

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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August 14, 2012

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**Re: James R. Zazzali v. Air Performance Service, Inc. and John Doe
1-10**

Adv. Proc. No. 10-53918(PJW) (Doc. # 15)

James R. Zazzali v. The Blind Gallery and John Doe 1-10

Adv. Proc. No. 10-53991(PJW) (Doc. # 13)

James R. Zazzali v. IBF Group and John Doe 1-10

Adv. Proc. No. 10-54899(PJW) (Doc. # 15)

Dear Counsel:

By a separate communication, I have today denied the venue transfer motion in Adv. Proc. No. 10-54648. The Trustee filed a consolidated opposition memorandum (Doc. # 32) addressing the motion filed in Adv. Proc. No. 10-54648 and the venue transfer motions in the following adversary proceedings:

10-53918
10-53991
10-54445
10-54490
10-54507
10-54510
10-54514
10-54553
10-54555
10-54556
10-54559
10-54564
10-54567
10-54569
10-54572
10-54578
10-54583
10-54585
10-54586
10-54591
10-54604
10-54606
10-54609
10-54623

10-54628
10-54636
10-54827
10-54882
10-54899
10-55219

It is my understanding that except for Adv. Proc. Nos. 10-53918, 10-53991, 10-54899 and 10-54648, the other adversary proceedings have been closed. This letter addresses the venue transfer motions in Advs. 10-53918, 10-53991 and 10-54899.

The opening briefs in support of those three motions are practically word for word the same - all of them asserting grandiose characterizations of the facts. The argument contents of each of the three briefs are exactly the same. All three of the briefs contain such statements as:

...together with the extreme burden and unfair prejudice that would be inflicted upon the Movant if forced to litigate this matter in Delaware (Doc. # 16, p. 8.)

It would be unreasonably burdensome, expensive, and cost prohibitive for the Movant to litigate this matter in Delaware. (Doc. # 16, p. 9.)

Litigating this matter in Idaho would avoid the significant expense for the Movant of frequent travel to Delaware for hearings and other court appearances. (Doc. # 16, p. 9)

... litigating this matter in Idaho is the only convenient forum for the parties due to the massive amount of evidence and documentation still located in

Boise. The Trustee's attorneys come to Idaho and stay for months to review the evidence. (Doc. # 16, p. 9.)

... substantially all of the material witnesses, including non-party witnesses, are located in Idaho.... The Final Report of the Examiner ("Report"), upon which the plaintiff heavily relies, identifies numerous potential witnesses and specifically lists the names of sixty-two (62) individuals, most of them non-parties, who have knowledge of critical areas related to allegations in the Complaint and whom the examiner interviewed. (Doc. # 16, p. 9.)

Other non-party witnesses who are likely to play an important role in this litigation include many former DBSI employees, particularly employees in the DBSI accounting and legal departments, none of whom are located in Delaware, and most, if not all, of whom reside in Idaho....Additional non-party witnesses are likely to include outside tax professionals and other professionals who advised DBSI, such as Moffat Thomas Barret Rock & Fields, Chtd (law firm) and Eide Bailly LLP (accounting firm), none of whom are located in Delaware and most of whom are in Idaho Although Counsel for the Movant have not yet identified all potential non-party witnesses, it is likely that there are scores of material non-party witnesses who reside in Idaho....Counsel for the Movant anticipates that the trial in this matter will be lengthy, with many witnesses testifying over multiple days, and that non-party witnesses will not be willing voluntarily to come to Delaware for trial. (Doc. # 16, p. 10.)

The sixth factor -- the location of books and records -- weighs heavily in favor of transfer to Idaho. The amount of documentation is extraordinarily voluminous in this case. (Doc. # 16, p. 10.)

According to Trustee's counsel, there are hundreds of millions of pages of DBSI documentation located in Boise, Idaho. (Doc. # 16, p. 11.)

Forcing the parties to litigate in Delaware, while the evidence remains in Idaho, would be illogical and a gross waste of resources. (Doc. # 16, p. 11.)

...because the extraordinary volume of evidence and nearly all the witnesses are located in Idaho, most of the discovery process will necessarily take place in Idaho. (Doc. # 16, p. 13.)

In a case as large and complex as this one, where there is only an attenuated (if any) relationship with the forum, the Delaware Court's heavy caseload weighs in favor of transfer. (Doc. # 16, p. 13.)

The relevant facts are these:

(1) The amounts sought to be recovered are:

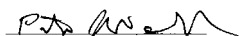
AP No. 10-53918: \$13,820.53
AP No. 10-53991: \$13,560.00
AP No. 10-54899: \$21,992.07

(2) With respect to the preference counts the only critical documents (easily produced by the debtor or the defendants or both) are invoices and cancelled checks (or wired funds information) that reflect the history of the petition transactions.

(3) As to the insolvency issue, that is usually a duel between the experts. Debtors' former employees are rarely needed, except to look for relevant documents.

(4) It is highly unlikely that these three adversary proceedings will go to trial. The experience of this Court is that less than 5% of preference/fraudulent conveyance actions go to trial.

Given the perfunctory and misleading character of the motions, I am denying them. SO ORDERED.



Peter J. Walsh

PJW:ipm