

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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CURTIS KOCH

*Debtor(s).*

Bankruptcy No. 99-02793-W

Chapter 7

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SCHOMANN INTERNATIONAL CORP.

*Plaintiff(s)*

Adversary No. 00-9015-W

vs.

CURTIS KOCH

*Defendant(s)*

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### **RULING ON PLAINTIFF'S MOTION FOR CHANGE OF VENUE**

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On April 28, 2000, the above-captioned matter came on for hearing on Plaintiff's Motion for Change of Venue. Plaintiff appeared by Attorney Frank Bersani. Defendant appeared by Attorney Michael Dunbar. The parties argued their positions after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

#### **STATEMENT OF THE CASE**

Debtor/Defendant Curtis Koch d/b/a Northern Wireless, Ltd. entered into a contractual relationship with Plaintiff Schomann International Corporation for the acquisition and installation of a cellular telephone system in the Republic of Georgia, formerly part of the U.S.S.R. Northern Wireless is an Iowa corporation with its principal place of business in Hudson, Iowa. Plaintiff is a New York corporation with its principal place of business in Skaneateles, New York.

Plaintiff filed an action for breach of contract against Debtor in United States District Court for the Northern District of New York on August 13, 1998, before Debtor filed his Chapter 7 bankruptcy petition. During this litigation, Debtor moved to transfer venue to the Northern District of Iowa. The New York district court denied the motion on January 26, 1999, giving weight to a New York choice-of-law provision in the contract and to Plaintiff's decision to file suit in its home district. Because a change of venue would merely "shift the inconvenience from one party to another," the New York district court concluded that a transfer of venue was unwarranted.

Debtor filed his Chapter 7 bankruptcy petition in the Northern District of Iowa nine months after the venue ruling, on October 21, 1999. Plaintiff initiated this adversary proceeding on January 24, 2000 asserting its claim is nondischargeable for fraud under 11 U.S.C. § 523(a)(2)(A). Plaintiff now moves for a change of venue under Rule 7087 and 28 U.S.C. § 1412.

#### **CONCLUSIONS**

Ordering a change of venue is within a bankruptcy court's sound discretion. In re Weatherly Frozen Food Group, Inc., 133 B.R. 862, 866 (Bankr. N.D. Ohio 1991). However, this discretion should be exercised cautiously when a case is commenced in the proper venue. Id. A debtor's choice of venue is entitled to some deference. See Krystal Cadillac-Oldsmobile-GMC Truck, Inc. v. General Motors Corp., 232 B.R. 622, 628 (E.D. Pa. 1999).

Where a debtor has little or no money to defend proceedings in an alternate forum, a bankruptcy court should not allow a change of venue unless other factors clearly favor it. In re Line by Dakota, Inc., 8 B.R. 643, 645 (Bankr. S.D. 1981). Similarly, where a change in venue would merely shift the burden of inconvenience from the creditor to the debtor, the change should be denied. Id. These principles reflect a bankruptcy policy that favors resolution of all claims in a single forum. This policy may be overcome by showing that a change in venue would be "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. The party seeking a change of venue must prove one of these two prongs by a preponderance of the evidence. In re Manville Forest Products Corp., 896 F.2d 1384, 1390-91 (2d Cir. 1990).

The "interest of justice" prong is "a broad and flexible standard which must be applied on a case-by-case basis." Id. Several factors bear on whether a change of venue will satisfy the "interest of justice" test, including:

- (a) Economics of estate administration
- (b) Presumption in favor of venue in the "home court" (the court in which the bankruptcy case was filed)
- (c) Judicial efficiency
- (d) Ability to receive a fair trial and
- (e) Enforceability of any judgment rendered.

In re Bruno's, Inc., 227 B.R. 311, 324-25 (Bankr. N.D. Ala. 1998). Because this Court feels that fairness and judgment enforceability are not at issue, only factors (a) - (c) above will be examined.

With respect to estate administration, there is no evidence that costs of administration are higher in Iowa than in New York. Debtor has no assets in this case and his estate can be administered efficiently in either forum. The only economic advantage of moving the case to New York would be enjoyed by Plaintiff at the expense of Debtor. A mere shift in inconveniences does not warrant a change of venue. Line by Dakota, Inc., 8 B.R. at 645; In re Aledo Financial Services, Inc., 63 B.R. 695, 697 (Bankr. D. Ariz. 1986).

Whether a change in venue is judicially efficient involves numerous issues, including the home court's familiarity with the substantive issues and law to be applied; the caseload of the respective courts; and the time for moving the case toward trial. Bruno's, Inc., 227 B.R. at 327. Judicial efficiency concerns are not strong enough to warrant a change of venue in this case. Debtor has been granted a discharge, there are no assets to be liquidated, and his case is winding down. Transferring venue at this stage would only serve to delay conclusion of the case. Although it is certainly arguable that a New York bankruptcy court might have more familiarity with New York contract law as implicated by this adversary proceeding, it appears that questions of federal bankruptcy law will predominate since it is the dischargeability of debt under 11 U.S.C. § 523(a)(2)(A) which is at issue. In any event, venue in this court is proper and New York law can be applied if necessary.

Finally, the presumption in favor of resolving claims in the "home court" coupled with Debtor's financial inability to travel to New York to defend this proceeding favor retention of venue. It appears

from the Chapter 7 filing that Debtor is a wage earner. It would be onerous for him to defend himself in a distant forum. Requiring him to do so would be unfair given a debtor's right to choose the venue of his bankruptcy case. This Court concludes that Plaintiff has failed to establish that a change of venue would be "in the interest of justice."

Plaintiff may alternatively attempt to show that the transfer is necessary "for the convenience of the parties." 28 U.S.C. § 1412. Several factors weigh in to this analysis, including:

- (a) Location of Plaintiff and Debtor
- (b) Ease of access to necessary proof
- (c) Convenience of witnesses and
- (d) Availability of subpoena power for unwilling witnesses.

Bruno's, Inc., 227 B.R. at 325.

Plaintiff relies on a Memorandum-Decision & Order from the United States District Court for the Northern District of New York to support its motion for a change of venue. In the Order, the District Court noted that "material witnesses and documents relevant to this action are located in both New York and Iowa," and that "this litigation will impose burdens on both parties regardless of where it is venued, and a transfer will simply 'shift the inconvenience from one party to the other.'" Schomann International Corporation v. Northern Wireless, Ltd., No. 98-CV-1305, slip. op. at 22-23 (N.D.N.Y. Jan. 26, 1999). The District Court denied Debtor's motion to change venue in that case, instead deferring to Plaintiff's choice of forum.

The District Court's reasoning applies with equal force in this adversary proceeding. Changing venue would not serve the convenience of both parties, it would only serve the convenience of Plaintiff. Under these circumstances, a change of venue is unwarranted. Debtor is a resident of Iowa and chose Iowa as an appropriate venue within which to file his bankruptcy petition. In fact, based upon residency requirements, Iowa is the only venue where Debtor could have filed. Therefore, for the same reasons that Debtor lost in New York, he is entitled to prevail here. Plaintiff has only established that it is more convenient for Plaintiff to litigate in New York. This constitutes a mere shifting of inconvenience and is insufficient. Because Debtor is entitled to deference in his choice of venue, and because Plaintiff has failed to prove by a preponderance of the evidence that changing venue would be "in the interest of justice or for the convenience of the parties," Plaintiff's motion must be denied.

**WHEREFORE**, for the reasons set out herein, Plaintiff's Motion for Change of Venue is DENIED.

**SO ORDERED** this 4th day of May, 2000.

Paul J. Kilburg  
Chief Bankruptcy Judge