IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
CVEO CORPORATION	)	
f/k/a CONVERSE, INC.	)	Case No. 01-0223(MFW)
	)	
Debtor.	)	
	)	
	)	Adversary No. 03-50376
ARGUS MANAGEMENT GROUP,	)	
as Trustee for the	)	
CREDITORS RESERVE TRUST	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DENNIS K. RODMAN and	)	
DENNIS K. RODMAN, INC.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION[1]

Before the Court is the Motion of Dennis K. Rodman ("Rodman") and Dennis K. Rodman, Inc. (collectively "the Defendants") to dismiss with prejudice the Complaint filed by Argus Management Group ("the Plaintiff") for lack of personal jurisdiction and standing, failure to state a claim upon which relief may be granted, and to transfer venue. The Motion is opposed by the Plaintiff. After considering the arguments of the parties, we will deny the Motion for the reasons set forth below.

[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 January 22, 2001, CVEO Corporation, f/k/a Converse, Inc. ("the Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Prior to the filing, the Debtor was a global designer, manufacturer, marketer and licensor of athletic footwear, and a licensor of sports apparel and accessories.

The Debtor's Second Amended Chapter 11 Plan was confirmed on June 6, 2002, and became effective on July 31, 2002. A Creditors Reserve Trust was created and all causes of action of the estate, including avoidance actions, were vested in the Trust. The Plaintiff was appointed as Plan Trustee to administer the Trust and now prosecutes the instant action on its behalf.

Pre-petition, the Debtor had signed an exclusive Endorsement Contract with the Defendants, pursuant to which Rodman agreed to wear the Debtor's footwear during basketball games and at certain other times; to make promotional appearances on behalf of the Debtor; and to provide development and consultation services. In return, the Debtor agreed to pay the Defendants a variable base compensation and royalties from the sale of shoes and athletic apparel and to furnish Rodman with complementary merchandise.

On January 20, 2003, the Plaintiff filed a Complaint against the Defendants seeking to avoid and recover, pursuant to sections

544, 548 and 550 of the Bankruptcy Code, approximately $4.7 million the Debtor had paid under the Contract between January 15, 1998, and March 8, 2000. On March 17, 2003, the Defendants filed a Motion to dismiss or, alternatively, to transfer venue. The Plaintiff filed a response to the Motion on March 31, 2003. The Motion has been fully briefed, and the matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this adversary pursuant to 28 U.S.C. §§ 1334 & 157(b)(2)(A), (H) & (O).

III. DISCUSSION

A. Personal Jurisdiction

The Defendants initially seek dismissal of the Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. They argue that the Court lacks personal jurisdiction over them because they have no substantial ties to, or relationship with, Delaware and have not purposefully directed their activities toward the state. The Defendants maintain further that our exercise of personal jurisdiction over them would "offend the very notions of equity and justice" because they cannot insure the appearance at trial of critical witnesses who are beyond this Court's subpoena power.

The Plaintiff contends, however, that the Court has personal jurisdiction over the Defendants pursuant to Rules 7004(d) and (f) of the Federal Rules of Bankruptcy Procedure. We agree.

The summons and complaint in an adversary proceeding filed in a bankruptcy case may be served anywhere in the United States. Fed. R. Bankr. P. 7004(d). Service can be made by postage-paid first class mail upon individuals and domestic corporations. Fed. R. Bankr. P. 7004(b)(1) & (3). The Plaintiff has filed a Certificate of Service with the Court as evidence that service was made properly upon the Defendants. See, e.g., Shipyards, Inc. v. Terex Corp. (In re Freuhauf Trailer Corp.), 250 B.R. 168, 183 (D. Del. 2000) (a court may consider sworn affidavits related to personal jurisdiction when deciding a motion to dismiss). Consequently, we have acquired personal jurisdiction over the Defendants. Fed. R. Bankr. P. 7004(d). See, e.g., Van Huffel Tube Corp. v. A&G Industries (In re Van Huffel Tube Corp.), 71 B.R. 145, 146 (N.D. Ohio 1987) ("service of process is the physical means by which personal jurisdiction is obtained").

Nonetheless, Rule 7004(f) requires that we exercise such jurisdiction in a "civil proceeding under the Code" only if it is "consistent with the Constitution and laws of the United States." Fed. R. Bankr. P. 7004(f). The Defendants argue that our exercise of jurisdiction over them is not consistent with the Constitution, particularly with its due process requirements.

When a federal statute provides for nationwide service of process, the proper due process inquiry is not whether the defendant has ties to the state where the court sits, but whether the defendant has sufficient minimum contacts with the United States. See, e.g., Medical Mutual of Ohio v. deSoto, 245 F.3d 561, 567 (6th Cir. 2001) (minimum contacts with the United States, not with a specific state, is the proper analysis where a statute allows national service of process); Diamond Mortgage Corp. of Illinois v. Sugar, 913 F.2d 1233, 1248 (7th Cir. 1990) (district courts can exercise personal jurisdiction over parties pursuant to nationwide service of process under Bankruptcy Rule 7004(d)); Brown v. C.D. Smith Drug Co., 1999 WL 709992, at *3 (D. Del. Aug. 18, 1999) (where there is a jurisdictional mechanism for nationwide service of process, a court need only satisfy itself that defendant has minimum contacts with the United States). As the Seventh Circuit has articulated the test: "there can be no question but that the defendant, a resident citizen of the United States, has sufficient contacts with the United States to support the fairness of the exercise of jurisdiction over him by a United States court." Fitzsimmons v. Barton, 589 F.2d 330, 333 (7th Cir. 1979).

In this case, the Defendants are California residents. Therefore, they have sufficient minimum contacts with the United States for this Court to exercise personal jurisdiction over

them. See, e.g., Adams v. Medical Accounts Receivables Solutions, Inc. (In re Coram Healthcare Corp.), 2003 WL 22948234, at *2 (Bankr. D. Del. Dec. 12, 2003) (California residency is sufficient minimum contacts with the United States to satisfy Fifth Amendment due process concerns).

Finally, the Defendants argue that our exercise of personal jurisdiction over them would "offend the very notions of equity and justice" because they cannot insure the appearance of critical witnesses at trial who are beyond our subpoena power. This argument is misplaced. That factor is relevant to a request to transfer venue, rather than a basis for dismissal of a complaint for lack of personal jurisdiction. See, e.g., Warfield v. KR Entertainment, Inc. (In re Federal Fountain, Inc.), 165 F.3d 600, 602 (8th Cir. 1998) (inconveniences of a particular forum can be brought to the court's attention in a motion to transfer venue); Fitzsimmons, 589 F.2d at 334 (the burden of litigating in a specific forum is not relevant to personal jurisdiction, but may be raised in a transfer of venue request).

Therefore, we conclude that we have personal jurisdiction over the Defendants pursuant to Rule 7004(b)(1), (b)(3) and (d), consistent with the conditions of Rule 7004(f). Consequently, we will not dismiss the Complaint on this basis.

B. Failure to State a Claim

The Defendants ask that we dismiss the Complaint for failure

to state a claim upon which relief may be granted under Rule 12(b)(6), which is incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure.

1. Standard under Rule 12(b)(6)

A court may dismiss a complaint for failure to state a claim upon which relief may be granted only if it is established "beyond doubt that the plaintiff can prove no set of facts" that would entitle it to the relief requested. Haines v. Kerner, 404 U.S. 519, 521 (1972) (quoting Conley v. Gibson, 355 U.S. 41, 45-6 (1957)). See also Wisniewski v. Johns-Mansville Corp., 759 F.2d 271, 273 (3d Cir. 1985). The burden of establishing this is on the movant. See, e.g., Johnsrud v. Carter, 620 F.2d 29, 33 (3d Cir. 1980).

2. Standing

The Defendants, relying on the decision in Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A., 530 U.S. 1, 14 (2000), assert that the Complaint must be dismissed for failure to state a claim because the Plaintiff lacks standing to bring this action. The Plaintiff disagrees, arguing that section 1123(b)(3) of the Bankruptcy Code allows the transfer of avoidance actions under a plan to a party other than the debtor or trustee.

The Defendants erroneously rely on the holding in Hartford Underwriters to support their argument that the Plaintiff lacks

standing. In that case, an administrative claimant brought a direct action under section 506(c) of the Code to surcharge the secured creditors' collateral. The Court ruled that section 506(c) allows only the trustee to seek such relief. Id. at 6-7. The Court acknowledged, however, that a chapter 11 debtor-in-possession could also initiate an action under section 506(c) because it has all the rights of a trustee under section 1107. Id. at 6 n.3.

In this case, there is also a specific provision of the Bankruptcy Code which allows someone other than the debtor or trustee to bring avoidance actions. Section 1123(b)(3)(B) provides that a confirmed plan of reorganization may provide for "the retention and enforcement [of claims or interests of the estate] by the debtor, by the trustee, or by a representative of the estate appointed for such purpose." 11 U.S.C. § 1123(b)(3)(B) (emphasis added). See also All Star International Trucks, Inc. v. Burlington Motor Carriers, Inc. (In re Burlington Motor Holdings, Inc.), 2002 WL 63595, at *2 (D. Del. Jan. 17, 2002) (holding that debtor's avoidance powers may be assigned to a representative of the estate pursuant to a plan of reorganization). Here, the Debtor's chapter 11 plan did exactly that, it designated the Plaintiff as Plan Trustee and empowered it to prosecute the Debtor's avoidance actions for the benefit of creditors. Consequently, we conclude that the Plaintiff has

standing to bring the instant action and will deny the Motion to dismiss on that ground.

3. Reasonably Equivalent Value

The Defendants assert that this Court is not competent to determine reasonably equivalent value within the context of the underlying Endorsement Contract because it is one for personal services that implicates Rodman's "unique and extraordinary talent." The Defendants further argue that the Plaintiff cannot claim that the Debtor did not receive reasonably equivalent value for the payments made to them because the Debtor expensed payments made under its endorsement contracts in statements filed with the SEC. In addition, the Defendants insist that the royalty payments they received from the Debtor represent "a de facto admission of receipt of reasonably equivalent value." The Plaintiff argues, however, that the Defendants' statements fall short of establishing this.

We are unpersuaded by the Defendants' arguments. First, this fraudulent conveyance action is a core proceeding in bankruptcy. 28 U.S.C. § 157(b)(2)(H). As such, we have the power to " hear. . . determine. . . and. . . enter appropriate orders and judgments" regarding all matters raised therein. Id. at § 157(b)(1). Since the determination of reasonably equivalent value is indispensable to deciding whether a fraudulent conveyance has occurred, we are empowered to resolve that issue

notwithstanding the nature of the underlying contract. See, e.g., Cooper v. Ashley Communications, Inc. (In re Morris Communications NC, Inc.), 914 F.2d 458, 466 (4th Cir. 1990) (because the Code does not define the meaning of reasonably equivalent value, "Congress left to the courts the obligation of marking the scope and meaning of such term").

Second, any ruling by this Court that the Defendants conveyed reasonably equivalent value to the Debtor for all or some of the payments they received under the Endorsement Contract requires that we first make "an express factual determination as to whether the debtor received any value at all" from the Defendants. In re R.M.L., Inc., 92 F.3d 139, 149 (3d Cir. 1996). This factual finding on the merits is improper at the current pleading stage. See, e.g., Sanner v. Board of Trade of the City of Chicago, 62 F.3d 918, 926 (7th Cir. 1995) ("factual disputes. . . should not be resolved on a motion to dismiss").

Therefore, we will not dismiss the Complaint on this ground.

4. New Value Defense

The Defendants contend that this Court should dismiss the Complaint because section 548(c) of the Bankruptcy Code provides a complete defense with respect to the Debtor's allegedly fraudulent transfers under section 548(a)(1). They claim the transfers they received were made in good faith and they gave the Debtor value in return. Section 548(c) states:

> A transferee . . . that takes [a transfer] for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligations incurred, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

11 U.S.C. § 548(c).

We agree with the Plaintiff that the Defendants have misinterpreted the statute. Section 548(c) does not provide the Defendants with a complete defense against the Plaintiff's section 548(a)(1) claim. Rather, the Defendants would be protected only "to the extent of the consideration" they gave to the Debtor. 5 Collier on Bankruptcy §548.07 (15th ed. 2004). This is a factual determination, however, which cannot be made at this stage in the proceeding. See, e.g., Argus v. Rider (In re CVEO Corp.), 2004 WL 2049316, at *2 (Bankr. D. Del. Sept. 13, 2004).

Therefore, we decline to dismiss the Complaint on this ground.

5. Statute of Limitations

The Defendants argue that the count of the complaint which seeks avoidance of the transfers under section 544 of the Code is time-barred. Section 544 allows avoidance of transfers which are avoidable by creditors under state statutes. The Defendants assert that the applicable state statute of limitations is three years. However, there are at least two California statutes under

which the Plaintiff may prosecute this adversary, each with a different bar date.[2] At least some of the transfers fall within both statutes. Consequently, we decline to dismiss the Complaint on this ground.

D. Venue

The Defendants alternatively request that we transfer venue of this fraudulent conveyance action to California. However, they have not specified a court, asking instead that we transfer it to the district court where the state or federal court sits in which, under applicable non-bankruptcy venue provisions, the Debtor may have commenced this action.

Section 1412 of title 28 authorizes a court to transfer a core proceeding "to a district court for another district . . . in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Nevertheless, there remains "a strong presumption of maintaining venue where the bankruptcy case is pending." HLI Creditor Trust v. Keller Rigging Construction, Inc. (In re Hayes Lemmerz International, Inc.), 312 B.R. 44, 48 (Bankr. D. Del. 2004) (quoting Southwinds Assocs., Ltd. v. Reedy (In re Southwinds Assocs. Ltd.), 115 B.R. 857, 862 (Bankr. W.D. Pa. 1990)). To overcome this presumption, the movant must prove

[2] Section 338 of the California Code of Civil Procedure provides a three-year deadline for filing fraudulent conveyance actions, while section 3439 of the California Civil Code fixes a four-year limit. Since this case is only at the pleading stage, it is not necessary that we determine which statute applies.

by a preponderance of the evidence that the transfer requested is justified. Id. at 46 (citing Hechinger Liquidation Trust v. Fox (In re Hechinger Inv. Co. of Del., Inc.), 296 B.R. 323 (Bankr. D. Del. 2003)).

The courts consider a number of factors when deciding a motion to transfer venue, specifically:

> (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 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 court's 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.

Keller Rigging, 312 B.R. at 46.

Regarding the first two factors, the Plaintiff has chosen Delaware; the Defendants favor California. We accord deference to the Plaintiff's choice of forum because the Defendants have not demonstrated that California is a more convenient forum for both parties. Id.

Regarding the third factor, the Defendants argue that the contract was signed in California and that the relevant transfers

occurred there. The Plaintiff does not dispute this. Therefore, this factor favors transfer.

The fourth and sixth factors are neutral. The Defendants contend that their proof - both documentary evidence and a majority of witnesses - is located in California beyond this Court's subpoena power. This seemingly weighs in their favor. Nevertheless, we agree with the Plaintiff that document production and depositions can be conducted wherever the relevant documents and witnesses are located. Therefore, pretrial preparations will be no more costly or burdensome to the Defendants than if the case were litigated in California. Moreover, the Defendants have failed to identify any documents or third-party witnesses indispensable to their case that cannot be produced for trial or compelled to testify because this Court lacks subpoena power in California.

We agree with the Plaintiffs that the fifth factor weighs in its favor. Litigating this case in California will increase the administrative expenses of the Debtor's estate and, thus, deplete the funds for distribution to creditors under the confirmed plan. See, e.g., Keller Rigging, 312 B.R. at 47 (citing Southwinds Assocs., 115 B.R. at 862).

On the seventh factor, we concur with the Plaintiff that there is no reason that a judgment by the Court in this case will not be given full faith and credit in California.

Regarding the eighth factor, the Plaintiff has other preference actions pending in Delaware. Therefore, litigating the instant case here will conserve estate funds.

With respect to the ninth factor, while the Court's docket is overburdened, transferring the instant case will not significantly alleviate this. Moreover, a transfer is inefficient because, unlike this Court, the California court is not familiar with the case, which will result in additional delay of this litigation.

The tenth factor is neutral. Because this case is prosecuted in federal court, there is no Delaware or California public policy which is implicated.

The eleventh factor does not weigh in the Defendants' favor. While one of the fraudulent conveyance claims asserted in the Complaint is based on California state law, it does not present complex or novel issues that preclude us from adequately addressing it. See, e.g., Keller Rigging, 312 B.R. at 48 (citing Hechinger Inv. Co. of Del. v. M.G.H. Home Improvement, Inc. (In re Hechinger Inv. Co. of Del., Inc.), 288 B.R. 398, 403 (Bankr. D. Del. 2003)). The remainder of the Complaint is based on federal law.

With respect to the final factor, the Defendants argue that Delaware has no interest in the instant dispute and that the burden of a jury trial would be unfair to the state's citizens.

This is inaccurate. Delaware does have an interest in this dispute because the Debtor was a Delaware corporation and its bankruptcy case is administered here. Moreover, there has been no request for a jury trial.

Therefore, in the aggregate, the Defendants have not established that a transfer of venue to California is warranted in this case.

IV. CONCLUSION

Based upon the foregoing, we will deny the Defendants' Motion to dismiss and to transfer venue.

An appropriate Order is attached.

BY THE COURT:

Dated: December 15, 2004

Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
CVEO CORPORATION	)	
f/k/a CONVERSE, INC.,	)	Case No. 01-0223 (MFW)
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Debtor.	)	
	)	
	)	Adversary No. 03-50376
ARGUS MANAGEMENT GROUP	)	
as trustee for the	)	
CREDITORS RESERVE TRUST,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DENNIS K. RODMAN and	)	
DENNIS K. RODMAN, INC.,	)	
	)	
Defendants.	)	

O R D E R

AND NOW this 15th day of December, 2004, upon consideration of the Motion of Dennis K. Rodman and Dennis K. Rodman, Inc., to dismiss or transfer venue of the Complaint filed by Argus Management Group and the latter's Response thereto, and for the reasons set forth in the Memorandum Opinion attached hereto, it is hereby:

ORDERED that the Motion is **DENIED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: John J. Winter, Esq.[1]

[1] Counsel is to distribute a copy of this Order and Opinion to all interested parties and file a Certificate of Service with the Court.