

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE

LAURARETTER CROWDER,

Case No. 96-35720X

Debtor.

Chapter 13

LAURARETER CROWDER,
Plaintiff,

V.

Adversary Proceeding No.
96-1357

WALKER AUTO SALES, INC.,
Defendant.

ORDER DENYING TURNOVER AND DISMISSING
BOTH ADVERSARY PROCEEDING AND CASE

On December 5, 1996, the debtor's complaint for turnover of a 1989 Buick Lesabre was heard, with the debtor and her attorney being present in court and the attorney for the defendant participating telephonically. Based upon the debtor's testimony, the statements of counsel for the parties, and the entire case record, the Court denied the debtor's turnover complaint and dismissed both the adversary proceeding and this chapter 13 case. The following contains findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

The debtor filed her voluntary chapter 13 case on November 22, 1996, and the debtor paid the case filing fee. The debtor is represented by Davis Loftin, an attorney practicing in West Memphis, Arkansas. The debtor's chapter 13 petition lists her residence address as 223 Lee Street, Earle, Arkansas, and her testimony at the hearing established that she had been a resident of Arkansas for more than the 180 days immediately preceding the filing of this case. There was

testimony that the debtor was employed by a home health care service in Arkansas, and there was no testimony to establish any basis for venue in the Western District of Tennessee. Notwithstanding the lack of venue in this District, the debtor signed her bankruptcy petition under penalty of perjury, with the venue statement checked that proper venue did exist in this District.

The debtor's attorney candidly admitted that the petition was filed in Memphis because it was quicker to drive across the Mississippi River than to file the case in Little Rock, Arkansas. At the time of filing the case, the debtor and her attorney were apparently concerned about the likelihood that Walker Auto Sales would pick up the debtor's car. No other basis for venue in the Western District of Tennessee was expressed other than the desire to more quickly file the case in the nearest forum. As the Court explained at the hearing, the United States Congress established the basis for venue of bankruptcy cases in 28 U.S.C. § 1408. This debtor did not have any arguable basis for venue in the Western District of Tennessee. Clearly, there have been other debtors in Arkansas that needed to file bankruptcy cases quickly, and there are methods for filing cases quickly in the proper judicial district. The Court finds this debtor's and her attorney's choice of venue of this case to be improper and an abuse of the bankruptcy system.

This improper venue choice has placed this Court in the posture of hearing a turnover complaint on the debtor's request for an emergency hearing. The debtor, her attorney, and the attorney for the defendant have been forced to participate in an unnecessary hearing in this District when the hearing should have been held in the proper Bankruptcy Court in Arkansas. Because of the lack of venue in this District, questions of this Court's subject matter jurisdiction over the automobile were presented.

There were allegations at this hearing about the defendant's violations of the automatic stay,

but because of the obvious lack of venue in this District, this Court did not find it appropriate to address those violations. Thus, the debtor may have suffered from her own incorrect choice of venue. This Court should not allow the debtor willfully to take advantage of an improper venue and then rely upon automatic stay violations.

Notwithstanding the lack of venue, the Court heard proof on the merits of the turnover complaint at the hearing on December 5, 1996. Proof established that the debtor had been driving this particular vehicle for several months on “fictitious” Arkansas tags. She stated that she had not maintained insurance on the vehicle because she was unable to afford both the insurance and the automobile payments. Moreover, the insurance presently in effect has questionable coverage as the application stated that the vehicle was not used in business but the debtor testified that she did use the vehicle in her work. The insurance also did not list Walker Auto Sales as a loss payee. The debtor expressed doubt about her ability to fund a chapter 13 plan that would adequately protect Walker Auto Sales. From the totality of the circumstances, the Court finds that this bankruptcy petition was not filed in good faith, that there are serious doubts about the debtor’s ability to fund her proposed plan and to provide adequate insurance protection on the vehicle, and that the debtor has not established sufficient adequate protection for Walker Auto Sales to justify this Court directing a turnover of the vehicle.

Moreover, the obvious lack of venue prevents this Court from directing a turnover, when that action would be detrimental to the creditor who has objected to the venue of this case. Both a turnover and plan confirmation issues need to be heard in the same court, one that has proper venue over the debtor. Walker Auto Sales raised its objection to venue at the hearing on December 5. The applicable bankruptcy rule provides that upon a timely motion and after a hearing with notice to the

debtor, the court may transfer a case filed in an improper venue or may dismiss that case. FED. R. BANKR. P. 1014(a)(2). Normally, a motion for transfer or dismissal of such a case would be set for a later hearing. However, under the totality of circumstances of this case, the notice to the debtor and her attorney of the Court's immediate consideration of the venue objection was adequate. The debtor and her attorney were aware that a venue choice had been made by them. When venue is used as a strategy by a debtor to take advantage of a creditor, due process demands prompt action. Moreover, an immediate resolution of the venue issue will enable the debtor, if she so chooses, to refile her chapter 13 in a proper venue.

The Court has considered that the debtor paid the filing fee in full upon the filing of this case as a factor weighing in favor of transfer of the case. However, the debtor's, and her attorney's, knowing improper choice of venue in this District weighs in favor of a dismissal of the case. Under the totality of circumstances of this case, a transfer of venue to Arkansas is not "in the interest of justice." FED. R. BANKR. P. 1014(a)(2). Moreover, dismissal will enable the debtor, if she so chooses, to file a new case in a proper venue and such a refiling may enable quicker action by a proper court than would a transfer of venue, which requires administrative and clerical actions by both the transferring and transferee courts.

Based upon the totality of the facts and circumstances in this particular case, the Court finds and concludes, and IT IS SO ORDERED that

1. The debtor's turnover complaint is denied, and this adversary proceeding is dismissed.
2. The debtor's chapter 13 case is dismissed without prejudice to the debtor filing a new case in a proper venue.

The Clerk shall notice all creditors of the dismissal of this chapter 13 case, and a copy of this

Order shall be docketed in both the adversary proceeding and case files.

UNITED STATES BANKRUPTCY JUDGE

Dated: December 10, 1996

Lauraretter Crowder, Debtor
223 Lee Street
Earle, AR 72331

Davis Loftin
Attorney for Debtor
310 Mid-Continent Plaza, Suite 360
West Memphis, AR 72301

Danny W. Glover
Attorney for Walker Auto Sales, Inc.
P.O. Box 373
Wynne, AR 72396

George W. Stevenson
Chapter 13 Trustee
200 Jefferson Ave., Suite 1113
Memphis, TN 38103