

1 and eighty days immediately preceding
2 such commencement,

3 In the instant case, debtors reside in Temecula, in
4 Riverside County, which is in the Central District of California.
5 28 U.S.C. § 84. There is no contention that they reside or are
6 domiciled in the Southern District. Mr. Malone operates a home
7 inspection service out of their Temecula home, inspecting homes
8 in both Riverside and San Diego Counties - more frequently in the
9 former rather than the latter.

10 The lone claim for proper venue in San Diego is that
11 Ms. Malone is under contract to teach at Santa Fe Christian
12 School in Encinitas, California, which is in San Diego County.
13 She has taught there the past three years on annual contracts.
14 Debtors claim that her employment contract is a "principal asset"
15 in this Chapter 7 case. The trustee counters that the contract
16 is not an asset of the bankruptcy estate, nor is it administrable
17 by the trustee for the benefit of creditors. Rather, it
18 represents potential post-petition revenue which is not property
19 of a Chapter 7 estate.

20 Debtors rely on dictum in In re Berryhill, 182 B.R. 29, 31
21 (Bankr. W.D.TN 1995), suggesting that guaranteed future earnings
22 might constitute a "principal asset". Berryhill actually
23 illustrates the problem of venue because there the debtors
24 resided across the river in Mississippi, but chose to file their
25 Chapter 7 case in Memphis, Tennessee. There, not only were the
26 federal judicial districts different, so also were the states,

1 with likely differences in exemptions and substantive state law
2 impacting property rights. Here, at least the state law is the
3 same, although different districts within states have different
4 procedures, allow different professional fees, and may view
5 substantive legal issues differently.

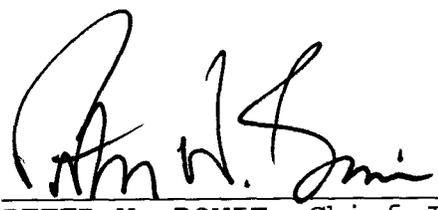
6 In the instant case, the trustee has not shown any
7 particular injury to creditors by allowing venue to remain in
8 this district. Nor is the trustee required to do so. The fact
9 is debtors do not reside in this district. Their over-encumbered
10 house is in the Central District. If the trustee wanted to
11 examine it, the trustee would have to travel out of district,
12 albeit only a mile or so. The debtors argue that having the case
13 in San Diego is more convenient for them, although in a routine
14 Chapter 7 there is little outside the first meeting of creditors
15 that would call for their presence here. It is no answer to say
16 their attorney is in this district, because they made that choice
17 at the outset and cannot bootstrap the choice into a
18 justification for venue.

19 While the Court sees no great harm to the bankruptcy system
20 by allowing this case to remain in this district, the Court is
21 unable to see the future. Congress chose the terms of its venue
22 provision. Debtors have failed to show how they meet the
23 requirements of § 1408. In this Chapter 7 case, Ms. Malone's
24 contract to teach the current school year in San Diego County
25 while commuting daily from the Central District of California
26 does not satisfy the "principal asset" element of § 1408.

1 Accordingly, the trustee's motion should be, and hereby is
2 granted. Under the circumstances of this case, the Court elects
3 to transfer the instant case to the Central District of
4 California.

5 IT IS SO ORDERED.

6 DATED: NOV 30 2010



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26