



SO ORDERED.

SIGNED this 27th day of August, 2018.

Catherine R Aron

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON SALEM DIVISION

In re:)	
)	
)	
John Michael Miles and)	Case No. 18-50403
Gennelle Latiese Miles,)	
)	
Debtors.)	
_____)	

ORDER DENYING MOTION TO DISMISS OR CHANGE VENUE

THIS CASE came before the Court on August 22, 2018, in Winston-Salem, North Carolina, upon the Motion by First New York Federal Credit Union to Dismiss or Change Venue [Doc. #20] (the “Motion”). At the hearing, Kristen Nardone appeared on behalf of the Debtors, Michael Stein appeared on behalf of First New York Federal Credit Union, Robert Price appeared on behalf of the United States Bankruptcy Administrator, and Kathryn Bringle appeared as the Chapter 13 Trustee (the “Trustee”). After considering the Motion, the response in opposition thereto [Doc. #29], the arguments of the parties, and the record in this case, the Court finds that the Motion should be denied.

While the Debtors admit that they do not meet the venue requirements in this district under 28 U.S.C. § 1408, this case concerns the timeliness requirement of Rule 1014 of the

Federal Rules of Bankruptcy Procedure. Under Rule 1014, the Court is required to dismiss or transfer a case filed in an improper district upon a *timely* filed motion by a party in interest.¹ See *In re Perkins*, No. 13-30747, 2013 WL 1934936, at *2 (Bankr. W.D.N.C. May 9, 2013); see also Fed. R. Bankr. P. 1014, Advisory Committee Note (1987) (“If a timely motion to dismiss for improper venue is not filed, the right to object to venue is waived.”). “What constitutes a timely filing of such a motion is not governed by statutory rule or definition; whether a motion to change venue has been timely filed depends on the facts and circumstances presented in the particular case.” *Blagg v. Miller (In re Blagg)*, 223 B.R. 795, 802 (B.A.P. 10th Cir. 1998). Factors to consider in determining the timeliness of the motion include whether “the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing of the estate.” *Id.* Thus, courts often find that venue has been waived after substantial developments in a case, or after substantial services have been performed by a trustee. See *Lebbos v. Schuette (In re Lebbos)*, Ch. 7 Case No. 06-22225, Adv. Nos. EC-07-1163-JuNaMo, EC-07-1174-JuNaMo, EC-07-1203-JuNaMo, 2007 WL 7540977, at *4 (B.A.P. 9th Cir. Nov. 14, 2007) (unpublished) (discussing cases).

The Court finds that, in light of the procedural posture of this case, the Motion was untimely filed. The Debtors instituted this bankruptcy proceeding on April 19, 2018, and issued a notice to creditors and proposed plan on the same date. See [Doc. #'s 1 and 2]. On May 1, 2018, the Debtors amended their schedules and filed an amended notice to creditors and proposed plan. [Doc. #'s 12-14]. Thereafter, the Trustee proceeded to discharge her duties in the case: (1) she attended the 341 meeting of creditors, which was held and concluded on June 1, 2018, (2) she filed and served a Notice and Proposed Order of Confirmation on June 13, 2018

¹ This Court has previously held that the venue provisions of 28 U.S.C. § 1408 are mandatory. *In re Zagaroli*, No. 18-50524, 2018 WL 3486767, at *1 (Bankr. M.D.N.C. July 18, 2018). Rule 1014 implements those provisions in the bankruptcy context. See *In re Deabel, Inc.*, 193 B.R. 739, 742 (Bankr. E.D. Penn. 1996).

[Doc. #'s 15 and 16], which alerted parties that they would have until seven days before July 11, 2018, to object to the Debtors' proposed plan, (2) she reviewed the Debtors' schedules, tax returns, pay stubs, and amended schedules, (3) she began collecting plan payments from the Debtors, and (4) she instituted a wage deduction for the male Debtor. As these events were unfolding, the claims deadline expired. Eleven claims were filed, including a claim by the Creditor. Only on the second to last day to object to confirmation did First New York Federal Credit Union file the Motion to Dismiss. The Court believes that, at this point, dismissing or transferring the case would result in a substantial duplication of administration of the estate. Thus, First New York Federal Credit Union has waived its right to object to venue.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is DENIED.

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SERVICE LIST

ALL PARTIES OF RECORD AS OF THE DATE OF THE ORDER SHALL BE SERVED BY
THE BANKRUPTCY NOTICING CENTER