

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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IN RE:	)	Bankruptcy Nos.	83A-00736
	)		83A-00810
DOUGLAS K. SIEBERT &	)		
DOROTHY SIEBERT,	)		
Debtors.	)		

MEMORANDUM DECISION

The trustee of the estates of the above-named debtors brought a motion asking this Court for an Order transferring these Chapter 7 cases to the United States Bankruptcy Court for the District of Oregon, Portland Office.

The interest of justice and the convenience of the parties are the stated reasons for change of venue. 28. U.S.C.A. Section 1475. The Court in In re Galanis, 6. B.R. 900 (Conn., 1980) quotes legislative history to the effect that this section derives from Rule 782 of the Rules of Bankruptcy Procedure and thus precedents under that rule are relevant. The meaning of the phrase is similar to the meaning in non-bankruptcy cases.

The Supreme Court has a decision which is something of a touchstone in the area of change of venue. It determined that in looking at a given venue, there should be considered:

1. The relative ease of access to proof
2. availability of compulsory process for obtaining unwilling witnesses or
3. the cost of obtaining willing ones
4. all other practical problems that make trial of a case easy, expeditious and inexpensive. Gulf Oil Corp. v. Gilbert, U.S. 501, 67 S.Ct. 839, 91 L. Ed. 1055 (1946).

In a bankruptcy case, the standard of interest of justice and the convenience of the parties has been stated to be applicable with the proximity of creditors, the debtor and witnesses to the Court, location of assets and the economic and efficient administration of the case being considered. In re Birchminster Corp. of California, 6 B.R. 258 (Pa., 1980). In considering a change of venue of a particular proceeding, a Court has considered factors such as the relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses and the cost of attendance of willing witnesses, the enforceability of any judgment rendered, relative advantages and obstacles to a fair trial, local interest in having localized controversies decided "at home" and trial in a state whose laws are applicable. In re Macon Uplands Venture, 2 B.R. 444 (Md., 1980).

The debtor's choice of the Utah forum is a factor to be evaluated in determining the question of transfer of venue. In re Cole Associates, supra, at 157. However, this is by no means

the controlling issue on deciding the advisability of a transfer. See Foster v. Litton Industries, Inc., 431 F. Supp. 86 (D.C.N.Y., 1977); Delay & Daniels, Inc. v. Allen Campbell Co., 71 F.R.D. 368 (D.C.S.C., 1976); Dristan Development v. Mountain States Development Corp., 402 F. Supp. 1317 (D.C. Ohio, 1975).

Economic considerations are important. One Court has stated that economic administration of the estate is the paramount consideration in determining whether to transfer under 28 U.S.C. Section 1475 a case originally filed in a correct venue. In re Boca Development Associates, 8 BCD 1086 (S.D.N.Y.). 18 B.R. 648 (S.D.N.Y., 1982).

In the case of In re Cole Associates, Inc., 7 B.R. 154, (Utah, 1980) the Bankruptcy Court specifically singled out economic and efficient administration of the estate as being the most important consideration when change of venue is being contemplated.

Procedurally the burden of proof is on the party seeking to change the venue and that burden is of a preponderance of evidence. In re Birchminster, supra; In re Macon, supra. Matter of Commonwealth Oil Refining Co., Inc., 596 F.2d(5th Cir., 1979).

The majority of the creditors in this case are in the State of Washington or Oregon.

The major business ventures of the debtors occurred in Oregon or Washington. The debtors have little or no tangible property within the State of Utah and only limited connection with the State of Utah.

The only potential asset of the debtor, the claim to property in a trust created by the debtor, is in Oregon. Since this property is located in Oregon, rulings may be required to be made in accordance with the laws of the State of Oregon. The Bankruptcy Court of Oregon would be in a better position than this Court to make those rulings. A court in the State whose law controls should be more familiar with the controlling law and may have easier access to the law. A court in one state can, of course, find the law of another state. However, it is more desirable that a suit be tried in a court in the state whose law will control.

The Court finds that this case would be more conveniently and economically administered by the Court which is closest to the property, to the majority of the creditors and to the states where the business ventures of the debtors took place.

The Court has considered the significant factors which contribute to a decision to transfer venue and concludes that the burden of proof has been sustained by the moving parties.

THEREFORE, IT IS HEREBY ORDERED that:

These cases be transferred to the District of Oregon, Portland Division and that the Clerk of this Court take all actions necessary to effect such transfer.

DATED: December 27, 1983.

  
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JOHN H. ALLEN  
United States Bankruptcy Judge

- Rule 5003(c) Designation
- The Clerk is directed to enter a copy of this order into the Court's Order Book.
  - Entry into Order Book not necessary.