

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
PC LANDING CORP., <i>et al.</i> ,)	Case No. 02-12086 (PJW)
)	
Debtors.)	
_____)	
)	
PC LANDING CORP., <i>et al.</i> ,)	
)	Adversary No. 04-54145 (PBL)
Plaintiffs,)	
)	
v.)	
)	Related Documents; 4, 5, 6, 7, 8
ASIA GLOBAL CROSSING, LTD.,)	
)	
Defendant.)	

MEMORANDUM¹

This is an adversary proceeding brought by PC Landing Corp. (“Debtor”) to avoid and recover certain allegedly preferential transfers under 11 U.S.C. §§ 547 and 550. Defendant, Asia Global Crossing, Ltd. (“Defendant”) is itself a debtor in a case pending in the Bankruptcy Court for the Southern District of New York (“the New York action”) under Chapter 7 of the Bankruptcy Code.²

¹ This court has jurisdiction of this proceeding under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), (F), and (O).

² 11 U.S.C. §§ 101 et seq. References herein to statutory provisions by section number only will be to provisions of the Bankruptcy Code unless the context requires otherwise.

Plaintiff filed a motion in Defendant's bankruptcy case to clarify the effect of their proof of claim and to request relief from the Automatic Stay of § 362. At a hearing on that motion before the Honorable Stuart M. Bernstein, it was determined in effect that although the amount of the alleged preferential transfers was included in Plaintiff's proof of claim in the New York action or in a proposed amendment thereto, it was also necessary for Plaintiff to commence an action in this Court, where its bankruptcy case was pending, seeking to avoid and recover the amount of the transfers. Thus, Judge Bernstein ordered the automatic stay lifted to allow Plaintiff to file a preference complaint and obtain and serve summons in this Court in order to satisfy the statute of limitations of § 546, but for no other purpose. Judge Bernstein also responded to Defendant's suggestion that this action would create duplicative litigation by saying: "Either ask me to transfer the proof of claim to Judge Walsh or ask Judge Walsh to transfer the complaint here to be tried together with the proof of claim." (Transcript, July 15, 2004, at 19) This adversary proceeding was subsequently filed, and assigned by Judge Walsh to this Court.

Defendant has moved this Court, pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 7087, to transfer the venue of this adversary proceeding to the United States Bankruptcy Court for the Southern District of New York.³

³ 28 U.S.C. 1412 is, in its entirety, as follows: "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." Bankruptcy Rule 7087 is, in material part, as follows: "On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412."

Plaintiff filed its objection to the relief sought and Defendant filed its reply. The motion has been fully briefed by the parties and is therefore ripe for consideration and decision by this Court.

Both parties recite the twelve factors considered by courts in the Third Circuit in determining motions of this kind, and argue their applicability to this case. Those factors are:

(1) plaintiff's choice of forum, (2) defendant's forum preference, (3) whether the claim arose elsewhere, (4) the location of books and records and/or the possibility of viewing 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 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.

Son v. Coal Equity, Inc. (In re Centennial Coal, Inc.), 282 B.R. 140, 144 (Bankr. D. Del., 2002), [citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (3d Cir. 1995)].

A hearing on this matter was held November 5, 2004 and the Court has reviewed the briefs of the parties, including their discussion of the twelve factors and their conclusions as to the applicability and relative strength of each in relation to their respective positions, and the authorities cited by the parties in support of their positions. It is unnecessary for the Court to discuss each of the elements in detail; however, some observations and discussion are in order.

Plaintiff initially desired to litigate the preference contentions in the claims litigation already under way in the New York action, and asserts that the amount of the alleged transfers in question is already included within the much larger proof of claim filed in the New York action. This case was brought only after it became apparent that Plaintiff might be found to have

abandoned the preference litigation if it was not brought as an adversary proceeding in this forum.

Defendant asserts that Plaintiff's preference litigation will have been futile unless it prevails against Defendant's challenge to Plaintiff's proof of claim, and that therefore it would be better for all concerned if the two issues could be dealt with by the same court in the same case. The hearing before Judge Bernstein supports that assertion.

Other factors such as the convenience of witnesses, location of books and records, the distance of the two fora from one another and the like, are not of sufficient significance to favor one forum over the other to any material extent.

It is this Court's opinion that the circumstances here outweigh the policy favoring the forum chosen by the plaintiff. First, it is noted that the adversary proceeding could not be tried quickly, in fact, it could not be tried at all in this forum absent further action by Judge Bernstein. The automatic stay was lifted for the sole purpose of allowing the filing and serving of this action in this Court. Prosecution of the action beyond initial service has not been authorized.

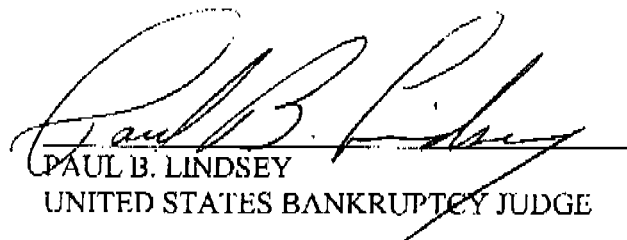
Further, Judge Bernstein clearly felt that both the claims controversy pending in the New York action and the preference litigation which is the subject of this adversary proceeding would and should be heard by the same judge. The claims controversy is already ongoing in the New York action, and is much larger in amount than the preference action pending here.⁴ The outcome of the claims controversy will undoubtedly have a substantial impact on that bankruptcy case, and should be heard and decided by the judge familiar with the case in which the issues are pending.

⁴ The parties state that PC Landing's proof of claim in the New York action totals \$677 million. (Asia Global's Opening Brief in Support of the Motion to Transfer Venue, at 1)

In these circumstances, this Court concludes that the interests of justice require that the motion of Defendant be granted, and that this adversary proceeding be transferred to the United States Bankruptcy Court for the Southern District of New York.

An appropriate order follows.

Dated: November 5, 2004


PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

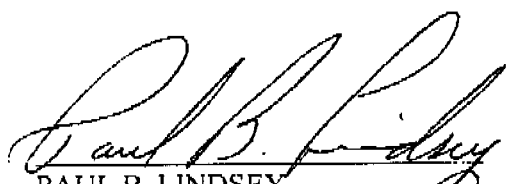
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**ORDER GRANTING MOTION TO TRANSFER VENUE
TO SOUTHERN DISTRICT OF NEW YORK**

Upon consideration of the Motion of Asia Global Crossing, Ltd. to Transfer Venue, the Opposition of PC Landing Corp. thereto, and a hearing having been held on November 5, 2004, it is hereby

ORDERED that the Motion is **GRANTED** for the reasons set forth in the accompanying Memorandum and the above-captioned adversary proceeding is hereby transferred to the United States Bankruptcy Court for the Southern District of New York.

Dated: November 5, 2004


PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE