United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: *In re Magnolia Storage and Logistics, LLC*

Bankruptcy No.: 21-12475

Date of Issuance: January 5, 2022

Judge: Deborah L. Thorne

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United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	**Case No.**	21-12475
DATE	January 5, 2022	**Adversary No.**	
CASE TITLE	In re Magnolia Storage and Logistics, LLC		
TITLE OF ORDER	Order Denying Motion to Transfer		

STATEMENT

The Debtor's senior secured creditor, TransPecos Banks, SSB ("**TB**"), moves to transfer this case to the Southern District of Texas, arguing that (I) venue is not proper in the Northern District of Illinois; and alternatively (II) even if the current venue is proper, the court should transfer venue in the interest of justice or for the convenience of the parties. Each of TB's arguments fails to meet its burden of proof. As explained more fully below, the preponderance of the evidence indicates that the Debtor's principal place of business is in the Northern District of Illinois and that transfer would not serve the interest of justice or the convenience of the parties. For these reasons, TB's motion is denied.

FACTUAL BACKGROUND

This is a single asset real estate case. The Debtor's sole asset is a tract of real property located in Magnolia, Texas (the "**Property**"), which is in the Southern District of that state. The Debtor—a single-member, Texas limited liability company—is owned and managed by Jason Fowler from his home office in the Northern District of Illinois.[1]

Mr. Fowler also owns and manages two other relevant entities: JWF Group, Inc. ("**JWF**") and HyQuality Alloys, LLC ("**HyQuality**"). JWF is a management company registered and

[1] The facts in this section are taken from the Debtor's amended petition (Dkt. No. 6), TB's motion to transfer (Dkt. No. 10), the Debtor's schedules (Dkt. No. 16) and the Debtor's response to the motion (Dkt. No. 33).

located in Illinois that provides day-to-day accounting and administrative functions for the Debtor. An employee of JWF handles the Debtor's corporate books and records from Illinois. HyQuality is a steel distributor incorporated in Texas but managed by Mr. Fowler and JWF from Illinois. The Debtor's sole source of revenue comes from leasing its warehouse to HyQuality, and HyQuality is the Debtor's co-obligor under two promissory notes and a loan agreement with TB as lender. Under a deed of trust governed by Texas law, TB has a lien on the Property and a perfected security interest in all of the personal property of the Debtor and HyQuality.

The Debtor filed a petition for chapter 11 relief in the Northern District of Illinois on October 31, 2021. In the six months preceding that date, the major business decisions facing the Debtor concerned attempts to negotiate a proposed sale of its Property and to renegotiate its debt obligations to TB. These decisions—which ultimately led to the bankruptcy filing—were undertaken by Mr. Fowler in Illinois, in consultation with legal and financial advisors here.

JURISDICTION

The court has subject matter jurisdiction to hear and determine this case under 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a), the case is referred to the court by District Court Internal Operating Procedure 15(a). This is a core proceeding "concerning the administration of the estate." 28 U.S.C. § 157(b)(2)(A).

DISCUSSION

I. *Venue is proper in the Northern District of Illinois*

Bankruptcy venue is governed by 28 U.S.C. § 1408, which provides (in relevant part) that a case under chapter 11 of the Bankruptcy Code may be commenced in the district:

> 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.

28 U.S.C. § 1408(1). *See also Matter of Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 792 (7th Cir. 1998). The success of TB's motion hinges on the meaning of "principal place of business" in this provision.

In *Peachtree Lane*, the Seventh Circuit confirmed that in the context of 28 U.S.C. § 1408, "an entity's principal place of business is the place where its major business decisions are made." *Peachtree Lane*, 150 F.3d at 795. The debtor in that single asset real estate case ("**Peachtree**") was a Texas limited partnership that filed a chapter 11 petition in the Northern District of Illinois. *Id*. at 789. Peachtree was managed from and headquartered in the Northern District of Illinois, and it owned an apartment complex in the Southern District of Texas. *Id*. at 790. During the 180-day venue period, Peachtree's owner and its owner's executives made decisions concerning the renegotiation of Peachtree's obligations to its largest secured creditor and the negotiation of a sale of Peachtree's apartment complex. *Id*. at 791. Confirming both the holding and the rationale of the bankruptcy judge, the Seventh Circuit quoted his observation that:

> The typical chapter 11 case for a single asset real estate entity is about raising new capital, renegotiating loan terms, or, if that cannot be done, attempting to "cram down" a plan on the secured creditors, or selling the asset. In determining where venue is proper in such a case, courts therefore look to where those persons who will make those key decisions are located.

Id. at 795. Moreover, venue is presumed to be proper in the district where the debtor files, "and the party challenging venue bears the burden of establishing by a preponderance of the evidence that the case was incorrectly venued." *Id*. at 792. Because Peachtree's owner and its owner's executives conducted loan renegotiations, pursued sale negotiations and filed for chapter 11 in the Northern District of Illinois, the Seventh Circuit found that Peachtree's principal place of business (for venue purposes[2]) was here. *Id*. at 796.

[2] In *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), the Supreme Court addressed the meaning of "principal place of business" in the context of diversity jurisdiction under 28 U.S.C. § 1332(c)(1). It held that, for jurisdictional purposes, a corporation's "principal place of business" is its "nerve center," that is, "the place where a corporation's officers

The rule of *Peachtree Lane* squarely covers the case before the court. The Debtor's principal place of business is in the Northern District of Illinois because, as in *Peachtree Lane*, the Debtor's owner and manager made major business decisions—concerning the negotiation of a proposed sale and the renegotiation of its debt obligations to TB—here during the relevant venue period.

Moreover, because the Debtor filed for chapter 11 here, TB "bears the burden of establishing by a preponderance of the evidence that the case was incorrectly venued." *Peachtree Lane*, 150 F.3d at 792. Relying on two irrelevant facts, TB's argument fails to carry this burden. First, TB alleges that the Debtor represented to TB, to the Texas Secretary of State and to the court that its principal place of business is located at the Property in Texas. The Debtor's representation to the court, however, was subsequently amended to reflect that its principal place of business is in Illinois, and the Debtor never actually represented anything regarding its principal place of business to TB or to the Texas Secretary of State. Rather, the Debtor simply used its Texas address on agreements and filings, which is manifestly not the same as making a major business decision from that address.[3] Second, TB points out that whereas Peachtree was a limited partnership owned and controlled by a chain of other partnerships and corporate entities, the Debtor is a single-member limited liability company owned entirely by Mr. Fowler. TB fails to explain why that fact distinguishes this case from *Peachtree Lane* in any meaningfully relevant way.

direct, control, and coordinate the corporation's activities." *Hertz Corp.*, 559 U.S. at 92-93. Though it interprets a jurisdictional provision rather than a venue provision, that holding reinforces the Seventh Circuit's interpretation of "principal place of business" as handed down in *Peachtree Lane* twelve years earlier.

[3] Even if the Debtor had represented that its principal place of business is in Texas, it would not immediately follow that its principal place of business is in fact there. TB has not explained why such a representation would override the fact that the Debtor's major business decisions are made in Illinois. Given that TB has conducted business and disputed with Mr. Fowler for over a year, TB likely knew that he conducted business from Illinois, so it is doubtful that the Debtor's alleged representations (had they actually been made) would have had any bearing on the venue question before the court.

Consequently, because the preponderance of the evidence indicates that the Debtor's principal place of business is in the Northern District of Illinois, the court finds that venue is proper here under 28 U.S.C. § 1408.

II. ***Transfer would not serve the interest of justice or the convenience of the parties***

TB next argues that even if venue is technically proper here (which it is), the court should transfer the case to the Southern District of Texas to serve "the interest of justice" or "the convenience of the parties." 28 U.S.C. § 1412. Because venue is proper under 28 U.S.C. § 1408, the Debtor's decision to file here is entitled to great deference, so "[t]he party seeking the transfer bears the burden of demonstrating by a preponderance of the evidence that venue should be transferred." *In re Denham Homes, LLC*, 2010 WL 1486237 at *2 (N.D. Ill. April 12, 2010). As before, TB's argument fails to carry this burden.

This court has explained that "[t]he ultimate analysis under [28 U.S.C.] § 1412 is whether the case can be efficiently and fairly administered in the debtor's chosen forum." *Id*. While TB's motion lists several factors that bear on this analysis—including, among others, the locations of the debtor, creditors, witnesses and assets and the economic administration of the estate—none of those factors is dispositive, and TB neglects to provide a single compelling reason why the Debtor's case cannot be efficiently and fairly administered here. *See* Dkt. No. 10, pp. 9-13. All hearings are conducted by Zoom, so no one is physically inconvenienced by the need to appear before the court. Though TB's interests in the Debtor's property are governed by Texas law, those interests are not in dispute.[4] Finally, to the extent that any judicial determinations in this case may "require familiarity with the local market," the parties are well-placed to provide the court all

[4] Even if issues of Texas law were in dispute, the court is competent to administer Texas law as necessary, especially with the aid of the parties' able briefs.

necessary information. Dkt. No. 10, p. 12. As a result, the court finds that transfer would not serve the interest of justice or the convenience of the parties.

CONCLUSION

Venue is proper under 28 U.S.C. § 1408, and TB has not carried its burden to demonstrate that transfer is warranted under 28 U.S.C. § 1412. Therefore, TB's motion is hereby DENIED.

Dated: 01/05/2022

Honorable Deborah L. Thorne
United States Bankruptcy Judge