

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
	.	Case No. 15-10047 (KG)
CAESARS ENTERTAINMENT	.	
OPERATING COMPANY, INC.,	.	Courtroom No. 3
	.	824 Market Street
	.	Wilmington, Delaware 19801
	.	
Alleged Debtor.	.	Wednesday, January 28, 2015
.	11:05 a.m.

TRANSCRIPT OF COURT DECISION RE:
MOTION OF THE PETITIONING CREDITORS
FOR ORDER ESTABLISHING VENUE
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 11:05 a.m.)

2 THE COURT: Good morning. This is Judge Gross on the
3 telephone.

4 Because it is absolutely essential that the Court rule
5 promptly, so the Caesars Entertainment cases can get underway
6 in earnest, I will be providing a summary ruling on venue, to
7 be followed, as soon as I am able, with a written decision.
8 The effort of the parties and the importance of the issue
9 warrant a more detailed analysis than time permits today, and
10 one will be forthcoming.

11 It is my practice to announce the ruling at the
12 outset, so parties are not twisting in the wind, as I go
13 through the introductory material.

14 I have determined that the cases will proceed in the
15 Northern District of Illinois. Here is my very abbreviated
16 ruling. I will issue an order today. It is -- the debtors and
17 its creditors, it is in their best interest that the Court rule
18 promptly.

19 The Court is deciding the forum in which the Chapter
20 11 case of Caesars Entertainment Operating Company, Inc. will
21 proceed. And I will refer to the "debtor" or "CEOC." The
22 choices presented to the Court are this district, in which CEOC
23 is incorporated, and where certain creditors of debtor, who
24 I'll refer to as the "petitioning creditors," filed an
25 involuntary petition on January 12, 2015, where, in the

1 Northern District of Illinois, the "Illinois Court," where
2 debtor and affiliates, three days later, filed voluntary
3 Chapter 11 petitions. And I'll refer to those cases as the
4 "Illinois cases."

5 For the reasons which follow, to be expanded in a
6 written opinion, the Court will direct that the case proceed
7 before the Illinois Court. The court is making its
8 determination pursuant to Bankruptcy Rule 1014(b), after taking
9 into account the facts discussed herein and pertinent case law.

10 The Court is now addressing the unusual situation of a
11 first-filed involuntary case pending before it, and a voluntary
12 case pending before the Illinois Court, both involving the same
13 debtor; namely, CEOC.

14 Immediately upon the filing of the voluntary petitions
15 of CEOC and its affiliates, the petitioning creditors moved to
16 stay CEOC from proceeding before the Illinois Court. Following
17 a hearing, the Court stayed CEOC from proceeding before the
18 Illinois Court, pursuant to Section 105(a) of the Bankruptcy
19 Code and Bankruptcy Rule 1014(b), until the Court determined
20 the venue in which the Chapter 11 case would proceed.

21 At the same time, the Court permitted the debtors to
22 seek from the Illinois Court limited relief on its first-day
23 motions, which would enable debtor and its affiliates to
24 continue to operate.

25 The Court has now conducted two days of hearings on

1 venue, as the Court with the first-filed case, which is, of
2 course, the involuntary case.

3 The venue analysis begins with the applicable statutes
4 and rule. The bankruptcy venue statute is 28 U.S.C., Section
5 1408. As CEOC is incorporated under the laws of the State of
6 Delaware, venue for the involuntary petition is proper in this
7 Court, pursuant to Section 1408(1).

8 Venue for the Illinois cases is, likewise, proper in
9 the Northern District of Illinois, pursuant to Section 1408(2),
10 since at least one of the Illinois debtors is incorporated
11 under the laws of the State of Illinois, and filed its
12 voluntary bankruptcy petition prior to any of the Illinois
13 debtors which are not incorporated in Illinois.

14 A sister provision to Section 1408, which is 28
15 U.S.C., Section 1412, provides that the Court, quote:

16 "-- may transfer a case or proceeding under Title 11
17 to a District Court for another district in the
18 interest of justice or for the convenience of
19 parties."

20 While Section 1412 does not directly address the
21 circumstances before the Court; namely, two bankruptcy
22 petitions pending against the same debtor in different
23 jurisdiction, Federal Rule of Bankruptcy Procedure 1014(b)
24 provides more precise guidance, stating in part:

25 "If petitions commencing cases under the Code or

1 seeking recognition under Chapter 15 are filed in
2 different districts, by, regarding, or against, (1)
3 the same debtor, (2) a partnership and one or more of
4 its general partners, (3) two or more general
5 partners, or (4) a debtor and an affiliate, the Court
6 in the district in which the first-filed petition is
7 pending may determine, in the interest of justice or
8 for the convenience of the parties, the district or
9 districts in which any of the cases should proceed."

10 In short, under Sections 1408 and 1412 and Rule 1014,
11 the involuntary petition and Illinois cases may proceed before
12 either this Court or the U.S. Bankruptcy Court for the Northern
13 District of Illinois.

14 It is up to this Court, as the Court in which the
15 first-filed bankruptcy petition is pending, to make the
16 determination pursuant to Rule 1014 as to the jurisdiction in
17 which the involuntary petition and Illinois cases should
18 proceed.

19 "The decision of whether to transfer venue is within
20 the Court's discretion, based on an individualized,
21 case-by-case analysis of convenience and fairness."

22 That is a quote from In Re Enron, and in concurrence
23 is In Re Patriot Coal Corp., both cases out of the Southern
24 District of New York.

25 As a preliminary matter, courts have consistently

1 commented that the debtor's choice of forum is entitled to a
2 certain level of deference if venue is proper under Section
3 1408. For that proposition see Enron and this Court's decision
4 in In Re Rehoboth Hospitality, LP.

5 In Enron, however, as well as the other cases cited by
6 the debtor for this proposition, the courts were addressing a
7 motion to transfer venue of a voluntary bankruptcy proceeding,
8 where there was no proceeding, voluntary or involuntary,
9 pending in another district.

10 The level of deference a debtor's choice of forum is
11 entitled to is less clear in the situation where an involuntary
12 bankruptcy petition was filed against the debtor in a different
13 venue prior to the debtor filing its voluntary petition. The
14 Court is mindful of the fact that it has not yet entered an
15 order for relief with respect to the involuntary petition. But
16 the fact is that the petitioning creditors filed the
17 involuntary petition prior to the debtor filing its voluntary
18 petition in the Northern District of Illinois. Also, a
19 substantial majority of creditors support venue in this
20 district; that is, the District of Delaware.

21 The Court has more closely scrutinized the debtor's
22 choice in forum than it would in a traditional Section 1412
23 analysis, as conducted in Enron.

24 Rule 1014, tracking the language of Section 1412, sets
25 forth a flexible, dual-track test, in which this Court may

1 determine the venue in which the voluntary petition and
2 Illinois cases should proceed, based on, one, the interest of
3 justice; or, two, the convenience of the parties. Quote:

4 "It has been observed that Section 1412 is written in
5 the disjunctive, making transfer of venue appropriate,
6 either in the interest of justice, or for the
7 convenience of the parties, and that this statutory
8 provision creates two distinct analytic bases upon
9 which transfer of venue may be grounded."

10 That quote is from In Re Qualteq, Inc., a decision of
11 this Court in February of 2012.

12 For the reasons set forth, which the Court will
13 discuss, the Court finds that the interest of justice narrowly
14 supports a determination that the involuntary petition and
15 Illinois cases should proceed before the Illinois Court.

16 First, the convenience of the parties.

17 "When considering the convenience of the parties for
18 purposes of transfer of venue, either under Section
19 1412, or Rule 1014, courts often look to the factors
20 set forth in the United States Court of Appeals for
21 the Fifth Circuit's COR Co decision. These factors
22 include: The proximity of creditors of every kind to
23 the court, the proximity of the debtor to the court,
24 the proximity of the witnesses necessary to the
25 administration of the estate, the location of the

1 assets, and the economic administration of the
2 estate."

3 That is Commonwealth of Puerto Rico v. Commonwealth
4 Oil Refining Co., which the Court has referred to as "COR Co,"
5 596 F.2d 1239, at Page 1247. In accord is Enron, 274 B.R., at
6 373; also, In Re Innovative Company, 358 B.R. 120, at Page 126.

7 The parties agree that the sixth COR Co factor, the
8 necessity for ancillary administration if liquidation should
9 result, is inapplicable here.

10 The Court's decision does not turn on the convenience
11 of the parties. In this day of law firms with multiple offices
12 across the nation, convenient and accessible airports, access
13 to information and court dockets in every lawyer's pocket, it
14 is fair to say that both this Court and the Northern District
15 of Illinois are convenient forums. Certainly, both this Court
16 and the Illinois Court are, on balance, equally convenient to
17 the lawyers who represent the key constituencies, and who
18 regularly travel wherever their busy caseloads take them.
19 Thus, convenience to the parties is a push as a factor.

20 Similarly, the distribution of the debtor's businesses
21 does not strongly favor Delaware over Chicago, or vice-versa.
22 The information and evidence which the parties amassed,
23 comparing gaming square feet, number of gaming tables, number
24 of hotel rooms, number of employees, earnings at the various
25 casinos does not inform the Court's decision. The Court could

1 readily apply the facts to support a finding on either side of
2 the venue ledger. Were Las Vegas under consideration, the
3 Court might very well find the balance tipping in favor of Las
4 Vegas, but that is not the case here. Thus, the Court
5 concludes that the analysis of the convenience of the parties
6 is not determinative of the venue dispute.

7 The Court must, therefore, turn to the second
8 consideration for determining venue under Rule 1014(b); that
9 is, the interests of justice. Ultimately, the overriding
10 consideration in the Court's decision is that the debtor chose
11 the Illinois Court as the venue for its voluntary filing. And
12 under the unique circumstances of this case, that decision is
13 entitled to just enough deference afforded a debtor's judgment
14 of in what venue it will best be able to reorganize its affairs
15 to permit debtor to proceed in its chosen forum.

16 The petitioning creditors filed first in Delaware and
17 are strongly supported by other junior creditors and first lien
18 bank lenders in their choice of forum. However, the
19 involuntary petition was clearly an anticipatory filing. The
20 petitioning creditors knew that CEOC would be filing for
21 bankruptcy in the coming days in the Illinois Court and, with
22 that knowledge, raced to the courthouse first.

23 Even without debtor's strident lecture to the Court,
24 the Court has concern that rewarding the petitioning creditors'
25 preemptive race to file first in another forum would be bad

1 precedent for future bankruptcy cases and the ability of
2 debtors to openly negotiate with creditors. It is contrary to
3 the interests of justice to favor the petitioning creditors
4 under such a scenario.

5 The debtors also demonstrated that their decision to
6 file in the Illinois Court, rather than Delaware, was premised
7 on their analysis of different applications of the law in the
8 circuits in which the Delaware and Illinois Court operate, and
9 that those differences could benefit debtors' reorganization
10 efforts. Whether debtors are correct in their analysis remains
11 to be seen, of course, but debtors did provide justification
12 for their choice of forum.

13 The Court is simply not able, based on the record for
14 a venue determination, to evaluate the fairness of debtors'
15 decision-making process. And even though the decision may
16 appear to have been made to favor non-debtors/insiders, but
17 importantly, the Illinois Court and the learned judge assigned
18 to the case are no less capable and no less available to
19 restrain debtors from reaching their duties and from preventing
20 fraud, should those facts come to the Court's attention.

21 The Court also readily recognized that the debtors'
22 conduct leading to its voluntary filings, on its face, is
23 suspect. There are serious allegations raised, both in the
24 involuntary petition and pending lawsuits, that the debtors'
25 controlling equity holders, Apollo Global Management, LLC, and

1 TPG Capital, LP, engaged in a series of self-dealing
2 transactions, transferring very substantial assets out of the
3 reach of creditors.

4 Indeed, at least one court, the Southern District of
5 New York, held recently that the plaintiff there stated a claim
6 which survived a motion to dismiss; that, in a transaction in
7 August 2014, debtors stripped plaintiffs, holders of notes
8 issued by CEOC and guaranteed by its parent, Caesars
9 Entertainment Corporation, of their guarantees, in violation of
10 the Trust Indenture Act, through payment to favored
11 noteholders. That case is Meehancombs Global Credit
12 Opportunities Master Fund, LP v. Caesars Entertainment
13 Corporation, and the case number is 1-2014-CV-07091.

14 The Court there also found that plaintiffs stated a
15 claim that the parent impermissibly was effecting an out-of-
16 court debt restructuring, which the Trust Indenture Act is
17 designed to prevent. CEOC is now engaged in a restructuring
18 based, in part, on that very August 2014 transaction.

19 The Court is completely confident that, every bit as
20 much as this Court would, the Illinois Court will view debtors'
21 conduct under a magnifying glass, and with the bright light
22 that the petitioning creditors and others will shine on their
23 conduct.

24 The Court is confident that its decision that the
25 Illinois Court is the proper venue in no way reduces the

1 ability of the petitioning creditors and other aggrieved
2 parties to obtain appropriate relief. The Illinois Court is
3 fully capable of recognizing, if they exist, breaches of
4 fiduciary duty and fraudulent activity. In the final analysis,
5 in an unprecedented struggle over the venue of the case, the
6 Court will defer to the debtors' decision.

7 As observed by Judge Chapman in her Patriot Coal
8 decision, a Chapter 11 proceeding is not a two-party dispute,
9 it is not us-versus-them. It is a collective proceeding in
10 which the Bankruptcy Court is charged with applying the
11 Bankruptcy Code and other applicable law to achieve the over-
12 arching goal of Chapter 11 Trustee: To maximize the value of
13 the debtors' estates for the benefit of all stakeholders, and
14 guide the debtors, if at all possible, through Chapter 11 and
15 beyond to emergence as a stronger company, financially and
16 operationally. The Illinois Court is fully capable of that
17 mandate.

18 I will issue an order consistent with this decision,
19 indicating that a written opinion will be forthcoming, lifting
20 the stay of the Illinois case and transferring the involuntary
21 petition to the Illinois Court.

22 I thank the parties for bringing this interesting and
23 challenging matter to me, and wish all well. Thank you,
24 Counsel.

25 (Proceedings concluded at 11:24 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Coleen Rand

January 28, 2015

Coleen Rand, AAERT Cert. No. 341
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