UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
STONE & WEBSTER, INCORPORATED, et al.,	)	Case No. 00-2142(PJW)
	)	Jointly Administered
Debtors.	)	
	)	
	)	
STONE & WEBSTER, INCORPORATED, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. Proc. No. 02-3974
	)	
COUTS HEATING & COOLING, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

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Dated: June 10, 2003

WALSH, J.

Before the Court is the motion of Couts Heating & Cooling, Inc., ("Couts") to transfer venue of this adversary proceeding to the United States District Court for the Central District of California, Riverside Division (Doc. # 3) (the "Motion"). For the reasons set forth below, the Motion will be denied.

BACKGROUND

On April 1, 1997, Stone & Webster Engineering Corporation ("SWEC")[1] and CanFibre of Riverside, Inc., entered into a contract pursuant to which SWEC engineered, procured, and constructed a medium density fibreboard plant in Riverside, California. On August 11, 1998, SWEC entered into an agreement with Couts, pursuant to which Couts operated as a general mechanical contractor and provided heating, ventilation, and cooling services at the facility. Couts' principal place of business is in California; SWEC's principal place of business is in Massachusetts.

On June 2, 2000 Stone & Webster, Incorporated ("Stone & Webster") and SWEC, along with multiple other Stone & Webster subsidiaries (collectively, the "Debtors"), filed voluntary Chapter 11 petitions in this Court. SWEC made two pre-petition payments to Couts, totaling $618,189, that it asserts are preferential and on June 2, 2002 it filed the adversary complaint seeking recovery of

[1]SWEC is a subsidiary of Stone & Webster, Incorporated.

those allegedly preferential payments.

DISCUSSION

At the outset, I would observe that this adversary proceeding appears to be a very routine preference action which will likely require very limited discovery and a short trial, if it goes to trial.

As a general rule, in a proceeding arising under title 11 or arising in or related to a case under title 11, venue is proper in the district where the bankruptcy case is pending. See 28 U.S.C. § 1409(a). However, 28 U.S.C. § 1412 permits a court to transfer venue of a case properly before it "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. The decision of whether venue should be transferred lies within the sound discretion of the Court, though the moving party must demonstrate by a preponderance of the evidence that such change is warranted. See Larami Ltd. v. Yes! Entm't Corp., 244 B.R. 56, 61 (D.N.J. 2000). "A determination of whether to transfer venue under § 1412 turns on the same issues as a determination under § 1404(a) which permits a court to transfer a *civil action* '[f]or the convenience of the parties and the witnesses [or] in the interest of justice.'" In re Centennial Coal, Inc., 282 B.R. 140, 144 (Bankr.D.Del. 2002) quoting 28 U.S.C. § 1404(a) (emphasis in original). In addition to the general factors set forth in the statutes, the Third Circuit has set forth a number of specific

factors to be considered in ruling upon a motion to transfer venue pursuant to §§ 1404(a) or 1412: (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 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. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995). I find that these factors weigh against transferring venue from this Court to the United States District Court for the Central District of California, Riverside Division ("Central District").

With respect to the first factor, a plaintiff's choice of forum is a choice (if legally proper) that the courts normally defer to. See Jumara, 55 F.3d at 880. With respect to the second factor, a defendant's choice of forum, the corollary of the above principle is that a defendant's choice of forum usually does not

carry the same weight as that of the plaintiff.

With respect to the third factor, whether the claim arose elsewhere, it cannot be said in this proceeding that the essential transactions underlying the dispute took place primarily in California. The essential transactions simply involved the sending and receiving of invoices and checks, and perhaps the exchange of communication regarding the timing of payments. The location of the construction project and the performance of the construction contract are not at issue here.

With respect to the fourth factor, location of books and records, while Couts' books and records may be located in California, SWEC'S books and records are located in Massachusetts. This preference action involves just two prepetition payments made by SWEC to Couts. Consequently, document production will be very limited. As with many preference actions, it appears that in this proceeding the location of those documents will have little, if any, impact on trial preparation and trial of the dispute. It is also likely that most discovery activity will be paper exchanges.

As to the fifth factor, the convenience of the parties as indicated by their relative physical and financial condition, while trial here would require Couts to hire local counsel, "[f]orcing the estate to prosecute this action in [the Central District] will increase administrative expenses, lower the amounts available for distribution under the confirmed Plan, and sap the temporal and

financial resources of the Debtor." Southwinds Assocs., LTD. v. Reedy (In re Southwinds Assocs., LTD., 115 B.R. 857, 862 (Bankr.W.D.Pa. 1990). Thus, the fifth factor weighs in favor of maintaining venue here in Delaware.

With respect to the sixth factor, the convenience of the witnesses - but only to the extent that the witnesses may actually be unavailable for trial in one of the fora, absent a contest over solvency, trial will likely require only a few witnesses and probably not last more than one day. If there is a contest over solvency, expert witnesses will be required; no one can predict where those witnesses will be located. In any event, there has also been no showing of unavailability of any witness in a particular forum.[2]

As to the seventh factor, it does appear that any judgment in favor of SWEC would require enforcement in the Central District. However, SWEC had to have been aware of that when it chose to bring its preference action in this forum. More importantly, as Couts has not objected to this Court's *in personam* jurisdiction, I see no reason why any judgment entered in this Court would not be given full faith and credit in the Central District, making enforcement of that judgment no more difficult than if it were issued in the Central District.

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[2]I would also note that the experience of this Court is that the vast majority, perhaps 90%, of preference actions do not go to trial.

As to the eighth factor, practical considerations that would make the trial easy, expeditious, or inexpensive, SWEC's local counsel is involved in a number of other preference actions so that each preference action tried here should minimize the lawyer time versus trying a particular preference action in California.

As to the ninth factor, the relative administrative difficulty in the two fora resulting from congestion of the court's dockets, I note that a number of other preference actions arising out of the chapter case are pending before me. As this trial is expected to be short and I already have some familiarity with SWEC's business affairs, it is in the interests of judicial economy for me to retain this adversary proceeding rather than have a judge in the Central District invest the time on an entirely new matter.

With respect to the tenth factor, public policies of the fora, the essential facts underlying a resolution of this dispute appear to be rather routine. If Couts were successful in having this case transferred to the Central District, it would establish a basis for transferring hundreds, if not thousands, of preference actions away from the forum of the debtor's chapter 11 case, resulting in considerable additional cost to the estate or causing the debtor (or trustee) to forgo pursuit of preference actions, thereby undermining the intended effect of 11 U.S.C. § 547 of equalizing distribution to creditors.

As to the eleventh and twelfth factors, familiarity of the judge with the applicable state law and the local interest in deciding local controversies at home, there are no state law issues which would support a California forum over a Delaware forum. There is also no local interest in deciding local controversies at home since this controversy is not local to any one particular place.

CONCLUSION

Upon consideration of the above factors, I conclude that Couts has not met its burden of proving by a preponderance of the evidence that a change of venue to the Central District is warranted. Therefore, Couts' Motion to transfer venue to the United States District Court for the Central District of California, Riverside Division is denied.

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COUTS HEATING & COOLING, INC.,	)	
	)	
Defendant.	)	

ORDER

For the reasons set forth in the Court's Memorandum Opinion of this date, defendant Couts Heating & Cooling, Inc.'s motion (Doc. # 3) to transfer venue to the United States District Court for the Central District of California, Riverside Division is **D**ENIED.

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Peter J. Walsh
United States Bankruptcy Judge

Dated: June 10, 2003