

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:	§	
	§	
BETTY TARVER,	§	Case No. 04-43068
	§	(Chapter 7)
Debtor.	§	

**ORDER DENYING DEBTOR'S MOTION TO TRANSFER VENUE**

Betty Tarver (the "Debtor") initiated this case by filing a petition for relief under Chapter 13 of the Bankruptcy Code on July 2, 2004. On January 13, 2005, the Court entered an order confirming the Debtor's plan, and on December 2, 2005, the Court entered an order modifying the confirmed plan. On February 15, 2006, the Debtor filed a notice of voluntary conversion to Chapter 7.<sup>1</sup> The Debtor filed a Motion to Transfer Venue on the same date.

In general, a federal case must be filed in the proper district. Section 1406(a) of Title 28 provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district *shall* dismiss or, if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." (Emphasis added.) However, §1406(b) expressly provides that improper venue is a waivable defect: "Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objections to venue."

---

<sup>1</sup> The Debtor's original notice of conversion was dismissed for failure to pay the required \$15 filing fee. The Debtor re-filed the notice on February 21, 2006 [Dkt. # 38].

With regard to bankruptcy cases, there is no requirement that a bankruptcy court *must* dismiss or transfer an improperly venued case. Rather, 28 U.S.C. §1412 provides that “[a] district court *may* transfer a case ... under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties ....” (Emphasis added.) Rule 1014(a) of the Federal Rules of Bankruptcy Procedure addresses motions to dismiss or transfer improperly venued cases as follows:

If a petition is filed in an improper district, on *timely* motion of a party in interest and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be dismissed or transferred to any other district if the court determines that *transfer is in the interest of justice or for the convenience of the parties.*

(Emphasis added.)

As the Fifth Circuit has explained, “[v]enue is a privilege personal to a litigant, and, even when venue is laid in a court where it would otherwise be improper, it may be waived by express agreement or by conduct.” *Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 1068 (5<sup>th</sup> Cir. 1986). In this case, the Debtor voluntarily chose this venue. By signing and filing her original bankruptcy petition, the Debtor declared under penalty of perjury that she resided in Collin County, Texas. *See* Debtor's Bankruptcy Petition, filed 7/2/04, Dkt. # 1. The Debtor's subsequent participation in the case constitutes both consent to this venue and conduct waiving any objection to venue. *See, e.g., In re Fishman*, 205 B.R.

147, 148 (Bankr.E.D.Ark.1997); *In re Moss*, 249 B.R. 200, 203 (Bankr.W.D.Mo. 2000).

In addition, as noted *supra*, Federal Rule of Bankruptcy Procedure 1014(a)(2) requires a *timely* objection to venue in bankruptcy cases. Failure to raise an objection to venue in a timely manner results in a waiver of any objection to venue. *See, e.g., Bryan v. Land (In re Land)*, 215 B.R. 398, 402-03 (8<sup>th</sup> Cir. BAP 1997); *In re McCall*, 194 B.R. 590, 591 (Bankr. W.D. Tenn. 1996); *In re Jones*, 39 B.R. 1019 (Bankr. S.D.N.Y. 1984); *In re Moss*, 249 B.R. 200, 203 (Bankr. W.D.Mo. 2000). What constitutes a timely filing is not governed by a statute or a rule, but depends on the facts and circumstances of the particular case. *Land*, 215 B.R. at 403.

Here, the Debtor waited more than a year and a half to complain that her previous attorney filed her bankruptcy case in the wrong district. In that time, her Chapter 13 plan was confirmed and modified, and her case was converted to Chapter 7 at her request. The Debtor has presented no argument or evidence in her Motion to Transfer Venue that a change of venue would be convenient to her creditors and would promote the interests of justice. *See, e.g., In re Bent, III*, 93 B.R. 329, 331-32 (Bankr. D. Vt. 1988).

Based on the facts and circumstances of this case, the Court finds that the Debtor has waived any objection to venue and that her objections to venue are untimely. For the foregoing reasons, it is

**ORDERED** that the Motion to Transfer Venue [Dkt. # 36] shall be, and it is hereby, **DENIED**.

Signed on 3/23/2006

Brenda T. Rhoades MD  
HONORABLE BRENDA T. RHOADES,  
UNITED STATES BANKRUPTCY JUDGE