IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Revstone Industries, LLC, *et al.*,[1]	)	Case No. 12-13262 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
Fred C. Caruso, solely in his capacity as the Revstone/Spara Litigation Trustee of the Revstone/Spara Litigation Trust,	)	Adv. No. 14-50468 (BLS)
	)	
Plaintiff,	)	Related to Adv. Docket Nos. 12, 13, 18 & 19
	)	
v.	)	
	)	
Fasig-Tipton Company, Inc.,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM ORDER[2]

Upon consideration of the Renewed Motion to Transfer Venue to the Eastern District of Kentucky ("Motion to Transfer") [Adv. Docket. No. 12] and accompanying memoranda of law [Adv. Docket No. 13] filed by defendant Fasig-Tipton Company, Inc. ("Fasig-Tipton"); the objection to the Motion to Transfer (the "Objection") [Adv. Docket No. 18] filed by plaintiff Fred C. Caruso, solely in his capacity as the Revstone/Spara Litigation Trustee of the Revstone/Spara Litigation Trust (the "Plaintiff"); and the reply (the "Reply") [Adv. Docket No. 19] filed by Fasig-Tipton; the Court hereby FINDS as follows:

[1] The Debtors in these Chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: Revstone Industries, LLC (7222); Spara, LLC (6613); Greenwood Forgings, LLC (9285); and US Tool & Engineering, LLC (6450).

[2] This Memorandum Order constitutes the Court's findings of fact and conclusions of law as required by the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bankr. P. 7052.

Background

1. In February 2010, Mark Glyer, a resident of Kentucky, entered into two consignment contracts with Fasig-Tipton for the sale of two horses for $100,000. Fasig-Tipton is an auction house for thoroughbred horses and is organized under the laws of Kentucky with its principal place of business in Kentucky.

2. In March 2010, Fasig-Tipton received a $100,000 check (the "Transfer") for the payment of the two horses from Revstone Industries, LLC ("Revstone" or the "Debtor"). Revstone was a designer and manufacturer of components for the automotive industry with headquarters in Lexington, Kentucky. In a memo accompanying the check, it specifically names the two horses Glyer purchased and an invoice date of February 17, 2010.

3. On December 3, 2012, Revstone and certain of its affiliates filed voluntary chapter 11 petitions in this Court. On July 22, 2014, the Plaintiff commenced the above-captioned adversary proceeding (the "Proceeding") and filed its First Amended Complaint to Avoid and Recover Fraudulent Transfers [Adv. Docket No. 1].[3] On August 1, 2014, the Plaintiff filed its Second Amended Complaint to Avoid and Recover Fraudulent Transfer (the "Complaint") [Adv. Docket No. 2].

4. The Plaintiff brings one count against Fasig-Tipton for avoidance and recovery of the Transfer pursuant to sections 544(b) and 550(a) of title 11 of the United States Code (the "Bankruptcy Code") and section 1305 of the Delaware Uniform Fraudulent Transfer Act.

5. The Plaintiff alleges that George S. Hofmeister—a resident of Kentucky and at relevant times Chairman and sole member of Revstone's Board of Managers—caused the Transfer to be made to Fasig-Tipton and that the horses were for his sole benefit. The Plaintiff also alleges that Revstone was insolvent at the time of the Transfer. Discovery in this matter has not yet commenced.

6. On March 24, 2015, Fasig-Tipton moved to transfer venue of this Proceeding pursuant to 28 U.S.C. § 1412 to the Eastern District of

[3] Revstone originally filed a single adversary proceeding against, among others, Fasig-Tipton, George S. Hofmeister, and Keeneland Association. [Adv. Pro. No. 14-50033, D.I. 1]. On July 18, 2014, this Court granted Fasig-Tipton and Keeneland Association's joint motion to sever improperly joined claims. [Adv. Pro. No. 14-50033, D.I. 231]. In accord with this Court's memorandum order, Revstone's original adversary proceeding was split into separate adversary proceedings. The Proceeding represents one of those severed adversary proceedings.

Kentucky. On April 29, 2015, Revstone objected to transferring venue, and on May 13, 2015, Fasig-Tipton filed the Reply.

7. On August 27, 2015, the Plaintiff filed a Notice of Substitution of Plaintiff (the "Notice") [Adv. Docket No. 22]. The Notice stated (i) that this Court confirmed the Debtors' chapter 11 plan (the "Plan"); (ii) that on June 24, 2015—the Plan's effective date ("Effective Date")—the Revstone/Spara Litigation Trust (the "Trust") was assigned this Proceeding; and (iii) that Mr. Caruso was substituting in for the Debtor as Plaintiff.

8. For the reasons that follow, the Court will grant the Motion to Transfer.

Analysis

9. Section 1412 of title 28 authorizes a bankruptcy court to "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." While courts apply a variety of factors and afford different weight to them, case law teaches that a decision to transfer venue is ultimately within the sound discretion of the court and should be evaluated on a case-by-case basis. *See, e.g., Kurz v. EMAK Worldwide, Inc.*, 464 B.R. 635, 648 (D. Del. 2011); *In re Buffets Holdings, Inc.*, 397 B.R. 725, 727 (Bankr. D. Del. 2008). The movant bears the burden of demonstrating the need to transfer a proceeding to another venue and must make such a showing by a preponderance of the evidence. *In re Hechinger Inv. Co. of Delaware, Inc.*, 296 B.R. 323, 325 (Bankr. D. Del. 2003).

10. Courts in the Third Circuit consider a nonexclusive list of twelve factors in determining whether to transfer an adversary proceeding:

> (1) plaintiff's choice of forum, (2) defendant's forum preference, (3) whether the claim arose elsewhere, (4) location of books and records and/or the possibility of viewing the premises if applicable, (5) the convenience of the parties as indicated by their relative physical and financial condition, (6) the convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora, (7) the enforceability of the judgment, (8) practical considerations that would make the trial easy, expeditious, or inexpensive, (9) the relative administrative difficulty in the two fora resulting from congestion of the courts' dockets, (10) the public policies of the fora, (11) the

> familiarity of the judge with the applicable state law, and (12) the local interest in deciding local controversies at home.

In re DBSI, Inc., 478 B.R. 192, 194 (Bankr. D. Del. 2012) (citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879–80 (3d Cir. 1995)); *see also In re Buffets Holdings*, 397 B.R. at 727 (listing the same twelve factors). No one factor is dispositive, although courts typically begin the analysis by according substantial deference to the plaintiff's forum choice.

11. Fasig-Tipton contends that this Court should transfer the Proceeding because the transactions underlying the claim against it took place entirely in Kentucky, between Kentucky individuals and entities, and that all potential witnesses and evidence are located in Kentucky. In response, the Plaintiff argues that transferring venue would prejudice the Debtor by forcing it to prosecute a core matter in a foreign jurisdiction and would waste judicial and estate resources.

12. Applying the above factors, the Court holds that Fasig-Tipton has carried its burden and shown that this Proceeding should be transferred to Eastern District of Kentucky. Each factor will be analyzed briefly in turn.

13. First, as noted above, courts generally defer to a plaintiff's choice of forum and often remark that it "should not be lightly disturbed." *E.g.*, *Jumara*, 55 F.3d at 879. When a bankruptcy case is properly brought under 28 U.S.C. § 1409, a "strong presumption" arises in favor of keeping a proceeding in the same venue as the pending bankruptcy case. *In re Hechinger*, 288 B.R. at 402. This presumption may be overcome, however, if as a whole the above listed factors support transferring venue. Further, the weight afforded to a plaintiff's forum choice "is diminished where . . . the choice of forum for its bankruptcy case has no direct relation to the operative, underlying facts of the adversary proceeding." *In re Buffets Holdings*, 397 B.R. at 728; *see In re Centennial Coal, Inc.*, 282 B.R. 140, 144–45 (Bankr. D. Del. 2002).

14. The Plaintiff and Fasig-Tipton agree that the first factor favors keeping this Proceeding in Delaware. While the analysis for this factor may appear to end before it begins because the Plaintiff chose Delaware, the weight afforded this factor is important to consider in the overall transfer calculus. *See In re Buffets Holdings*, 397 B.R. at 728; *In re Centennial Coal*, 282 B.R. at 145. The Court finds this factor is not entitled to significant weight for two reasons. First, other than the Debtors' cases being filed in Delaware, the claim at issue here has no connection to Delaware: Fasig-Tipton, Revstone, potential witnesses, and the books and records are

in Kentucky; the execution of the consignment agreement occurred in Kentucky; and the purchase of the two horses took place in Kentucky. Further, it does not appear to the Court that litigating this relatively small commercial dispute in another forum will materially or unfairly burden the post-confirmation estate.[4] Finally, the remaining factors viewed in their totality favor transferring venue. *See In re Centennial Coal*, 282 B.R. at 148.

15. The second factor favors transfer as Fasig-Tipton prefers the Proceeding to be in the Eastern District of Kentucky. The weight given to a defendant's choice of forum depends on the entirety of the court's analysis of all the factors and should not be analyzed in a vacuum. *See In re Buffets Holdings*, 397 B.R. at 728 ("The Court agrees that typically a defendant's preference does not carry as much weight as a plaintiff's choice of forum. There is an exception, however, where, as here, the other *Jumara* factors weigh substantially in favor of transferring venue.") (citing *Jumara*, 55 F.3d at 880). Because this Court concludes that the other factors as a whole weigh substantially in favor of transferring venue, this factor supports transferring venue.

16. The third factor relates to where the claim arose, and here weighs heavily in favor of transfer. Fasig-Tipton argues that the claim against it arose entirely in Kentucky: the auction sale and purchase of the horses was in Kentucky; the check received by Fasig-Tipton for payment was drawn on a Kentucky bank; the payment Fasig-Tipton received was from Revstone, which is headquartered in Kentucky; the delivery of the horses and negotiations took place in Kentucky; and both Hofmeister and Glyer reside in Kentucky.

17. The Plaintiff contends that where the claim arose is not at issue and that the claim "arose in in this . . . [Proceeding] under §§ 544 and 550 of the Bankruptcy Code." Contrary to the Plaintiff's assertion, where the claim arose *is* at issue when analyzing this factor. *In re DBSI*, 478 B.R. at 194 (stating that the third factor is "whether the claim arose elsewhere"). It appears uncontroverted that the nucleus of operative facts and all the underlying events relevant to the Plaintiff's avoidance action arose in Kentucky. Instead of conceding this factor, the Plaintiff attempts to make the legal distinction that the claim against Fasig-Tipton arose in the Proceeding under section 544(b). The Court finds this contention unavailing. Section 544(b) empowers the Plaintiff to "avoid any transfer of interest of an interest of the debtor in property . . . that is voidable under appli-

[4] The Court readily acknowledges that, under different circumstances, the burden upon a debtor associated with litigating in a different forum could be nearly dispositive in the venue analysis.

cable law." 11 U.S.C. § 544(b). Section 544(b) does not establish a bankruptcy specific avoidance action, but rather gives the Plaintiff the status of a creditor under state law. *In re Derivium Capital, LLC*, 396 B.R. 184, 192 (Bankr. D.S.C. 2008). *Compare* 11 U.S.C. § 544(b), *with* 11 U.S.C. § 548(a). Only if the Plaintiff can demonstrate a viable cause of action under Delaware's fraudulent conveyance law can the Transfer be avoided. Notwithstanding that state law is actually the genesis of the cause of action and section 544(b) is merely the mechanism to bring the action in bankruptcy, the central infirmity in the Plaintiff's argument is ignoring where the operative facts occurred—the sole inquiry for this factor.

18. Factors four, five and six—regarding the location of evidence and witnesses—favor transferring venue. The books, records, and witnesses relating to the Plaintiff's avoidance claim are in Kentucky.

19. The seventh, eighth, and ninth factors do not materially weigh in favor of either party. A judgment rendered in either this District or in Kentucky would be given full faith and credit. *E.g., In re Buffets Holdings*, 397 B.R. at 730; *In re Hechinger*, 296 B.R. at 326. As to "whether it is actually easier, faster, or less expensive to litigate this [Proceeding] in another forum," *In re Onco Invest. Co.*, 320 B.R. 577, 581 (Bankr. D. Del. 2005), nothing in the record strongly suggests increased efficiency in this Court or elsewhere.

20. The tenth factor, which looks to the public policies of the fora, slightly favors transferring venue. Both parties raise sound policy considerations. On the one hand, Fasig-Tipton argues that the Eastern District of Kentucky has a significant interest in adjudicating this Proceeding because the transaction in issue was executed in Kentucky and involves individuals and companies located in Kentucky.

21. On the other hand, the Plaintiff asserts that transferring venue is inappropriate because the public policy of the United States as embodied in the Bankruptcy Code favors centralization of bankruptcy matters. At the outset of a bankruptcy case, this policy recognizes the disruption transferring bankruptcy matters to other venues has on the administration of a bankruptcy estate; however, the policy of favoring centralization of bankruptcy matters is at its zenith in the early stages of a case, but when a bankruptcy case is in the postconfirmation stage the concerns underlying maintaining matters in the originally filed forum diminishes. Here, the policy favoring centralization wanes in light of the posture of the Debtors' bankruptcy cases: this Proceeding has no bearing on the Debtors' reorganization efforts, the Debtors' Plan has been confirmed, and the Plan likely has been substantially consummated given that the Ef-

fective Date occurred over three months ago.[5] [Bankr. Case No. 12-13262, Docket Nos. 2067 & 2222]. On balance of the competing public policies of the two fora, the Court finds this factor weighs in favor of transferring venue.

22. The eleventh factor, which relates to state law, is largely neutral. Fasig-Tipton contends that Kentucky law may become germane during the pendency of this Proceeding when it raises future defenses and cross-claims. The Plaintiff stresses that it has specifically invoked Delaware's Uniform Fraudulent Transfer Act to avoid the Transfer. At this juncture, however, the Court cannot foresee how this Proceeding will play out and to what extent, if at all, Kentucky law will be implicated. The Court presumes that both it and the transfer court are equally able to apply the relatively discrete state laws that may arise.

23. Finally, the twelfth factor favors Fasig-Tipton because Kentucky has a greater interest in deciding matters that impact its residents and businesses. *See In re Buffets Holdings*, 397 B.R. at 730. As noted above, the parties and non-parties involved in this Proceeding are all based in Kentucky. Furthermore, Kentucky has an interest in resolving disputes that occur entirely within its borders and involves the equine and thoroughbred racing industry, which is alleged to be an important and prominent industry in Kentucky.

24. After weighing the above factors, this Court holds that Fasig-Tipton satisfied its burden that the interest of justice and convenience of the parties warrants transferring this Proceeding to the Eastern District of Kentucky.

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[5] The Court makes no determination here as to whether the Debtors' Plan has in fact been substantially consummated within the meaning of section 1101(2) of the Bankruptcy Code.

Accordingly, it is hereby

ORDERED, that Fasig-Tipton's Motion to Transfer is **GRANTED.**

BY THE COURT:

Dated: November 3, 2015
Wilmington, Delaware

Brendan Linehan Shannon
Chief United States Bankruptcy Judge