

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

DONALD HARVEY,

Case Number 98-12013

Debtor.

Chapter 7

**DAIMLERCHRYSLER CORPORATION,
f/k/a CHRYSLER CORPORATION,**

Plaintiff, Counter-Defendant,

v.

Adv. Pro. No. 98-5299

DONALD HARVEY,

Defendant, Counter-Plaintiff.

**MEMORANDUM OPINION AND ORDER RE
PLAINTIFF'S MOTION FOR A CHANGE OF VENUE**

The Court conducted a hearing on the Plaintiff's Motion for a Change of Venue on January 12, 1999. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

Currently before the Court is a motion by the Plaintiff, DaimlerChrysler, ("Chrysler"), for a change of venue of this adversary proceeding from the Western District of Tennessee, Eastern Division, to the Eastern District of Michigan, Southern Division. The underlying complaint involves payments the debtor, Donald Harvey, ("Harvey"), received from Chrysler after he was laid off in 1994. Harvey worked for Chrysler for twenty-seven (27) years in Auburn Hills, Michigan. Chrysler alleges that the debtor is obligated to repay these monies to Chrysler and that such repayment obligation gives rise to a non-dischargeable debt under 11 U.S.C. § 523(a).

Section 1412 of Title 28 of the United States Code allows a court to "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." 28 U.S.C. § 1412. A court's decision to transfer venue is a discretionary one. *In re Thomasson*, 60 B.R. 629, 632 (Bankr. M.D.Tenn. 1986). The party moving for a change of venue carries the burden of proof by a preponderance of the evidence. *Id.*; *Burlingame v. Whilden* (*In re*

“Memorandum Opinion and Order re Plaintiff’s Motion for a Change of Venue”

Whilden, 67 B.R. 40 (Bankr. M.D. Fla. 1986).

In considering a motion for a change of venue, courts must weigh and balance the conveniences and/or hardships of the parties. In so doing, courts often consider several factors. These include:

- (1) the proximity of creditors to the court;
- (2) the proximity of the debtor to the court;
- (3) the proximity of necessary witnesses;
- (4) the location of assets;
- (5) the economic administration of the estate;
- (6) relative advantages and obstacles to a fair trial;
- (7) economic harm to a debtor; and
- (8) inability of a party to defend in the new forum.

Whilden, 67 B.R. at 42; *Thomasson*, 60 B.R. at 632. Should the economic harm to a debtor and/or the inability of a party to defend in the other forum weigh heavily in favor of keeping the matter before the original court, the motion for a change of venue will most likely be denied. *Whilden*, 67 B.R. at 42.

In the case at bar, the alleged actions occurred in Michigan. The plaintiff is based in Michigan. The necessary documentation regarding the severance payments is in Michigan. The debtor, however, resides in the Western District of Tennessee, Eastern Division and he is without the financial ability to travel to Michigan to defend the lawsuit. The debtor is also without the financial means to hire local counsel in the Eastern District of Michigan to represent him in the matter. Simply put, the debtor would be unable to defend the suit if venue were transferred. Based on these factors, the Court concludes that the hardships of the debtor which would result if the matter were transferred far outweigh the conveniences and/or hardships of Chrysler. Accordingly, the Court finds that it is not appropriate to transfer venue from the Western District of Tennessee to the Eastern District of Michigan at this time.

III. ORDER

It is therefore **ORDERED** that the Plaintiff’s Motion for a Change of Venue is **DENIED**.
IT IS SO ORDERED.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: February 25, 1999