

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
CORAM HEALTHCARE CORP. and CORAM,) Case No. 00-3299 (MFW)
INC.,)
) (Jointly Administered)
Debtors.)
-----)
ARLIN M. ADAMS, as Chapter 11)
Trustee of the estates of Coram)
Healthcare Corp. and Coram, Inc.,)
)
Plaintiff,) Adv. No. 03-53964
)
vs.)
)
MEDICAL ACCOUNTS RECEIVABLE)
SOLUTIONS, INC., and MARGARET)
STARLEY, Individually,)
)
Defendants.)

OPINION¹

Before the Court is the Motion to Dismiss for lack of personal jurisdiction and improper venue filed by the defendant Margaret Starley ("Starley"). For the reasons stated below, the Motion will be granted.

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

On August 8, 2000, Coram Healthcare Corp. and Coram, Inc. (collectively "the Debtors") filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are engaged in the business of providing comprehensive infusion care and related services to patients in non-hospital settings. On or about April 1, 2001, Medical Accounts Receivable Solutions ("MARS") and the Debtors entered into an agreement ("the Agreement") whereby MARS acted as a collection agent for the Debtors.

On March 7, 2002, Arlin M. Adams ("the Trustee") was appointed the chapter 11 trustee in the Debtors' cases. On June 29, 2003, the Trustee filed an adversary proceeding against MARS and Starley (collectively "the Defendants") asserting claims for breach of contract, fraudulent misrepresentation, unjust enrichment, and conversion. Starley, a California resident, is the founder, president, board member and sole shareholder of MARS. MARS is a Delaware corporation with its principal place of business in California. In lieu of an answer, Starley filed the Motion to Dismiss. The Trustee opposes the Motion and briefs have been filed by the parties.

II. JURISDICTION

This Court has jurisdiction over this matter, which is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O).

III. DISCUSSION

A. Motion to Dismiss Standard

Starley seeks dismissal pursuant to Rule 12(b)(2) and (3) of the Federal Rules of Civil Procedure, incorporated by Bankruptcy Rule 7012(b). In a motion to dismiss, the court may consider "sworn affidavits or other competent evidence" related to personal jurisdiction. In re Fruehauf Trailer Corp., 250 B.R. 168, 183 (Bankr. D. Del. 2000). To prevail on a motion to dismiss for improper venue, "facts must be presented that will defeat the plaintiff's assertion of venue." 2215 Fifth St. Assocs. v. U-Haul Int'l, Inc., 148 F. Supp 2d 50, 54 (D. D.C. 2001) (citing 5A Fed. Prac. & Proc. 2d 1352).

1. Personal Jurisdiction

Starley argues that the Court cannot exercise personal jurisdiction because the requirements of Delaware's long arm statute cannot be met. See 10 Del. C. § 3104(c)(4). She argues that she lacked the requisite minimum contacts with Delaware, set forth in International Shoe and the Fourteenth Amendment, because her only contacts with Delaware were in a corporate capacity. See, e.g., International Shoe Co. v. Washington, 326 U.S. 310 (1945).

The Trustee notes that service of process was properly made on Starley pursuant to Bankruptcy Rule 7004(d). He argues that

the Court consequently has personal jurisdiction over Starley because Starley had minimum contacts with the United States as a California resident.

Rule 7004(d) states that "the summons and complaint and all other process except a subpoena may be served anywhere in the United States." Fed. R. Bankr. P. 7004(d). Under Rule 7004(b), service of process can be made by first class mail within the United States. When a federal statute or rule, such as Rule 7004(d), permits the service of process beyond the boundaries of the forum state, then the issue is whether the party has sufficient contacts with the United States, not any particular state. In re F/S Airlease II, Inc., 67 B.R. 428, 431 (Bankr. W.D. Pa. 1986). See, e.g., Brown v. C.D. Smith Drug Co., No. 98-494-SLR, 1999 U.S. Dist. LEXIS 13872 (D. Del. Aug. 18, 1999) (holding that the relevant inquiry was whether the defendants had sufficient contacts with the United States, rather than the state, because Bankruptcy Rule 7004(d) allowed national service of process); In re Pacques, Inc., 277 B.R. 615, 633 (Bankr. E.D. Pa. 2000) (holding that personal jurisdiction over out-of-state defendants in adversary proceeding depended on minimum contacts with the United States, not Pennsylvania); In re Geauga Trenching Corp., 110 B.R. 638, 648 (Bankr. E.D.N.Y. 1990) (holding that, where trustee brought a post-petition breach of contract claim, a federal "minimum contact" test rather than a state "minimum

contact" test is applied).

Thus, Starley's argument based on International Shoe and the Fourteenth Amendment is misplaced. Because this Court has jurisdiction under section 1334(b) of title 28 and "service of process was effected pursuant to a federal rule [7004] having the force of federal law" the Fourteenth Amendment is not implicated. Brown, 1999 U.S. Dist. LEXIS 13872 at *10.

In this case, Starley was properly served by first class mail pursuant to Rule 7004(b). As a resident of California, she has sufficient minimum contacts with the United States. Consequently, the exercise of personal jurisdiction over Starley in the adversary proceeding does not constitute a due process violation. Therefore, we conclude that we have personal jurisdiction over Starley and the Complaint cannot be dismissed on this basis.

2. Venue

Section 1409 of title 28 governs venue of adversary proceedings in bankruptcy cases. The general rule under section 1409(a) is that proper venue of a proceeding arising under or related to a case under title 11 lies in the court in which the bankruptcy case is pending. 28 U.S.C. §1409(a). If the claim arises after the commencement of the case, however, section 1409(d) applies:

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only

in the district court for the district where a State or Federal court sits in which, under applicable non-bankruptcy venue provisions, an action on such claim may be brought.

28 U.S.C. § 1409(d) (2003).

"In carrying on its business after the filing of bankruptcy, the presumption in favor of venue in the home bankruptcy court dissipates, and the debtor is exposed to liability in any court where the controversy might be heard as if the debtor were an ordinary citizen." Geauga, 110 B.R. at 652 (citing In re Continental Airlines, Inc., 61 B.R. 758 (Bankr. S.D. Tex. 1986)).

In the present case, the parties entered into the Agreement post-petition and the alleged wrongdoing occurred post-petition. Therefore, section 1409(d) applies. See, e.g., In re Bayview Plaza Associates Ltd. P'ship, 209 B.R. 840, 843 (Bankr. D. Del. 1997) (applying section 1409(d) to a post-petition claim arising from the operation of the debtor's business). Thus, we must consider what applicable non-bankruptcy venue provisions dictate.

Section 1391 of title 28 provides the basis for venue in non-bankruptcy cases. See, e.g., In re Olympia Holding Corp., 139 B.R. 565 (Bankr. M.D. Fla. 1992). If jurisdiction is based solely on diversity, section 1391(a) applies. Otherwise, section 1391(b) applies.

Diversity jurisdiction exists in this case because the Debtors are Delaware corporations, which maintain their principal place of

business in Colorado² and Starley is a resident of California. However, our jurisdiction over this action is not based solely on diversity. Instead, our jurisdiction over the adversary proceeding is premised on sections 1334 and 157 of title 28.³

The adversary proceeding involves post-petition contract claims of the trustee and arises in the Debtors' bankruptcy case. See Geauga, 110 B.R. at 645 (holding that trustee's post-petition contract claim is a core proceeding because it arises in a title 11 case).

The Trustee's post-petition breach of contract claims are core proceedings. "Simply because the proceeding presents questions of state law does not necessarily mean that the proceeding is 'non-core' or otherwise beyond the jurisdiction of the bankruptcy courts." In re Popular Run Five Ltd. P'ship, 192 B.R. 848, 857 (Bankr. E.D. Va. 1995). See also, In re Agri-Concrete Prods., Inc. v Fabcor, Inc., 153 B.R. 673 (Bankr. M.D. Pa. 1993) (holding that post-petition breach of contract actions are core proceedings); In

² Since Coram operates numerous facilities in many states, we conclude that its principal place of business is in Denver, Colorado, where its principal executive offices are located.

³ District courts "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." See 28 U.S.C. § 1334. Bankruptcy judges are given the power to determine "all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11." See 28 U.S.C. § 157(b)(1). Section 157(b)(2) provides a non-exhaustive list of matters constituting core proceedings. See 28 U.S.C. § 157(b)(2).

re Jackson, 90 B.R. 126 (Bankr. E.D. Pa. 1988) (holding trustee's claim for breach of contract against attorneys for post-petition conduct was core proceeding because it related directly to administration of debtors' estate); In re Tidwell Industries, Inc., 87 B.R. 345 (Bankr. E.D. Pa. 1988) ("actions based upon post-petition contracts are core and not related proceedings"); In re J.B. Van Sciver Co., 73 B.R. 838 (Bankr. E.D. Pa. 1987) (holding breach of post-petition real estate sales agreement is a core proceeding).

The Trustee's breach of contract claim in this case is a core proceeding because it is a matter "concerning the administration of the estate", seeks an order "to turn over property of the estate" and is a proceeding "affecting the liquidation of the assets of the estate." 28 U.S.C. § 157(b)(2)(A), (E) & (O). See Geauga, 110 B.R. at 646; In re Agri-Concrete Prods., Inc., 153 B.R. at 676-77.

Since jurisdiction over this action is not based solely on diversity jurisdiction, the applicable venue provision is section 1391(b). Section 1391(b) provides:

(b) a civil action wherein jurisdiction is not founded solely on diversity of citizenship may . . . be brought in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. 1391(b).

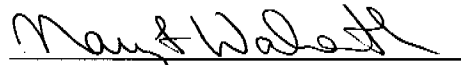
Pursuant to section 1391(b), venue would also lie in Colorado, Texas, Arizona, or Illinois, where Starley, MARS, and the Debtors conducted substantial business related to the Agreement and where the alleged breaches occurred. It is not proper, however, in Delaware since the parties conducted no business in this state. Therefore, we will grant the Motion to Dismiss for improper venue.

IV. CONCLUSION

For the foregoing reasons, Starley's Motion to Dismiss will be granted.

An appropriate Order is attached.

BY THE COURT:



Mary F. Walrath

United States Bankruptcy Judge

Dated: December 12, 2003

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SOLUTIONS, INC., and MARGARET)
STARLEY, Individually,)
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Defendants.)

O R D E R

AND NOW, this 12th day of DECEMBER, 2003, upon consideration of Margaret Starley's Motion to Dismiss; it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that the adversary proceeding against Margaret Starley is **DISMISSED** without prejudice.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached