



**SO ORDERED,**

Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: December 2, 2020

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**JORDAN LANDING, L.P,**

**CASE NO. 20-02176-NPO**

**DEBTOR.**

**CHAPTER 11**

**ORDER DENYING TENNESSEE HOUSING DEVELOPMENT  
AGENCY'S MOTION TO TRANSFER VENUE AND HOLD  
DEBTOR'S 11 U.S.C. § 505 MOTION IN ABEYANCE, OR  
ALTERNATIVELY CONTINUE THE DEADLINE TO RESPOND**

This matter came before the Court for a telephonic hearing on November 16, 2020 (the "Hearing") on the Tennessee Housing Development Agency's Motion to Transfer Venue and Hold Debtor's 11 U.S.C. § 505 Motion in Abeyance, or Alternatively Continue the Deadline to Respond (the "Motion") (Dkt. 91) filed by the Tennessee Housing Development Agency d/b/a Volunteer Mortgage Loan Servicing (the "THDA"); and the Response to the Tennessee Housing Development Agency's Motion to Transfer Venue and Hold Debtor's 11 U.S.C. § 505 Motion in Abeyance, or Alternatively Continue the Deadline to Respond (Dkt. 108) filed by Jordan Landing, L.P. (the "Debtor"). At the Hearing, Matthew R. Gaske represented the THDA, and Douglas C. Noble represented the Debtor. At the conclusion of the Hearing, the Court announced its decision from the bench, denying the Motion. The Court issues this Order memorializing and supplementing its earlier bench ruling.

## **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A). *See In re Pope Vineyards*, 90 B.R. 252, 254 (Bankr. S.D. Tex. 1988). Notice of the Hearing was proper under the circumstances.

## **Facts<sup>1</sup>**

1. On August 13, 2020, the Debtor filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code (the “Code”) (Dkt. 1), commencing the above-referenced bankruptcy case (the “Bankruptcy Case”). In the voluntary petition, the Debtor listed its principal place of business as 584 S Deerfield Drive, Canton, MS 39046-9414 and the location of its principal asset, a 40-unit subdivision property, as 201 Jordan Circle, South Pittsburg, TN 37380-0113 (the “Property”).

2. On September 4, 2020, the Debtor filed Schedule D: Non-Individual-Creditors Having Claims Secured by Property (“Schedule D”) (Dkt. 35). Schedule D lists the THDA as holding a “forgivable grant” in the amount of \$2,261,810.00, secured by the Property with a value of \$5,212,800.00.

3. On September 10, 2020, Bonneville Mortgage Company (“Bonneville”) filed the Motion to Dismiss Under 11 U.S.C. § 305 or, in the Alternative, to Transfer Venue (Dkt. 58). On October 5, 2020, the THDA filed the Tennessee Housing Development Agency’s Response in Support of Bonneville Mortgage Company’s Motion to Dismiss Under 11 U.S.C. Section 305 or, in the Alternative, to Transfer Venue (Dkt. 78). Thereafter, Bonneville, the THDA, and the Debtor reached a resolution, and on October 19, 2020, the Court entered the Agreed Order Withdrawing

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<sup>1</sup> The following findings of fact and conclusions of law are made pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Motion to Dismiss Under 11 U.S.C. §305 or, in the Alternative, to Transfer Venue (the “Agreed Order”) (Dkt. 90) on their *ore tenus* joint motion to withdraw the Motion to Dismiss and the THDA Response.

4. On October 6, 2020, the Debtor filed the Motion for Determination of Tax Liability Pursuant to § 505 and for Related Relief (the “Tax Motion”) (Dkt. 79). On October 27, 2020, THDA filed the Tennessee Housing Development Agency’s Objection to Debtor’s Motion for Determination of Tax Liability Pursuant to § 505 and for Related Relief (the “THDA Tax Objection”) (Dkt. 101). In the Tax Motion, the Debtor requested that the Court determine its property tax liability pursuant to 11 U.S.C. § 505(a)(1). The Debtor sought a prospective re-valuation and assessment of property taxes using an income, rather than a cost-value approach. In the THDA Tax Objection, the THDA asked the Court to deny the Tax Motion on the ground that the relief was unavailable under 11 U.S.C. § 505(a) or, in the alternative, asked the Court to transfer the Bankruptcy Case to the U.S. Bankruptcy Court for the Eastern District of Tennessee, Chattanooga Division.

5. On October 19, 2020, the Final Order (1) Authorizing Use of Cash Collateral; (2) Granting Adequate Protection; (3) Scheduling and Approving Method of Notice of Final Hearing; and (4) For Related Relief (the “Cash Collateral Order”) (Dkt. 88) was entered, evidencing an agreement between the Debtor and Bonneville on the terms of the Debtor’s use of cash collateral. The Cash Collateral Order, among other things, permits the Debtor to use cash collateral to pay regular operating expenses until January 20, 2021, subject to further order of the Court.

6. On October 19, 2020, the same day the Agreed Order was entered, the THDA filed the Motion, again requesting that the Court transfer the Bankruptcy Case to the U.S. Bankruptcy Court for the Eastern District of Tennessee, Chattanooga Division. The THDA asserts that a

transfer of venue will promote the efficient resolution and advancement of the Bankruptcy Case and will “safeguard the important state and venue-specific interests presented in this case.” (Dkt. 91 at 10).

7. On November 13, 2020, the Debtor filed the Affidavit of George C. Hoch (“Hoch”) (Dkt. 109), indicating that Hoch, who works for the Tennessee Comptroller, performed a property tax appraisal of the Property using the approach requested in the Tax Motion.

8. A Hearing was held on the Tax Motion on November 16, 2020. At the Hearing, the Court denied the Tax Motion without prejudice after counsel for the Debtor indicated that the Debtor no longer needed relief under 11 U.S.C. § 505 because the primary reason the Debtor filed the Tax Motion had been rectified. Specifically, counsel for the Debtor indicated that the appraisal by Hoch resolved the issues raised in the Tax Motion in its favor. The Order Denying Motion for Determination of Tax Liability Pursuant to § 505 and for Related Relief Without Prejudice (the “Tax Order”) (Dkt. 112) was entered on November 17, 2020 memorializing the bench ruling.

### **Discussion**

The THDA seeks the transfer of venue of the Bankruptcy Case to the U.S. Bankruptcy Court for the Eastern District of Tennessee, Chattanooga Division. In the Motion, the THDA argues venue should be transferred because it is in the interest of justice and the convenience of the parties. The THDA rests its argument largely on the Tax Motion, the resolution of which it considers critical to the Bankruptcy Case.

#### **A. Venue under 28 U.S.C. § 1408**

Under subsection one of the bankruptcy venue statute, 28 U.S.C. § 1408(1), a chapter 11 case “may be commenced in the district court for the district . . . in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the

[debtor] have been located for the one hundred and eighty days immediately preceding such commencement.” 28 U.S.C. § 1408(1). Subsection one thus renders venue proper in any one of the four listed locations. It is not in dispute that the Debtor is domiciled in Canton, Mississippi, with its principal assets in South Pittsburg, Tennessee. Accordingly, venue is proper in both the Southern District of Mississippi and the Eastern District of Tennessee.

**B. Change of Venue under 28 U.S.C. § 1412**

Even though venue is proper in the Southern District of Mississippi under 28 U.S.C. § 1408, it is within the Court’s discretion to transfer the case to Tennessee. *See* FED. R. BANKR. P. 1014(a)(1). The Court considers whether the Bankruptcy Case should be transferred to another bankruptcy court under 28 U.S.C. § 1412.<sup>2</sup> Pursuant to 28 U.S.C. § 1412 and Rule 1014 of the Federal Rules of Bankruptcy Procedure (“Rule 1014”), a properly-filed bankruptcy case may be transferred to another venue “in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. Similarly, Rule 1014 provides, in pertinent part: “If a petition is filed in the proper district, the court . . . may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.” FED. R. BANKR. P. 1014(a)(1). Section 1412 and Rule 1014 are written in the disjunctive, meaning that each of the two prongs—“in the interest of justice” or “for the convenience of the parties”—constitutes an independent ground for transferring venue. If a debtor’s choice of forum meets the requirements of the bankruptcy venue statute, a presumption arises in favor of that choice, and the party seeking transfer of a bankruptcy case to a different venue has the burden of showing by a preponderance of the evidence that the transfer is warranted either in the interest of justice or for the convenience

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<sup>2</sup> The authority of a bankruptcy court to exercise a district court’s power to transfer a case through 28 U.S.C. § 1412 arises from the district court’s referral to the bankruptcy court pursuant to 28 U.S.C. § 157(a). *In re Ross*, 312 B.R. 879, 884 (Bankr. W.D. Tenn. 2004).

of the parties. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). The Fifth Circuit Court of Appeals has cautioned, however, that a debtor’s venue choice should not be given “undue weight.” *Id.* at 309. Finally, the Court notes that “[t]here is no litmus test or set of hard and fast rules that offer precise guidance or transfer of venue, and the bankruptcy courts are left to a case-by-case determination based upon all relevant factors.” *In re New Luxury Motors, LLC*, No. 10-30835, 2010 WL 817204, at \*3 (Bankr. S.D. Tex. Mar. 4, 2010).

The seminal case on whether the transfer of venue of a bankruptcy case is in the interest of justice or for the convenience of the parties is the Fifth Circuit’s decision in *Puerto Rico v. Commonwealth Oil Refining Co. (In re Commonwealth Oil Refining Co.)*, 596 F.2d 1239 (5th Cir. 1979) (“*CORCO*”). There, the Fifth Circuit affirmed the bankruptcy court’s denial of a motion seeking to transfer the chapter 11 case of Commonwealth Oil Refining Company (“*CORCO*”) and the cases of its eleven (11) subsidiaries from Texas to Puerto Rico. *CORCO*’s executive officers were located in Texas, and its principal asset, a billion-dollar oil refinery, was located in Puerto Rico as were most of its employees, creditors, and books and records. The Fifth Circuit concluded that venue in Texas was proper for several reasons, including that the management of *CORCO*’s business was being handled in Texas, *CORCO*’s problems were financial rather than operational, and the people responsible for solving its financial problems and who would appear to testify in court resided in Texas. *CORCO*, 596 F.2d at 1241-48. Guided by *CORCO*, the Court considers first the “interest of justice” prong of the statute.

### **1. Interest of Justice**

The Court begins its analysis by noting that “interest of justice” is “an elusive term not easily amenable to definition.” *In re Pinehaven Assocs.*, 132 B.R. 982, 990 (Bankr. E.D.N.Y. 1991). It has been described as a broad and flexible standard, applied on a case-by-case basis. *In*

*re Patriot Coal Corp.*, 482 B.R. 718, 739 (Bankr. S.D.N.Y. 2012). Factors generally considered include whether transferring venue would promote the efficient administration of the estate and serve the interests of judicial economy. *Id.* An additional relevant factor is the interest of either forum in having the controversy decided within its boundaries. *Id.*

**a. Efficient Administration of the Estate**

The Fifth Circuit in *CORCO* found that venue was more appropriate where the financial restructuring of the debtors would occur rather than where the debtors' physical assets were located. In *CORCO*, the business operations of CORCO, an oil refining company, took place in Puerto Rico, while CORCO's executive officers were located in Texas. The Fifth Circuit considered that the heart of a chapter 11 proceeding is the development of an acceptable chapter 11 plan and determined that the location of the people "charged with this responsibility" is especially relevant. *CORCO*, 596 F.2d at 1247.

Here, the Debtor is domiciled in the Southern District of Mississippi, and its attorney responsible for filing its chapter 11 plan and chapter 11 operating reports is also located within the Southern District of Mississippi. Additionally, orders have been entered in the Bankruptcy Case, including the Cash Collateral Order, providing a pathway to resolution and exit in early 2021, or stay relief may be granted. With the entry of those orders, in conjunction with the resolution of the Tax Motion, the Bankruptcy Case is set to move forward swiftly. The interest of efficiency encourages the Court to retain venue. To transfer venue at this point in the Bankruptcy Case would not facilitate an efficient administration of the estate but would have the opposite effect and derail the current momentum toward confirmation.

**b. Judicial Economy**

Although the THDA asserts that this Court’s opinion in *Amazing Energy* supports its Motion, the present case is distinguishable for a number of reasons, with judicial economy being one of the most divergent factors. In *Amazing Energy*, there were at least four related cases pending in Texas state courts—a declaratory judgment action, a fraudulent transfer suit, and two collection cases. *In re Amazing Energy MS, LLC*, No. 20-01423-NPO, 2020 WL 4730890, at \*10 (Bankr. S.D. Miss. June 25, 2020). Many thorny issues governed by Texas law were likely to be raised in those cases, and therefore the Court determined that judicial economy would be served better if those disputes were decided by a Texas bankruptcy judge more familiar with Texas oil and gas law. *Id.*

The THDA argues that judicial economy would be best facilitated in a Tennessee bankruptcy court because “the Debtor’s reorganization purportedly depends on the relief requested in the Tax Motion.” (Dkt. 91 at 6). The THDA contends that a Tennessee-based court would be more familiar with the questions arising out of the Tax Motion and that a Tennessee court’s understanding of those issues would promote “the efficient adjudication of Debtor’s Tax Motion and therefore support judicial economy.” (*Id.* at 4). As discussed above, the Tax Motion was resolved with the entry of the Tax Order on November 17, 2020. Moreover, this Court is often called upon to apply state law to resolve bankruptcy issues and to the extent that further Tennessee state law issues arise in the confirmation process, judicial economy should not be affected by the routine application of state law to bankruptcy issues. *See Fugitt v. Miss. Dep’t of Revenue (In re Fugitt)*, No. 13-00098-NPO, 2014 WL 3888281, at \*13 (Bankr. S.D. Miss. Aug. 8, 2014).



**c. Interest of the Transferee Forum**

The THDA argues that the interest of justice is advanced when a bankruptcy case proceeds in the forum containing the parties best suited to address the case's issues, and the "main question for this case involves Tennessee tax law, Tennessee agency law, and a division of authority between Tennessee and its localities concerning an affordable housing property located in Tennessee. Thus, the people and entities who can best . . . resolve those problems are in Tennessee." (Dkt. 91 at 4). Further, the THDA argues that the "nerve center" in this case is the site of the real estate where residents live and pay rent and where maintenance and similar operations are conducted. The THDA contends that the residents of the Property would have better access to a court in Tennessee.

In *CORCO*, the Fifth Circuit was not persuaded to transfer venue to Puerto Rico because of its alleged economic interest in the outcome of the bankruptcy case. It found that maintaining the bankruptcy in close proximity to CORCO's management who were working to provide the debtor with access to capital markets and potential buyers better served Puerto Rico's interest. In *Amazing Energy*, on the other hand, the Court found that it was in the interest of justice to transfer venue because: (1) the major impetus for the bankruptcy case was a dispute regarding the foreclosure of land in Texas; (2) Texas had a greater interest than Mississippi in the outcome of the parties' dispute involving Texas real property interests and Texas law; and (3) a majority of the unsecured creditors were local Texas businesses or Texas individual residents.

Here, the facts fall somewhere in between those in *CORCO* and *Amazing Energy*. The Debtor's presence in Mississippi (the initial venue state) is not as expansive as CORCO's presence in Texas (the initial venue state); and the Debtor's presence in Tennessee (the proposed venue state) is also not as expansive as the *Amazing Energy* debtor's presence in Texas (the proposed

venue state). Mississippi has an interest in this Bankruptcy Case because the Debtor is a Mississippi corporation, and Tennessee has an interest because the Property is located in Tennessee. The Court finds that the interest of the transferee forum factor does not weigh in favor of either party and thus does not support a transfer of venue.

**d. Summary**

After considering the factors under the interest-of-justice prong—the efficient administration of the estate, judicial economy, and interest of the transferee forum, the Court finds that the THDA has not shown by a preponderance of the evidence that the Bankruptcy Case should be transferred. The Court finds that transferring venue to Tennessee does not enhance the Debtor’s prospects for a successful reorganization and, in fact, given the recent progress made toward a swift resolution of the Bankruptcy Case, to transfer venue would adversely affect the Debtor’s prospects for a successful reorganization. The Court next considers whether the requested transfer serves the convenience of the parties.

**2. Convenience of the Parties**

In *CORCO*, the Fifth Circuit considered the following six factors in determining the convenience of the parties: (1) proximity of creditors to the court; (2) proximity of the debtor to the court; (3) proximity of the witnesses necessary to the administration of the estate; (4) location of the assets; (5) economic administration of the estate; and (6) necessity for ancillary administration if bankruptcy should result. *CORCO*, 596 F.2d at 1247. The most important factor is the fifth factor, “whether the requested transfer would promote the economic and efficient administration of the estate.” *Id.* As a preliminary matter, the Court notes that there is much overlap in these factors and those the Court already has considered under the interest-of-justice prong of the venue statute.

**a. Proximity of Creditors, the Debtor, and Witnesses to the Court**

The Court considers the first three (3) convenience factors together. The creditors in this case include: (1) Bonneville, based in Salt Lake City, Utah; (2) the City of South Pittsburg, Tennessee; (3) Marion County, Tennessee; (4) the THDA, based in Nashville, Tennessee; and (5) JW Landing Management, LLC, a Mississippi entity with a Boothbay Harbor, Maine mailing address. (Dkt. 35, 36, 39). The Internal Revenue Service also filed a proof of claim. (Cl. 1-1). The Debtor is a Mississippi entity. At this time, it is unclear whether witnesses will be necessary for the administration of the estate, or where those potential witnesses are located.

Due to the COVID-19 pandemic, this Court and the U.S. Bankruptcy Court for the Eastern District of Tennessee have emergency orders in place, curtailing in-person hearings. In both bankruptcy courts, hearings are held telephonically until further notice. (*Id.*). Because any hearings in this Bankruptcy Case will likely be held telephonically, the matter of physical distance from either bankruptcy court should be immaterial.

**b. Location of Assets**

As noted previously, the Property is located in South Pittsburg, Tennessee. The Fifth Circuit in *CORCO* characterized the location of assets as less important to the restructuring of the debtors than the nerve center of its business operations. *CORCO*, 596 F.2d at 1247-48. In *Amazing Energy*, the Court considered the location of assets as a factor in favor of transfer because the assets were complex oil and gas leases subject to ongoing litigation in Texas, the proposed transfer state. *Amazing Energy*, 2020 WL 4730890, at \*12.

Here, the Court finds that the location of the Property does not warrant a transfer of venue. The Bankruptcy Case is a single-asset real estate case, and the Property is not the subject of

ongoing litigation. Like *CORCO*, this is largely a financial case and, accordingly, the location of the Property does not weigh in favor of transfer.

**c. Economic Administration of Estate**

This factor has been discussed previously in connection with the interest-of-justice prong. At this point, the Court finds there is no discernible impact or prejudice to the parties by proceeding in the Mississippi bankruptcy court rather than in the Tennessee bankruptcy court, since the Tax Motion involving Tennessee law has been resolved and the remaining matters will be dealt with under bankruptcy law through the reorganization. *See In re Red Door Prop. Mgmt. LLC*, No. 11-02704-KMS, 2011 WL 5592910, at \*7 (Bankr. S.D. Miss. Nov. 16, 2011). Even if further issues of Tennessee law were to arise, the implication of the laws of another state is not enough alone to warrant a transfer of venue. *Think3 Litig. Tr. v. Zuccarello (In re Think3, Inc.)*, 529 B.R. 147, 210 (Bankr. W.D. Tex. 2015).

**d. Necessity for Ancillary Administration**

As in *CORCO* and *Amazing Energy*, the Court finds it unnecessary to contemplate the failure of the Bankruptcy Case at this early stage.

**e. Summary**

When considering the totality of the circumstances, the Court finds that the THDA has not met its burden of showing that venue of the Bankruptcy Case should be transferred to Tennessee for the convenience of parties.

**Conclusion**

For the above reasons, the Court finds that the interest of justice and the convenience of the parties require that the Bankruptcy Case remain in the Bankruptcy Court for the Southern District of Mississippi. The principal argument for transferring venue was that the Tax Motion

would require analysis of Tennessee state law. With the recent resolution of the Tax Motion, there is no compelling reason to transfer venue, and in fact, to transfer venue would impede the Bankruptcy Case's current momentum toward resolution.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied without prejudice.

IT IS FURTHER ORDERED that the venue of the Bankruptcy Case will hereby remain in the U.S. Bankruptcy Court for the Southern District of Mississippi, Jackson Division.

##END OF ORDER##