

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

824 MARKET STREET  
WILMINGTON, DE 19801  
(302) 252-2925

October 13, 2000

Martin Rosen  
84 Radcliffe Road  
Plainview, NY 11803

Theodore J. Tacconelli  
Ferry & Joseph, P.A.  
824 Market Street, Suite 904  
P.O. Box 1351  
Wilmington, DE 19899

Counsel for Allou Health &  
Beauty Care, Inc.

Adam Singer  
Paul J. Dougherty, III  
Cooch and Taylor  
824 Market Street, Suite 1000  
P.O. Box 1680  
Wilmington, DE 19899-1680

Counsel for Jeffrey L. Burtch,  
Trustee

Dear Counsel:

**Re: Jeffrey L. Burtch, Chapter 7 Trustee for the  
Cosmetic Center, Inc. vs. Allou Health & Beauty  
Care, Inc.  
Adv. Pro. No. 00-00445**

This is with respect to the Defendant's motion to transfer venue (Doc. # 5) and the chapter 7 Trustee's objection and response thereto (Doc. # 6). For the reasons discussed below, I will deny the motion.

The underlying complaint by Jeoffrey L. Burtch, chapter 7 trustee ("Trustee"), against Allou Health & Beauty Care, Inc. ("Allou") seeks recovery of \$65,275.00 in allegedly preferential transfers. Allou, based in Brentwood, New York, requests transfer of venue to the United States Bankruptcy Court for the Eastern District of New York. Allou argues that litigation in Delaware is unfairly expensive and inconvenient because its defense witnesses and evidence are all in New York.

The Trustee opposes transfer. He anticipates that evidence will be primarily documentary and that in the event of trial, his two witnesses will be from Wilmington, Delaware, and Chevy Chase, Maryland. According to the Trustee, the claim against Allou is one of approximately 74 preference claims involving the debtor, of which about thirty had been settled and another eleven were in the process of being settled at the time the Trustee filed his opposition. The Trustee's litigation counsel is based in Wilmington, Delaware, and the chapter 7 debtor was formerly based in Maryland.

It seems to me that this is a routine preference action that is most efficiently disposed of in the present forum. The party who seeks transfer bears the burden to overcome the strong presumption of maintaining venue in the same court where the bankruptcy case is pending. See, e.g., Continental Airlines, Inc. v. Chrysler (In re Continental Airlines, Inc.), 133 B.R. 585, 587 (Bankr. D.Del. 1991). One of the most important factors a court

considers when determining venue is whether transfer promotes the economic and efficient administration of the debtor's estate. Puerto Rico v. Commonwealth Oil Refining Co. (In re Commonwealth Oil Refining Co.), 596 F.2d 1239, 1247 (5th Cir. 1979); Nixon Machinery Co. v. Roy Energy, Inc. (In re Nixon Machinery Co.), 27 B.R. 871, 873 (Bankr. E.D.Tenn. 1983) ("In a bankruptcy case, a paramount consideration is speedy and economic administration of the bankruptcy case. This consideration underlies the general rule that the court where the bankruptcy case is pending is the proper venue for all related proceedings within the court's jurisdiction").

Judicial economy and expediency in this case strongly favor the Trustee's choice of forum. Allou has not established that the cost of litigation in Delaware as opposed to New York is so much greater that transfer is warranted. Allou must bear defense related expenses regardless of venue and Delaware is not so distant as to render this litigation unduly burdensome. But even if Allou incurs some additional expense, that alone does not outweigh the cost and inefficiency that the debtor's estate will bear if the Trustee is forced to litigate the claim in the Eastern District of New York.

It also seems to me Allou assumed the risk of litigation in a forum other than Eastern New York when it chose to transact business with a Maryland-based entity. It cannot now shift the cost of this risk onto the debtor's estate. I also note that the

only truly contested issue appears to be the applicability of the affirmative defenses under 11 U.S.C. § 547(c). Matters of proof should therefore be minimal.

The most efficient disposition of this adversary proceeding is in the present forum. Consequently, I will deny Allou's motion.

So ordered.

Very truly yours,

Peter J. Walsh

PJW:ipm