UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	No. 02-14678-W
Donna W. Hewson,	**JUDGMENT**
Debtor.	Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Debtor's Motion to Transfer Venue is denied.

John G. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 10, 2003.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	No. 02-14678-W
Donna W. Hewson,	**ORDER**
Debtor.	Chapter 7

THIS MATTER comes before the Court upon Debtor's Motion to Transfer Venue to the United States Bankruptcy Court for the Western District of Washington[1] ("Motion"). Based upon the pleadings presented to the Court and the arguments of Debtor and counsel for the Trustee, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Donna W. Hewson ("Debtor") filed a Voluntary Petition for Bankruptcy ("Petition") under Chapter 7 of the United States Bankruptcy Code on December 14, 2002. At that time, Debtor was represented by counsel, Elizabeth Atkins ("Atkins"). Debtor signed her Petition and thereby declared under penalty of perjury that she "has been domiciled or has had residence . . ., or principal assets in [the District of South Carolina][2] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District." In the Petition, Debtor listed her address as 1523 Telfair Way, Charleston, SC 29412. On January 9, 2003, Atkins, acting on behalf of Debtor, submitted a letter to the Court changing Debtor's address of record to 1739 Maybank Highway, Suite B-8, Box 344, Charleston, SC 29412. On March 31, 2003, Atkins filed a Motion to Withdraw as Attorney for Debtor stating that Debtor

[1] Debtor only requested that venue be transferred to Seattle, Washington which lies in the jurisdiction of the United States Bankruptcy Court for the Western District of Washington.

[2] It is clear that the use of the words "this District" in the Petition refer to the District of South Carolina.

"has not returned calls, has previously advised that she is not retrieving mail, and has refused to cooperate with [Atkins], in order to enable [Atkins] to represent [Debtor's] interest in this case." The Court held a hearing on Atkins' Motion to Withdraw on May 13, 2003. The Debtor did not attend the hearing, and later that day, the Court issued an order permitting Atkins to withdraw as counsel for Debtor.

Following the First Meeting of Creditors held on January 15, 2003, Kevin Campbell ("Trustee"), the Chapter 7 Trustee for Debtor, investigated Debtor's case and declared Debtor's case to be an asset case. Through his investigation, the Trustee determined that Debtor had an interest in a class action lawsuit against Merrill, Lynch, Pierce, Fenner & Smith ("ML") arising out of her employment with ML and that Debtor's interest may give rise to sufficient assets to satisfy all creditors who timely filed proofs of claim. To pursue the action against ML, the Trustee filed a Notice and Application to Employ Special Counsel on June 17, 2003.[3] On July 14, 2003, the Court approved the Trustee's request to employ the law firm of Stowell and Friedman, Ltd. as special counsel to represent the Trustee in the class action against ML. Upon the recommendation of special counsel, the Trustee determined that it would be in the best interests of Debtor's estate to settle Debtor's class action claim against ML for approximately $166,667.67. The Trustee determined that such a settlement would satisfy all timely filed creditor claims, cover the Trustee's expenses, and provide Debtor with a dividend of approximately $27,985.

On June 17, 2003, the Trustee sent a Notice of Application for Settlement and

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[3] The Trustee employed the same special counsel that Debtor previously employed to represent her in the class action suit against ML.

Compromise to all interested parties, including Debtor and Atkins. On July 15, 2003, the Court held a hearing on the Application for Settlement and Compromise which Debtor failed to attend. No party filed an objection to the Trustee's settlement with ML. After the hearing, the Court issued an Order granting the Trustee's Application for Settlement and Compromise on July 16, 2003.

On August 12, 2003, Debtor filed the Motion. In the Motion, Debtor alleged that she was a resident of the State of Washington. The Trustee objected to Debtor's Motion. The Court held a hearing on Debtor's Motion on September 4, 2003. At the hearing, Debtor stated that she primarily filed the Motion in order to receive information about her case since the Trustee did not respond to Debtor's attempts to obtain such information from his office. After Trustee's counsel provided a complete report that disclosed the status of Debtor's case at the hearing, Debtor claimed that she did not approve of the settlement because she wanted the settlement to include a provision that would require ML to provide Debtor with employment.[4] Debtor also claimed that she failed to receive notice of the Court's hearing on the Trustee's Application for Settlement and Compromise.

The Certificate of Service for the Notice of Application for Settlement and Compromise clearly demonstrates that the Trustee properly mailed the Notice to Debtor at the latest address of record provided by her former counsel, Atkins, on January 9, 2003. Furthermore, the Notice of Application for Settlement and Compromise sufficiently informed Debtor that she had the right

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[4] Debtor also raised a number of complaints concerning the representation she received from her counsel, Elizabeth Atkins. In the Court's view, Debtor's complaints concerning her counsel can be appropriately addressed by the South Carolina Bar and other remedial measures outside the Bankruptcy Court and need not be investigated further by this Court at this time.

to be heard in order to set forth any objections to the Trustee's proposed settlement. In response to the Motion, Trustee's counsel argued that the Court should not transfer venue because (1) the Trustee had reached a point where he could close the case and satisfy all timely filed creditor claims once ML paid the settlement it reached with the Trustee; (2) transfer of the Debtor's case to another venue would prejudice creditors who rely on the Trustee's Settlement and Compromise with ML to satisfy their claims; (3) the Debtor, while under oath, listed her home state as South Carolina on the Petition; and (4) Debtor has been in the bankruptcy proceeding for close to a year and only recently decided to bring forth her Motion.

CONCLUSIONS OF LAW

28 U.S.C. § 1408(1) provides as follows:

> Except as provided in section 1410 of this title, a case under Title 11 may be commenced in the district court for the district -
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> (1) 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 the case have been located for 180 days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district.

Generally, this Court looks to the domicile, residence, principal place of business, and location of the debtor's assets in considering the basis for venue. See In re Lakeside Regent, Inc., 87-01261-D, slip op. at 3 (Bankr. D.S.C. Feb. 11, 1988).

While under oath, the Debtor asserted that she "has been domiciled or has had residence. . ., or principal assets in [the District of South Carolina] for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District" on her

Petition. Thus, under the Debtor's sworn statement, the criteria for establishing venue in the United States Bankruptcy Court for the District of South Carolina under 28 U.S.C. § 1408 has been met. Additionally, when questioned by the Court at the hearing, Debtor was vague in disclosing the date when she moved to the State of Washington. Generally, Debtor's testimony did not convince the Court that venue in the District of South Carolina was improper. In light of these findings, the Court has determined that the District of South Carolina is the proper venue for Debtor's case.

Pursuant to 28 U.S.C. § 1412, a district court may transfer a case or proceeding under Title 11 to a district court for another district, in the interest of justice or for the convenience of the parties. Transfer of venue to another district on the basis of convenience of the parties or the interest of justice is within the sound discretion of the court. Bittner v. Best (In re Best), 246 B.R. 806, 808 (Bankr. D.S.C. 1999) (citing In re Baltimore Systems, Inc., 71 B.R. 795, 801 (Bankr. D.S.C. 1986); In re Weber, 118 B.R. 441, 443 (Bankr. E.D. Va. 1990) (citing In re Pope Vineyard, 90 B.R. 252, 255 (Bankr. S.D. Tex. 1988)). Under this authority, the Court finds that Debtor is not entitled to a transfer of venue under the circumstances because Debtor has not raised sufficient facts demonstrating that factors weigh in favor of a transfer of venue. See Bittner, 246 B.R. at 808 ("movant bears the burden to prove that transferring the case to another district would be for the interest of justice or would be of more convenience to the parties involved."). During the hearing on Debtor's motion, Debtor claimed that she only filed her Motion in order to get information on her case. The only inconvenience raised by Debtor was the fact that she now chooses to reside in the State of Washington. However, her physical presence in this District is not necessary for any further proceedings at this juncture of her case. Even if

Debtor were required to appear, the court can provide accommodations for Debtor to appear and be heard by telephone.

Furthermore, in considering the interests of creditors and the Trustee, a transfer of venue and the resulting delay would greatly inconvenience these parties. The Trustee has been working on Debtor's case for nearly a year and appears to be on the cusp of closing Debtor's case and providing a 100% distribution to creditors and a substantial dividend to Debtor upon ML's payment of the settlement funds. The estate has incurred professional fees and other expenses in procuring this favorable result. At the same time, creditors continue to wait for a resolution of their claims. Thus, on balance, the factual circumstances raised in Debtor's case dictate that her Motion be denied.

As to Debtor's related complaint of lack of notice regarding the Trustee's Application for Settlement and Compromise, this Court has noted that "[t]he United States Supreme Court defined notice required to fulfill due process as being 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" See In re Johnson, 274 B.R. 445, 449 (Bankr. D.S.C. 2001) (quoting Mullane v. Central Hanover Bank & Trust, 339 U.S. 306, 314 (1950)). In light of the factual findings of the Court, the Court finds that the Certificate of Service attached to the Trustee's Notice of Application for Settlement and Compromise demonstrates that the Trustee properly served notice to Debtor by mailing the notice to Debtor's address and Atkins' address as listed on the Court's mailing matrix. The Court also finds that the content of the Trustee's notice sufficiently informed Debtor that she had the right to be heard in order to set forth any objections to the Trustee's proposed settlement. Thus, this Court finds that service of the Trustee's Notice

of Application for Settlement and Compromise was sufficient and proper. See Bak v. Vincze (In re Vincze), 230 F.3d. 297, 299-300 (7th Cir. 2000) ("Rule 7004(b)(9) does not require proof of actual receipt; it only requires the summons and complaint be mailed to both the debtor and the debtor's attorney"); Hatz v. Araujo (In re Araujo), 292 B.R. 19, 23 (Bankr. D. Conn. 2003) ("service of the Pleadings by mail upon the Debtor at the Listed Address (the only address on file with the court) was effective even if he was not there to receive them.").

In light of Debtor's prior opportunity to question and object to the settlement reached by the Trustee and being cognizant of the fact that creditors and professionals rely on the settlement to satisfy their claims, the Court finds that it is simply too late for Debtor to raise concerns about the settlement now. Thus, the Court finds that Debtor is barred by laches and estoppel from asserting an objection to the terms of the Trustee's settlement with ML. Therefore, for all the reasons stated herein, it is

ORDERED that Debtor's Motion to Transfer Venue be denied.

It is **FURTHER ORDERED** that the Clerk of Court serve a copy of this Order to Debtor's address of record - 1739 Maybank Highway, Suite B-8, Box 344, Charleston, SC 29412- and Debtor's second address - P.O. Box 2442, Everett, WA 98203.

AND IT IS SO ORDERED.

John E Waites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 10, 2003.