

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

CASE NO. 6:08-bk-10159-ABB
(Jointly Administered Under Chapter 7)

LAND RESOURCE, LLC,
et al.,¹
Debtors.

_____/

LEIGH R. MEININGER,
Chapter 7 Trustee,

Plaintiff,
v.

Adversary No. 6:10-ap-273-JAF

EURAM, LLC,
et al.,
Defendants.

**ORDER DENYING MOTION OF THE EURAM DEFENDANTS TO TRANSFER
VENUE**

This proceeding came before the Court upon Motion of the Euram Defendants to Transfer Venue (Doc. 14), Defendant Barrington H. Branch's Joinder in Motion of the Euram Defendants to Transfer Venue (Doc. 18), and Plaintiff's Response to Motion of the Euram Defendants to Transfer Venue (Doc. 23). Upon consideration, the Court finds the Motions are due to be **DENIED**.

¹ The jointly administered cases are listed in footnote one of the Amended Complaint (Doc. 7 at 2 n.1).

I. BACKGROUND

This adversary proceeding arises out of and relates to the Chapter 7 case of Land Resource, LLC, Case No. 6:08-bk-10159-ABB, and the jointly administered cases. Plaintiff, Leigh R. Meininger, is the Trustee for the jointly administered cases.² Plaintiff maintains Defendants were parties to a complex series of transactions that are alleged to have been conducted in a fraudulent manner. More particularly, it is alleged that Defendants were involved in a ponzi-type scheme, whereupon Land Resource, LLC and its many subsidiary affiliates (which were operated and controlled by an individual named J. Robert Ward) defrauded land purchasers in North Carolina, Georgia, Tennessee, West Virginia, and Florida (*see* Doc. 7 at 4-18; Doc. 22 at 23).³

² On October 30, 2008, Land Resource, LLC filed a voluntary petition under Chapter 11, thereby commencing Case No. 6:08-bk-10159-ABB. On March 20, 2009, the Court entered an Order Converting Cases to Proceedings Under Chapter 7 of the Bankruptcy Code (Doc. 441, Case No. 6:08-bk-10159-ABB), which converted the Debtors' cases into separately administered cases under Chapter 7. On July 21, 2009, the Court entered an Order Granting Trustee's Motion for Order Directing Joint Administration of Related Chapter 7 Cases (Doc. 522, Case No. 6:08-bk-10159-ABB), directing that the related cases pending in Chapter 7 be jointly administered with Land Resource, LLC (Case No. 6:08-bk-10159-ABB) as the primary case.

³ Neither Mr. Ward nor Land Resource, LLC are parties to this adversary proceeding.

It is claimed that Land Resource, LLC was the “parent company” of not less than twenty-six of the debtor entities created to facilitate the marketing, sale, and infrastructure improvements of various real estate developments (Doc. 7 at 4-5). Defendants were part equity owners of one or more of such entities (*see* Doc. 7 at 5-12). In general, Plaintiff asserts that certain transfers to Defendants were fraudulent as to the land purchasers and other creditors in that they were made without any consideration, collateral, security interest, or promise to repay (Doc. 7 at 15). Plaintiff maintains such transfers left the subject companies with unreasonably small capital, and that they were thus unable to complete promised infrastructure improvements (Doc. 7 at 15-16). By way of this and other adversary proceedings, Plaintiff seeks, *inter alia*, to avoid the subject transfers. The Court would note that the present adversary proceeding is one of eight filed by the Trustee.

II. ANALYSIS

Section 1409 of Title 28 sets forth the proper venue for proceedings arising under Title 11 or arising in or related to cases under Title 11 and provides that such proceedings “may be commenced in the district court in which such case is pending.” Pursuant to section 1412 of Title 28, “[a] district court may 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.” Transfer of venue is discretionary and the moving party has the burden to establish by a preponderance of the evidence that transfer is appropriate. *Ford v. Ford (In re Ford)*, 191 B.R. 233, 238 (Bankr. M.D. Fla. 1995). The parties do not dispute that venue is proper in this district. Thus, the sole issue for the Court’s determination is whether transfer of venue is appropriate in this instance. Since the section 1412 criteria, *supra*, are stated in the disjunctive, transfer may be based upon either the interest of justice or the convenience of the parties.

In support of the Motion, the Euram Defendants argue that venue of this adversary proceeding should be transferred because: (1) all Defendants are located in the Northern District of Georgia; (2) the entity Defendants were created under Georgia law and thus their corporate internal affairs would be governed by Georgia law; (3) Georgia's fraudulent transfer laws apply; and (4) many of Defendants' witnesses reside in the Northern District of Georgia (Doc. 14 at 2-3).

Plaintiff, on the other hand, argues that transfer of venue in this instance is not appropriate because: (1) the creditors of the estate are not centralized in Georgia; (2) the Debtor's principal place of business is in Florida; (3) the Debtor's business records are in Florida; (4) the primary witness (Mr. Ward) resides in Florida; (5) the majority of the estate's assets are not located in Georgia; (6) transfer of venue would impose an undue burden on the Trustee's ability to prosecute this matter; (7) transfer of venue would have a negative impact on the economic administration of the estate; and (8) the judicial administration of this and other related adversary proceedings weighs against any transfer of venue (Doc. 23 at 2).

A. In the Interest of Justice In determining the propriety of granting a motion to transfer venue of an adversary proceeding, the following section 1412 "interest of justice" factors are considered: (1) the economics of estate administration; (2) the presumption in favor of the "home court"; (3) judicial efficiency; (4) the ability to receive a fair trial; (5) a state's interest in having its local controversies decided within its borders by those familiar with its laws; (6) the enforceability of any judgment rendered; and (7) the plaintiff's original choice of forum. *A.B. Real Estate, Inc. v. Bruno's, Inc. (In re Bruno's, Inc.)*, 227 B.R. 311, 324-26 (Bankr. N.D. Ala. 1998).

For the reasons stated below, the Court finds the interest of justice factors, *supra*, weigh more heavily in favor of non-transfer.

As an initial matter, the Court finds the ability to receive a fair trial and the enforcement of any judgment rendered are not an issue. Therefore, these factors do not weigh in favor of transfer.

With respect to the presumption in favor of the “home court,” the district in which the underlying bankruptcy case is pending is presumed to be the appropriate district to hear and determine any adversary proceedings. *Official Comm. of Unsecured Creditors of Grumman Olson Industries, Inc. v. McConnell (In re Grumman Olson Industries, Inc.)*, 329 B.R. 411, 435 (Bankr. S.D.N.Y. 2005).

“There is a strong presumption in favor of maintaining venue where the bankruptcy case is pending.” *Alexander v. The Steel Law Firm, P.C. (In re Terry Mfg. Co. Inc.)*, 323 B.R. 507, 509 (Bankr. M.D. Ala. 2005). This presumption exists mainly to foster the speedy and economic administration of the bankruptcy case. *Nixon Mach. Co. v. Roy Energy, Inc. (In re Nixon Mach. Co.)*, 27 B.R. 871, 873 (E.D. Tenn. 1983) (“[of] paramount consideration is [the] speedy and economic administration of the bankruptcy case”). Unless the balance is strongly in favor of the defendant, a plaintiff’s choice of forum should rarely be disturbed. *Windsor Com. Group, Inc. v. Five Towns Stationary, Inc. (In re Windsor Com. Group, Inc.)*, 53 B.R. 293, 296 (Bankr. E.D. Pa. 1985).

Regarding judicial efficiency, the Court finds having this adversary proceeding remain in the Middle District of Florida would more likely foster a speedy resolution of the case. The Court is already familiar with the underlying facts of this proceeding; therefore, having it remain in the Middle District of Florida would save the investment of time and resources of a court in another district having to take a fresh look at the complexities of this matter. In addition, as eight separate

adversary proceedings have been filed by the Trustee, the Court finds the interest of judicial economy would be best served if one court, rather than several different courts, presided over the adversary proceedings. *See In re Terry Mfg. Co. Inc.*, 323 B.R. at 510.

With respect to a particular state having an interest in its local controversies being decided within its borders by those familiar with its laws, the Court has previously found that either Georgia or Florida law (or both) will likely apply to this cause of action (Doc. 52 at 13-15). Consequently, the Court does not find this factor weighs in favor of transfer. As to the economics of estate administration, the Court finds transfer would add additional costs to the prosecution of this case, hamper the Trustee, and place additional financial burdens on the estate. It would be more efficient for the Trustee to try all the adversary cases in one forum rather than fora located throughout the Southeast. *See In re Terry Mfg. Co. Inc.*, 323 B.R. at 510. Finally, with respect to a plaintiff's original choice of forum, "where the venue of a bankruptcy case is proper, then a debtor/plaintiff's choice of forum is to be accorded substantial weight and deference." *In re Bruno's, Inc.*, 227 B.R. at 328 (internal quotations and citations omitted). As venue is proper in the Middle District of Florida, the Court will afford Plaintiff's choice of forum substantial deference.

B. Convenience of the Parties

Courts in this District consider the following factors with respect to the convenience of the parties: (1) the proximity of creditors to the Court; (2) the proximity of the debtor to the court; (3) the proximity of the necessary witnesses; (4) the location of assets; (5) the economic administration of the estate; (6) relative advantages and obstacles to a fair trial; (7) economic harm to the debtor; and (8) the inability of a party to defend in the new forum. *Burlingame v. Whilden (In re Whilden)*, 67 B.R. 40, 42 (M.D. Fla. 1986); *In re Ford*, 191 B.R. at 238.

For the reasons that follow, the Court finds the convenience of the parties weighs more heavily in favor of non-transfer.

Specifically, although Defendants make a cogent argument that transfer to the Northern District of Georgia would be more convenient for them, the party requesting a transfer must demonstrate that it will be more convenient for all parties involved. *Taca Int'l Airlines, S.A. v. Pan Am World Airways, Inc. (In re Pan Am Corp.)*, 177 B.R. 1014, 1018 (Bankr. S.D. Fla. 1995) (finding, absent such a showing, the court would not disturb the choice of forum made by the plaintiff). “Merely shifting the balance of inconvenience from one party to another is not sufficient to justify a transfer of venue.” *In re Terry Mfg. Co. Inc.*, 323 B.R. at 510. Thus, this factor does not weigh in favor of transfer.

With respect to the economic administration of the estate, the Court has already found, *supra*, that this factor does not weigh in favor of transfer. As to the proximity of creditors and the location of estate assets, these factors are inconsequential as neither the creditors nor the assets of the estate are centralized in Georgia or Florida. Likewise, potential obstacles to a fair trial and the inability of a party to defend in the new forum are not at issue. Regarding the proximity of the debtor to the Court, Land Resource, LLC and its principal, J. Robert Ward, are located in the Middle District of Florida. Therefore, this factor weighs in favor of non-transfer.

Finally, with respect to the proximity of the necessary witnesses, the Trustee maintains the primary witness to the alleged fraudulent transfers is Mr. Ward, who resides in the Middle District of Florida (Doc. 23 at 5). While Defendants assert that their potential witnesses reside in the Northern District of Georgia, the convenience of witnesses is only one factor among many for a court to consider. *See In re Terry Mfg. Co. Inc.*, 323 B.R. at 511.

III. CONCLUSION

For the reasons stated herein, the Court finds Defendants have not shown by a preponderance of the evidence that transfer is appropriate in this instance. Accordingly, it is hereby **ORDERED**:

1. Motion of the Euram Defendants to Transfer Venue (Doc. 14) is **DENIED**.
2. Defendant Barrington H. Branch's Joinder in Motion of the Euram Defendants to Transfer Venue (Doc. 18) is **DENIED**.

DATED this 10th day of August, 2011 in Jacksonville, Florida.

/s/ Jerry A. Funk

Jerry A. Funk
United States Bankruptcy Judge

Copies Furnished To:

Jacob D. Flentke, Attorney for Plaintiff,
and All Interested Parties