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9-25-95 L.A.B.

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA  
DISTRICT OF SOUTH CAROLINA

In re: )  
Thomas L. Williams, )  
Debtor. ) Case No. 95-73436  
Chapter 11

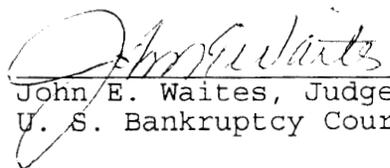
JUDGMENT

A motion to transfer this case to the Columbia Division (the "Motion"), came to hearing on September 13, 1995. All parties in interest and those whose names appear on the mailing matrix in this case were served with the notice, and only one objection, which was made by the debtor (the "Objection"), was filed and served.

The Court granted the Motion. Because the Objection was not in compliance with Local Rule 9014, the Court exercised its discretion under Local Rule 9011 by denying the debtor's counsel an opportunity at the hearing to support the Objection or argue against the Motion. The Court found and concluded that, since the vast majority of the assets, liabilities and creditors, to the extent of their connection with this case, emanate from York County, SC, divisional venue should be transferred from Charleston to Columbia.

Judgment on Order of the Court entered on September 22, 1995.

Columbia, SC

  
John E. Waites, Judge  
U. S. Bankruptcy Court



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In re:	)	
	)	Case No. 95-73436
Thomas L. Williams,	)	
	)	Chapter 11
Debtor.	)	

ORDER CHANGING DIVISIONAL VENUE

THIS MATTER came before me on September 13, 1995 at 1:30 p.m. in the Charleston Division of this Court. The matter for hearing was a Notice and Motion to Change Venue (the "Motion") filed by Donald R. Walton ("Walton"), a secured creditor. Present were James W. Sheedy, attorney for Walton; Melvin B. McKeown, Jr., attorney for Bank of York, a secured creditor; and Merrill A. Cox, attorney for the debtor.

The Motion was served on the attorney for the debtor, the Office of the U.S. Trustee, and all of those whose names appear on the mailing matrix in this case. Only one objection to the Motion was filed, and it was made by the debtor. Debtor's Objection to Change of Venue (the "Objection") was improperly captioned "Chapter 13," and failed to contain any reasons for opposition to the Motion or any citation to applicable statutes, rules and/or controlling case law.

By Order dated June 3, 1994, this Court adopted certain Local Rules. The Local Rules apply to all pending cases and all litigants appearing in those cases. (Local Rule 1001). Local

*Jaw 1-*

Rule 9014 requires, among other things, objections to be "properly captioned in accordance with Bankruptcy Rule 9004 [and to] set forth with particularity the reasons for opposition, citing applicable statutes, rules and controlling case law; . . ." (Local Rule 9014 (1), (2)). The Motion notified all parties in interest, including the debtor, that objections must be in accordance with Local Rule 9014.

The Objection was not in compliance with Local Rule 9014. The attorney for the debtor made no argument that the Objection satisfied the Rule. "[F]ailure to comply with [the] Local Bankruptcy Rules may subject the offending party and its attorney, in the discretion of the Court, to appropriate discipline . . ." (Local Rule 9011). Appropriate discipline specifically includes a refusal "to allow the disobedient party to support or oppose designated claims or defenses." (Annotation to Local Rule 9011).

The attorney for the debtor has been warned in the past about filing legal papers which did not comport with the requirements of the Local Rules. Yet it is apparent from the Objection that prior warnings have not been sufficient to curb the conduct. It would be contrary to the letter and spirit of the Local Rules for this Court to tacitly allow any practice of non-compliance therewith by not issuing sanctions under these circumstances.<sup>1</sup> Therefore, this

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<sup>1</sup> The Objection may also contravene the requirements of Bankruptcy Rule 9011. Furthermore, in addition to the Local Rules and the Bankruptcy Rules, this Court has the inherent power to fashion appropriate sanctions. In re Palumbo Family Limited Partnership, 182 B.R. 447, 476 (Bankr. E.D. Va. 1995), and

Court precluded the debtor's attorney from supporting the Objection or opposing the Motion at the hearing.

In the documents filed with the Bankruptcy Court, the debtor lists as his principal asset the property under mortgage lien to Walton and the Bank of York. (Schedule "A"). This property represents approximately 97% of the value of the debtor's scheduled assets. (Summary of Schedules). The debt on the property amounts to approximately 88% of the debtor's listed liabilities. (Id.). The security property is the only apparent asset in which the debtor has any equity and from which creditors in this case may expect any recovery. Walton and the Bank of York are located in York County.

The creditors without collateral in this case are situated as follows: two are located in Columbia; four are located in York County; four are located in Charlotte; six are located outside of the Carolinas; and only one, Trident Hospital, an unsecured creditor, is located in Charleston. Six of the sixteen entities are within the Columbia Division. The S. C. Employment Security Commission is, of course, in Columbia. The IRS is there as well. The closest Division of this Court for York County, Marrett, York Clerk of Court and Dr. Shah is Columbia. The Charlotte creditors are closer to Columbia than Charleston. There is no hardship to

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Fellheimer, Eichen & Braverman, P.C. v. Charter Technologies, 57 F.3rd 1215, 1228 (3rd Cir. 1995), both citing to Chambers v. Nasco, Inc., 501 U.S. 32, 50, 111 S.Ct. 2123, 2136 (1991).

any of the national or regional companies<sup>2</sup> if this case is transferred to Columbia.

Authority to make a change in divisional venue may be found in 28 U.S.C. § 1404(b). Section 1404(b) presumes that existing venue is proper and allows for a change of venue under certain circumstances. The factors to be examined when considering a change in venue are: "(1) the location of the debtor's estate; (2) the economic and efficient administration of the debtor's estate; (3) the proximity of the debtor; (4) the proximity of the creditors; and (5) the proximity of the witnesses." In re A & D Care, Inc., 86 B.R. 43, 45 (Bankr. M.D. Pa. 1988), citing to In re Old Delmar Corp., 45 B.R. 883 (S.D.N.Y. 1985). Applying the test set forth by the courts in A & D Care and Old Delmar to the facts in this case leads to a conclusion in favor of transfer.

A substantial local interest in the particular case and where the principal asset of the debtor is located, weigh heavily in any transfer decision. Id. "Many courts have focused on one factor which they consider to overwhelmingly compel transfer and that is where the principal asset of the debtor is located." In re A & D Care, Inc., 86 B.R. 43, 45 (Bankr. M.D. Pa. 1988) (citing In re Old Delmar Corp., 45 B.R. 883 (S.D.N.Y. 1985)). The Columbia Division is a proper venue under U.S.C. 1404(b) because, among other reasons, the principal asset of the debtor is located in York

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<sup>2</sup> E.g., Belks, Discover Card, First Union, Sears, AT&T, BellSouth, Duke Power, IRS, Chase Manhattan, and Lawyers Co-Op.

County. In re Boca Raton Sanctuary Assoc., 105 B.R. 273 (Bankr. E.D. Pa. 1989). Almost all of the liabilities of the debtor also have their origin in York County.

The debtor filed this case in the Charleston Division. (Notice of Commencement of Case). He resided in Charleston for at least 180 days preceding his bankruptcy filing. (Petition). Although the debtor's residence was sufficient on the date of filing to support venue in the Charleston Division, his residence, standing alone, is not enough to defeat the Motion; if it were, Section 1404(b), which allows for venue transfers notwithstanding proper venue on the filing date, would have very little meaning. The debtor's attorney's office in Charleston is not enough either. Forums cannot be shopped through retention of counsel.

The debtor's wearing apparel, household goods and furnishings, and automobile are now in Charleston. The household goods and furnishings, and wearing apparel, are claimed as exempt property. (Schedule C). The automobile is under lien to Infiniti Financial Services, located in Atlanta. There is no equity in the automobile for the debtor to claim as exempt, much less for creditors to seek to liquidate. (Schedule B).

York County is the nucleus from which all of the debtor's actions or inactions emanated; and, therefore, the majority of the information, witnesses and individuals affected should be found in proximity to York County. The connection of this case with

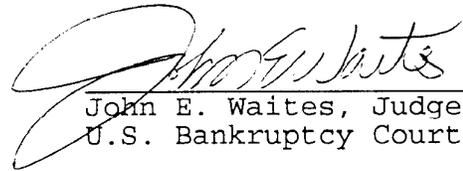
Charleston is insubstantial. The proper venue of this case is the Columbia Division.

NOW, THEREFORE, for all of the foregoing reasons, it is hereby

ORDERED that the Motion is granted and the venue of this case is transferred from the Charleston to the Columbia Division of this Court.

AND IT IS SO ORDERED.

Columbia, SC  
Date: September 22, 1995

  
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John E. Waites, Judge,  
U.S. Bankruptcy Court