

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

In re:
CBRM REALTY INC., et al.,
Debtors.¹

Chapter 11
Case No. 25-15343 (MBK)
(Jointly Administered)

**OPPOSITION TO DEBTORS 'MOTION TO TRANSFER VENUE UNDER
BANKRUPTCY RULE 1014(b) AND 28 U.S.C. § 1412**

INTRODUCTION

Moshe Silber ("Silber"), by and through his undersigned counsel, respectfully submits this Opposition to the Debtors' Motion for Entry of an Order (I) Pursuant to Bankruptcy Rule 1014(b) Transferring Venue of *In re Moshe Silber*, Case No. 25-22890-shl (Bankr. S.D.N.Y.) to the District of New Jersey and (II) Related Relief (the "Motion").

The Motion should be denied because the Debtors have failed to meet their heavy burden under 28 U.S.C. § 1412 and Bankruptcy Rule 1014(b). The Debtors have not established that Silber and the CBRM Debtors are "affiliates" within the meaning of 11 U.S.C. § 101(2), nor have they shown that transfer serves the interests of justice or the convenience of the parties.

This Motion arises on the eve of confirmation in these jointly administered Chapter 11 cases (see ECF Nos. 375, 415), after this Court has already determined that Silber's equity interests are without value and that control of the Debtors rests exclusively with an Independent Fiduciary

¹ The Debtor's in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (9071), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Cooper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC, (0122), RH New Orleans Holdings LLC (7528), RH New Orleans Holdings MM LLC (1951), and Laguna Reserve Arts Investor LLC (N/A). The location of the Debtors' service address in these chapter 11 cases is: In re CBRM Realty Inc. et. al. % White & Case LLP, 1221 Avenue of the Americas, New York New York 10020.



(ECF No. 496). The timing and record facts confirm that transfer is neither necessary nor appropriate.

In addition, Silber's circumstances make the Southern District of New York ("SDNY") the only practical and fair venue. He is currently confined within the jurisdiction of the SDNY and, upon release, will remain subject to travel restrictions that limit his ability to appear in other districts. His legal counsel, principal creditors, and records are all located in New York. The Debtors' assertion that proceedings would be more convenient in New Jersey is unsupported. Any litigation they intend to pursue against Silber, including claims for breach of fiduciary duty or dischargeability, can be efficiently handled in SDNY through a motion to modify the automatic stay or by adversary proceeding. These matters can and should be litigated where Silber can meaningfully defend himself, without the expense and logistical hardship of appearing in another state.

I. LEGAL STANDARD UNDER 28 U.S.C. § 1412 AND RULE 1014(b)

Venue transfer under 28 U.S.C. § 1412 is permitted only if the movant establishes that transfer is "in the interest of justice or for the convenience of the parties." The movant bears a heavy burden to justify departure from the debtor's chosen forum.

Courts consider six principal factors: (1) proximity of creditors; (2) proximity of the debtor; (3) proximity of witnesses; (4) location of assets; (5) efficient administration of the estate; and (6) necessity for ancillary administration.

See 28 U.S.C. § 1412; *Fire Ground Techs., LLC v. Hometown Restoration, LLC*, 2022 U.S. Dist. LEXIS 87589 (D.N.J. May 16, 2022).

The burden of proof rests squarely on the party seeking transfer, and the standard is high. See *In re Manville Forest Prods. Corp.*, 896 F.2d 1384, 1390 (2d Cir. 1990) ("transfer is

appropriate only when the interests of justice or convenience strongly favor it”); *In re Certa Dose, Inc.*, 2021 Bankr. LEXIS 3053 (S.D.N.Y. Nov. 4, 2021).

II. THE “HOME COURT” PRESUMPTION AND JUDICIAL EFFICIENCY STRONGLY FAVOR MAINTAINING VENUE IN THE SOUTHERN DISTRICT OF NEW YORK

The “home court presumption” favors maintaining venue where the case was originally filed. *Tang v. Citic Capital Holdings Ltd.*, 2022 U.S. Dist. LEXIS 184505 (D.N.J. Oct. 7, 2022). Rule 1014(b) authorizes transfer of related cases filed in different districts only where a true affiliate relationship exists and transfer will promote judicial efficiency.

Here, Silber’s Chapter 7 case was properly filed in SDNY. In fact he could only file in SDNY. His Chapter 7 Trustee, creditors, and counsel are all or will be, based within the New York metropolitan area. Silber himself, presently confined at FCI Otisville, New York, remains under the territorial reach of the SDNY and specifically the White Plains Division, which covers the counties where his confinement and supervised release are centered.

Judicial economy also counsels against transfer. The CBRM Debtors’ Chapter 11 cases are on the eve of confirmation, and control of those entities is vested exclusively in an Independent Fiduciary. There is no overlap in fiduciaries, assets, or creditors. Transferring Silber’s Chapter 7 case to New Jersey would not coordinate proceedings but would instead create confusion, duplication, and delay.

The timing of the Motion, filed only after confirmation became imminent, further suggests a tactical rather than administrative motive. Courts have repeatedly warned against venue manipulation for strategic advantage. See *In re LTL Mgmt. LLC*, 2021 Bankr. LEXIS 3173 (Bankr. D.N.J. Nov. 16, 2021).

III. RULE 1014(b) DOES NOT APPLY BECAUSE THERE IS NO AFFILIATE RELATIONSHIP

The Debtors' reliance on Bankruptcy Rule 1014(b) is misplaced. That rule applies only when "petitions are filed in different districts by or against (1) the same debtor; or (2) a partnership and one or more of its general partners; or (3) two or more general partners; or (4) a debtor and an affiliate." Fed. R. Bankr. P. 1014(b).

Silber is not an affiliate of any of the CBRM Debtors within the meaning of 11 U.S.C. § 101(2). The statute defines "affiliate" in terms of control, ownership, or business dependency, none of which exists here. Silber holds no equity interest in the CBRM Debtors, exercises no management authority, and has no overlapping financial or fiduciary relationship with them. The record before both courts establishes that an Independent Fiduciary, not Silber, has exclusive control of the CBRM entities.

The Debtors have not presented any evidence of a shared business purpose, common management, or consolidated operations. The mere existence of historical transactions or unrelated allegations of past conduct does not create "affiliation" under the Bankruptcy Code. See *In re Patriot Coal Corp.*, 482 B.R. 718, 737 (Bankr. S.D.N.Y. 2012) (holding that mere overlapping interests or historical connections are insufficient to establish affiliate status).

Accordingly, Rule 1014(b) does not authorize transfer, and venue must be evaluated solely under the convenience and justice factors of 28 U.S.C. § 1412.

IV. TRANSFER WOULD NOT SERVE THE INTEREST OF JUSTICE OR CONVENIENCE

A. The "Home Court" Presumption Favors SDNY

As the CBRM Chapter 11 cases near plan confirmation, there is no legitimate reason to disturb Silber's properly filed Chapter 7 case in SDNY. His estate, creditors, and counsel are located in or near this district, and his current confinement is within its jurisdictional reach.

Requiring him to litigate in New Jersey would impose unnecessary costs, logistical

barriers, and prejudice, especially given his current incarceration and anticipated travel restrictions after release. Courts have consistently held that a debtor's inability to appear due to confinement or similar restrictions weighs heavily against transfer. See *In re Nixon*, 317 B.R. 662, 669 (Bankr. E.D. Mich. 2004).

The SDNY, particularly its White Plains Division, is ideally positioned to manage this case because it can accommodate the debtor's limited mobility while ensuring that proceedings are efficiently conducted. Moving the case to New Jersey would force Silber to cross district and state lines under federal supervision, an unnecessary hardship inconsistent with fairness and judicial economy.

B. Interests of Justice Weigh Strongly Against Transfer

Maintaining venue in SDNY serves the interests of justice because that court has both the administrative infrastructure and the local presence necessary to ensure fair participation by all parties. The White Plains Division is located within the same jurisdiction where the debtor is confined and will remain upon supervised release. This proximity allows for hearings, examinations, and other proceedings without undue burden or cost.

The Debtors argue that potential claims against Silber justify transfer. Yet any such claims can be addressed directly in the SDNY. If the Debtors wish to pursue alleged causes of action, including claims for breach of fiduciary duty or non-dischargeability, they may seek relief from the automatic stay in SDNY and file an adversary proceeding before the same court already administering Silber's estate. This course of action preserves judicial efficiency and avoids unnecessary duplication.

Moreover, the relevant counsel and professionals representing the Debtors, creditors, and the Independent Fiduciary are located in New York. There is no practical or procedural benefit to

relocating the case to New Jersey, particularly when SDNY can handle all matters in one coordinated venue.

Silber's travel limitations are significant and ongoing. Both during incarceration and following release, federal supervision and reporting requirements will restrict his ability to appear elsewhere. Requiring him to defend claims in a different district would substantially impair his ability to mount an adequate defense. By contrast, keeping the case in SDNY enables meaningful participation while eliminating the expense and complexity associated with cross-district travel.

These factors make clear that retaining venue in SDNY is not only consistent with judicial efficiency but essential to ensuring that Silber receives a fair opportunity to be heard. Courts evaluating convenience under § 1412 give great weight to such considerations of fairness and accessibility. See *In re Commonwealth Oil Refining Co.*, 805 F.2d 1175, 1182 (5th Cir. 1986) (retaining venue where witnesses and parties were most accessible); *In re Toxic Control Techs., Inc.*, 84 B.R. 140, 143 (Bankr. N.D. Ind. 1988).

C. Convenience Factors Under § 1412

Courts consistently emphasize that venue should remain where it best serves convenience and efficiency. *Gulf States Exploration Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1390 (2d Cir. 1990).

1. Proximity of Creditors, Witnesses, and the Debtor

The SDNY, and particularly its White Plains Division, lies closest to the debtor's current confinement and expected residence upon release. Transporting an incarcerated debtor across state lines for proceedings in another federal district would create unnecessary complexity, cost, and potential security concerns. Courts have declined transfers requiring such cross-border movement. See *Rogers v. Fed. Bureau of Prisons*, 105 F. App'x 980 (D.C. Cir. 2004); *Williams v. Bowman*,

157 F. Supp. 2d 1103 (N.D. Cal. 2001).

Furthermore, the relevant creditors, professionals, and records are concentrated within the New York metropolitan area, making SDNY the most convenient forum for all involved. The White Plains Division covers the very counties where the debtor's confinement and reentry process are centered, ensuring continuity and accessibility.

2. Proximity of Assets and Administrative Interests

While the debtor's tangible assets are limited, his intangible assets, including potential causes of action, legal defenses, and financial relationships, are located within the SDNY's jurisdiction. Courts have long recognized that such intangible property constitutes "assets" for venue purposes. See *A.B. Real Estate v. Bruno's, Inc. (In re Bruno's, Inc.)*, 227 B.R. 311, 324 (Bankr. N.D. Ala. 1998); *In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008). Maintaining venue in SDNY ensures centralized administration of any related litigation and allows for efficient evaluation of these intangible assets by the Chapter 7 Trustee. The SDNY is already familiar with the debtor's financial background and capable of overseeing all aspects of the estate without disruption.

If the Debtors intend to challenge the dischargeability of any debts, those proceedings can and should occur in SDNY. The debtor can participate directly, ensuring fairness while preventing prejudice stemming from his limited ability to travel. This approach also relieves both courts of unnecessary duplication and conflicting rulings, promoting the efficient administration that § 1412 requires.

D. Efficient Administration of the Estate

The Southern District of New York Bankruptcy Court is exceptionally well-equipped to ensure the efficient administration of bankruptcy estates, even in the early stages of a case. Courts

have consistently recognized that the economic and efficient administration of the estate is one of the most critical considerations under 28 U.S.C. § 1412.

In *In re Enron Corp.*, 284 B.R. 376, 384–86 (Bankr. S.D.N.Y. 2002), the court underscored that judicial economy, timeliness, and fairness, as well as the efficient administration of the estate, are paramount when determining venue. The court retained jurisdiction because SDNY possessed the infrastructure, expertise, and professional resources necessary to manage complex financial matters without delay. The same reasoning applies here.

Likewise, in *In re Patriot Coal Corp.*, 482 B.R. 718, 739–40 (Bankr. S.D.N.Y. 2012), the court declined to transfer venue despite other related proceedings elsewhere, finding that SDNY's resources and experience were decisive to ensuring efficient administration.

That reasoning applies even more strongly here. As previously noted, Silber's case bears no legal or factual relationship to the Debtors' proceedings in New Jersey. The cases involve different parties, distinct assets, and no shared management. Even if, for the sake of argument, a connection were assumed, the SDNY Bankruptcy Court, particularly its White Plains Division offers the infrastructure, professional network, and proximity required for efficient and fair administration.

Given that the Debtors' plan is nearly confirmed, the asserted need for transfer is illusory. There is nothing imminent requiring joint administration or overlapping adjudication. To the contrary, transferring the case now would disrupt established progress and impose delay. Furthermore, the SDNY's experienced trustee panel can promptly assign and oversee administration of Silber's estate. The court's local rules, such as SDNY LBR 9076-1, provide mechanisms for expedited scheduling and case management. These resources make SDNY uniquely capable of handling this case without the risk of procedural delay.

E. Interests of Justice

Maintaining venue in the Southern District of New York serves the interests of justice, given this Court's substantial experience with complex Chapter 7 and Chapter 11 matters and its proximity to the debtor's creditors, records, and administrative infrastructure. Courts have long recognized a strong presumption in favor of the debtor's chosen forum, which should not be disturbed absent a clear showing that transfer would materially promote justice or convenience. *In re Manville Forest Prods. Corp.*, 896 F.2d 1384, 1390 (2d Cir. 1990) (transfer appropriate only when "the interests of justice or convenience strongly favor" the alternative forum); see also *In re Certa Dose, Inc.*, 2021 Bankr. LEXIS 3053 (S.D.N.Y. Nov. 4, 2021) (denying transfer where existing venue offered greater efficiency and familiarity with the debtor's affairs).

The reasoning of *In re TS Employment, Inc.*, Case No. 15-10243 (Bankr. S.D.N.Y. Aug. 18, 2015), further reinforces that point. There, venue was transferred only after the court found a genuine and ongoing operational relationship among multiple affiliated debtors that necessitated centralized administration. In sharp contrast, no such affiliate or operational relationship exists here. Silber's Chapter 7 case involves an individual debtor whose estate is administered by a separate trustee, under distinct fiduciary and statutory frameworks, and with no overlap in assets, creditors, or management with the CBRM Debtors. Thus, the very circumstances that justified consolidation in *TS Employment* are wholly absent here. The reasoning of that case, by negative implication, counsels against transfer where efficiency and justice are better served by maintaining the case in its properly chosen venue.

Moreover, the SDNY, particularly its White Plains Division, offers superior administrative resources and convenient geographic proximity to the debtor, creditors, and records. Transferring the case to another district would result in unnecessary duplication, increased costs, and procedural

delay, which would undermine the very purpose of 28 U.S.C. § 1412. The decisions in *Manville Forest*, *Certa Dose*, and *TS Employment* collectively establish that venue transfer is appropriate only when it clearly advances the interests of justice or convenience. In this case, maintaining venue in the Southern District of New York achieves both objectives, ensuring continuity, efficiency, and fair administration of the estate. SDNY therefore provides the most logical, efficient, and equitable forum for adjudication, consistent with the expectations of creditors and the debtor alike.

Additionally, fairness considerations weigh heavily in favor of retaining venue. Silber's confinement and forthcoming travel restrictions significantly impair his ability to appear outside the SDNY. Requiring him to defend potential actions in New Jersey would place him at a severe disadvantage. The interests of justice are best served by maintaining a venue that allows Silber to participate fully and fairly in all proceedings, including any challenges to dischargeability or fiduciary allegations.

The Debtors and any other party seeking relief are not prejudiced by keeping venue in SDNY. Should they wish to pursue claims against Silber, they may do so by moving to modify the automatic stay in that forum. The SDNY Bankruptcy Court is fully competent to adjudicate such matters, ensuring due process and consistency in administration. This approach not only minimizes procedural complexity but also aligns with the equitable goals of the Bankruptcy Code.

It is well established that the debtor's chosen forum should be respected unless the movant demonstrates that transfer will clearly advance justice or convenience. Here, the record shows the opposite. The SDNY provides the most effective means of administering the case while protecting all parties' rights.

The interests of justice therefore compel denial of the Motion.

V. THE TIMING OF THE MOTION SUGGESTS STRATEGIC ADVANTAGE RATHER THAN NECESSITY

The Debtors' motion was filed only as the CBRM plan approached confirmation (ECF Nos. 375, 415). At this procedural juncture, all significant matters concerning the Debtors are nearing resolution. The apparent objective of the Motion is not administrative coordination but to secure perceived strategic advantage in pending or potential disputes.

Courts have cautioned against venue manipulation where transfer would disrupt ongoing proceedings or confer tactical benefit. *In re LTL Mgmt. LLC*, 2021 Bankr. LEXIS 3173 (Bankr. D.N.J. Nov. 16, 2021) (denying venue transfer where movant sought tactical advantage rather than true efficiency); see also *In re Caesars Ent. Operating Co.*, 2015 Bankr. LEXIS 4061 (Bankr. N.D. Ill. Dec. 18, 2015) (rejecting transfer filed to influence litigation strategy).

Here, the Debtors' plan confirmation is imminent, and there is no legitimate administrative reason for transfer. The timing and record demonstrate that the Motion was designed for leverage, not necessity. If the Debtors intend to bring actions against Silber, such as claims of breach of fiduciary duty, they can do so in the SDNY by seeking modification of the automatic stay. That forum allows all parties to litigate efficiently and fairly.

Silber, by contrast, would suffer undue hardship if compelled to appear in New Jersey. His confinement and subsequent supervised release impose federal travel restrictions that would hinder his ability to participate in hearings or depositions in another district. The SDNY's White Plains Division, within accessible proximity to his custodial and residential locations, ensures that he can meaningfully defend himself while complying with the terms of his release.

Given these facts, transfer would create asymmetrical prejudice, imposing logistical and financial burdens on Silber while conferring no countervailing benefit to the Debtors. Courts evaluating similar circumstances have refused to permit venue changes that would impair a

debtor's due process rights or ability to defend. See *In re Nixon*, 317 B.R. 662 (Bankr. E.D. Mich. 2004); *In re Barge*, 2003 Bankr. LEXIS 2221 (Bankr. N.D. Tex. Dec. 17, 2003).

Furthermore, given that the Chapter 11 cases are near confirmation, the Debtors' argument that transfer promotes efficiency is unsupported. Once confirmed, the CBRM Debtors will proceed under their plan, and no meaningful coordination will remain to be achieved. If any post-confirmation disputes arise, the SDNY is fully equipped to hear them, ensuring that both the Chapter 7 Trustee and the Debtors' representatives can participate effectively.

Accordingly, the record supports only one conclusion: the Motion seeks strategic advantage rather than the legitimate interests of justice or convenience.

VI. CONCLUSION

For all these reasons, including the absence of an affiliate relationship, the imminent confirmation of the CBRM plan, the debtor's confinement within the jurisdiction of the SDNY, and the serious limitations imposed by his travel restrictions, the Motion to Transfer Venue should be denied.

The SDNY offers the most fair, efficient, and practical forum for administration of this case. It ensures that Silber can meaningfully defend any claims, including dischargeability or fiduciary-related actions, while permitting the Debtors or any creditor to pursue relief through appropriate motions in the same court. Transferring the case now would impose delay, duplication, and prejudice, all contrary to the principles of judicial economy and fairness embodied in 28 U.S.C. § 1412.

WHEREFORE, Moshe Silber respectfully requests that this Court deny the Debtors' Motion to Transfer Venue in its entirety and grant such other and further relief as it deems just and proper.

Dated: October 26, 2025

Respectfully submitted,

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