

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

THOMAS SINGE,

Debtor.

Chapter 13
Case No. 23-60376-6-pgr

APPEARANCES:

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MARK W. SWIMELAR-TRUSTEE
Standing Chapter 13 Trustee
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EDWARD J. FINTEL, ESQ.

DECISION AND ORDER GRANTING MOTION TO DISMISS

1. Prior to filing, Thomas Singe (the “Debtor”) and Bates Troy, Inc. (“Bates Troy”) were opposing parties in two state court cases pending in New York State Supreme Court, in and for Broome County (“State Court Litigation”).
2. After a bench trial was completed in the State Court Litigation, but before a decision was rendered, Debtor commenced this case, by and through his

counsel, by filing a Petition for Relief under Chapter 13 of the Bankruptcy Code. (Docket No. 1).

3. On October 3, 2023, the Chapter 13 Trustee filed a motion to dismiss or transfer this case due to improper venue pursuant to 28 U.S.C. §§ 1408 and 1412 (the “Motion to Dismiss”) (Docket No. 26). Debtor opposed the motion. (Docket No. 29). The Trustee withdrew and subsequently reinstated the motion. (Docket Nos. 45 & 46). Supplemental briefs in support of the Motion to Dismiss were filed by the Trustee and Bates Troy, Inc. (“Bates Troy”). (Docket Nos. 47 & 48).
4. The Trustee argues that the Northern District of New York is the improper venue for this case.
5. In opposition, Debtor asserts that his 10% ownership interest in Bates Troy is sufficient to establish venue in the Northern District.
6. Whether Debtor was entitled to retain stock in Bates Troy was an issue in the State Court Litigation.
7. On November 1, 2023, this Court issued a Memorandum Decision and Order lifting the automatic stay and permitting the State Court Litigation to proceed to judgment. (Docket No. 33).
8. On March 21, 2024, the Honorable Joseph A. McBride, Justice of the New York State Supreme Court, issued a Decision and Order in which he determined, *inter alia*, that Debtor “forfeited all of his shares of stock in Bates Troy, Inc. as of February 1, 2018.” (NY Sup. Ct. Decision & Order at 8, Docket No. 47, ex.1).

9. After Judge McBride issued his decision, the Trustee renewed the Motion to Dismiss due to (a) improper venue, (b) Debtor's ineligibility to file under Chapter 13 due to exceeding the statutory debt limit, and (c) lack of good faith.
10. On April 30, 2024, Bates Troy filed a supplemental brief in support of the Motion to Dismiss and asserted the same arguments in favor of dismissal. (Docket No. 48).
11. This Court held hearings to consider the Motion to Dismiss on October 24, 2023, November 21, 2023, April 16, 2024, and May 14, 2024.
12. Attorney Orville appeared on behalf of the Debtor. Attorney Fintel appeared for the Trustee. Attorney Bivona appeared for Bates Troy.
13. During the May 14, 2024 hearing, this Court heard oral argument and reserved decision.
14. For the reasons outlined below, the Motion to Dismiss is granted.

Improper Venue

15. Under 28 U.S.C. § 1408, a bankruptcy case is properly filed in a particular district if the Debtor's domicile, residence, principal place of business, or principal asset(s) have been located in that district for the 180-day period immediately preceding commencement of the case.
16. There is no dispute that Debtor's domicile, residence, and principal place of business are not located in the Northern District of New York.
17. Debtor's Petition lists his residence and domicile in Rochester, New York. (Docket No. 1).

18. The Statement of Financial Affairs indicates that Debtor has not lived anywhere else in the last 3 years. (Docket No. 9).
19. Rochester is located in the Western District of New York.
20. According to Debtor's Schedule I, the majority of his monthly income comes from Social Security (\$2,225) and contributions from his girlfriend (\$1,060).
21. Debtor's Schedules also show that he receives additional income from the operation of two businesses, Mr. Squeeze Lemonade, LLC and U Town Linen Services, LLC (\$902). (Docket No. 9).
22. The Trustee has alleged that these businesses are based in Rochester, which has not been disputed by the Debtor. (Docket Nos. 26 & 29).
23. In an effort to satisfy the venue requirement to file here, Debtor argues that his principal asset, stock in Bates Troy, is located in Broome County, which is within the bounds of the Northern District. (Docket No. 1) (answering "Major asset is in Broome County-Owns 10% stock in Bates Troy, Inc." in response to Official Form 101 question "Why you are choosing *this district* to file for bankruptcy") (emphasis in original).
24. However, Judge McBride determined that the Debtor lost his interest in the stock in 2018, which is more than 180 days prior to this filing. (NY Sup. Ct. Decision & Order at 8, Docket No. 47, ex.1).
25. Therefore, the stock is not an asset of the Debtor for purposes of establishing venue. This is true notwithstanding Debtor's stated intention to appeal the State Court's decision. See *Papapietro v. Clott*, No. 22CV1318RPKVMS, 2023

WL 2731687, at *5 (E.D.N.Y. Mar. 31, 2023) (“Under New York law, ‘the mere pendency of an appeal does not prevent the use of the challenged judgment as the basis of collaterally estopping a party to that judgment in a second proceeding.’”) (quoting *DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003)).

26. Where, as here, none of § 1408’s bases for venue are satisfied, 28 U.S.C. § 1406 applies and the Court lacks authority to retain Debtor’s case. *In re Houghton Mifflin Harcourt Pub. Co.*, 474 B.R. 122, 134 (Bankr. S.D.N.Y. 2012).

27. Section 1406(a) of title 28 of the United States Code states: “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

28. Here, the Court finds, in the interests of justice and for the reasons discussed in this decision, Debtor’s case should be dismissed rather than transferred to the Western District of New York.

Lack of Good Faith

29. In addition and in the alternative, this Court finds dismissal warranted for cause.

30. The Court has statutory authority to dismiss a chapter 13 filing “for cause” under 11 U.S.C. § 1307(c).

31. Lack of good faith can constitute cause to dismiss. *In re Bush*, 579 B.R. 688, 701 (Bankr. N.D.N.Y. 2017).

32. Courts consider the totality of circumstances when determining a lack of good faith. *Id.*

33. Some factors for determining a lack of good faith include:

- a. nature of the debt;
- b. timing of the petition;
- c. manner in which the debt arose;
- d. debtor's motive in filing the bankruptcy petition;
- e. manner in which the debtor's actions have affected creditors;
- f. debtor's treatment of creditors both before and after the petition filing;
- g. whether the debtor has been forthcoming with both the bankruptcy court and the creditors;
- h. a misrepresentation of facts in the petition;
- i. debtor's history of filings and dismissals;
- j. whether debtor undertook the bankruptcy merely to defeat the outcome of state court litigation; and
- k. whether debtor engaged in egregious behavior prior to or during the filing.

Id.

34. This case appears to have been filed for the sole purpose of preventing a judgment from being entered in the State Court Litigation.

35. Debtor has very little debt other than the debt owed to Bates Troy.

36. Debtor has \$38,942.08 in secured debt against real property valued at \$174,000. The secured creditor has not asserted any prepetition arrears, and Debtor's plan indicates that he is current on this debt. (Docket No. 1 & Claim No. 3-1).
37. Other than the claim of Bates Troy, the Claims Register shows one priority tax claim in the amount of \$838.21 and \$13,245.45 in unsecured claims.
38. This is, fundamentally, a two-party dispute.
39. Judge McBride found Debtor liable to Bates Troy for diversion and embezzlement, theft and conversion, unjust enrichment, and breach of fiduciary duty. He awarded punitive damages to Bates Troy as he found that Debtor's behavior involved "malice, oppression, insult, wanton or reckless disregard" of Bates Troy's rights. (NY Sup. Ct. Decision & Order, Docket No. 47, ex.1).
40. Bates Troy has moved to have its multi-million-dollar debt declared non-dischargeable, which means that, if Bates Troy prevails, this bankruptcy would not assist the Debtor in addressing his single-largest obligation.
41. There is also a dispute regarding whether Debtor is eligible to be a debtor under chapter 13 as it is alleged that, by virtue of Bates Troy's claim, he exceeds the statutory debt limit. This Court need not reach this issue as it finds dismissal warranted for the reasons stated above.
42. For the reasons set forth herein, this Court dismisses Debtor's case due to improper venue and lack of good faith.

The Trustee's Motion to Dismiss (Docket No. 26) is GRANTED.

Dated: May 29, 2024
Utica, New York

/s/ Patrick G. Radel
United States Bankruptcy Judge