IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
REHOBOTH HOSPITALITY, LP,	)	Case No. 11-12798 (KG)
d/b/a LOGOS PLAZA HOTEL,	)	
	)	
Debtor.	)	
_____	)	**Re Dkt. Nos. 26, 38, 45**

MEMORANDUM ORDER GRANTING
ABILENE HOLDINGS, LLC'S MOTION TO TRANSFER VENUE
TO THE NORTHERN DISTRICT OF TEXAS PURSUANT TO 28 U.S.C. § 1412

The Court has before it the Motion of Abilene Holdings, LLC to Transfer Venue to the Northern District of Texas Pursuant to 28 U.S.C.§ 1412 (the "Transfer Motion") (D.I. 26). Upon review of the pleadings, and following a hearing on September 30, 2011, the Motion is hereby GRANTED, as provided below.

JURISDICTION

The Court has jurisdiction over the Transfer Motion, which is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) (2006). *See Brizzolara v. Fisher Pen Co.*, 158 B.R. 761, 767 (Bankr. N.D. Ill. 1993) ("Motions for change of venue, abstention, and remand are core proceedings under 28 U.S.C. § 157(b)(2)(A)."). *See also Lipshie v. AM Cable TV Indus., Inc. (In re Geauga Trenching Corp.)*, 110 B.R. 638, 653 (Bankr. E.D.N.Y. 1990) (concluding that a motion to change venue does not involve adjudication of a right that may be heard only by an Article III Judge and, therefore, "a venue motion is a core matter and that we have the authority to determine discretionary transfer of venue motions despite the omission of the Bankruptcy Court from § 1412.")

FACTS

On September 5, 2011 (the "Petition Date"), Rehoboth Hospitality, LP, d/b/a Logos Plaza Hotel (the "Debtor") filed a voluntary petition under chapter 11 of the United States Code, 11 U.S.C. § 101 *et seq*. (the "Bankruptcy Code"). The Debtor owns and operates a hotel located in Abilene, Texas (the "Hotel"). *Declaration of Arasu A. Rajaratnam in Support of First Day Motions (the "Rajaratnam Declaration")*, at 2. The Hotel and the 11.72 acres on which it is situated are the Debtor's primary assets. *Rajaratnam Declaration*, at 2; *Amended Chapter 11 Petition*, *Schedule A - Real Property* (D.I. 50); *Debtor's Objection to Motion of Abilene Holdings, LLC to Transfer Venue to the Northern District of Texas Pursuant to 28 U.S.C. § 1412*, at 2 (the "Debtor's Objection") (D.I. 38).[1]

The Hotel is a three-story building with 107 rooms, and an additional 91 rooms in four separate outbuildings that are in need of renovation.[2] *Rajaratnam Declaration*, at 2; Transcript of Hearing on September 30, 2011 ("Hrg. Tr."). The Hotel employs approximately 13 people and one independent contractor. All are located in Texas. *Debtor's Objection,* at 2. One of those employees is a full-time manager, who manages and operates the Hotel on a day-to-day basis. Hrg. Tr. September 30, 2011. The Hotel also has a restaurant and lounge which are currently not operating, although both have been renovated and according to Debtor's counsel, have permits and can be

---

[1] The Debtor's schedules of assets filed with the chapter 11 petition do not reveal any other real property assets. *See Amended Chapter 11 Petition, Summary of Schedules, Schedule A - Real Property* (D.I. 3). Additionally, Schedule B lists the Debtors personal property as (1) a checking account; (2) fees from "each of the 107 rooms, plus the common area" with a current value ranging between $150,000 to $200,000; (3) accounts receivable of approximately $800 to $1,000; and (4) office and kitchen equipment used in the business valued at approximately $100,000. *See Summary of Schedules, Schedule B - Personal Property* (D.I. 3).

[2] It appears that not all of the 107 rooms located in the three-story central building are fully usable and rentable. At the September 30, 2011, hearing Holding's counsel asserted that of those 107 rooms in the central building, 30 could not be rented because they did not have air conditioning. The Rajaratnam Declaration supports this assertion. *See Rajaratnam Declaration*, at ¶ 14.

operational. *Id.* There is an outdoor pool which is not functioning. A chapel has been restored but the parties dispute whether it is operational. *See id; but see Transfer Motion*, at 2; *Motion of Abilene Holdings, LLC for Determination that Debtor is Subject to 11 U.S.C. § 362(d)(3)*, at¶ 9. Debtor claims that it is one of only two full service hotels in Abilene, Texas, meaning that the Hotel also has a restaurant. *Id.*

The Debtor's affairs are governed by a limited partnership agreement (the "Partnership Agreement") of Rehoboth Hospitality, LP, formed under Delaware law, between the Debtor's general partner, Rehoboth Hospitality, GP, LLC (the "General Partner") and two limited partners, (1) Mr. & Mrs. Arasu A. and Emma Rajaratnam, by the entireties, and (2) Dr. Howard Hutt (collectively, the "Limited Partners"). *Rajaratnam Declaration*, at 1. The General Partner is managed by Arasu Rajaratnam. *Id.* The General Partner owns a 2% interest, the Rajaratnams own a 48% interest and Dr. Hutt owns a 50% interest in the Debtor. *Id.*

The Debtor's day-to-day operations are managed by an on-site manager at the Hotel. Hrg. Tr. September 30, 2011. Nonetheless, in the Debtor's Supplemental Declaration of Arasu A. Rajaratnam (the "Supplemental Declaration") (D.I. 37), the Debtor asserts that the principal place of business is Philadelphia, Pennsylvania, because that is the location of the Debtor's General Partner's headquarters, and "all executive-level operational and financing decisions of the Debtor are made in Philadelphia." *Supplemental Declaration* at ¶ 16, 18. The Partnership Agreement provides, that the "Principal Place of Business of the Partnership shall be at 8106 Castor Avenue, Philadelphia, PA 19152 or such place as the General Partner may from time to time designate." *Supplemental Declaration*, at 4. The Rajaratnams reside in Pennsylvania. The record is unclear where the other Limited Partner, Dr. Hutt, resides.[3] *Debtor's Objection*, at 4; Hrg. Tr. September

[3] At the September 30, 2011, hearing counsel for both parties disputed whether Dr. Hutt resides in Florida or Pennsylvania.

30, 2011.

RELEVANT FACTS TO THE TRANSFER MOTION

The Debtor purchased the Hotel from First National Zions Bank ("Zions") on February 14, 2005. *Rajaratnam Declaration*, at 2. Zions held first and second lien mortgages (collectively, the "Mortgages") on the Hotel. *Rajaratnam Declaration*, at 3-4. The Mortgages were secured by liens on and security interests in substantially all of the Debtor's assets. *Id.* at 3. Beginning in April 2011, the Debtor defaulted on its mortgage payments. *Id.* at 4. After the Debtor and Zions failed to reach a consensual loan modification, Zions scheduled a non-judicial foreclosure sale of the Hotel for September 6, 2011. *Id.* Days prior to the foreclosure sale, Zions sold the Mortgages to the newly formed Abilene Holdings, LLC ("Holdings")[4]. *Id.* Shortly thereafter, the Debtor filed its chapter 11 petition in this Court.

On September 13, 2011, Holdings filed its Transfer Motion arguing primarily that the case should be transferred to the Northern District of Texas in the interest of justice or for the convenience of the parties. Holdings argues that the Debtor's true principal place of business is the location of its principal and sole asset, which is in Texas, and that transfer of venue will promote judicial economy and prevent relative economic harm to the interested parties because the likely issues in the case will involve valuation and disposition of the Hotel which will require local knowledge. *Transfer Motion*, at 5-8. Conversely, the Debtor asserts that the Court must give great deference to the Debtor's chosen venue and that the location of the Debtor's assets (even if the case involves a single asset Debtor) deserves less weight in a chapter 11 proceeding. *Debtor's Objection*,

[4] Holdings was formed on August 22, 2011, and its sole shareholder is Mr. Phillip Napier. *Supplemental Declaration*, at 7. Debtor's counsel alleges that Mr. Napier is a business partner of one of the Debtor's limited partners, Dr. Hutt, and that Napier's forming of Holdings just before the foreclosure sale is an attempt by Dr. Hutt to gain control of the partnership through Holding's purchase of the first mortgage note from Zions. *Id.*; *Debtor's Objection*, at 12.

at 6-8.[5]

Debtor's counsel further asserts that this Court should not indulge Holding's "preference to transfer this entire case to its home turf" because Holdings seeks a liquidation of the Debtor and will attempt to foreclose on the property to satisfy Holding's interests. *See Debtor's Objection*, at 1 (Preliminary Statement), 5-6 (Reservation of Rights), 14 (Conclusion). Debtor overlooks the automatic stay which is a significant hurdle that Holdings must overcome to foreclose. Moreover, Debtor's concerns that Holdings may have an advantage or will benefit from appearing before the Texas Bankruptcy Court rather than this Court is misplaced. This Court has full confidence in the Texas Bankruptcy Court's impartiality and good judgment.

DISCUSSION

The decision to transfer venue is solely within the discretion of the bankruptcy court. *In re Centennial Coal, Inc.*, 282 B.R. 140, 146 (Bankr. D. Del. 2002). Generally, there is a presumption in favor of maintaining the debtor's choice of forum. *In re Borden Chem's. and Plastics Operating*

---

[5] The Debtor cites this Court's Order Denying Puerto Rico Treasury Department's Motion to Transfer Venue to the United States Bankruptcy court for the District of Puerto Rico in *In re Carribean Petroleum Corp.*, 10-12553(KG) (D.I. 159) to support its argument that the location of the assets, even if most of them are in a different district, is irrelevant in a sale case. *Debtor's Objection*, at 8-9. The Carribean Petroleum case is distinguishable from the present circumstances. From the outset of that case, and as part of the Debtors' first day motions, the Debtors' had a plan of reorganization to sell the assets in a section 363 sale and obtained debtor-in-possession financing. *See Motion to Approve (Motion of Debtors for Entry of (I) an Order (A) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing Entry into Stalking Horse Agreements and Approving Stalking Horse Protections, (C) Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Scheduling Auction and Sale Approval Hearing, (E) Approving the Form and Manner of the Sale Notice, and (F) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief*, 10-12553 (D.I. 9) and *Motion to Approve Debtor in Possession Financing* (D.I. 8). Additionally, the Debtors in Carribean Petroleum were not a single real estate asset Debtor, but rather a large corporation with a significant asset base with assets worth $100 million - $500 million. It is not, however, the size of the case which is the distinguishing factor but, instead, that this case will involve operational issues which a local court is better situated to address.

Limited P'ship, 2004 WL 1887532, *2 (Bankr. D. Del. 2004); *In re Ocean Properties of Delaware, Inc.*, 95 B.R. 304, 305 (Bankr. D. Del. 1988). Nonetheless, the weight afforded to the debtor's choice of forum is diminished when the choice of forum is not directly related to the operative, underlying facts of the case. *In re Centennial Coal, Inc.*, 282 B.R. at 144-45. The burden of proof is on the moving party requesting transfer. *Hechinger Inv. Co. of Del. v. M.G.H. Home Improvement, Inc.*, 288 B.R. 398, 402 (Bankr. D. Del. 2003). Moreover, if the moving party meets its burden by the preponderance of the evidence, the court in its discretion, may transfer a case in the interest of justice or for the convenience of the parties. *In re Centennial Coal, Inc.*, 282 B.R. at 144; *In re LaGuardia Assoc., L.P.*, 316 B.R. 832, 837 (Bankr. E.D. Pa. 2004) (citing 28 U.S.C.§ 1412).

In determining whether to transfer venue, bankruptcy courts generally take the following eight factors into account:

> (1) the location of the plaintiff and defendant;
> (2) the ease of access to the necessary proof;
> (3) the availability of subpoena power for the unwilling witnesses;
> (4) the expense related to obtaining willing witnesses;
> (5) the enforceability of any judgment rendered;
> (6) the ability to receive a fair trial;
> (7) the state's interest in having local controversies decided within its borders; and
> (8) the economics of the estate administration.

In re Borden Chem.'s and Plastics Operating Limited P'ship, 2004 WL 1887532, at *2 (citing *Hechinger*, 288 B.R. at 402-03); *Continental Airlines Inc. v. Chrysler*, 133 B.R. 585, 587-88 (Bankr. D. Del. 1991).

The Court finds that Holdings has satisfied its burden. The following factors, taken as a whole, support this finding:

(1) The Location of the Parties

Although the Debtor states in the Supplemental Declaration that the Debtor's principal place of business for "all executive-level operational and financing decisions of the Debtor" is

Pennsylvania, the true day to day operational and managerial decisions for the Hotel are conducted by the on-site Hotel manager, in Texas. Additionally, as noted by Holdings, the Debtor's prospective purchaser, Emeral Twinkle Star Roofs, Inc., is located in Abilene, Texas. Additionally, an examination of the Amended Voluntary Petition (D.I. 50) reveals that, excluding the personal loans into the partnership from the partners[6], the overwhelming majority, in number, of the remaining secured and unsecured creditors are located in Texas. *See Amended Voluntary Petition, Schedules D (Secured creditors), E (Unsecured priority creditors), and F (Unsecured non-priority creditors).* Thus, on balance, this factor favors transfer.

(2) Ease of Access to the Necessary Proof

As noted below, some of the potential witnesses are beyond the subpoena power of this Court, as none of the parties, except for the Debtor (and then only the entity), reside in Delaware. On the other hand, the Debtor's Supplemental Declaration and Partnership Agreement state that the principal place of business is in Pennsylvania because executive level managerial and operational decisions occur in Philadelphia. Thus, the Court assumes that the Debtor's books and records would also be located in Pennsylvania which would militate against a transfer of venue. On balance, this factor is neutral as to both parties.

(3) The Availability of Subpoena Power for Unwilling Witnesses

Some of the potential witnesses are beyond the subpoena power of this Court, as none of the parties, except for the Debtor entity, reside in Delaware. Additionally, all of the Hotel's employees, who may serve as witnesses during this case, are located in Abilene, Texas but beyond the subpoena power of this Court. This factor weighs in favor of transfer.

---

[6] The parties dispute whether these loans are equity interests rather than unsecured claims. *See Debtor's Objection*, at 12. The Court need not decide that issue now.

(4) The Expense Related to Obtaining Willing Witnesses

If the case remains in this jurisdiction, a foreseeable, and significant issue will be the Hotel's condition, operational ability/capacity, and valuation. This would be presented through witnesses, including potentially current and former employees of the Debtor and a real estate appraisal expert who has conducted a valuation report on the Hotel and who has knowledge of commercial real estate in Texas. These necessary witnesses would have to travel to Delaware, at significant expense, to participate in the proceeding. This factor favors transfer.

(5) The Enforceability of Any Judgment

This factor does not weigh in favor of either party. The Court has no reason to believe that a judgment in either jurisdiction would not be given full faith and credit. *See, e.g.*, *OCB Rest. Co. v. Vlahakis (In re Buffets Holdings, Inc.)*, 397 B.R. 725, 729 (Bankr. D. Del. 2008). Therefore, the Court finds that this factor is neutral.

(6) The Ability to Receive a Fair Trial

As previously stated, there is no reason to believe that the Debtor would not receive a fair trial in either Delaware or Texas. As a result, the Court finds that this factor favors transfer.

(7) Texas's Interest in Having Local Controversies Decided within its Borders, by those Familiar with its Law

The Texas Bankruptcy Court will have the same expertise and familiarity applying the Bankruptcy Code as this Court. Since, the central issue in this case is likely to be the value of the Debtor's single asset, the Court agrees with Holdings, that the Texas Bankruptcy Court will have greater familiarity with the locale and physical property at issue and is better situated to determine an appropriate valuation based on the local valuation expert's testimony. Also, resolution of the issues will require interpretation and application of Texas real property law which the Texas Bankruptcy Court is uniquely positioned to determine. Additionally, the result of this case and the

future of the Hotel is of primary importance to the community in which it resides. As noted by the Debtor, the Hotel is only one of two full service hotels in the area. The Texas Bankruptcy Court with its local knowledge of the property, locale and real estate values, is better situated to preside over this case. This factor favors transfer.

(8) The Economics of the Estate Administration

As previously stated, *supra*, the estate may incur significant travel costs to obtain the testimony of witnesses that are located in Texas. Additionally, as argued by Holdings the majority of the issues in this case will revolve around the Hotel and its valuation, and/or potential disposition. This will require familiarity with the local real estate market and application of Texas real property law. This Court could certainly familiarize itself with those issues in due course. The Texas Bankruptcy Court already has familiarity and knowledge with those issues and would better serve the interests of the Debtor and creditors which would also save the estate time and money. Additionally, this Court's docket is already overburdened.

Finally, this Court agrees with other courts in this Circuit which have held "that the estate of a real estate partnership is most efficiently administered in the district where the principal asset is located." *In re Midland Assoc's*., 121 B.R. 459, 461 (Bankr. E.D. Pa. 1990) (citing, *In re Oklahoma City Assoc's.*, 98 B.R.194, 199-200 (Bankr. E.D. Pa. 1989)); *see also In re Pavilion Place Associates*, 88 B.R. 32, 36 (Bankr. S.D.N.Y. 1988); *In re Sundance Corp.*, 84 B.R. 699, 703 (Bankr. Mont. 1988); *In re Nantucket Apartments Associates*, 80 B.R. 154, 156 (Bankr. E.D. Mo. 1987). In the context of what is essentially a single asset case, the location of the lone improved real estate asset is of particular concern to the Court, especially in the event of a potential liquidation, and the case is "better administered by a court in the district in which it is located." *In re Midland Assoc's*, 121 B.R. at 461. This factor favors transfer.

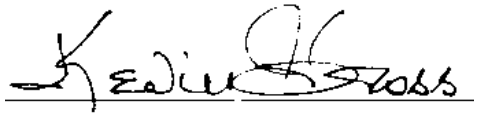
On balance of the factors, the Court holds that transferring this case to the Northern District of Texas, the jurisdiction in which the Debtor's asset is located, is in the interest of justice and appropriate in the context of the facts of this case.

For the reasons set forth above, it is hereby ORDERED that:

1. The Transfer Motion is granted; and

2. This Chapter 11 case shall be transferred to the United States Bankruptcy Court for the Northern District of Texas.

Dated: October 19, 2011



KEVIN GROSS, U.S.B.J.