

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 95-2000-CH
ALFRED K. RYDER and	:	
MARY ANN RYDER,	:	
	:	Chapter 7
Debtors.	:	
		[Western District of Missouri No. 02-50255-jwv]

**ORDER - UNITED STATES TRUSTEE'S MOTION TO TRANSFER VENUE OR
DISMISS AND DEBTORS' MOTION TO TRANSFER VENUE**

United States Trustee's Motion to Transfer Venue to the Southern District of Iowa, or Alternatively, to Dismiss, and Debtors' objection thereto, and Debtors' Motion to Transfer Chapter 7 to the United States Bankruptcy Court, Western District of Missouri, and chapter 7 trustee's resistance thereto, came on for hearing on April 30, 2001.

The United States Trustee appeared by the Assistant United States Trustee, James L. Snyder; the debtors, Alfred K Ryder and Mary Ann Ryder, appeared without counsel; the chapter 7 trustee appeared by his attorney, Paul A. Drey; and, there was no appearance by Ryder Farms, Inc.

This court has jurisdiction of these matters pursuant to 28 U.S.C. § 157(b)(1); 28 U.S.C. § 1334; and order of the United States District Court for the Southern District of Iowa. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The court upon review of the pleadings, evidence, and arguments, now enters the findings and conclusions pursuant to Fed. R. Bankr. P. §§ 9014 and 7052.

FINDINGS OF FACT

1. The debtors, Alfred K. Ryder and Mary A. Ryder, filed a voluntary chapter 7 petition on July 6, 1995.

2. Donald F. Neiman was appointed the chapter 7 trustee on July 6, 1995.
3. Three adversary proceedings were filed in which the debtors and Ryder Farms Inc. were defendants.
4. On May 9, 2000, the adversary proceeding of Donald F. Neiman, Trustee, Plaintiff, v. Alfred K. Ryder, Mary Ann Ryder, and Ryder Farms, Inc. of Iowa, Adversary Proceeding No. 98-98049, came on for trial.
5. This adversary proceeding contained allegations of fraud against the debtors, Alfred K. Ryder and Mary Ann Ryder; that Ryder Farms, Inc., was the alter ego of the debtors; that Debtors transferred estate property pre-petition and post-petition; and that Debtors should be denied a discharge.
6. After Alfred K. Ryder testified during the morning of May 9, 2000, the parties announced that all of the issues raised in the three adversary proceedings had been settled. This global settlement was dictated into the record, and Debtors were questioned as to their understanding of the agreement. Alfred K. Ryder, Mary Ann Ryder, and Alfred K. Ryder, as president of Ryder Farms, Inc., with the benefit and concurrence of their attorney, approved this agreement on the record.
7. Debtors refused to sign the settlement agreement after the agreement had been reduced to writing, although their attorney approved of the agreement.
8. The Stipulated Settlement Agreement (DN 253) was filed on July 14, 2000, and approved by order of court (DN 249) and judgment (DN 251) entered on July 14, 2000.

9. The settlement agreement provided that the real estate and personal property held in the name of the debtors and Ryder Farms, Inc., including real estate located in Wayne County, Iowa, Harrison County, Missouri, Mercer County, Missouri, and Sullivan County, Missouri, was turned over to the trustee.

10. This agreement provided for the liquidation of assets held in the name of the debtors and Ryder Farms, Inc.

11. On January 27, 2000, Alfred Ryder, as president of Ryder Farms, Inc., had caused Ryder Farms, Inc., to file a chapter 12 petition in the United States Bankruptcy Court, Western District of Missouri, case number 00-500046-SJjwv.

12. This chapter 12 petition was to be dismissed by Alfred Ryder as part of the global settlement.

13. The chapter 12 case was transferred to the United States Bankruptcy Court for the Southern District of Iowa by order entered in the United States Bankruptcy Court, Western District of Missouri, on April 17, 2000.

14. On March 13, 2002, this court authorized the trustee to sell real estate located in Mercer County, Missouri (DN 672).

15. On March 19, 2002, Alfred Ryder, as President of Ryder Farms, Inc., caused a chapter 11 petition to be filed in the name of Ryder Farms, Inc. of Missouri and Iowa in the United States Bankruptcy Court, Western District of Missouri, case number 02-50255-jwv (Exh. UST-1).

16. The chapter 11 petition states that this debtor has filed no prior bankruptcy cases within the last 6 years. It also states that there are no pending bankruptcy cases filed by any affiliate of the debtor.

17. Schedule A of the chapter 11 petition schedules real estate located in Harrison County, Wayne County, Sullivan County, and Mercer County, all in the State of Missouri. Some of this real estate is the same real estate which was the subject of the sale order entered in this court on March 13, 2002.

18. The List of Creditors Holding 20 Largest Unsecured Claims filed with the chapter 11 petition lists four creditors. All of these creditors have filed claims in the chapter 7 case in the Southern District of Iowa and have appeared in this court to prove up on their claims.

19. The U. S. Bankruptcy Court for the Western District of Missouri has stayed proceedings in the chapter 11 case pending determination of the U. S. Trustee's motion to transfer venue of the chapter 11 to this court.

20. Alfred Ryder testified that the sole purpose for the filing of the chapter 11 petition in the Western District of Missouri was to frustrate the sale of real estate as ordered by this court and to prevent the requirement that a supersedeas bond be posted as a result of any appeal of the order authorizing sale of real estate.

DISCUSSION

DEBTORS' MOTION TO TRANSFER CHAPTER 7 TO U. S. BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MISSOURI

Debtors ask the court to transfer their chapter 7 case from the Southern District of Iowa to the Western District of Missouri. In their motion, Debtors offer no authority in support of the proposed transfer. The basis for their request is that the bulk of real property that has been brought into the bankruptcy estate and ordered administered by the chapter 7 trustee pursuant to a global settlement agreement is located in Missouri. Therefore, Debtors argue that their chapter 7 case should be administered in conjunction with the chapter 11 case filed in the United States Bankruptcy Court for the Western District of Missouri by Ryder Farms, Inc. of Iowa and Missouri. Based on this information, the court interprets Debtors' motion as one for a change of venue brought pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014.

Venue for cases brought under title 11 is governed by 28 U.S.C. § 1408. The statute provides:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district--

(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 such case have been located for the one hundred and eighty 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; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408.

Section 1412 of title 28 provides:

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.

28 U.S.C. § 1412.

Fed. R. Bankr. P. 1014 supplies a bankruptcy court with the authority to transfer a case or proceeding. The rule provides in relevant part:

(a) DISMISSAL AND TRANSFER OF CASES.

(1) Cases filed in proper district

If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be transferred to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

* * *

Fed. R. Bankr. P. 1014.

In this case, Debtors filed a petition for chapter 7 relief with the United States Bankruptcy Court for the Southern District of Iowa on July 6, 1995. On the petition, Debtors stated that their current address was Route 1, Lineville, Iowa. Under the heading “VENUE,” they checked the box indicating that they had been domiciled or had a residence, principal place of business, or principal assets in the district for 180 days or the larger part of 180 days immediately preceding the filing of the petition. To date, Debtors have not filed a statement of change of address, see Fed. R. Bankr. P. 4002, or an amendment of their petition indicating that the address indicated was incorrect. Accordingly, the court finds that venue in the Southern District of Iowa is proper.

When a bankruptcy case is filed in the proper venue, Fed. R. Bankr. P. 1014(a) governs the transfer of the case to another district. Upon timely motion of a party in

interest, the court may transfer the case in the interest of justice or for the convenience of the parties. The moving party has the burden of proof in showing that the transfer is appropriate, and the burden must be carried by a preponderance of evidence. Gulf States Exploration Co. v. Manville Forest Prod. Corp. (In re Manville Forest Prod. Corp.), 896 F.2d 1384, 1390 (2d Cir. 1990).

In this case, the court determines that Debtors have not carried their burden. The motion to transfer the case will be denied.

First, the court finds that Debtors' motion was not timely filed. In making its determination, the court considers the facts and circumstances presented in this particular case. Bryan v. Land (In re Land), 215 B.R. 398 (B.A.P. 8th Cir. 1997).

Debtors chose to file their bankruptcy petition in this district almost seven years ago. They availed themselves of the Iowa exemptions and have utilized the protections of the automatic stay provisions of the Bankruptcy Code to forestall collection efforts by their creditors. It is well documented in the case file that Debtors have been less than forthcoming with potential estate assets. They have actively concealed assets, and hindered the chapter 7 trustee in the administration of the estate.

Some five years into the case, Debtors entered into a global settlement agreement resolving all the issues of the bankruptcy case. Almost immediately after entering into the agreement, Debtors refused to abide by its terms and began taking steps to thwart its implementation.

Central to the settlement agreement is a provision providing that Trustee would not sell any farmland or personal property without providing Debtors the opportunity to

pay off all claims provided in the settlement agreement, and then only upon court approval. Trustee notified Debtors by mail in September of 2001, of the estimated amount needed to pay the claims and stated that the funds were required by December 31, 2001, otherwise Trustee would proceed to sell the farmland. Debtors refused the opportunity to contact the trustee and forward the required funds, and instead filed an objection to Trustee's notification letter. Subsequently, Trustee proceeded to accept bids for the farmland. On March 13, 2002, the court authorized Trustee to proceed with the sale of the identified farmland property, and Debtor, Alfred Ryder, responded by causing a chapter 11 petition to be filed in the Western District of Missouri for Ryder Farms, Inc. of Iowa and Missouri. Alfred Ryder testified that the sole purpose for the filing of the chapter 11 petition was to frustrate the sale of real estate as ordered by this court and to prevent the requirement that a supersedeas bond be posted as a result of any appeal of the order authorizing sale of real estate.

The court views this motion to transfer venue as the latest in a long series of steps to hinder the administration of this case. Accordingly, based on the above facts and circumstances, the court finds that the motion to transfer venue is untimely. Accordingly, the motion shall be denied.

UNITED STATES TRUSTEE'S MOTION TO TRANSFER VENUE TO THE SOUTHERN DISTRICT OF IOWA, OR ALTERNATIVELY, TO DISMISS

The United States Trustee asks that the chapter 11 case of Ryder Farms, Inc., of Missouri and Iowa, case number 02-50255-11-jwv, filed on March 19, 2002, in the Western District of Missouri be transferred to this court.

As stated above, Fed. R. Bankr. P. 1014 gives a bankruptcy court authority to transfer venue. In the instance where a related case is pending, the rule provides in pertinent part:

(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS.

If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (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.

The Bankruptcy Code includes in its definition of “affiliate” a “corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor;” and a “person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.” 11 U.S.C. § 101(2)(B), (C) & (D). A “person” “includes individual, partnership, and corporation, but does not include governmental unit...” 11 U.S.C. § 101(41), and “entity” “includes person, estate, trust, governmental unit, and United States trustee.” 11 U.S.C. § 101(15).

In this case, the court finds that Ryder Farms, Inc. of Iowa and Missouri is an affiliate of Debtors Alfred and Mary Ryder for the purposes of the United States Trustee's motion pursuant to Fed. R. Bankr. P. 1014(b). The court is highly skeptical that Alfred and Mary Ryder each hold only one share of stock of Ryder Farms, Inc. as the chapter 11 schedules indicate. Likewise, the court is skeptical that Thomas Ryder and Lucille Ryder own 5000 shares each. As a purported majority shareholder, Thomas showed remarkably little interest over the years in the disposition of real property that his corporation allegedly owned and used as its primary source of revenue. Further, Thomas Ryder died prior to the time that the chapter 11 case was filed, and there is nothing before the court to indicate that there is an estate for him. Lucille Ryder died a number of years ago. Alfred Ryder has suggested that Lucille's stock passed to Jane Anne Ryder, but nothing in the record shows such a transfer. Alternatively, Debtors have been most persistent in contesting the disposition of property in which they claim to have very little interest, especially when the proceeds would be used to extinguish their liability on debts.

It is apparent that Debtors control Ryder Farms, Inc. for the purpose of Fed. R. Bankr. P. 1014(b). They control the farming operations and the corporate operations, such as exist, of Ryder Farms, Inc. Although requested repeatedly by Trustee and ordered by the court, Debtors have not produced the complete corporate records. Nor have they produced evidence that anyone other than themselves have engaged in the operation of Ryder Farms, Inc.

Further, as noted earlier, Debtors filed their chapter 7 petition on July 6, 1995. Their case is still open, and assets are being administered. The chapter 11 case of Ryder

Farms Inc. was filed on March 19, 2002. Thus, the Southern District of Iowa is the venue for the first filed and pending bankruptcy case, and the United States Trustee may appropriately bring the motion to transfer.

When engaging in the two-prong analysis of “the interest of justice” and “convenience of the parties,” courts have compiled various lists of nonexclusive factors to assist in making the determination. In re Apache Transp., Inc., 127 B.R. 25, 26 (Bankr. E.D. Ark. 1991). The factors generally include:

- (1) the proximity to the court of the debtors, the creditors, assets, witnesses;
- (2) the relative economic harm to debtors and creditors caused by a transfer
- (3) the economics of administering the estate
- (4) the effect on the parties and their willingness or ability to participate in the case or in adversary proceedings
- (5) the availability of compulsory process and the cost associated with the attendance of unwilling witnesses.

In re Dececco, 224 B.R. 202, 203 (Bankr. M.D. Fla. 1998). Most courts considering a transfer of venue have indicated that the discretion to transfer should be exercised only with great caution. In re Apache Transp., Inc., 127 B.R. at 26. In addition to being in the interest of justice, a transfer should result in the economic and efficient administration of the bankruptcy estates. Id. at 27.

The court finds that a transfer of the chapter 11 case of Ryder Farms Inc. of Iowa and Missouri to the Southern District of Iowa is in the best interest of justice. The proximity of the court in Des Moines is at least as convenient to the parties as that of the Western District of Missouri located in St. Joseph. The court notes that the chapter 11 petition identifies only four creditors; all of whom are scheduled in Debtors’ chapter 7 case. Hullinger Trucking and Maple Tree Investments have actively participated in the

proceedings in Des Moines. The court finds that the chapter 11 parties will suffer no inconvenience by the case being transferred to Des Moines. On the contrary, matters will be more convenient for the parties by having a single court docket to monitor.

Most importantly, the economic considerations weigh heavily for transferring the case to Des Moines. The majority of property scheduled in the chapter 11 including the real property has been brought under the control of the chapter 7 trustee. In the global settlement that Debtors entered into on May 9, 2000, they agreed that all claims against them personally and against Ryder Farms, Inc. would be paid by the chapter 7 trustee through his administration of their estate. They agreed that real and personal property could be liquidated to pay those claims. Debtors adamantly insisted in the inclusion of a provision that required that they be given the opportunity to provide funds to pay the claims prior to Trustee selling any of the real property. Trustee agreed to the provision, and, as noted above, complied with the terms.

Allowing two cases with estates comprised of the same property to proceed in different venues would be far from economic and efficient. It would frustrate the equitable administration of both cases and work an injustice on creditors who have been forestalled in their collection efforts for over seven years. Such a situation would be particularly egregious where, as now, the chapter 7 trustee is proceeding to liquidate real estate, pay claims, and wind up the estate.

Finally, the court notes that the attorney of record, John Manring, who filed the chapter 11 petition for Ryder Farms, Inc., did not appear for the corporation at the hearing on the transfer of venue held on April 30, 2002. Alfred and Mary Ann Ryder

filed an objection to the transfer of the chapter 11 case; Ryder Farms, Inc. did not.

Essentially, the corporation did not resist the transfer of venue.

For all the foregoing reasons, the United States Trustee's motion will be granted. The chapter 11 case of Ryder Farms Inc. of Iowa and Missouri shall be transferred from the United States Bankruptcy Court for the Western District of Missouri to the United States Bankruptcy Court for the Southern District of Iowa.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. Debtors, Alfred K. Ryder and Mary Ann Ryder's Motion to Transfer chapter 7 to U. S. Bankruptcy Court for the Western District of Missouri is hereby DENIED.
2. The United States Trustee's Motion To Transfer Venue To The Southern District Of Iowa is hereby GRANTED. Ryder Farms Inc. of Iowa and Missouri's chapter 11 case filed in the United States Bankruptcy Court for the Western District of Missouri shall be transferred to the United States Bankruptcy Court for the Southern District of Iowa.
3. The United States Trustee's alternative motion to dismiss the Chapter 11 case is DENIED.

RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT