

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

In re:	)	Case No. 01-11200 (MAW)
ANC Rental Corporation	)	Chapter 11
Debtor	)	
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Alamo Rent A Car LLC, National Car	)	
Rental Systems, Inc., and ANC	)	
Rental Corporation,	)	
Plaintiffs,	)	Adv. Pro. No. 03-58378
	)	
vs.	)	
	)	
COURTESY ISUZU	)	
Defendant.	)	

**MEMORANDUM OPINION**<sup>1</sup>

Before the Court is the Motion of Courtesy Isuzu (“the Defendant”) to transfer venue of this preference action to the United States Bankruptcy Court for the District of Colorado. The Motion is opposed by ANC Liquidating Trust as successor to ANC Corporation (“the Plaintiff”). For the reasons set forth below, the Motion will be denied.

I. BACKGROUND

On November 13, 2001, ANC Rental Corporation, Inc. and Alamo Rent-A-Car, LLC (collectively “the Debtors”) filed voluntary petitions under chapter 11 of the Bankruptcy Code together with several of their affiliates. The Plaintiff is an entity created by the Debtors’ confirmed Plan of Reorganization (“the Plan”) to

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

pursue, inter alia, preference actions on behalf of the estate. On November 10, 2003, the Plaintiff filed a Complaint against the Defendant to avoid allegedly preferential transfers. In lieu of filing an answer, the Defendant filed its Motion to transfer venue on June 15, 2005. The parties have fully briefed the issue and the matter is ripe for decision.

## II. JURISDICTION

This Court has jurisdiction of this adversary pursuant to 28 U.S.C. §§ 1334 & 157(b)(2)(F).

## III. DISCUSSION

The Defendant seeks to transfer this adversary proceeding pursuant to section 1412 of title 28, which authorizes a 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".

There is "a strong presumption of maintaining venue where the bankruptcy case is pending." Southwinds Assocs., Ltd. v. Reedy (In re Southwinds Assocs. Ltd.), 115 B.R. 857, 862 (Bankr. W.D. Pa. 1990). Therefore, the party seeking to transfer venue has the burden of demonstrating, by a preponderance of the evidence, that a transfer is justified. Hechinger Liquidation Trust v. Fox (In re Hechinger Inv. Co. of Del., Inc.), 296 B.R.

323 (Bankr. D. Del. 2003).

Twelve factors are considered in determining whether venue should be transferred under section 1412.<sup>2</sup> See, e.g., Hechinger, 296 B.R. at 325 (citing Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995)); Son v. Coal Equity, Inc. (In re Centennial Coal, Inc.), 282 B.R. 140, 144 (Bankr. D. Del. 2002). The 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 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. Hechinger, 296 B.R. at 325 (citing Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995)).

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<sup>2</sup> The Defendant cites authority from the Fifth Circuit, which is inapplicable. Rather, the standards established by the Third Circuit are binding on this Court.

With respect to the first two factors, deference is given to the plaintiff's choice. Jumara, 55 F.3d at 879-80 (citing In re Ricoh Corp., 870 F.2d 570, 573 (11th Cir. 1989)). Therefore, the Plaintiff's decision to file this action in the District of Delaware carries more weight than the Defendant's desire to transfer it.

On the third factor, the Defendant argues that all its business transactions with the Plaintiff were conducted in Colorado. Therefore, the Defendant asserts that the claim arose elsewhere. The Court disagrees. The physical location of the business transactions are not an issue in preference actions. See, e.g., HLI Creditor Trust v. Keller Rigging Constr., Inc. (In re Hayes Lemmerz Int'l, Inc.), 312 B.R. 44, 46 Bankr. D. Del. 2004); Stone & Webster, Inc. v. Coutts Heating & Cooling, Inc. (In re Stone & Webster, Inc.), Adv. No. 02-3974, 2003 WL 21356088, at \*2 (Bankr. D. Del. June 10, 2003); Hechinger, 296 B.R. at 326. Therefore, the Court cannot conclude that the claim arose elsewhere.

With respect to the fourth factor, the Defendant argues that the majority of its evidence (the parties' books and records) is located in Colorado. Therefore, it asserts that this weighs in favor of a transfer to that state. The Plaintiff, on the other hand, argues that the physical location of the books and records is largely irrelevant because any discovery will consist of less

than one-hundred pages of documents. The Court agrees with the Plaintiff that the physical location of the books is not significant because, by the nature of this adversary proceeding, discovery will likely involve only "paper exchanges" which will be relatively few. See HLI Creditor Trust, 312 B.R. at 47. Accordingly, although this factor favors transfer of venue, it is minimal.

As to the fifth factor, the Defendant argues that it is inconvenient for the adversary proceeding to remain in Delaware because the Defendant is a small, locally-owned company in Colorado. Further, the Defendant notes that, although the Plaintiff is a national company in chapter 11 in Delaware, it has offices in Colorado. The Defendant contends that it would have to spend significant sums to litigate this adversary proceeding, and given its financial condition, it will be forced to settle. The Plaintiff responds that it will be more convenient to remain in Delaware because a transfer to Colorado will increase administrative expenses to the detriment of the unsecured creditors. The Court concludes that the bankruptcy goal of preserving the estate for the benefit of creditors favors sustaining venue in Delaware.<sup>3</sup>

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<sup>3</sup> Congress recently accepted the Defendant's argument with respect to preference complaints which seek less than \$10,000. 28 U.S.C. §1409(b). The complaint in this adversary proceeding, however, was filed before the amendment's effective date and seeks more than \$10,000.

With respect to the sixth factor, the Defendant argues that all witnesses reside in Colorado (or possibly Florida). This factor is relevant, however, only to the extent that the witnesses may actually be unavailable for trial in one of the fora. The witnesses in this adversary proceeding are largely employees of the parties to the litigation and "are presumed to be willing to testify in either forum despite the inconvenience that one of the forums would entail." I.R.S. v. CM Holdings, Inc., No. Civ. A. 97-695, 1999 WL 459754, at \*4 (Bankr. D. Del. June 10, 1999). Therefore, the fact that the parties may be economically inconvenienced is not relevant to the analysis under this factor.

The Plaintiff asserts that, if there is a trial, it will likely be short, with a minimal number of witnesses. The Defendant claims, however, that it will have to bring in third party witnesses to testify about business practices in the industry. This argument does not support transfer of venue, however, because there is no evidence that Colorado is the only locale for experts in this industry. Rather, it is likely that experts can be found throughout the country. Therefore, the Court cannot conclude that this factor favors transferring venue.

On the seventh factor, there is no reason why a judgment entered in Delaware would not receive full faith and credit in the Colorado courts. See HLI Creditor Trust, 312 B.R. at 47;

Hechinger, 296 B.R. at 326.

The eighth factor requires the Court to delve into practical considerations that would make the trial easy, expeditious, or inexpensive. The Defendant states that the trial would be easier, more expeditious, and less expensive in Colorado. Undoubtedly, this is so for the Defendant. However, where the Defendant gains, the Plaintiff loses. The Plaintiff has already commenced hundreds of similar adversary proceedings in this forum. Forcing the Plaintiff to try one of these adversary proceedings in another district unnecessarily wastes the estate's funds and time. Clearly, this cuts against the goal of preserving the estate's assets for distribution to its creditors. The Defendant also claims that the Plaintiff has had an attorney in Colorado. That does not mean, however, that its counsel is capable of handling this action. In fact, it is more convenient for the attorney who has handled the other preference actions in this District to handle this adversary proceeding.

On the ninth factor, the Defendant argues that there is higher administrative difficulty in Delaware resulting from the greater congestion of its docket as opposed to that of the Colorado court. The Plaintiff counters that this Court is uniquely familiar with the issues relevant to the adversary proceeding, because it has the other preference actions. While the Defendant's argument might have been true before, the recent

addition of four bankruptcy judges in this District has significantly alleviated the congestion of the Delaware docket. Even if the Defendant were correct, however, it is unlikely that the transfer of a single, small adversary proceeding would have any demonstrable, positive effect in mitigating this Court's caseload. Furthermore, it is likely that a transfer will result in an overall loss of judicial efficiency by trying the action in a court that is not as familiar with the facts of this case. See, e.g., HLI Creditor Trust, 312 B.R. at 47; Hechinger, 296 B.R. at 327.

With respect to the tenth factor, allowing a transfer of venue in this adversary proceeding might encourage other preference defendants to seek transfer of their adversary proceedings to other courts. See HLI Creditor Trust, 312 B.R. at 48 (citing Hechinger, 296 B.R. at 327). This would ultimately impose additional costs on the Plaintiff in responding to such actions and, if unsuccessful, in bringing preference actions in other fora. Therefore, this factor weighs against granting a transfer of venue to Colorado.

With respect to the eleventh factor, the Defendant asserts that Colorado judges are more familiar with Colorado law. This is irrelevant, however, because there is nothing in this preference action (which is governed solely by federal law) that would present any issues of Colorado state law.



Finally, the twelfth factor directs the Court to account for the local interest, if any, in deciding local controversies at home. Although there might be a general, abstract interest in deciding all local controversies at home, under this analysis there must be a specific interest in deciding a matter within a particular state. The Defendant has only claimed a general interest that Colorado has in this preference action. Therefore, the Court concludes that there is no specific local interest that weighs against keeping this preference action in Delaware.

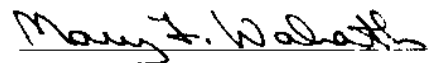
IV. CONCLUSION

Based on the twelve factor test, the Court concludes that the Defendant has not met its burden of establishing that transfer of venue of this adversary proceeding is warranted under section 1412 of title 28. Thus, the motion to transfer venue will be denied.

An appropriate order is attached.

BY THE COURT:

Dated: July 5, 2006



Mary F. Walrath  
United States Bankruptcy Judge

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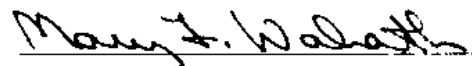
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Rental Corporation,	)	
Plaintiffs,	)	Adv. Pro. No. 03-58378
	)	
vs.	)	
	)	
COURTESY ISUZU	)	
Defendant.	)	

**ORDER**

\_\_\_\_\_ **AND NOW**, this **5th** day of **JULY, 2006**, upon consideration of the Motion of the Defendant to Transfer Venue and the response of the Plaintiff thereto, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

**ORDERED** that the Motion to Transfer Venue is **DENIED**.

BY THE COURT:



Mary F. Walrath  
United States Bankruptcy Judge

cc: Thomas G. Whalen, Jr., Esquire<sup>1</sup>

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<sup>1</sup> Counsel shall distribute a copy of this Order and accompanying Memorandum Opinion to all interested parties and file a Certificate of Service with the Court.

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