

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

110

COUNTER COPY - DO NOT REMOVE - ~~CERTIFIED TRUE AND CORRECT COPY~~

IN RE: ) Bankruptcy Court No. 83-0659  
PRACTICAL CONCEPTS ) Adversary Proceeding No.  
INCORPORATED, ) 83P-0659  
Debtor. )

---

MEMORANDUM DECISION

---

Practical Concepts is a debtor in a Chapter 11 proceeding filed in the Eastern District of Virginia. The Petition was filed May 11, 1983.

This debtor is also a defendant in a case filed originally in the District Court of Cache County, State of Utah, Samuel R. Davies v. Leon J. Rosenberg, Practical Concepts Incorporated, and Lawrence Posner, Civil No. 19494. That case was removed to the Bankruptcy Court for the District of Utah. The removal section, 28 U.S.C., Section 1478(a) permits removal of "any claim or cause of action, in a civil action, other than a proceeding before the United States Tax Court of a civil action by a Government unit to enforce such governmental unit's police or regulatory power."

The debtor asks the Court to transfer the venue of the removed State Court Action to the Eastern District of Virginia where the Chapter 11 is filed.

Other than the commencement of a bankruptcy case itself, there is the consideration of proper venue for other litigation. The basic rule is that the litigation is to be brought in the Bankruptcy Court in which the Bankruptcy Court case itself is pending. The theory underlying this basic rule is that in a bankruptcy case the paramount consideration is the speedy and economical administration of the bankruptcy estate. See In re Smith Jones, 13 B.R. 804 (N.D. Tex, 1981): Matter of Trim-Lean Meat Products, Inc., 11 B.R. 1010, (Del., 1981).

As the Court stated in In re Nat. Sugar Refining Co., 26 B.R. 762 (SDNY, 1982) in considering defendant's motion under U.S.C. §1475 to transfer venue of an action brought by the debtor in possession in the home Bankruptcy Court the "general preference is to try all matters involving bankruptcy in the court in which the bankruptcy is pending." In accord In re Nixon Machinery Co., 27 B.R., 871 (E.D. Tenn., 1983).

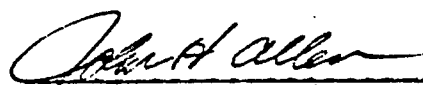
The new Bankruptcy Rules, which went into effect August 1, 1983, reflect this preference developed by case law. Rule 5005(a) requires, except where filing in another district as authorized by 28 U.S.C. §1473, all papers including the Complaint commencing adversary proceedings to be filed in the Court where the case under the code is pending. Pursuant to §1475 this Court may transfer this case if it is "in the interest of justice and for the convenience of the parties."

In re Cole Associates, 7 B.R. 154 (Utah, 1980) outlined the factors a Court must consider when deciding a venue question. These include ease of access to sources of proof, availability of compulsory process, cost of obtaining attendance of witnesses, enforceability of a particular state law, proximity of creditors to the Court, proximity of the debtor to the Court, proximity of witnesses necessary to the administration of the estate, location of assets, and the most important consideration of all, the economic administration of the estate.

This case meets all the above criteria. The proximity of creditors of every kind is to the Eastern District of Virginia, the debtor has its principal place of business in Great Falls, Virginia, the proximity of witnesses is the to Eastern District of Virginia, the assets are located there. It is logical to conclude that economic administration of the estate requires transfer of this proceeding to the Eastern District of Virginia.

THEREFORE, IT IS ORDERED that this case be transferred to the Eastern District of Virginia and that the Clerk of this court take all actions necessary to effect such transfer.

DATED: January 10, 1984.

  
\_\_\_\_\_  
JOHN H. ALLEN  
United States Bankruptcy Judge