to show "compelling reasons" why it should remain in this District. The uncontested record establishes that Debtor has no "compelling reason" why this case should remain in the Northern District and not be transferred to the proper venue located in the Southern District.

The geographical distance between Debtor's residence and the nearest Court point is significantly closer to Des Moines than to Cedar Rapids. As indicated by Mr. Hurlbutt's comments, this case consists of many creditors with small unsecured claims who are located in the Des Moines area. To require their presence in the Bankruptcy Court in Cedar Rapids would place an undue burden upon these creditors when a convenient Court point is located nearby. Finally, many of the creditors are located in Des Moines with only two or three being located in the Cedar Rapids area. Though one major creditor appears to live in the Cedar Rapids area, on balance, the great majority of the claims are from the Southern District of Iowa near the residence of Debtor.

In summary, pursuant to 28 U.S.C. § 1408, the Northern District of Iowa is not the proper venue for this case. Further, Debtor has not met its burden to establish "compelling reasons" why this case should be retained. As such, the Court finds that Creditor's Motion for Change of Venue should be granted.

ORDER

IT IS THEREFORE ORDERED that the Motion to transfer this case to the United States Bankruptcy Court for the Southern District of Iowa is GRANTED.

SO ORDERED this 19th day of September, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge

