

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re)	
)	Chapter 11
RADLAX GATEWAY DECK, LLC,)	Case No. 09-30048
)	
Debtor.)	Hon. Bruce W. Black
)	
)	

MOTION FOR CHANGE OF VENUE

Bomel Construction Co., Inc. (“Bomel”), a creditor herein, moves this Court for an order transferring the bankruptcy case of RADLAX Gateway Deck, LLC, (the “Debtor”) from the Northern District of Illinois, Eastern Division (the “Illinois Bankruptcy Court”) to the Central District of California, Western Division (the “California Bankruptcy Court”), pursuant to 28 U.S.C. § 1412 and Federal Rule of Bankruptcy Procedure 1014(a)(1). In support thereof, Bomel states as follows:

BACKGROUND

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a).
2. A motion to change venue is a core matter under 28 U.S.C. § 157(b)(2)(A).
3. On August 17, 2009 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11, title 11 of the United States Code (the “Bankruptcy Code”), in the Illinois Bankruptcy Court.
4. The Debtor is a single-purpose entity which owns the parking garage located at the Radisson Hotel at Los Angeles Airport (hereinafter, the “Hotel”). Bomel is a creditor in this case with a claim of approximately \$15.5 million. The claim is the result of a construction

contract with the Debtor whereby Bomel agreed to design and build an eight level, 2,543 car stall cast-in-place concrete parking structure (the "Parking Garage") which was to serve the guests of the Hotel. The Parking Garage is located at 6225 W. Century Blvd., Los Angeles, California. The parties agreed to a contract price of \$31,348,176.00, and the Debtor agreed to pay Bomel to construct the Parking Garage. The Parking Garage was unfinished and therefore unusable on the Petition Date, due to the termination of funding for the project.

5. On August 6, 2009, Bomel filed a Complaint in the Superior Court of the State of California, County of Los Angeles, for breach of contract, quantum meruit, to foreclose its mechanic's lien and to enforce its bonded stop notice (the "California Litigation"). The California Litigation has been stayed by the filing of this proceeding.

6. Bomel is requesting that this bankruptcy case, along with the related bankruptcy case of RADLAX Gateway Hotel, LLC, case no. 09-30047 (the single purpose entity which owns the Radisson) and which is also co-owner of the Parking Garage, be transferred to the California Bankruptcy Court in the interest of justice and the convenience of the parties. The Debtor has no other domestic business activity or presence outside of California. The Debtor's assets and pending litigation are all in California. The vast majority of the Debtor's creditors are in California. The only connection with Illinois is the location of the Debtor and its limited liability company's members. However, the Debtor availed itself to jurisdiction in California by owning and operating the Hotel and contracting to construct the Parking Garage in Los Angeles, California.

RELIEF REQUESTED AND AUTHORITY FOR RELIEF

7. Transfer of venue is addressed in *28 U.S.C. § 1412*, which refers to transfer of cases or proceedings under title 11, and provides that, "[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." *See Fed. R. Bankr. P. 1014(a)(1)*. Transfer of venue is discretionary and the moving party must establish its burden by a preponderance of the evidence. *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1515 (10th Cir. 1991). However, substantial weight should be given to the location of the debtor's assets. *In re Pickwick Place Limited Partnership*, 63 B.R. 290 (Bankr. N.D. Ill. 1986).

8. The courts have focused on five factors to consider when determining whether a case should be transferred for the convenience of the parties: 1) location of the creditors; 2) location of the debtor; 3) location of witnesses necessary to the administration of the estate; 4) location of the debtor's assets; and 5) which forum would provide for the most efficient and economical administration of the case. *In re B.L. McCandles LP*, 2009 Bankr. LEXIS 3255 (Bankr. N.D. Ill. 2009) (Hollis, J.), citing *In re Pickwick Place Limited Partnership, supra.*; see also *Kotlicky v. Belford*, 64 B.R. 679 (N.D. Ill. 1986).

9. In the instant case, the location of the creditors weights in favor of transferring this case to California. Of the Debtor's twelve unsecured creditors, ten are located in California. Attached hereto as Exhibit A, Schedule F, Creditors Holding Unsecured Claims. The six unsecured creditors listed on the "20 largest" are all in California. Seventeen out of eighteen secured creditors, including mechanic's lien claimants like Bomel, are also located in California. Attached hereto as Exhibit B is Schedule D, Creditors Holding Secured Claims. The only secured creditor in the case that is not exclusively located in California is Amalgamated Bank, but the Bank is represented by California counsel, has been involved with the Debtor in California, and has filed a pro hac vice motion in this case.

10. The location of the Debtor is the only factor in favor of the case staying in the Illinois Bankruptcy Court. The Debtor is a Delaware limited liability company located in Oak

Brook, Illinois. However, the Debtor has retained the national law firm of Perkins Coie, LLP. Perkins Coie, LLP has an office in Los Angeles, California, so the Debtor will not be at a disadvantage by losing or even inconveniencing its counsel.

11. The Debtor's counsel in California has filed notices of removal in the California Litigation, as well as in other mechanic's lien cases pending against the Debtor, to attempt to remove all of the state court cases to the District Court in California based on alleged bankruptcy court jurisdiction. This is clearly an ill-conceived strategic move to have all of the California lien claimants have their California based claims and rights adjudicated by an Illinois bankruptcy court, thereby making it as difficult and expensive as possible for California creditors to pursue and protect their claims. Attached hereto as Exhibit C are true and correct copies of the Notices of Removal involving the Hotel and the Parking Garage.

12. Another factor that weighs in favor of transferring the case to the California Bankruptcy Court is the location of witnesses necessary to the administration of the estate. Again, the Debtor's only business is the Parking Garage, and any other parties in interest other than the Debtor, are located in California. All creditors, including Bomel, will suffer substantial burden and expense if they wish to participate in the bankruptcy case in Illinois. In the event there is a dispute over confirmation of a plan, value or a potential cram down, sale of assets, objections to claims, etc., all fact witnesses and experts such as appraisers, will necessarily be from California. Any disputes or contested issues in the bankruptcy case would force creditors to travel to Chicago and hire counsel in Chicago in order to pursue or protect their interests.

13. On the Petition Date, the Debtor was involved in multiple law suits concerning the construction of the Hotel and the Parking Garage. The Debtor's Statement of Financial Affairs lists three mechanic's lien cases pending on the Petition Date. The Debtor did not

include Bomel's mechanic's lien case on the list, which would make four pending cases. In fact, Bomel is a defendant in six separate cases and anticipates that many others will be filing suit in the coming months, since Bomel was the general contractor for the Parking Garage. All of these cases involve California mechanic's lien law. These issues would clearly be best sorted out by California courts.

14. But by far the most compelling factor in favor of transferring this case to the California Bankruptcy Court is that *all of the Debtor's assets are located in California*. Schedules A and B indicate that Debtor's only assets are the Parking Garage, the construction plans for the Parking Garage and the building permit for the construction of the Parking Garage are in California. See Exhibit D attached hereto, Schedules A and B, listing the Debtor's Real and Personal Property. Grounds for change of venue are particularly compelling in real estate cases. Where "a debtor's assets consist solely of real property cases have held that transfer of venue is proper because matters concerning real property have always been of local concern and traditionally are decided at the situs of the property". *In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008), citing *In re Enron Corp.*, 284 B.R. 376, 392 (Bankr. S.D.N.Y. 2002) (abrogated on other grounds). In *Dumore Homes*, the court granted a motion for change of venue where the state of the debtor's incorporation was New York, but all of the assets and operations of the debtor was in California, including real property assets. The court in *Dunmore Homes* noted that "special consideration to the administration at the situs if the assets where those assets consist of real property". *Id.*

15. This case is similar to *In re Pinehaven Associates*, 132 B.R. 982 (Bankr. E.D.N.Y. 1991), where the debtor was a limited partnership that was formed for the purpose of owning and managing real estate. At the time of the filing of the bankruptcy case in the Eastern District

of New York, the debtor's only business was the operation of a Best Western motel in Mississippi. The business offices of the debtor were located in New York. As in this case, the only factor supporting retention of venue in New York was the location of the debtor, while the debtor's sole asset was in Mississippi. In granting the motion to change venue to Mississippi, the court noted that the most important factor is whether the transfer would promote the economic and efficient administration of the estate. *Id.*, at 989. The court observed that an appraisal of the motel's value will be required to establish value. It was "inevitable" that Mississippi appraisers will be selected, as they are most familiar with the market. In addition, if a sale of the motel was to take place, again, Mississippi professionals would need be engaged. *Id.*, at 988. Therefore, real estate cases are particularly local in nature and require local administration.

16. The final factor of "efficient administration" is not independent of other factors such as the proximity of the parties, witnesses and location of assets, and is actually a summary of those other factors. The court *Pinehaven* concluded:

There is ample support for the proposition that a real estate case like *Pinehaven*, can be most efficiently and economically administered in the bankruptcy court closest to its major asset, and that the Chapter 11 case can best unfold there [multiple citations omitted]. *Id.*, at 989.

17. Finally, the interests of justice favor this case being transferred to the California Bankruptcy Court. While both bankruptcy courts have the ability to handle the case and have a fair proceeding, because the multiple court cases already pending in California are mechanic's lien cases, most if not all of the issues to be resolved in those cases will be governed by California law. When that is the case, "judicial economy would be better served if all cases were pending in California." *In re Dunmore Homes, Inc.*, *supra.*, 380 B.R. at 674.

18. Transferring this case from Illinois Bankruptcy Court to the California Bankruptcy Court is in the interest of justice and the convenience of the parties.

WHEREFORE, movant Bomel Construction Co., Inc., respectfully requests that this Honorable Court transfer the venue of this Chapter 11 case from the Northern District of Illinois to the Central District of California pursuant to 28 U.S.C. § 1412, upon a finding that the interests of justice and the convenience of the parties would be best served by transferring venue to a more appropriate forum, and granting such other and further relief as the Court deems just and proper.

Dated: November 10, 2009

Respectfully submitted,

By: /s/ Lauren Newman

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