

1. Basics of Bankruptcy Venue, Transfer of Cases

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The question of where to file a bankruptcy case does not always have an obvious answer. The debtor may be incorporated in a state other than where its operations are located or where it is headquartered. Where there are multiple related debtors filing cases at the same time, the question becomes even more complex.

For creditors and other interested parties, the question arises as to what can be done in cases where the debtor's chosen venue may be improper or objectionable. To understand how to address these questions, one needs to understand the venue provisions and the procedure for seeking transfer of a case.

A. Applicable Provisions of the Judicial Code

Venue in a bankruptcy case is governed by § 1408 of title 28 of the U.S. Code.^{[1](#)} Section 1408 provides that a debtor may file its bankruptcy case (1) in any district court where the debtor's domicile, residence, principal place of business, or principal assets are located, or (2) in any district court where an affiliate, general partner, or partnership of the debtor has a case pending.^{[2](#)} This statute often gives a debtor—particularly a commercial debtor—several potential filing locations. Accordingly, planning for a chapter 11 filing routinely includes an analysis to identify the most appropriate venue.

While § 1408 and related case law provide debtors significant flexibility in selecting venue, that power is not unlimited. A party in interest may request a transfer of venue or the court may transfer venue *sua sponte*. The statutory bases for transferring venue are 28 U.S.C. §§ 1404, 1406 and

1412. Each of the statutes uses similar language regarding transferring venue for convenience and/or in the interests of justice. Additionally, Bankruptcy Rule 1014 allows for the transfer of a bankruptcy case following its commencement if the venue is found to be improper or, even if proper, for other reasons that generally mirror the statutory bases, including if the transfer is “in the interest of justice or for the convenience of the parties.”

B. Rule 1014 Generally

Bankruptcy Rule 1014³ is divided into two parts. The first part governs the transfer or dismissal of cases filed in a proper, but inconvenient, district or an improper district. Specifically, Bankruptcy Rule 1014(a)(1) provides that, if the case was filed in the proper district, on a timely motion by a party in interest or by its own motion, the court may transfer a case to any other district in the interest of justice or for the convenience of the parties. In 2007, Bankruptcy Rule 1014 was amended to clarify that the court could sua sponte transfer venue. The prior rule did not include the language allowing the court to transfer venue by its own motion, so the amendment laid any doubts to rest and adopted the generally held view that the court could transfer venue by its own motion.

Bankruptcy Rule 1014(a)(2) governs cases filed in an improper district. If filed in an improper district, the court, on a timely motion by a party in interest or by its own motion, may dismiss the case or transfer it in the interests of justice or for the convenience of the parties. The primary difference between filing in a proper or improper district is that if improper, the court can decide to dismiss the case rather than transfer it to the proper district.⁴

The second part of Bankruptcy Rule 1014 resolves the potential conflict that arises when petitions involving the same or related debtors are filed in different courts.⁵ Bankruptcy Rule 1014(b) authorizes a court in the district in which the first petition is filed to determine the district or districts in which the case or cases should proceed. Further, any proceedings in any cases filed after the first petition has been filed are stayed until the court determines the venue issue.

C. When Is Transfer Appropriate?

Regardless of whether the case was filed in the proper district, when determining whether transfer of a bankruptcy case is warranted “for the convenience of the parties,” courts have considered, among others, the following factors:

1. proximity of creditors to the court;
2. proximity of the debtor;
3. proximity of witnesses who are necessary to the administration of the estate;

4. the location of the debtor's assets;
5. the economic administration of the estate; and
6. the necessity for ancillary administration in the event of liquidation.⁶

Under the heading “interests of justice,” courts have considered:

1. whether transfer would promote the economic and efficient administration of the bankruptcy estate;
2. whether the interests of judicial economy would be served by the transfer;
3. whether the parties would be able to receive a fair trial in each of the possible venues;
4. whether either forum has an interest in having the controversies resolved within its borders;
5. whether the enforceability of any judgment would be affected by the transfer; and
6. whether the plaintiff's original choice of forum should be disturbed.⁷

Unless raised by the court *sua sponte*, Bankruptcy Rule 1014 requires a timely motion of a party in interest to request transfer of a case. Whether such a motion is timely is a matter within the discretion of the court.⁸ The party seeking the venue change bears the burden of proof, which must be carried by a preponderance of the evidence.⁹ Further, the debtor's chosen forum should be given great deference.¹⁰ However, the weight given to a debtor's chosen forum is diminished when the choice of forum is not directly related to the operative underlying facts of the case.¹¹ Nonetheless, the case law indicates that courts are willing to grant transfer motions where the debtor and the bankruptcy case have limited ties to the chosen district.¹²

One of the most widely discussed recent examples of the venue-transfer provisions in action is the *In re Winn-Dixie Stores Inc.* cases¹³ that were filed in the Southern District of New York. In *Winn-Dixie*, the debtors filed their cases on Feb. 21, 2005. The first of the 24 debtors to file in those jointly administered cases was Dixie Stores Inc., a wholly-owned subsidiary of debtor Winn-Dixie Stores Inc. Dixie Stores Inc. was incorporated in New York on Feb. 9, 2005—less than two weeks before the cases filed. Of the remaining debtors, 19 were Florida entities, and none were New York entities. By first filing the Dixie Stores, Inc. case, the other 23 debtors were permitted to file in the Southern District of New York under § 1408(2) as affiliates of a debtor with a case pending in that district.

Less than a month later, a creditor, Buffalo Rock Co., filed a motion to transfer the cases to the Middle District of Florida, Jacksonville Division.¹⁴ In its motion to transfer venue, Buffalo Rock alleged that the debtors' businesses were centered in, and most creditors and employees were

located in, the southeastern United States, and that the debtors were headquartered in Jacksonville.

Buffalo Rock sought transfer of the cases based on the contention that the debtors improperly manufactured jurisdiction in the Southern District of New York by incorporating Dixie Stores Inc. on the eve of the filings. According to Buffalo Rock, the debtors forum-shopped to minimize creditor involvement in the cases. Accordingly, Buffalo Rock argued that the cases should be transferred because they were filed in New York in bad faith, or in the alternative, on equitable grounds. In particular, Buffalo Rock urged the court to consider factors such as the effect of “forum shopping” on the integrity of the bankruptcy system, New York’s lack of connections to the debtors, and the convenience of employees and creditors.

Rather than contesting Buffalo Rock’s motion (which was joined in by a small group of other parties), the debtors filed a response^{[15](#)} defending their venue choice, but nonetheless requested a transfer to the Middle District of Florida. On April 13, 2005, the motion was granted,^{[16](#)} and the cases were transferred to the Middle District of Florida, Jacksonville Division.^{[17](#)}

Similarly, on Oct. 19, 2011, the U.S. Bankruptcy Court for the District of Delaware transferred venue of the case of *In re Rehoboth Hospitality LP d/b/a Logos Plaza Hotel*^{[18](#)} to the Northern District of Texas. In *Rehoboth*, the debtor, which owns and operates a hotel in Abilene, Texas, filed its case in Delaware, the state in which it is incorporated. The debtor asserted in its petition that its principal place of business is Philadelphia because that is where the general partner of the debtor maintains its office.

Abilene Holdings LLC, the mortgagee of the property on which the debtor’s hotel is located, filed a motion to transfer venue, asserting, in part, that the debtor’s true principal place of business was Abilene, Texas, and that transfer was warranted as being in the best interests of justice and more convenient to the parties. The court found that the presence of most of the debtor’s creditors in Texas, the court’s inability to exercise subpoena power over most witnesses, the expense of requiring witnesses to travel from Texas to Delaware, a Texas court’s familiarity with the locale of the debtor’s real property, and the Delaware court’s overburdened docket favored transfer.

D. Conclusion

The experiences of *Winn-Dixie Stores Inc.* and *Rehoboth*, and similar cases, demonstrate the flexibility of the Judicial Code and the Bankruptcy Rules for dealing with those circumstances where a debtor may have manufactured a basis for jurisdiction on the eve of filing or where another district might be the more suitable venue for the bankruptcy case. There are a variety of valid bases upon which venue will be found to be proper. However, when the question arises of whether venue may be proper, but other circumstances warrant transfer to a venue where the case may better be administered, the Judicial Code, the Bankruptcy Rules and the courts, are flexible and

efficient at sorting out these sometimes difficult questions.

1 Venue is not jurisdictional. If a debtor files a case in a venue that is not permitted by § 1408, the orders of the bankruptcy court presiding over the case are nevertheless valid. *In re Moss*, 267 B.R. 834, 838 (8th Cir. B.A.P. 2001).

2 See 28 U.S.C. § 1408.

3 Rule 1014 provides:

(a) Dismissal and Transfer of Cases.

(1) *Cases Filed in Proper District*. If a petition is filed in a proper district, the court on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District*. If a petition is filed in an improper district, the court, on timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

(b) *Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts*. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties the district or districts in which the case or cases should proceed. Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on the other petitions shall be stayed by the courts in which they have been filed until the determination is made.

4 See, e.g., *EDP Medical Computer Sys. Inc. v. U.S. (In re EDP Medical Computer Sys. Inc.)*, 178 B.R. 57 (M.D. Pa. 1995).

5 See Fed. R. Bankr. P. 1014(b).

6 *Commonwealth of Puerto Rico v. Commonwealth Oil Refining Co. Inc. (In re Commonwealth Oil Refining Co. Inc.)*, 596 F.2d 1239, 1247 (5th Cir. 1979); *In re Innovative Commc'n Co.*, 358 B.R. 120, 126 (Bankr. D. Del. 2006); *In re B.L. McCandless LP*, 417 B.R. 80, 82-83 (Bankr. N.D. Ill. 2009); *In re Dunmore Homes Inc.*, 380 B.R. 663, 672 (Bankr. S.D.N.Y. 2008); *In re Malden Mills Indus. Inc.*, 361 B.R. 1, 9-10 (Bankr. D. Mass. 2007); *In re B.L. of Miami Inc.*, 294 B.R. 325, 329 (Bankr. D. Nev. 2003); *Krystal Cadillac-Oldsmobile-GMC Truck Inc. v. General Motors Corp.*, 232 B.R. 622, 628 (E.D. Pa. 1999).

7 *Enron Corp. v. Arora (In re Enron Corp.)*, 317 B.R. 629, (Bankr. S.D.N.Y. 2004) (citing *Enron Corp. v. Dynergy Inc. (In re Enron Corp.)*, No. 01-3626 (AJG), 2002 WL 32153911, at * 3-4 (Bankr. S.D.N.Y. Apr. 12, 2002)).

8 *Stone v. Stone (In re Stone)*, 94 B.R. 298 (S.D.N.Y. 1988).

9 *Gulf States Exploration Co. v. Manville Forest Prod. Corp. (In re Manville Forest Prod. Corp.)*, 896 F.2d 1384, 1390 (2d Cir. 1990); *Commonwealth Oil Refining*, 596 F.2d at 1239.

10 *Krystal Cadillac-Oldsmobile-GMC Truck Inc. v. General Motors Corp.*, 232 B.R. 622, 628 (E.D. Pa. 1999).

11 *Son v. Coal Equity Inc. (In re Centennial Coal Inc.)*, 282 B.R. 140, 144-45 (Bankr. D. Del. 2002).

12 See, e.g., *In re W. Coast Interventional Pain Medicine Inc.*, 435 B.R. 569, 585 (Bankr. N.D. Ind. 2010) (court transferred cases from Indiana to California because administration of the cases would involve application of California law and proceedings that were almost exclusively in California, creditors most likely to be subject to claim objections were located in California, majority of the witnesses were in California, and accounts receivables collection efforts would be conducted in California); *In re Innovative Commc'n Co.*, 358 B.R. 120, 127 (Bankr. D. Del. 2006) (court transferred cases from Delaware to Virgin Islands because the corporate debtors' principal places of business, creditors, employees, shareholders, and

assets were in the Virgin Islands); *In re B.L. McCandless LP*, 417 B.R. 80, 83-84 (Bankr. N.D. Ill. 2009) (transferring case from Illinois to Pennsylvania because (1) all secured creditors, (2) a few unsecured creditors, (3) all assets, (4) witnesses were in Pennsylvania and (5) the case would require application of Pennsylvania law).

[13](#) Case No. 05-11063 (RDD) (Bankr. S.D.N.Y.)

[14](#) *Id.*, Docket No. 407.

[15](#) *Id.*, Docket No. 569.

[16](#) *Id.*, Docket No. 731.

[17](#) Case No. 05-3817 (JAF) (Bankr. M.D. Fla.).

[18](#) Case No. 11-12798 (KG) (Bankr. D. Del.).