

Bankr. R. 1014
28 U.S.C. §1408
28 U.S.C. §1412
venue

In re Hatfield 390-35594-S7

DDS 2/21/91 unpublished

Judge Sullivan denied a creditor's motion to dismiss a chapter 7 based on improper venue. Venue was actually proper in Washington because the debtors lived in Washington and their assets were in Washington, and the debtor's salaried position in Oregon probably did not fall within the term "principal place of business." However, the motion was denied as untimely. The motion was filed after the §341(a) meeting. The case was a no asset chapter 7, and there was nothing further to be done except enter the order of discharge and close the case. Transferring the case to Washington would create additional work for the courts without benefitting any interested party.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 390-35594-S7
RALPH C. HATFIELD,)
DE ETTA R. HATFIELD,) MEMORANDUM DENYING MOTION TO
) DISMISS FOR LACK OF JURISDICTION
Debtors.) OR TO TRANSFER VENUE

Credit Bureaus Inc. ("CBI") filed a motion to dismiss this chapter 7 for lack of jurisdiction. CBI claims that venue is improper because the debtors live in Washington and their assets are in Washington. The debtors claim that venue is proper in Oregon because Mr. Hatfield is employed in Oregon and some of the creditors are in Oregon. The motion to dismiss or transfer venue should be denied because the motion is not timely under the circumstances of this case.

Venue of cases under title 11 is proper in the district in which the debtors have had their domicile, residence, principal place of business or principal assets for the one hundred and eighty days immediately preceding the filing of the bankruptcy petition. 28 U.S.C. § 1408. CBI argues that the debtor's

place of employment does not fall within the scope of the term "principal place of business," when the debtor is a salaried employee. CBI cites Barnes v. Whelan (In re Barnes), 689 F.2d 193 (D.C. Cir. 1982) which does support the creditor's position. The parties have not cited, and the court has not found any cases to the contrary. The debtors claim that Oregon and Washington are both proper venues because Mr. Hatfield is employed in Oregon. While the debtors acknowledge that they have no legal authority to support their construction of the term principal place of business, they urge the court to retain jurisdiction in the interest of justice and for the convenience of the parties based on 28 U.S.C. §1477. Alternatively, the debtors assert that the motion is not timely.

The debtors' reliance on 28 U.S.C. §1477 is misplaced because that statute was superseded by 28 U.S.C. §1412. Retention in an improper venue is not an option if a timely motion is filed objecting to venue. The court must either dismiss the case or transfer it to the proper court. Bankr. R. 1014. Venue is not jurisdictional and improper venue can be waived if the issue is not raised in a timely fashion.

The motion to dismiss for improper venue was not timely under the circumstances of this case. The debtors filed this case on October 19, 1990 and the U.S. Trustee conducted the meeting of creditors required by 11 U.S.C. §341(a) on November

28, 1990. The trustee filed a no asset report on November 29, 1990. The motion to dismiss was filed on December 7, 1990. The deadline to object to discharge or dischargeability expired on January 28, 1991, and no complaints were filed. There is nothing further to do in this routine case except enter an order discharging the debtor and an order approving the accounts and discharging the trustee. No purpose would be served in transferring this case to the Western District of Washington to enter two routine orders, and it would create unnecessary administrative duties for the clerks of the bankruptcy courts involved.

Although there is no specific time expressed in Bankr. R. 1014 for a motion objecting to venue to be timely, it should be done early in the case. In an adversary proceeding the motion generally must be filed within 30 days after the clerk issues the summons. Bankr. R. 7012. In a no asset chapter 7 the objection should be filed in an equally expeditious time frame. A motion filed after the §341(a) meeting is not timely, so the case will not be transferred or dismissed. If the motion were timely, I would transfer the case to the proper district for entry of the remaining orders rather than dismiss the case.

A separate order denying the motion to dismiss will be entered.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: Willis Anderson
Jeffrey A. Meehan
U. S. Trustee
Donald H. Hartvig