

SO ORDERED



Nancy V. Alquist
NANCY V. ALQUIST
U. S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re:

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BRYAN CRAIG BAKER

*

Case No. 05-24007-NVA
(Chapter 7)

Debtor

*

* * * * *

**MEMORANDUM ORDER DENYING UNITED STATES
TRUSTEE'S MOTION [8] TO DISMISS CASE FOR IMPROPER VENUE**

Bryan Craig Baker (the "Debtor or "Mr. Baker"), a United States citizen domiciled in Costa Rica, filed a voluntary petition for relief under chapter 7 of the bankruptcy code on June 17, 2005. Because Mr. Baker has no current ties to the District of Maryland other than a single bank account that reportedly contains \$100, the United States Trustee moved to dismiss his chapter 7 case for lack of venue.

The Debtor and the United States Trustee submitted a Stipulation [13] of Facts, and, the Court conducted a hearing on the motion to dismiss on November 30, 2005. The Court denies the motion to dismiss for the reasons set forth herein.

The Debtor admittedly has extremely tenuous ties to the District of Maryland. He has never resided in the District of Maryland; no case has ever been pending before this Court concerning an affiliate, general partner or partnership of the Debtor. The sole tie that the Debtor has to the District of Maryland is a scheduled Sandy Spring Bank account (the “Maryland Account”) that was established in this Maryland-located bank in June, 2005, shortly before this chapter 7 case was commenced.

The Debtor is a United States citizen and holds a United States passport. It appears that all of his creditors are based in the United States. The Debtor files United States income tax returns. The Debtor’s residence is in Costa Rica. He has resided in Costa Rica since approximately March 2002. The Debtor is employed in Costa Rica, he holds a Costa Rican driver’s license and all of his personal property is located in Costa Rica. The Debtor owns no real property. It appears that the Debtor has an ownership interest in a chiropractic business in Costa Rica.

Other than the Maryland Account, the only other state within the United States to which the Debtor may have a tie is the State of Kansas; the Debtor has a scheduled ownership interest in a joint bank account containing \$165.00 with his mother in that state.

The United States Trustee does not appear to challenge Mr. Baker’s right to be a debtor or this Court’s jurisdiction over him. Pursuant to 28 U.S.C. § 1334, the United States District Court has jurisdiction over all cases arising under title 11 of the United States Code.¹ Cases arising under

¹ 28 U.S.C. § 1334 provides:(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

title 11 are automatically referred to the United States Bankruptcy Court. *See* 28 U.S.C. § 157.² As to Mr. Baker’s eligibility to file for bankruptcy protection, 11 U.S.C. § 109 (a) requires that he either reside in the United States or have “a domicile, a place of business, or property in the United States.” This statute does not contain any quantification of the type of property that is sufficient, and one court has held that “a dollar, a dime or a peppercorn” located in the United States will suffice. *In re McTague*, 198 B.R. 428, 432 (Bankr. W.D.N.Y. 1996). Mr. Baker has assets in the United States that qualify him to be a debtor under § 109 (a) - - the Maryland Account and the Kansas bank account. Accordingly, Mr. Baker has the unequivocal right to file for bankruptcy protection and the Court has jurisdiction over his case.

The Debtor is entitled to a presumption that the District of Maryland, as the district in which he filed his bankruptcy petition, is the proper venue, and the United States Trustee as the party disputing that position carries the burden by a preponderance of the evidence. *See In re Handel*, 253 B.R. 308, 310 (1st Cir. B.A.P. 2000). The United States Trustee argues that venue is not proper in this district because the Debtor’s sole claim to venue is the *de minimis* Maryland Account established prior to filing. This, the United States Trustee argues, “fails to pass muster.”

² 28 U.S.C. § 157 provides:

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

The District of Maryland has provided for the automatic reference of such matters to the Bankruptcy Court. *See* Maryland District Court Local Rule 402.

In accordance with 28 U.S.C. § 1408, the controlling venue provision, in order for the Debtor to establish venue on the basis of the location of his property, the Debtor's principal assets must have been located within this district for the one-hundred-and-eighty-day period preceding the filing of his petition. The venue statute provides:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district--

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408

Not only does the United States Trustee argue that the Maryland Account is insufficient to fulfill the requirements of this statute, but further argues that transfer of venue in accordance with Bankruptcy Rule 1014 is not appropriate in this case because there is no judicial district within the United States in which this case could appropriately be brought. Even though the Debtor has an interest in a Kansas bank account, the United States Trustee posits that the Kansas forum suffers from the same venue-based infirmities as Maryland. Notwithstanding, the United States Trustee implicitly acknowledges that there is jurisdiction under title 11 sufficient to encompass a foreign domiciled United States citizen like Mr. Baker but seems undaunted that his case, under the United

States Trustee's view, would be destined to slip into a venue never-never land and Mr. Baker would thus be denied an important substantive right to which he would otherwise be entitled. Instead, the United States Trustee suggests, Mr. Baker could investigate filing a Costa Rican insolvency proceeding.

Having the right to file for bankruptcy protection, is Mr. Baker to be denied a remedy based on venue? The Court does not believe that this result comports with notions of justice or with a fair and plain reading of the venue statute.

First, as the Debtor points out, there are no minima in the venue statute, either in terms of the dollar amount required to be located in the subject district or the percentage of the 180-day time span for which the assets are required to be located in the district. In the Debtor's case, in accordance with the venue statute, "the principal assets in the United States" (in this case the sole interest in a \$100 bank account as opposed to a shared interest in a \$165.00 bank account) was located in the District of Maryland for the majority of the 180 days prior to the filing of this bankruptcy case. Tenuous as this connection may be, no other district has a greater connection to this Debtor.

Because the Debtor is a Costa Rican domiciliary with a Costa Rican address and is employed in Costa Rica, he does not meet the residency, domicile or place of business tests for the venue statute. But, under the plain language of the statute, these are not the only tests. A debtor may also establish venue based on the location of his principal assets in a district of the United States. *See In re Gray*, 2005 Bankr. LEXIS 311, *2 (Bankr. M.D. Ga. 2005) (venue may be established by (i) the debtor's domicile, (ii) the debtor's residence, (iii) the debtor's principal place of business or (iv) the debtor's principal assets in the United States.)

The Debtor's principal asset in the United States (his sole interest in the Maryland Account) was located in this district during the 180-day period prior to the filing of his bankruptcy petition.³ For the purposes of this venue motion, it is of no moment that the account may have been opened solely for the purposes of establishing venue. Even if true, such an allegation may be the foundation for a motion under § 707 of the Bankruptcy Code, but does not make venue improper in the first instance. *See McTague, supra* (in *dicta*, opining that circumstances that created eligibility for filing and venue could raise issues related to bad faith or substantial abuse). In the instant case, there is no showing that any creditor has been prejudiced by the Debtor's selection of the District of Maryland as a venue, or that this selection was made in bad faith.

Neither is it crucial that the Maryland Account has not been in existence for the entire 180-day period prior to the Debtor's filing of his bankruptcy petition. What matters is that this account is Mr. Baker's principal asset in the United States and it has not been located in any other judicial district within the 180-day time period. *See In re Farmer*, 288 B.R. 31 (Bankr. N.D.N.Y. 2002) (finding that venue was proper in district where debtor was a foreign domiciliary and had opened a bank account in the district prior to filing, without any showing of prejudice to creditors).

Based on the foregoing, the Debtor meets the plain language requirements of 28 U.S.C. § 1408 and his case will not be dismissed for improper venue. Of course, whether the Debtor's discharge (if any) will be honored by the Costa Rican courts is a matter of international comity and a matter over which this Court has no jurisdiction. *See McTague, supra*.

³ The Court acknowledges that there is disparity in the view that a bank account is located in a specific jurisdiction and thus can establish venue. This Court adopts the view that the location of a bank account can give rise to venue. *See Farmer, supra*. *See also, In re Newby*, 2007 WL 1385618 (Bankr. S.D. Fl. 2007). The Court also acknowledges that a court in this district has ruled that a bank account is intangible and assumes the location of the owner. *See In re Healy*, 1989 WL 149679 (Bankr. D.Md. 1989) (Mannes, J.).

In consideration of the foregoing, it is, by the United States Bankruptcy Court for the District of Maryland, hereby:

ORDERED that the United States Trustee's Motion to Dismiss for Improper Venue is hereby denied.

cc: Brett Weiss, Esquire
David Gold, Esquire
Roger Schlossberg, Chapter 7 Trustee

END OF ORDER