

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
INSYS THERAPUTICS, INC., <i>et al.</i> ,	)	Case No. 19-11292 (JTD)
	)	
<u>Debtors.</u>	)	
INSYS LIQUIDATION TRUST, by and	)	
Through WILLIAM HEINRICH, as	)	
LIQUIDATING TRUSTEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Pro. No. 21-50141 (JTD)
	)	
HALEY TECHNOLOGIES, INC. d/b/a PC	)	
PITSTOP	)	
	)	
<u>Defendant.</u>	)	<b>Re: D.I. 10</b>

**MEMORANDUM ORDER**

Plaintiff, Insys Liquidation Trust (“Insys”), brought this Adversary Proceeding seeking to avoid and recover preferential and/or fraudulent transfers to Defendant, Haley Technologies (“Haley”). Haley moved to dismiss the Complaint for improper venue under 28 U.S.C. § 1409(b). For the reasons that follow, I will deny the motion to dismiss.

**JURISDICTION**

The Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157(a) and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). I find venue to be proper pursuant to 28 U.S.C. § 1409(a).

## **BACKGROUND**

On February 18, 2021, Insys sued Haley to avoid and recover preferential and/or fraudulent transfers. The avoidance and recovery actions are brought pursuant to 11 U.S.C. §§ 547, 548, 549, and 550. Insys claims venue in this Court is proper pursuant to 28 U.S.C. § 1409(a).<sup>1</sup> Haley moved to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3), made applicable by Federal Rule of Bankruptcy Procedure 7012, arguing that the amount in controversy, \$10,766.79, is less than the monetary threshold of \$25,000 for “debt (excluding a consumer debt) against a noninsider” as stated in 28 U.S.C. § 1409(b). Haley argues that because the amount in controversy is below the statutory threshold, Haley can only be sued in the district in which it resides.<sup>2</sup> Insys responds that venue is proper because the causes of action it is pursuing arise under the Bankruptcy Code and the plain language of 28 U.S.C. § 1409(b) does not include actions “arising under” the Code.<sup>3</sup>

## **DISCUSSION**

The default venue provision for actions arising in, under, or related to title 11 is 28 U.S.C. § 1409(a). The statute states “[e]xcept as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.” 28 U.S.C. § 1409(a). This grant of venue in the bankruptcy court is restricted only by the limited exceptions delineated in subsections (b) and (d) which provide instances where actions

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<sup>1</sup> Complaint, Adv. D.I. 1.

<sup>2</sup> Motion to Dismiss, Adv. D.I. 10.

<sup>3</sup> Answering Brief in Opposition to Motion to Dismiss, Adv. D.I. 13.

must be brought in a non-debtor's home court." *In re Petland Discounts Inc.*, No. 8-19-72292-reg, 2021 WL 1535793, \*1 (Bankr. E.D.N.Y. Jan. 26, 2021). The avoidance and recovery causes of action that Insys is pursuing "arise under" title 11. See *In re Petland Discounts, Inc.*, 2021 WL 1535793, \*1 ("It is beyond question that a preference action 'arises under' title 11."); see also *In re Munson*, 627 B.R. 507, 516 (Bankr. C.D. Ill. 2021) (finding that proceedings "arising under" title 11 "include preference actions"). Although the exception to venue in 28 U.S.C. § 1409(b) does not include actions "arising under" the Code, Haley asserts that it should be read to include those actions to comport with the congressional intent to protect defendants with small claims filed against them from having to defend in far off venues. I disagree.

"Only when statutory text is ambiguous do we consider 'other indicia of congressional intent such as the legislative history.'" *In re Cirino Constr. Co., Inc.*, No. 19-51037, 2020 WL 2989750, \*2 (Bankr. M.D. N.C., May 22, 2020) (quoting *Copley v. United States*, 959 F.3d 118, 123 (4th Cir. 2020)).

Congress included all three types of bankruptcy proceedings, including those "arising under" title 11 and those "arising in" or "related to" title 11, in 28 U.S.C. § 1409(a). Congress only included two types of bankruptcy proceedings, those "arising in" or "related to" title 11, in 28 U.S.C. § 1409(b). "[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

*Id.* at 2 (quoting *Russello v. United States*, 464 U.S. 16, 23(1983)). Other cases have referred to the omission of the "arising under" language from 28 U.S.C. § 1409(b) as

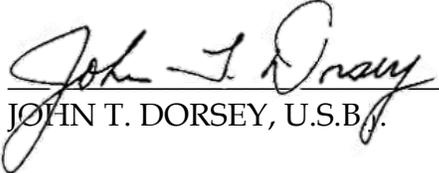
“intentional” and “deliberate.” *In re Tadich Grill of Washington DC LLC*, 598 B.R. 65, 69 (Bankr. D.D.C. 2019); *In re Rosenberger*, 400 B.R. 569, 573 (Bankr. W.D. Mich. 2008).

There is simply no reason to conclude, given the clear language of § 1409, that Congress accidentally failed to include arising under in the exceptions to general venue under § 1409(b). Therefore, the Motion to Dismiss is denied.

### CONCLUSION

Since 28 U.S.C. § 1409(b) does not apply to a proceeding “arising under” title 11, venue is proper under 28 U.S.C. § 1409(a). Therefore, the Defendant’s Motion to Dismiss is denied. SO ORDERD.

Dated: June 17, 2021

  
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JOHN T. DORSEY, U.S.B.