

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

JUL 21 1986

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

RICHARD V. GOSS
DAISY MAE GOSS

LF7-86-00127

Debtors.

RICHARD V. GOSS,

Plaintiff,

Adversary Number:

v.

86-0119-7

WISCONSIN OPTICAL SERVICE, S.C.,

Defendant.

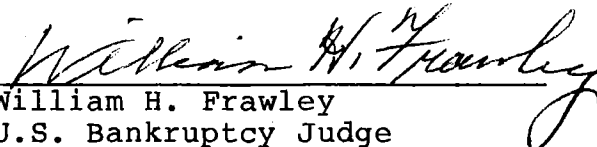
ORDER

The court having this day entered its memorandum opinion,
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the motion of the
Wisconsin Optical Service, S.C., requesting the court to
reconsider its Order of June 30, 1986, denying Wisconsin Optical
Service's motion for change of venue is hereby denied.

Dated: July 21, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney William Rinehart
Attorney Melvin L. Hoffman

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MEMORANDUM DECISION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The Wisconsin Optical Service, S.C. (WOS), by William Rinehart, has filed this motion requesting the court to reconsider its Order of June 30, 1986, denying WOS's motion to change venue pursuant to 28 U.S.C. § 1409(b). The debtor, Richard Goss, is represented in this proceeding by Melvin L. Hoffman. The court has been fully advised in the premises and finds that this motion to reconsider should be denied.

The general rule is that a proceeding under Title 11 or arising in or related to a case under Title 11 may be commenced in the district in which the case is pending. 28 U.S.C. § 1409(a). An exception to this general rule is provided in

cases where a trustee commences a proceeding to recover a money judgment or property worth less than \$1,000, or a consumer debt of less than \$5,000. 28 U.S.C. § 1409(b). In such cases proper venue is in the district in which the defendant resides.

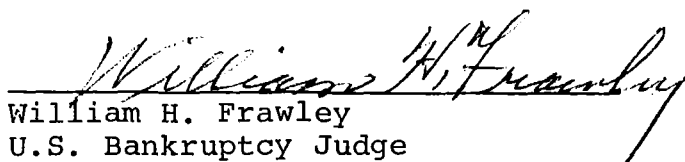
WOS argues that 28 U.S.C. § 1409(b) should also apply to proceedings commenced by the debtor. WOS cites case law supposedly in support of this proposition. In re Greiner, 45 B.R. 715 (Bankr. D. N.D. 1985). However, Greiner only stands for the proposition that, "[s]ection 1409 contains a mandatory exception in the case of recovery of small claims by a trustee." Id. at 716 (emphasis added). The case at hand involves a proceeding commenced by the debtor.

WOS cites persuasive authority suggesting that venue in proceedings initiated by a debtor is provided under 28 U.S.C. § 1409(a). 1 King, Collier on Bankruptcy 3-107 (15th ed. 1979). The court agrees. Venue for this proceeding initiated by the debtor is provided for under the general provision of 28 U.S.C. § 1409(a); and the exception provided by 28 U.S.C. § 1409(b) does not apply. It is the conclusion of the court that WOS's motion for reconsideration should be denied.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

Dated: July 21, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge