

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

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**IN RE**

**Ronnie Caldwell,**

**Case No. 01-12162**

**Debtor.**

**Chapter 11**

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**MEMORANDUM OPINION AND ORDER RE  
(1) MOTION TO DISMISS FILED BY THE UNITED STATES TRUSTEE  
and  
(2) MOTION TO DISMISS FILED BY FREDERICK M. CANEER, GREGORY D. KEENUM, &  
RONALD KILGORE**

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The Court conducted a hearing on the Motions to Dismiss filed by the United States Trustee and Frederick M. Caneer, et al, on September 19, 2001. 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.

**I. FINDINGS OF FACT**

Ronnie Caldwell filed the instant Chapter 11 proceeding on May 16, 2001, as an individual doing business as "Major Discount Furniture aka Tiplersville Auction, Auction Outlet, Happy Days Restaurant." The debtor's street address as well as the location of the principal assets of the debtor's business were listed on the petition as 26 Edwards Drive, Jackson, TN 38301. The Debtor's mailing address was listed on the petition as P.O. Box 53, Tiplersville, MS 38674.

According to the debtor's undisputed testimony at the hearing, the debtor conducted business as Ron's Major Discount Furniture in Jackson, Tennessee, during the 180 days preceding the bankruptcy filing. The debtor further testified that he operated Ron's Major Discount Furniture from 1996 up to and through June 2001. Caldwell's Monthly Operating Report for June 2001 shows a \$2000 rental payment which he testified was for the Ron's Major Discount Furniture building. At the end of June, Caldwell's landlord informed him that they had leased the building which housed Ron's Major Discount Furniture to

someone else and Caldwell would have to vacate the premises. Caldwell moved all of Ron's Major Discount Furniture's inventory and assets to a warehouse in Tiplersville, Mississippi, at the end of June 2001.

At his § 341 meeting of creditors, Caldwell testified that he was the sole proprietor of Ron's Major Discount Furniture. He admitted he resides in Tiplersville, Mississippi, and that he has other business interests in Mississippi. Caldwell testified at the hearing on the motions to dismiss that up until the time Ron's Major Discount Furniture was closed in June 2001, it had provided him with the majority of his income. Between 1996 and June 2001, Ron's Major Discount Furniture sold over \$4 million of furniture in Jackson. Caldwell further testified that since he moved his store's assets to Mississippi he no longer has any assets in Madison County.

## **II. CONCLUSIONS OF LAW**

Venue of bankruptcy cases is controlled by 28 U.S.C. § 1408 which provides as follows:

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-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. Venue in the district in which the debtor filed his bankruptcy petition is presumed to be proper. *In re Peachtree Lane Assoc., Ltd.*, 150 F.3d 788, 792 (7<sup>th</sup> Cir.1998). A party wishing to challenge venue bears the burden of establishing that venue is improper by a preponderance of the evidence. *Id.* Subsections (1) and (2) of § 1408 are not mutually exclusive and either subsection may provide a basis for venue. As was discussed at the hearing in this matter, Caldwell originally used § 1408(2) as his basis for venue; however, because the case he was relying on was subsequently dismissed, § 1408(2) could not provide him with venue. As a result, the Court will analyze the venue issue under 28 U.S.C. § 1408(1).

As the Court has previously recognized, "[t]he four tests for venue, domicile, residence, principal place of business in the United States, and principal assets in the United States, are given in the alternative. Any of the four is jurisdictionally sufficient." *In re Gurley*, 215 B.R. 703, 707 (Bankr. W.D.Tenn. 1997). Determining the location of the debtor's domicile, residence, principal place of business or principal assets is a question of fact. *In re Commonwealth Oil Ref. Co.*, 596 F2d 1239, 1241 (2d Cir. 1990). "A sole proprietor does business where that business is located." *Gurley*, 215 B.R. at 708 (referring to 1 Norton Bankruptcy Law and Practice 2d § 19:8, p. 19-19).

In the case at bar, the debtor's undisputed testimony was that he conducted business as Ron's Major Discount Furniture in Jackson, Tennessee, from 1996 until June 2001. Caldwell was the sole proprietor of that business during the 180 days preceding the filing of his bankruptcy petition. The assets of Ron's Major Discount Furniture were located in Jackson during the relevant 180 day time period. As a result of these facts, the Court finds that venue is proper in this district. The motions to dismiss will be denied.

### **III. ORDER**

It is therefore **ORDERED** that:

(1) the Motion to Dismiss filed by the United States Trustee is **DENIED**.

(2) the Motion to Dismiss filed by Frederick M. Caneer, Gregory D. Keenum, & Ronald Kilgore is **DENIED**.

**It is so ordered.**

**By the Court,**

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

**Date: October 10, 2001**