

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	CHAPTER 11
)	
THE ALIERA COMPANIES INC.)	CASE NO. 21-11548-JTD
d/b/a Alieria Healthcare, Inc.,)	
)	Related to Docs. # 17 and 18
Alleged Debtor.)	Obj. Deadline: January 6, 2022, at 4:00 P.M. (EST)
)	H'rg Date: January 13, 2022, at 11:00 A.M. (EST)

**OBJECTION TO PETITIONING CREDITORS’ MOTION TO
TRANSFER VENUE OF THE LATER-FILED VOLUNTARY BANKRUPTCY
CASES OF THE ALIERA COMPANIES INC. AND ITS FOUR AFFILIATES**

COMES NOW The Alieria Companies Inc. d/b/a Alieria Healthcare, Inc. (the “**Alleged Debtor**” or “**Alieria**”), by and through their undersigned counsel, and submits this objection (the “**Objection**”) to the *Petitioning Creditors’ Motion to Transfer Venue of the Later-Filed Voluntary Bankruptcy Cases of The Alieria Companies Inc. and Its Four Affiliates* [Dkt. No. 18] (the “**PC Venue Motion**”) filed by the petitioning creditors in the above-captioned case (the “**Petitioning Creditors**”), seeking entry of an order transferring venue of various cases filed in the United States Bankruptcy Court for the Northern District of Georgia (the “**Georgia Court**”) to this Court.¹ In support of the Objection, Alieria respectfully state as follows:

INTRODUCTION

1. The PC Venue Motion is chock full of irrelevant and inappropriate innuendo, hyperbole, half-truths and misleading or incomplete statements that are utterly immaterial to the actual legal issues raised by the PC Venue Motion and the corresponding *Motion to Transfer Venue Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014* [Dkt. No. 17] (the “**Alieria Venue**”

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the PC Venue Motion and the Alieria Venue Motion.

Motion”), filed by Alieria. While Alieria disputes virtually every one of the “facts” set forth in the PC Venue Motion, it does not intend to address most of said “facts” because they are completely irrelevant to resolution of the PC Venue Motion.²

2. Additionally, while not really germane to the issues before the Court, counsel for Alieria believes that counsel for the Petitioning Creditors has mischaracterized in some respects the “meet and confer” conversation which occurred on December 27, 2021. Counsel for Alieria does not recall stating that “the same court should handle the bankruptcies of Alieria and its subsidiaries.” PC Venue Motion at ¶ 4. Counsel for Alieria did, however, state Alieria’s position that if the cases moved forward in Georgia Alieria would seek to have them jointly administered but was holding off on filing such a motion until venue of the Alieria case had been finally determined.

3. Further, the Petitioning Creditors devote a substantial amount of their argument to criticize Alieria’s initial decision to seek to liquidate its assets for the benefit of creditors under a Georgia statutory ABC proceeding. PC Venue Motion at ¶¶ 3, 31 and 32. The Petitioning Creditors would have the Court believe that this was some type of nefarious plot to shield insiders and others from fraudulent transfer and other claims. That is simply not true, and is based on a complete misunderstanding of the Georgia ABC process and, further, what appears to be a deliberate mischaracterization of the detailed information provided under oath in the ABC Deed which was filed as a public record. *See* Alieria Venue Motion Ex. 2 – ABC Deed. As noted in the

² The Petitioning Creditors, throughout this process, have cast numerous aspersions regarding undersigned counsel, the independent Assignee, the Georgia Court and the Office of the United States Trustee for Region 21 (which oversees bankruptcy cases in the Northern District of Georgia). The not-so-subtle suggestions that the experienced professionals and fiduciaries (not to mention the Georgia Court and the U.S. Trustee) would not properly fulfill their respective legal and statutory responsibilities if Alieria’s Chapter 11 case proceeds in Georgia rather than Delaware are offensive and wrongheaded. Further, Alieria need not address each of the allegations of purported impropriety of Alieria and its officers, as such allegations are not at issue before the Court and are not relevant to the determination of an appropriate venue for this matter.

Aliera Venue Motion, once it became clear that Aliera and certain of its subsidiaries lacked adequate cash flow to continue to operate their businesses, a decision was made to wind down and liquidate its assets for the benefit of its creditors in an expeditious and cost-effective manner through an ABC process. While in Georgia this process is not generally overseen by a court, it is an open process which requires disclosure of all assets and outstanding claims (O.C.G.A. §§ 18-2-44 and 18-2-47). It also allows the assignee to have recourse to the Georgia courts to pursue causes of action and specifically empowers the assignee to seek to avoid fraudulent transfers made by the assignor. O.C.G.A. § 18-2-54 provides as follows: “The assignee shall succeed to all rights of the assignor but may attack and set aside any fraudulent conveyances or recover property conveyed by the assignor for the purpose of hindering, delaying, or defrauding creditors.” Particularly in cases such as here, where the assignor-debtors have little immediate cash but potentially valuable receivables, claims, tax refunds and other intangible assets, it is a cost-effective way to liquidate the debtors’ assets and maximize the value for creditors. *See* ABC Deed Exs. B-1 through B-5. The Petitioning Creditors, in fact, reluctantly admit in their motion that an assignee under Georgia law has the power to pursue fraudulent transfers, but complain that they are not required to do so.³ *See* PC Venue Motion at ¶ 3, p. 4.

4. In attacking the ABC, the Petitioning Creditors, unfairly and with no supporting evidence, seek to denigrate Katie Goodman, the principal of the Assignee. PC Venue Motion at ¶ 3. They note that she was selected by “insiders” and suggest she “would have no incentive to aggressively pursue Aliera’s claims against the insiders and might even settle claims that Aliera

³ The Petitioning Creditors neglect to mention that neither are bankruptcy trustees “required” to pursue fraudulent transfer or other avoidance claims. Presumably, competent fiduciaries, whether bankruptcy trustees or ABC assignees, will make the decision to pursue claims in which it makes sense to do so based on a cost-benefit analysis and other relevant factors.

has against them for a small fraction of their true value.” *Id.* There is absolutely no factual basis here which would justify a conclusion that Ms. Goodman would not faithfully and effectively execute all of her fiduciary duties as assignee. To the contrary, her long and distinguished career acting in a fiduciary capacity in numerous insolvency-related proceedings, including proceedings in this Court, belies any such suggestion. *See* Alieria Venue Motion, Exhibit A - Goodman Declaration. And the fact that she was selected by insiders does not change that conclusion. Having a fiduciary selected by management in situations where a company voluntarily enters into an insolvency proceeding is not uncommon and is consistent with management’s fiduciary responsibilities. The Bankruptcy Code itself contemplates that management of a chapter 11 debtor in possession will ordinarily be determined at the outset by existing “insiders.”

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.⁴

BACKGROUND

6. The relevant factual and procedural background is set forth in the Alieria Venue Motion and in Alieria’s *Motion to Dismiss Involuntary Petition* [Dkt. No. 21] (the “**Motion to Dismiss**”). The facts contained in the Alieria Venue Motion and the Motion to Dismiss are incorporated herein by reference as if set forth in full herein.

⁴ Pursuant to Local Rule 9013-1(f), the Alleged Debtor hereby consents to the entry of a final judgment or order in connection with this Motion if it is determined that this Court cannot – absent the consent of the parties – enter such final judgment or order consistent with Article III of the United States Constitution.

REPLY TO OBJECTION

7. Under 28 U.S.C. § 1412, a 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.” Under Bankruptcy Rule 1014, this standard applies whether the court is considering venue issues in the context of a single case in a single district, or multiple cases in multiple districts, relating to a single alleged debtor.

8. The decision to transfer venue is solely within the discretion of the bankruptcy court. *In re Centennial Coal, Inc.*, 282 B.R. 140, 146 (Bankr. D. Del. 2002). The party requesting transfer of forum bears the burden of proof, but “if the party meets its burden by the preponderance of the evidence, the court in its discretion may transfer a case in the interest of justice or for the convenience of the parties.” *In re Rehoboth Hospitality, LP*, No. 11-12798 (KG), 2011 WL 5024267, at *3 (Bankr. D. Del. Oct. 19, 2011).

9. In determining whether to transfer a case, bankruptcy courts consider the following relevant factors:

- (a) proximity of creditors of every kind to the court;
- (b) proximity of the alleged debtor;
- (c) proximity of witnesses who are necessary to administration of the estate;
- (d) the location of the alleged debtor’s assets;
- (e) the economic administration of the estate; and
- (f) the necessity for ancillary administration in the event of liquidation.

In re Innovative Commc’n Co., 358 B.R. 120, 126 (Bankr. D. Del. 2006); see also 1 Alan Resnick & Henry Sommer, *Collier on Bankruptcy* ¶ 4.05[3][a][ii], at 4-33 to 4-34 (16th ed. rev. 2014).

10. In the event that the Court does not grant the Motion to Dismiss, as amply demonstrated in Alieria's Venue Motion (the arguments in which are incorporated by reference), the balance of factors in this matter tip decidedly in favor of granting Alieria's Venue Motion and transferring venue of this matter to the Georgia Court.

11. Further "[a] debtor's choice of forum is entitled to great weight if venue is proper." *In re Rests. Acquisition I, LLC*, No. 15-12406, 2016 Bankr. LEXIS 684, at *7 (Bankr. D. Del. Mar. 4, 2016). See Also *In re Suntech Power Holdings Co.*, 520 B.R. 399, 420 (Bankr. S.D.N.Y. 2014) ("Where the case is initially brought in a proper venue, the debtor's choice of forum is entitled to great weight."); *Rehoboth Hospitality*, 2011 Bankr. LEXIS 3992, at *10 ("[g]enerally, there is a presumption in favor of maintaining the debtor's choice of forum."); *In re Uslar*, 131 B.R. 22, 23 (Bankr. E.D. Pa. 1991) ("unless the balance is strongly in favor of transferring venue, the debtor's choice of forum should rarely be disturbed"). Clearly, Alieria, the debtor, has chosen its forum, both initially in filing the ABC in Georgia, and then in commencing the cases in the Georgia Court. As such, this factor weighs heavily against the PC Venue Motion. See *In re Ceasars Entertainment Operating Company, Inc.*, 2015 Bankr. LEXIS 314 at *18, 2015 WL 495259, Case No. 15-10047 (Bankr. D. Del. Feb. 2, 2015) ("[i]f the Court finds that the Debtor's choice of forum is entitled to deference, as a practical matter the Petitioning Creditors bear a burden to overcome that deference. . . .").

12. In the PC Venue Motion, the Petitioning Creditors argue that this case is "uniquely complex" and requires a steep learning curve with regard to various areas of the law, thus justifying granting the PC Venue Motion. See PC Venue Motion at ¶¶ 43-44. But that is simply not true. For one thing, any claims against Alieria or any other party may well be tried in a District Court, if

tried at all.⁵ And even if claims of the Petitioning Creditors or similar claims end up being adjudicated in bankruptcy court, both this Court and the Georgia Bankruptcy Court are fully capable of conducting evidentiary hearings, reviewing applicable law, and sorting out what are essentially contract and fraud-type claims. That is, after all, the bread and butter for federal bankruptcy courts.⁶ *See, e.g., In re Ceasars Entertainment*, 2015 Bankr. LEXIS at *29 (holding that venue of a first-filed involuntary petition should be transferred from Delaware to Illinois where the debtors had later filed voluntary petitions despite allegations of wrongdoing by management, because “Illinois Court is, of course, fully capable of recognizing, to the extent they exist, breaches of fiduciary duty and fraudulent activity.”).

13. Further, it must be noted that the Petitioning Creditors entire motion appears to be premised on their assertion that the Petitioning Creditors (along with the Sharity Liquidating Trust) are either the only, or at least the most important, creditor class in the Alera case, and that therefore their views should control here. They may or may not be (such claims have yet to be determined), but in any event, that is not how the bankruptcy system works. The Petitioning Creditors represent a subset of alleged creditors of Alera that may very well have a conflict with Alera’s trade or other non-Sharity creditors, and it is entirely likely that an unsecured creditors committee in the Alera case, made up of a cross-section of Alera’s creditors, will contest, or at least closely

⁵ Indeed, the Petitioning Creditors contend that they have already obtained default judgments against Alera that may not be attacked, and if they are correct, what is left to try, at least with regard to the Petitioning Creditors’ claims? Further, if Alera were to appeal or seek to reopen the default judgments, the claims would still need to be tried in another court in any event.

⁶ Moreover, a review of the docket in the Sharity bankruptcy case shows that the deadline for filing claims just expired on January 4, 2022, and no claim objections have yet been filed and no contested evidentiary hearings have yet been held on any claims asserted against or by that debtor’s estate. So it seems highly unlikely that any bankruptcy court has had the opportunity to examine these types of claims in any detail.

scrutinize, the Petitioning Creditors' and Sharity's claims. Again, that is part of the normal bankruptcy process, and will occur whether the case proceeds in Delaware or Georgia.

14. Indeed, the Petitioning Creditors themselves recognize that this bankruptcy case is not nearly as unique or complex as they would have this Court believe. The Petitioning Creditors state that this case "is likely to follow the same path as the Sharity Bankruptcy. Neither corporation will resume business – the only path for Alieria is liquidation into a trust run to benefit its creditors." PC Venue Motion at ¶ 51. In other words, the Petitioning Creditors contend that the Alieria case will be fairly simple – file a liquidating plan, drop all the assets into a trust, and then have that trust pursue claims against third parties on theories such as simple contract actions and fraudulent conveyance actions. If that is in fact true, then, with all due respect to this Court, what special knowledge and history would the Georgia Court need to make that process more efficient?

15. With respect to other factors bearing upon the determination of venue, it is significant that in their PC Venue Motion, the Petitioning Creditors do not dispute that (a) Alieria's books and records and other remaining assets are located primarily in Georgia, (b) former officers, directors, employees and other persons who might be needed to testify and/or provide information required to administer Alieria's bankruptcy case are located almost exclusively in Georgia, (c) that Alieria's principal place of business and executive offices has been at all times and remains in Georgia, (d) it appears that a large plurality of creditors are located in Georgia, and, in any event, no significant creditors appear to be located in Delaware, and (e) that trade creditors of Alieria have expressed a preference for having Alieria's chapter 11 case move forward in Georgia.

16. The only real response offered to these points by the Petitioning Creditors is the observation that in the "post-pandemic legal world," physical proximity to the court is of less importance, because hearings are largely being conducted by Zoom and/or by telephone. PC

Venue Motion at ¶ 40. That may be true, but of course that point cuts both ways. It would be just as easy for the Petitioning Creditors and other creditors outside of Georgia to participate electronically in Alieria's case in Georgia as in Delaware. Not surprisingly, a review of Judge Sacca's chambers page on the web site for the United States Bankruptcy Court for the Northern District of Georgia shows that he has established procedures facilitating hearings by telephone and video. See <https://www.ganb.uscourts.gov/content/honorable-james-r-sacca>. Additionally, the cases of Alieria and its subsidiaries have been designated for treatment under the Georgia Court's "Complex Case" protocol. See *In re Procedures for Complex Chapter 11 Cases*, General Order No. 26-2019 (U.S.B.C., N.D.Ga. Nov. 4, 2019) (the "**Complex Case Order**"). And this likewise incorporates procedures designed to facilitate participation by creditors and parties in interest desiring to appear electronically. See, e.g., *Complex Case Order* at ¶ E.5. (Telephonic Participation).⁷ And, to the extent that in-person hearings resume at some point in the future, it is undeniable that the key witnesses are located in Georgia.

CONCLUSION

WHEREFORE, having replied to the PC Venue Motion, Alieria respectfully requests that this Court enter an order (i) dismissing the Involuntary Petition pursuant to the Motion to Dismiss, or, in the alternative, (ii) transferring venue of the above-captioned case to the Georgia Court, and (iii) granting such other and further relief as may be just, equitable and proper.

This 6th day of January, 2022.

⁷ The Petitioning Creditors also argue that it would be "unfair" to require them to hire new counsel in Georgia and wait for its new advisors to "get up to speed" in a new jurisdiction. PC Venue Motion at ¶ 46. That argument is without merit. The Petitioning Creditors' current counsel can certainly participate in the Georgia proceedings without missing a beat, so there is no need to retain new counsel (other than local counsel, which the Petitioning Creditors have already retained and, one would imagine, has already been brought "up to speed.")

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CERTIFICATE OF SERVICE

I, Rachel B. Mersky, hereby certify that on January 6, 2022, I served or caused to be served a correct copy of the foregoing *Objection to Petitioning Creditors' Motion to Transfer Venue of the Later-Filed Voluntary Bankruptcy Cases of The Alieria Companies Inc. and Its Four Affiliates* by the Court's CM/ECF system on all counsel of record registered in this case through CM/ECF and by separate e-mail upon the following:

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January 6, 2022

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