

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN
DISTRICT OF IOWA

IN RE:)

) Chapter 11

J.G. ROBINS, INC.)

) Bankruptcy No. 03-01789

Debtor.)

ORDER RE MOTION TO DISMISS OR TRANSFER VENUE

This matter came before the undersigned pursuant to assignment on a Motion to Dismiss, or in the Alternative, for Transfer of Venue filed by Fauser Oil Co. In lieu of a hearing, and with approval of the Court, the parties agreed this could be decided upon a stipulation of facts, which has now been filed. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A).

STATEMENT OF THE CASE

Debtor J. G. Robins, Inc. filed its Chapter 11 petition on May 7, 2003. Creditor Fauser Oil Company, Inc. requests the Court dismiss this matter or, in the alternative, transfer venue of this matter to the U.S. Bankruptcy Court for the Southern District of Iowa pursuant to Rule 1014(a) (2). Debtor resists and argues that retaining this proceeding in this district is in the best interests of all parties. No other parties have filed a response to the Motion.

FINDINGS OF FACT

The Court adopts the Fact Stipulation filed jointly by Debtor and Fauser Oil on August 11, 2003. In summary, the Stipulation states that during the 180 days prior to the petition date Debtor maintained only one place of business. This is a gas station and convenience store called Petro N Provision in Iowa City, Johnson County, Iowa which is the location of all Debtors assets. All Debtors' shareholders, officers and directors reside in Coralville, Johnson County, Iowa. At the time of Debtor's incorporation, however, some of these individuals resided in West Branch, Cedar County, Iowa. They moved from West Branch several years ago.

Schedules reveal that Debtor's only three creditors as of the petition date are located in the Northern District of Iowa. One of the creditors, Walford Bank, has instituted a foreclosure action against Debtor in Johnson County. Fauser Oil has an action pending in Johnson County against Debtor's principal, individually. Debtor recently filed monthly reports for May and June 2003. These reports show payments to numerous suppliers and

employees. The Court is unable to determine the locations of these payees.

The parties agree Debtor filed this case in the Northern District of Iowa so that it is more convenient and less expensive and time-consuming for Debtor's principals, counsel and creditors to attend court hearings. Johnson County is in the Southern District of Iowa. Cedar County is in the Northern District of Iowa. Counsel for creditors Fauser Oil and Walford Bank and for Debtor are all located in the Northern District. The Court notes that Debtor's principal place of business is approximately 20 to 30 miles from Cedar Rapids. Cedar Rapids, Linn County, Iowa is the principal court location for the Bankruptcy Court of the Northern District of Iowa. The Southern District of Iowa has court locations in Davenport and Des Moines, both of which are farther from Debtor's business than is Cedar Rapids.

CONCLUSIONS OF LAW

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 that the domicile or residence of Debtor is in Johnson County which is located in the Southern District of Iowa. Debtor stipulates that its principal place of business and all of its assets are in Iowa City in Johnson County, Iowa. Because Johnson County is not with the Northern District of Iowa, Debtor's filing is in an improper district.

Federal R. Bankr.P. 1014(a) (2) provides that:

If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be dismissed or transferred to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

Debtor has not raised the timeliness of Fauser Oil's motion as an issue. Debtor filed its petition on May 7, 2003. Fauser Oil filed its Motion to dismiss or change venue on June 11, 2003. The § 341 Meeting of Creditors was held on June 12, 2003. In these circumstances, the Court finds Fauser Oils motion is timely.

The 8th Circuit Bankruptcy Appellate Panel has stated, in dicta, that if venue is not proper in a district, upon the filing of a timely motion to change venue the bankruptcy court is without authority to retain the bankruptcy case. In re Land, 215 B.R. 398, 403 (B.A.P. 8th Cir. 1997) (determining that motion to change venue was not timely filed). Subsequently, however, and also in dicta, the Panel has implied that the bankruptcy court may have discretion to keep venue of a bankruptcy case filed in an improper district under Rule 1014(a)(2). In re Wilson, 284 B.R. 109, 111 (B.A.P. 8th Cir. 2002) (finding sua sponte dismissal by the court improper without appropriate notice and opportunity for hearing).

The Court notes that there is a split of authority on the issue of whether the Bankruptcy Court may retain an improperly venued case, or must either dismiss it or transfer it to a proper district. Compare In re Sorrells, 218 B.R. 580, 585 (B.A.P. 10th Cir. 1998), with In re Lazaro, 128 B.R. 168, 174-75 (Bankr. W.D. Tex. 1991).

The majority of courts have held that, if venue is contested and found to be improper, a bankruptcy court may not retain the case, but rather must dismiss it or transfer it pursuant to section 1406(a) and Bankruptcy Rule 1014(a)(2). The minority of courts . . . have held a bankruptcy court may retain an improperly venued case in the interest of justice and for the convenience of the parties despite a timely objection thereto.

Sorrells, 218 at 586 (citations omitted). One of the cases cited in Sorrells as following the majority of courts is ICMR, Inc. v. Tri-City Foods, Inc., 100 B.R. 51, 53 (D. Kan. 1989). The 8th Circuit B.A.P. also relied on the ICMR case in Land. Land, 215 B.R. at 401.

It has been a long standing policy of the Judges for the Northern District of Iowa that they will administer cases improperly

filed in this District so long as no venue objections are lodged. However, if an objection to venue is properly and timely made, the case will be dismissed or more likely transferred to the proper venue. The 8th Circuit Bankruptcy Appellate Panel comments, combined with the holdings of a majority of courts considering the issue, lead this Court to conclude that its policy is appropriate. This Court also concludes that it is without authority to retain this case. Debtor filed this Chapter 11 case in an improper district. Under Rule 1014(a)(2), the Court may dismiss the case. In the alternative, the Court may transfer to another district if it determines "that transfer is in the interest of justice or for the convenience of the parties."

Fauser Oil urges the Court to dismiss the case. In its Memorandum in support of its motion filed August 11, 2003, it argues that dismissal rather than transfer is appropriate. No date-specific causes of action will be prejudiced by dismissal of this case. Other than Debtor, no other party in interest has communicated a preference for transfer rather than dismissal.

The docket sheet shows that Debtor filed its petition on May 7, 2003. Fauser Oil filed its Motion to dismiss or change venue on June 11, 2003. Debtor filed its objection to the motion on July 1, 2003 and the matter was set for hearing for July 29, 2003. On that date, the parties agreed to file their Fact Stipulation by August 11, 2003. In the meantime, Debtor has received Orders allowing for payment of payroll and payroll taxes and granting priority status to Debtor's fuel supplier. Debtor and Farmers Savings Bank have stipulated to a cash collateral order. The § 341 Meeting of Creditors was held on June 12, 2003. Debtor has filed two monthly reports.

In light of the progress of this case, the Court concludes that the interests of justice and convenience of the parties would be better served by transfer of this case to the Southern District of Iowa rather than dismissal.

WHEREFORE, Fauser Oil Co.'s Motion to Dismiss, or in the Alternative, for Transfer of Venue is GRANTED in part.

FURTHER, the Northern District of Iowa is an improper venue for this case.

FURTHER, this case is hereby transferred to the Southern District of Iowa.

SO ORDERED this 22nd day of August, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY COURT