


SO ORDERED.

SIGNED this 10th day of February, 2022.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
Amy Parsley Allen,)	Case No. 21-50752
)	
Debtor.)	Chapter 13
)	

ORDER
DENYING SECU’S MOTION TO DISMISS AND GRANTING THE ALTERNATIVE
MOTION FOR CHANGE OF VENUE

THIS MATTER came before the Court on the Objection to Venue and Motion to Dismiss Case or, in the Alternative, Motion for Change of Venue (Docket No. 12, the “Motion”) filed by State Employees’ Credit Union (“SECU”). SECU seeks dismissal of this case under 28 U.S.C. § 1406(a) and Federal Rule of Bankruptcy Procedure 1014 because it alleges that the Debtor filed the case in an improper venue. Alternatively, SECU requests that the case be transferred to the proper venue, the United States Bankruptcy Court for the Western District of North Carolina. For the reasons stated below, the Court will deny SECU’s request to dismiss and transfer the case to the Western District of North Carolina.

BACKGROUND

The Debtor commenced this case on December 13, 2021, by filing a voluntary petition for relief under chapter 13 of the Bankruptcy Code (Docket No. 1). On page 2 of the petition, in response to the prompt “Why you are choosing this district to file for bankruptcy,” the Debtor wrote, “Debtor files in MDNC for convenience & believing creditors have no objection.” However, in response to the prompt “Where you live,” the Debtor entered the address 74 Eastmoor Drive, Asheville, North Carolina, which is located in Buncombe County and within the Western District of North Carolina. Shortly after the filing of the case, SECU filed the instant Motion under § 1406(a) to dismiss this case or transfer it to the proper venue.

The Court held a hearing on the Motion on January 19, 2022, at which the Debtor expressed her opposition to the Motion’s request for a dismissal, and the hearing was continued to give the parties an opportunity to present evidence and file supplemental briefs. The Debtor filed a Brief in Support of Transfer on January 30, 2022 (Docket No. 19, the “Response Brief”), conceding that venue was not proper under § 1408 but opposing dismissal of her case. Instead, the Debtor consented to a transfer of the case. At the hearing on February 2, counsel for SECU, Craig S. Haskell, and counsel for Debtor, Benjamin Busch, appeared. The Assistant Bankruptcy Administrator, Robert E. Price, Jr., and the Chapter 13 standing trustee, Kathryn Bringle, also appeared but did not take a position on SECU’s requested relief. The Debtor was also present.

At the hearing, the Debtor testified as to the circumstances of her previous bankruptcy filing, those of her spouse as a sole debtor, and her decision to file in the Middle District of North Carolina. The Debtor testified that she believed her previous joint case, No. 11-0971 in the United States Bankruptcy Court for the Western District of North Carolina, was severely mismanaged by counsel, resulting in mortgage arrears to SECU not being paid. The case was converted from chapter 13 to chapter 7, then back to chapter 13, without proper treatment of SECU's claim. The Debtor also testified that she found it difficult to contact her attorney and, ultimately, he moved to a different state and withdrew from the case.

The Debtor also testified that the third case, No. 17-10161 in the Western District, filed by her spouse as the sole debtor, failed because the Debtor and her spouse were directly impacted by the COVID-19 pandemic and fell behind on plan payments. The Debtor filed this bankruptcy petition to try one last time to save her home, and she chose her current bankruptcy counsel based upon a recommendation by her prior counsel, who was no longer available. On the advice of current counsel, she filed this case in the Middle District of North Carolina, without believing venue would be an issue. Counsel confirmed at the hearing that he advised the Debtor that venue objections were rarely filed and the Middle District was more convenient.

After hearing arguments from counsel and testimony from the Debtor, the Court took the matter under advisement.

DISCUSSION

The parties agree that 28 U.S.C. § 1408 governs proper venue in this bankruptcy case and that § 1408's mandatory venue requirements, *see In re Zagaroli*, No. 18-50524, 2018 WL 3486767, at *1 (Bankr. M.D.N.C. July 18, 2018), were not met by filing the petition in the Middle District. The parties dispute, however, whether the Court should dismiss this improperly venued case or transfer it to the proper venue. The matter is governed by § 1406(a), which states that a court shall dismiss an improperly venued case, "or if it be in the interest of justice, transfer such case to any district ... in which it could have been brought." 28 U.S.C. § 1406(a). A survey of cases in the Fourth Circuit shows that the overwhelming majority of courts favor transfer over dismissal. *See, e.g., In re Zagaroli*, No. 18-50524, 2018 WL 3486767, at *2 (Bankr. M.D.N.C. July 18, 2018); *In re Perkins*, No. 13-30747, 2013 WL 1934936, at *2 (Bankr. W.D.N.C. 2013); *In re Kight*, No. 11-01034-DD, 2011 WL 976630, at *2 (Bankr D.S.C. Mar. 18, 2011); accord 14D CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3827 (4th ed. 2021) ("In most cases of improper venue [under § 1406(a)], the courts conclude that it is in the interest of justice to transfer to a proper forum rather than to dismiss the litigation."). Transfer may only occur if the Court finds it is in the interest of justice, *see Thompson v. Greenwood*, 507 F.3d 416, 421 (6th Cir. 2007) (citing 28 U.S.C. § 1406(a)), a determination committed to the Court's sound discretion. *See In re Hall*, 939 F.2d at 804.

This interest of justice analysis is similar to that under § 1412 and considers factors such as whether:

(i) transfer would promote the economic and efficient administration of the bankruptcy estate; (ii) the interests of judicial economy would be served by the transfer; (iii) the parties would be able to receive a fair trial in each of the possible venues; (iv) either forum has an interest in having the controversy decided within its borders; (v) the enforceability of any judgment would be affected by the transfer; and (vi) the plaintiff's original choice of forum should be disturbed.

In re Silicon Valley Innovation Co., No. 12-52706-ASW, 2012 WL 3778853, at *5 (Bankr. N.D. Cal. Aug. 30, 2012) (citing *In re Dunmore Homes, Inc.*, 380 B.R. 663, 671–72 (Bankr. S.D.N.Y. 2008)). Because this inquiry is a “broad and flexible standard,” the Court may also consider other factors. *Silicon Valley*, 2012 WL 3778853, at *4; see *In re Enron Corp.*, 274 B.R. 327, 343 (Bankr. S.D.N.Y. 2002). One such factor is whether the Debtor filed her petition in bad faith, which would weigh against transfer. See *In re Hall*, 939 F.2d at 806. But contrary to the Debtor’s assertions, a finding of bad faith is not required to dismiss a case.

Here, the Court believes efficient administration and judicial economy favor transfer, as the Western District of North Carolina is familiar with the Debtor and her spouse’s previous bankruptcy filings and previous counsel, as well as contested matters relating to the Property. The Western District also has an interest in having the bankruptcy case heard in its court, as all the Debtor’s assets in the bankruptcy estate are located within its jurisdiction. Transfer will save the Debtor the time and money required to file a new petition

and all required schedules. *In re Swinney*, 300 B.R. 388, 393 (Bankr. M.D. Ga. 2003).

Additionally, the Court cannot overlook the Debtor's credible and unrebutted testimony that the Debtor chose her present counsel on the advice of her prior counsel, who then advised her that filing in the Middle District was not generally an issue. Given the circumstances, the Court concludes that justice would be served by transferring the case rather than penalizing the Debtor with the ramifications of an additional filing. *See* 11 U.S.C. § 362(c).

Lastly, the Court also addresses SECU's insinuations that the Debtor filed her case in the Middle District not in good faith, rendering dismissal the more appropriate option. As discussed above, courts may consider bad faith as a factor within the broader interest of justice analysis when faced with an improperly venued case. *See In re Hall*, 939 F.2d at 806. But a party requesting dismissal based on bad faith carries the burden of proof, *In re Ballantine*, 605 B.R. 710, 714 (Bankr. M.D.N.C. 2019), and should properly allege and demonstrate bad faith. Instead, SECU's insinuations of impropriety in its Motion and arguments do not constitute clear allegations of bad faith, so the issue is not properly before the Court. SECU argues that transfer "may ultimately be an act of futility" given the failure of the Debtor and her spouse's previous bankruptcy filings, all of which were dismissed prior to discharge (Docket No. 12, ¶ 7). SECU's counsel also noted that mortgage arrears are higher now than when the first case was filed in 2011, standing at almost

\$90,000. All of these issues are more properly addressed by the bankruptcy court in the Western District.

Accordingly, after balancing the relevant factors, the Court finds the interests of justice weigh in favor of transferring this case to the Western District of North Carolina.

CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED that SECU's request to dismiss this case is DENIED. However, SECU's request for alternative relief in the form of a transfer of this case to the United States Bankruptcy Court for the Western District of North Carolina is GRANTED.

IT IS FURTHER ORDERED that this case be transferred to the United States Bankruptcy Court for the Western District of North Carolina.

END OF DOCUMENT

PARTIES TO BE SERVED

Amy Allen (Ch.13)

21-50752

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via cm/ecf

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