UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

57 Oxbow Associates,
Debtor.

CHAPTER 11

Bky. No. 3-95-2275

ORDER AMENDING FINDINGS and
ORDER TO SHOW CAUSE

This matter is before The Court on motion of Premier Bank, N.A., (Bank) for Amended Findings of Fact, Conclusions of Law, And Order Denying Transfer of Venue, order issued July 6, 1995, pursuant to hearing on the same day. Appearances were noted in the record. The Court, having reviewed the briefs and considered the oral arguments; and, otherwise being fully advised in the matter; now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

The Debtor's bankruptcy presents a limited partnership single asset, single liability real estate case, consisting of an apartment development in South Dakota. The case was filed in this district, on May 8, 1995, by its managing general partner, Citi-Central Plains Partners. The Bank is the Debtor's creditor, having obtained a judgment in foreclosure on the property for approximately $1,500,000. The case was filed to interrupt a scheduled foreclosure sale.

The Bank filed motions for change of venue to the United States Bankruptcy Court for the District of South Dakota; and, for relief from stay. Both motions were heard on July 6, 1995. The Court denied the motion for change of venue and continued the motion for relief from stay for evidentiary hearing on August 2, 1995. The Bank was relieved from turnover of the property, pursuant to 11 U.S.C.Section 543(d), and the receiver was allowed to remain in control of the development. The Bank withdrew the motion for relief from stay, and instead, seeks amended findings regarding the transfer of venue matter. The Bank points out that the Court made no findings at the first hearing on the venue issue. It is true that the Court did not make findings at the initial hearing. This order constitutes the missing findings.

II.

Citi-Central Plains Partners holds 99 percent of the equity interests in 57 Oxbow Associates. Citi-Central is a limited partnership, controlled by its general partner, Citi-Equity Group, Inc.. Citi-Equity Group, Inc. is a corporation that, until its involuntary filing in this district on May 18, 1994, pursuant to 11 ect

At filing of 57 Oxbow, the property was operated by a state court appointed receiver in connection with the Bank's foreclosure

proceeding. Prior to the commencement of that action, control over the property and its management was in Citi-Central Plains by Amendment To Articles Of Partnership Of Oxbow Associates, adopted in January, 1991. Actual management of the property was by Paradigm Management Corporation. Paradigm Management is a corporation that, until its bankruptcy filing in this district on July 25, 1994, was technically controlled by Gary Lefkowitz, its sole shareholder. Mr. Lefkowitz had ceded control, however, to Citi-Equity Group after Citi-Equity's bankruptcy filing, as part of a Management Agreement approved by this Court early in that case.

Gary Lefkowitz created 57 Oxbow Associates. Mr. Lefkowitz is a convicted felon. He defrauded myriad groups of investors, lenders, and others, of millions of dollars through a scheme that involved 57 Oxbow Associates and numerous other similarly created partnerships throughout the country. Mr. Lefkowitz personally controlled the partnerships, their properties and cash flows, through Citi-Equity Group and Paradigm Management. He commingled cash flows from the various projects and diverted millions of dollars to his personal use. On July 21, 1995, Mr. Lefkowitz was convicted in federal district court on 47 counts of criminal fraud in connection with a single enterprise that included 57 Oxbow Associates and more than 100 other similar developments.

The Bank argued that transfer of venue to the district of South Dakota is mandatory because venue in this district does not lie under 28 U.S.C.Section 1408. Alternatively, the Bank urged that discretionary transfer principles should be applied to transfer the case, if the case is properly venued in Minnesota.

Venue was proper in this jurisdiction under 28 U.S.C.Section 1408(2) at filing. The statute provides:

> 1408. Venue of cases under Title 11
>
> Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district --
>
> (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or
>
> (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

Prior to the bankruptcy filing of Citi-Equity, control of the 57 Oxbow property was in the hands of Gary Lefkowitz. Citi-Equity and Paradigm Management Group were simply Gary Lefkowitz dressed in different sets of clothes. After the filing of Citi-Equity, by virtue of the Management Agreement between Mr. Lefkowitz and Citi-Equity, approved by this Court, Citi-Equity acquired effective control rights with respect to the management of 57 Oxbow, and all similarly situated partnership properties. At filing, actual control of the Oxbow property was in the hands of a state court appointed receiver, but the property was subject to turnover to the Debtor under 11 U.S.C. Section 543.

At filing of 57 Oxbow, Citi-Equity was an "affiliate" of the Debtor, and venue was proper under 28 U.S.C. 1408(2). The term "affiliate" includes an "entity that operates the business or substantially all of the property of the debtor under an operating agreement." 11 U.S.C. Section 101(2). As successor in interest to Gary Lefkowitz, who before the succession controlled the Oxbow property through various entities, Citi-Equity had the right of control, subject to the foreclosure proceeding. Upon filing of the Oxbow bankruptcy, control of the property was subject to turnover to 57 Oxbow and management by Citi-Equity. Venue in this district was proper.

Under the facts, as they existed at the time of the July 6 hearing, principles of discretionary transfer did not favor transfer of venue. It is true that, ordinarily, single asset cases should be venued in the jurisdiction where a debtor's principal place of business is and where the property lies. However, this case presented a highly unusual situation. The Debtor and its property were caught up in a massive fraud arising out of a single enterprise. At filing of the case, a global solution was being explored. The case is essentially a single creditor case. The Federal District of South Dakota is adjacent to the Federal District of Minnesota. Control of the property was permitted to remain in the hands of the state court appointed receiver for administration of rents and maintenance under that state's foreclosure laws. Keeping the case venued in Minnesota simply did not present significant issues of administration and convenience of the parties.

There was substantial reason to keep the case in this jurisdiction. It appeared that the case might be substantially affected by a global resolution of issues that 57 Oxbow had been caught up in, and that were common to numerous other similarly situated partnerships. It was reasonable to retain venue to facilitate an expeditious and orderly resolution of the case.

However, since the hearing on July 6, 1995, circumstances have changed. Citi-Equity has sold and transferred all its partnership interests connected with the 57 Oxbow property, and all other partnership interests, to a third party. Citi-Equity now has only cash and causes of action; it no longer has any connection with the 57 Oxbow property or its management. The Bank has scheduled a hearing on motion for Approval Of Stipulation For Relief From Stay for September 25 at 9:30 a.m. in this Court.

Under present circumstances, it appears that, if the case remains in bankruptcy, venue should be transferred to the Bankruptcy Court for the Federal District of South Dakota. It would be appropriate that interested parties have the opportunity to appear before the Court and show cause, if any, why the Court should not now transfer venue of the case to the Bankruptcy Court for the Federal District of South Dakota, pursuant to 28 U.S.C. Section 1412 and the Bank's request.

III.

Accordingly, it is hereby ORDERED:

1) that this order constitute the findings and conclusions that the Court failed to enter upon the record at hearing on July 6, 1995, in connection with the disposition of the Bank's motion for change of venue; and,

2) that all interested parties appear at 11:30 a.m. on October 2, 1995, in the United States Bankruptcy Court, Courtroom No. 228A - 238 U.S. Courthouse, 316 North Robert Street, St. Paul Minnesota 55101; and, show cause, if any, why this case should not be

transferred to the venue of the United States Bankruptcy Court for the District of South Dakota pursuant to 28 U.S.C. Section 1412.
Dated: September 22, 1995.

By The Court:

DENNIS D. O'BRIEN

CHIEF U.S. BANKRUPTCY JUDGE