

Venue Issues for a Corporation Considering Filing for Bankruptcy

By Camille J. Iurillo and Gina M. Pellegrino

Generally speaking, determining where to file a bankruptcy case is straightforward. An individual filing a personal bankruptcy typically files their bankruptcy case in the state and district in which they reside. What about a corporation? What if a corporation is considering filing a bankruptcy and is incorporated in one state, operates primarily in another state, and has assets in a third state? Where should that corporation file their bankruptcy case? In addition, if that corporation files their bankruptcy case in one state, could the case then be transferred to another state?

This article is intended only as a starting point with respect to venue issues for a corporation considering filing for bankruptcy, and is by no means an exhaustive list.

According to 28 U.S.C. § 1408(1), a debtor may file bankruptcy in the district where that person or entity has its domicile, residence, principal place of business or principal assets.

Pursuant to the pertinent case law, a corporation's domicile is deemed located where that corporation is incorporated. In re B.L. of Miami, Inc., 294 B.R. 325, 328 (Bankr. D. NV 2003). Therefore, in B.L. of Miami, Inc., the Court held that because the chapter 11 corporate debtor was incorporated in Nevada, Nevada is deemed the debtor's domicile; thus, the bankruptcy case was properly filed in Nevada. Id.

Moreover, Rule 1014(a)(1) of the Federal Rules of Bankruptcy Procedure states that even if a bankruptcy case is filed initially in the proper district, a party in interest may file a motion to transfer the bankruptcy case to another district in the interest of justice or for the convenience of the parties. As a result, in B.L. of Miami, Inc., despite the Court's conclusion that the bankruptcy case was initially filed properly in Nevada, the Court held further that the case would be transferred to Florida in the interest of justice and for the convenience of the parties, pursuant to Fed. R. Bankr. P. 1014(a)(1), as a result of the following: the sole major asset of the debtor, a nightclub, was located in Florida, a significant majority of the creditors were located in Florida, and the financial records of the debtor located in Nevada could easily be transmitted to Florida. Id. at 328-34.

In addition, a corporation's "principal place of business" is where "general supervision is given." In re Newport Creamery, Inc., 265 B.R. 614, 617 (Bankr. M.D. Fla. 2001). In Newport Creamery, Inc., the Court held that the corporate chapter 11 bankruptcy case, which was filed in the Middle District of Florida, was not filed initially in the proper venue, for the following reasons: the debtor's business was incorporated in Rhode Island and not qualified to do business in Florida, the corporation operated in Rhode Island, the principal assets of the corporation were located in Rhode Island, and the general supervision of the operations of the corporation took place in Rhode Island. In addition, the Court, in determining proper venue, did not find it sufficient that the shareholders of the corporation claimed only to have made strategic decisions about the corporation in Florida. Id. at 616-8.

Furthermore, Rule 1014(a)(2) of the Federal Rules of Bankruptcy Procedure states that if a bankruptcy case is not filed initially in the proper district, a party in interest may file a motion to dismiss the case or to transfer the case to another district in the interest of justice or for the convenience of the parties. As a result, in Newport Creamery, Inc., despite the Court's conclusion that the bankruptcy case was not filed properly in Florida, the Court held that it was proper for the bankruptcy case to be transferred to the bankruptcy court in Rhode Island, rather than dismissing the case, in the interest of justice and for the convenience of the parties, pursuant to Fed. R. Bankr. P. 1014(a)(2). Id. at 623.

Therefore, it is important to note that even if a bankruptcy case is initially filed in the proper district, it may be transferred to another district in the interest of justice or for the convenience of the parties. Similarly, if a bankruptcy case is not initially filed in the proper district, the case may be dismissed or transferred to another district in the interest of justice or for the convenience of the parties.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, as Of Counsel. **Ms. Iurillo** has been active in the St. Petersburg Bar Association for several years, and she is on the Executive Committee of The Florida Bar's General Practice Solo and Small Law Firm Section. **Ms. Pellegrino** joined the Firm in 2006 and is an active member of the St. Petersburg Bar Association Young Lawyers Section.

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