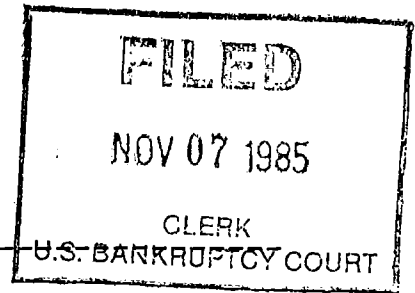


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

REGINALD A. GASSEN

LF7-85-00008

Debtor.

GRACE DELUNA, et al.,

Plaintiff Class Members,

Adversary Number:

KENT BOCKES, et al.,

85-0090-7

Additional Plaintiffs,

v.

REGINALD GASSEN
LAKESIDE PARTNERS,

Defendants.

ORDER DIRECTING TRANSFER OF ADVERSARY PROCEEDING

Plaintiffs Grace Deluna, et al., have moved this court for an order transferring this adversary proceeding to the Bankruptcy Court for the Northern District of Iowa located in Cedar Rapids, Iowa. A telephonic hearing on this motion was held November 4, 1985. The defendants, Reginald A. Gassen and Lakeside Partners, appeared by Attorney Donald J. Harman and plaintiffs by Attorney Paul Papak.

Pursuant to Bankruptcy Rule 7087 and 28 U.S.C. § 1475 a bankruptcy court may transfer a proceeding arising under or related to a bankruptcy case to a bankruptcy court for another

district in the interest of justice and for the convenience of the parties. Courts have considered numerous factors in determining whether a particular proceeding should be transferred including: 1) the relative ease of access to sources of proof; 2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining attendance of willing witnesses; 3) the enforceability of judgment if one is obtained; 4) relative advantages and obstacles to a fair trial; 5) a local interest in having localized controversies decided at home; and 6) a trial in the state whose laws will govern the action. In re Birchminister Corp. of California, 6 B.R. 258, 260 (Bankr.E.D.Pa. 1980).

This adversary proceeding involves a landlord-tenant dispute under Iowa law. Plaintiffs are 36 former tenants who resided in Iowa apartments owned by the defendants. They allege that defendants failed to return rental deposits in violation of Iowa law. An Iowa District Court entered a default judgment in favor of a portion of the 36 plaintiffs on October 26, 1984. Those plaintiffs argue that this judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(4). The remaining plaintiffs claim similar debts and also contend that those debts are nondischargeable. Plaintiffs' rental deposit claims total \$15,338.50, and range from \$118 to \$540.

An initial factor to be considered in deciding this motion is the convenience of the parties. Undoubtedly, the defendants will be somewhat inconvenienced if this case is transferred to

Iowa. That inconvenience should not be significant since in all likelihood only defendants' attorney will be required to travel to Iowa. Witnesses most likely required by defendants would be the individuals who managed the apartments. Those individuals are probably Iowa residents. Regardless of this, any inconvenience to defendants is overwhelmingly outweighed by the burden of forcing plaintiffs to litigate in Wisconsin. The plaintiffs would each have to travel to Wisconsin to testify. Many plaintiffs would probably be financially or logistically unable to make such a trip.

Another factor which this court must assess is the location of the dispute. Under the circumstances of this case it would be inequitable to allow defendants to avoid having this dispute adjudicated in its place of origin. Defendants willingly did business in Iowa. Any necessary witnesses, for both sides, would in all probability reside in Johnson County, Iowa, where the apartments are located. If this case is not transferred, many plaintiffs may be unable to pursue their claims.

A final factor relevant to the court's decision is the fact that this proceeding involves Iowa law. Whether rental deposits have impermissibly been withheld is most certainly a matter of Iowa law. Iowa law will also be a significant consideration on the issue of dischargeability. Plaintiffs assert that defendants occupied a fiduciary capacity by virtue of Iowa Code § 562A.12 (1985). The law of Iowa can best be interpreted by a court presiding in that state. A state has an understandable interest

in having its laws, whenever feasible, interpreted by judges from that state. Transfer of this matter would serve that legitimate interest.

Based on the factors discussed above, the court concludes that transfer of this matter to the Northern District of Iowa should be ordered in the interest of justice and for the convenience of the parties. Such a transfer will not hinder the expeditious disposition of the underlying bankruptcy case or this matter itself.

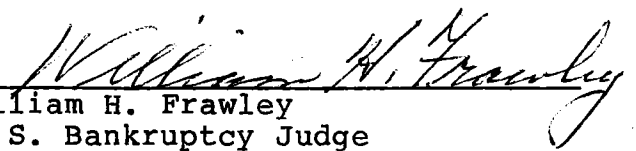
This opinion shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT this adversary proceeding shall be transferred to the Bankruptcy Court for the Northern District of Iowa located in Cedar Rapids, Iowa.

Dated: November 7, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attoreny Donald J. Harman
Attorney Paul Papak *ca*