

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

LOUISIANA INTERESTS, INC.,

CASE NO. 03-42256-WSS

Debtor.

Chapter 11

**ORDER DENYING FIRST BANK AND TRUST'S
MOTION TO DISMISS OR TRANSFER VENUE**

Bruce Fehr, Counsel for the Debtors
T.A. Borowski, Counsel for First Bank and Trust
Charles Edwards, U.S. Trustee

This matter is before the Court on First Bank and Trust's motion to dismiss or transfer venue. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

The Debtor, Louisiana Interests, Inc. ("LI"), filed the present chapter 11 petition on August 18, 2003. LI is a Louisiana corporation formed in 1993. LI and its affiliates own and operate bars throughout the Southeast. In LI's disclosure statement, it identifies its sole business as operation of a bar named "Oz" located at 800 Bourbon Street, New Orleans Louisiana. LI's President, John Chisholm ("Chisholm"), testified that the company also plans Memorial Day weekend entertainment events at MGM and Disney World in Orlando, Florida. LI owns no property; the building for "Oz" is leased. The corporate offices for LI are leased in Pensacola, Florida. The books and records for LI are also kept in Pensacola, Florida. LI's 2002 tax return show the company's business address as P.O. Box 1272, Pensacola Florida. Chisholm testified that LI moved its business offices to Pensacola in February 2003. Before the move, LI's offices

were located in New Orleans and Mississippi. The only LI assets located outside Louisiana are holiday decorations for “Oz”. All other lighting and sound equipment listed in LI’s disclosure statement is located on the premises of “Oz”. LI has two bank accounts which are located in Pensacola, Florida. Chisholm lives in Florida, and LI’s other partner lives in Mississippi. Approximately half of LI’s creditors are in Louisiana, and the rest of creditors range throughout the United States.

First Bank brings its motion to dismiss or transfer venue under Bankruptcy Rule 1014(a)(1)-(2), which provides that if a bankruptcy petition is filed in a proper district, the case may be transferred to another district in the interest of justice or for the convenience of the parties. If the petition is filed in an improper district, the court may dismiss the case or transfer the case to another district if the transfer is in the interest of justice or for the convenience of the parties. To apply this rule, the court must first determine if venue is proper for this debtor in the Northern District of Florida. Section 1408(1) of Title 28 governing venue provides that chapter 11 case may be filed in the district court of the district

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-and-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; . . .”¹

LI maintains that its principal place of business is Pensacola, Florida where its corporate office is located and one of its principals lives. LI’s books and records as well as its accountant

¹The parties stipulated at the hearing that §1408(2) did not apply in this case because the chapter 11 petition of Emerald City of Pensacola, Inc., LI’s alleged affiliate, was filed shortly after LI’s case.

are also in Pensacola. First Bank counters that the debtor has no connection to the Northern District of Florida, aside from the fact that one of its principals lives in the district. All of its assets and operations are located in New Orleans, Louisiana.

The evidence shows that LI's corporate office and its corporate books and records are located in this district. LI's accountant maintains those books and records in this district. LI cited court decisions holding that a business's principal place of business for venue purposes is where business decisions are made, not necessarily where its major assets are located. *In re Suzanne de Lyon, Inc.*, 125 B.R. 863, 867 (Bankr. S.D.N.Y. 1991). "[A] corporation's principal place of business is the place where general supervision is given. . . ." *In re the Newport Creamery, Inc.*, 265 B.R. 614, 617 (Bankr. M.D. Fla. 2001). While the facts in this case are not clear cut, the court finds that LI's principal place of business is Pensacola, Florida, and has been for the majority of the 180 days prior to its filing. Therefore, venue for the chapter 11 petition is proper.

Having found that venue is proper in this case, the court must now decide if transfer to another district is in the interest of justice or for the convenience of the parties as required by Bankruptcy Rule 1014(a)(1). There are several factors to consider when deciding whether a case should be transferred to another district:

- (1) the proximity of creditors of every kind to the Court;
- (2) the proximity of the debtors to the Court;
- (3) the proximity of the witnesses necessary to the administration of the estate;
- (4) the location of the assets;
- (5) the economic administration of the estate; and
- (6) the necessity for ancillary administration if bankruptcy should result.

In re Townsend, 84 B.R. 764, 767 (Bankr. N.D. Fla. 1988).

As stated above, the proximity of the LI's principal place of business counts in

favor of keeping the case in this district. LI's principal, records and accountant all are located in this district, and will be key in formulating a chapter 11 plan. In addition to the location of "Oz" in Louisiana, First Bank points out that over half of the debtor's twenty largest creditors are in Louisiana. None are located in this district. There are also several Louisiana taxing authorities listed in LI's petition, although none have moved to change the venue of the case. Finally, prior to February or March 2003, LI's book and record keeping was done in New Orleans, and this past accounting history will also be pertinent to the debtor's chapter 11 plan.

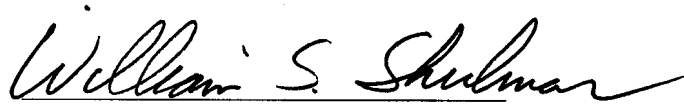
The court acknowledges that one of LI's largest assets and many of its creditors are located in Louisiana. However, there are also many unsecured creditors located around the United States for whom the Northern District of Florida is no closer than Louisiana. The location of "Oz" is not significant as a proximity consideration because the bar's books and records are now maintained in Pensacola, and these financial records are more important to the chapter 11 plan than the actual premises.

First Bank argues that the creditors will be burdened by increased costs for traveling to Florida and having to find local counsel. It is true that creditors may incur additional expense. However, LI has chosen a proper venue for its petition, and that choice deserves due deference. As LI points out in its post-trial brief, transferring this case to Louisiana will simply shift the burden and inconvenience from the Louisiana creditors to the debtor, the party in the weakest financial condition, and the least able to bear such costs. The court handles many motions, status conferences and non-evidentiary hearings by telephone, so that travel to the Northern District of Florida can be kept to a

minimum. The court's electronic case filing system will also help alleviate the need for creditors to travel. After weighing the factors to determine if venue should be transferred, the Court finds that transfer is not in the interest of justice or the convenience of all the parties, and therefore, First Bank's motion to dismiss or transfer should be denied. It is hereby

ORDERED that First Bank and Trust's motion to dismiss or transfer venue is **DENIED**.

Dated: March 26, 2004

A handwritten signature in black ink, reading "William S. Shulman". The signature is written in a cursive style with a long, sweeping tail.

WILLIAM S. SHULMAN
CHIEF U.S. BANKRUPTCY JUDGE