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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
MICHAEL PETER THOMAS and ANNA
LISA THOMAS,
Debtors.

Case No. 96-50925-JRG
Chapter 7

CORLISS ST. CLAIR WALKER,
EDITH ANN WALKER and DAVID L.
CARPENTER,
Plaintiffs,

Adversary No. 96-5313-
JRG/JAR

vs.

**ORDER GRANTING MOTION FOR
CHANGE OF VENUE**

MICHAEL PETER THOMAS and ANNA
LISA THOMAS,
Defendants.

I. INTRODUCTION

Before the court is the *Motion to Dismiss or, Alternatively, For Change Of Venue* (the "Transfer Motion") filed by plaintiffs Corliss Walker, Edith Walker and David Carpenter, in which they seek transfer of bankruptcy case and all pending

1 adversary proceedings¹ to the United States Bankruptcy Court for
2 the District of Wyoming. The court previously denied
3 plaintiffs' request that this case be dismissed.

4 For the reasons set forth below, the court orders that the
5 Chapter 7 trustee file an interim accounting, and that all
6 professionals seeking compensation or reimbursement of expenses
7 from the estate file their applications for compensation, by
8 April 30, 1997. The case, and Adversary Proceeding No. 96-5313,
9 shall then be transferred to the Bankruptcy Court for the
10 District of Wyoming on May 1, 1997.

11 **II. FACTUAL BACKGROUND**

12 In September 1991, the debtors purchased 100% of the stock
13 of C & E, Inc., a Wyoming corporation, from the plaintiffs for
14 \$1,400,000. Debtors paid \$300,000 in cash and executed a
15 \$1,100,000 promissory note in favor of plaintiffs (the "Note"),
16 with repayment of the Note secured by a pledge of the C & E,
17 Inc. corporate stock. C & E, Inc., doing business as "Mountain
18 House," operated a furniture store and gourmet kitchen shop in
19 Jackson, Wyoming. Shortly thereafter, debtors changed the name
20 of C & E, Inc. to "Mountain House."

21 From the outset of their operation of Mountain House,
22 debtors struggled in the face of continual financial
23 difficulties. Although the debtors admit that their financial
24 projections proved to be unrealistic, they contend that they
25 relied upon the plaintiffs' representations concerning the
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27 ¹ Only one adversary proceeding is pending before this court, which was commenced by plaintiffs on May 9, 1996
28 and assigned Adversary Proceeding No. 96-5313.

1 financial prospects of this business in purchasing the Wyoming
2 business. Regardless of the genesis of their difficulties, the
3 debtors continually were confronted with operating revenues that
4 were insufficient both to satisfy the Note and to operate their
5 business with new investments by debtors from their savings or
6 other personal funds being required from time to time.
7 Consequently, at the debtors' request, plaintiffs on several
8 occasions either extended or modified the terms of the debt
9 evidenced by the Note.

10 By summer 1993, debtors had concluded that it was necessary
11 to increase the revenues of Mountain House if the business was
12 to survive. Debtors decided that expansion into similar markets
13 would enable their business to realize economies of scale and to
14 withstand the seasonal business cycle characterizing mountain
15 resort economies like that in Jackson, Wyoming. At about the
16 same time, debtors discovered Telluride, Colorado and determined
17 that it represented a market that was substantially similar to
18 Jackson, Wyoming. Debtors decided to open a new business in
19 Telluride and approached plaintiffs about investing in the new
20 business. Plaintiffs, however, declined to do so. Undeterred,
21 debtors formed "Mountain House Home Furnishings & Design, Inc.,"
22 a Delaware corporation, to carry out their business plan and
23 found new investors who reportedly invested \$400,000 in start-up
24 capital.

25 From its inception, Mountain House Home Furnishings &
26 Design, Inc. assisted debtors' Mountain House business with its
27 cash-flow problem. For example, debtors contend that in late
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1 1994, Mountain House Home Furnishings & Design, Inc. loaned
2 \$200,000 to Mountain House, which Mountain House used to pay off
3 its line of credit owed to Bank of Jackson Hole. As a result of
4 this pay-off, the Bank of Jackson Hole and the Small Business
5 Administration ("SBA") renewed debtors' line of credit for
6 another year. Debtors also contend that Mountain House Home
7 Furnishings & Design, Inc. purchased excess merchandise from
8 Mountain House and thereby provided needed cash for its
9 operations.

10 Although the Mountain House business in Wyoming and
11 Mountain House Home Furnishings & Design, Inc. were separate
12 legal entities, debtors admit that there were frequent
13 transactions between the two companies. Plaintiffs contend that
14 debtors' transfer of assets between the two businesses was
15 improper and violated security agreements executed by debtors in
16 connection with the Note owed to plaintiffs. Debtors, on the
17 other hand, contend that these transactions all were accurately
18 carried on the books of both companies and that debtors'
19 creditors (including plaintiffs) were not defrauded or otherwise
20 adversely affected.²

21 Plaintiffs also contend that during 1995 the debtors took
22 numerous items of merchandise from the Mountain House store in
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24 ² These accusations form the basis for plaintiffs' adversary proceeding that is pending in this case. The court notes
25 that the many, if not all, of the allegations made in the Complaint also are included as grounds for transferring the entire
26 case. However, the evidence adduced in support of the Transfer Motion is only in the form of affidavits and the affiants
27 have not been subjected to cross-examination by the debtors. Although the affidavits submitted by the adverse parties
28 are in striking contrast on the merits of the allegations made in the Complaint, the court does not have to resolve these
conflicts in the evidence. Instead, it must consider the affidavits submitted in support of, and in opposition to, to the
Transfer Motion only in determining whether the "interests of justice or [the] convenience of the parties" will be served
by transferring this case. See 28 U.S.C. § 1412.

1 Jackson without paying for the items, that they made numerous
2 credit entries in their favor on the business' records and that
3 they paid their personal obligations with company funds.
4 Plaintiffs contend that all of these actions were improper and
5 violated security agreements executed by the debtors in
6 connection with the Note to plaintiffs, and adversely affected
7 plaintiffs and other creditors. Debtors vehemently deny these
8 allegations and contend that these transactions all were
9 accurately carried on Mountain House's books and that their
10 creditors were not defrauded or otherwise adversely affected.

11 In June 1995, debtor Michael Thomas accepted employment in
12 California as the chief executive officer of First Pacific
13 Networks, Inc., a high technology company, at an annual salary
14 of \$200,000. Debtors contend that Mr. Thomas accepted the
15 employment in order to secure cash necessary to reinvest in the
16 debtors' business in Jackson, Wyoming. Mr. Thomas moved his
17 residence to California and quickly obtained a driver's license
18 and registered to vote.

19 Debtors contend that debtor Anna Thomas continued to manage
20 the Wyoming business on a daily basis, and conducted her duties
21 as the merchandise buyer for both the Wyoming business and the
22 Colorado business, from June 1995 through December 1995.
23 Additionally, debtors contend that Mr. Thomas remained
24 responsible for handling the monthly close of the business'
25 books until Mountain House ceased business in early January
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1 1996.³

2 In November 1995, debtors decided that Mrs. Thomas should
3 be paid her salary that had been accruing. However, because
4 there was insufficient cash to honor any check that might be
5 written for this debt, debtors listed the accrued salary on the
6 business' books as an account payable. During this time,
7 debtors concluded that Mountain House needed not only to renew
8 its line of credit with the Bank of Jackson Hole, but to
9 increase it if the business was to remain viable. In order to
10 improve Mountain House's financial condition and thereby to
11 persuade the Bank of Jackson Hole to increase the line of
12 credit, debtors attempted to persuade plaintiffs to merge
13 Mountain House and Mountain House Home Furnishings & Design,
14 Inc. into one company. Debtors contend that under their
15 proposal, the loans owed to plaintiffs (as well as those owed to
16 the investors in Mountain House Home Furnishings & Design, Inc.)
17 would have been converted into preferred stock in the new
18 corporation. Although the Bank of Jackson Hole reportedly
19 endorsed this proposal, plaintiffs rejected it.

20 By December 1995, Mountain House was unable to make its
21 dividend payment and, consequently, debtors were unable to make
22 their payment due under the Note. In response, debtors held a
23 month-long sale in their Jackson, Wyoming store and generated
24 significant revenues. Although debtors contend that the sale
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26 ³ The amount of time the debtors actually expended on these activities after August 1995 is not clear from the record.
27 However, the court concludes that it is not required to resolve this issue for purposes of resolving the Transfer Motion.
28 Instead, if this issue becomes pertinent to any issue in dispute, its determination awaits a full hearing in the Wyoming
Bankruptcy Court.

1 helped to alleviate their immediate cash flow problems, they
2 still faced crushing financial difficulties. Nonetheless,
3 debtors admit that they paid Mrs. Thomas' deferred salary from
4 December's sales proceeds. Debtors also admit purchasing
5 furniture from Mountain House during December 1995, for use in
6 Mr. Thomas' California residence. Once again, plaintiffs
7 contend that these items were removed by debtors without full
8 payment or in exchange for credits and that, consequently, their
9 rights under Note were adversely affected. Debtors vehemently
10 deny plaintiffs' allegations of wrongdoing.

11 In December 1995, debtors also renewed their proposal that
12 plaintiffs either agree to merger of Mountain House with
13 Mountain House Home Furnishings & Design, Inc. or that they
14 repurchase Mountain House from the debtors. Once again,
15 plaintiffs rejected the debtors' proposals and made counter-
16 proposals that were equally unpalatable to the debtors.

17 In late December 1995, Mrs. Thomas left Jackson, Wyoming.
18 The circumstances of this move are hotly contested by the
19 parties. Plaintiffs contend that the debtors took items that
20 were property of Mountain Home when they moved to California and
21 that the move was made with the intent to defraud their
22 creditors. Debtors, in contrast, contend that Mrs. Thomas
23 decided to move her residence to California initially to realize
24 cost savings by conducting her merchandise buying duties for
25 both of debtors' businesses from California.

26 In December 1995, after the debtors had left Wyoming,
27 plaintiffs filed an action in Wyoming state court alleging fraud
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1 by the debtors and seeking to collect on the Note (upon which
2 they contend that approximately \$800,000 remained unpaid).⁴

3 Finally, in early January 1996, the Bank of Jackson Hole
4 declared debtors' loan in default and refused to extend their
5 business line of credit. Faced with insufficient cash to
6 continue operations, the debtors closed Mountain House.

7 **III. PROCEDURAL HISTORY OF THE BANKRUPTCY CASE AND ADVERSARY**
8 **PROCEEDING**

9 On February 7, 1996, the debtors filed a petition in the
10 United States Bankruptcy Court for the Northern District of
11 California, San Jose Division, seeking relief under Chapter 7 of
12 the Bankruptcy Code. The petition for relief was filed
13 approximately 10 days before the debtors were required to file
14 an answer to the Wyoming State Court action.

15 On May 9, 1996, based upon the failed business relationship
16 between plaintiffs and the debtors, the plaintiffs commenced an
17 adversary proceeding by filing their *Complaint For Denial Of*
18 *Discharge And Non-Dischargeability of Debt* (the "Complaint").⁵
19 The Complaint seeks: (i) denial of the debtors' discharge
20 pursuant to 11 U.S.C. § 727;⁶ (ii) denial of the discharge of the
21 debt arising from the Note pursuant to section 523(a); and (iii)

22 ⁴ The complaint filed in Wyoming State Court "sounds in fraud" and is predicated on debtors' alleged manipulation
23 and distortion of business records, transfer of assets from the business to debtors' residence in California, transfer of
24 business assets to debtors' business located in Colorado, and unexplained events such as the transferring of business
25 assets from Mountain Home trucks to unmarked semi-trailer trucks and Mr. Thomas' withdrawal of \$20,000 in cash
allegedly for payment of Mrs. Thomas' salary prior to the default on obligations owed to creditors.

26 ⁵ Pursuant to the Ninth Circuit Workload Equalization Pilot Program, the adversary proceeding was transferred to
27 Judge John A. Rossmeissl, of the U.S. Bankruptcy Court for the Eastern District of Washington. On September 4, 1996,
Judge Rossmeissl entered an order transferring Adversary Proceeding No. 96-5313 back to this court, pending resolution
of the motion for change of venue.

28 ⁶ All references are to title 11 of the U.S. Bankruptcy Code unless otherwise indicated.

1 recovery of damages related to default under the Note, breach of
2 the stock pledge agreement and conversion of assets.

3 Specifically, the Complaint seeks denial of the debtors'
4 discharge pursuant to § 727(a)(4) for knowingly and fraudulently
5 making a false oath, and pursuant to § 727(a)(5) for failure to
6 account for a loss of assets.⁷ Debtors vehemently deny these
7 allegations of wrong-doing.

8 The Complaint also seeks denial of the discharge of the
9 debt arising from the Note: (a) for knowingly and intentionally
10 making false representations regarding the Note, making false
11 business records, secreting assets with an intent to defraud,
12 and inducing plaintiffs to modify, extend and alter their
13 financing arrangements [see, § 523(a)(2)(A)]; (b) for knowingly
14 and intentionally making writings that were materially false and
15 misrepresented the debtors' financial condition and plaintiffs'
16 reasonably relied upon the writings to their detriment [see, §
17 523(a)(2)(B)]; and (c) for willfully and maliciously injuring
18 plaintiffs or their property [see, § 523(a)(6)].⁸

19 Finally, the Complaint seeks: (a) recovery of \$852,600.73
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21 ⁷ In support of their cause of action under § 727(a)(4), plaintiffs allege that debtors: (1) failed to list on their schedules
22 property purchased from Mountain House in the ninety days preceding the filing of this case and other property owned
23 by debtors; (2) misrepresented that they were penniless at the commencement of the case because Mr. Thomas was
24 employed at an annual salary of \$200,000; (3) failed to list Nordstrom's as a creditor or any preferential payments made
25 to Nordstrom's; (4) failed to list art on Schedule B exceeding \$1,000; (5) failed to list other assets on the Schedules; (6)
26 failed to account for cash withdrawals from their business; and (7) did not accurately disclose that Mr. Thomas wrote
27 himself a check for Mrs. Thomas' unpaid salary in December, 1996. See First Cause of Action and Second Cause of
28 Action of the Complaint. Additionally, plaintiffs contend that debtors' breach of the stock pledge agreement constitutes
a ground to deny discharge. See Fourth Cause of Action of the Complaint.

⁸ Plaintiffs allege that these false representations were made by debtors "to induce plaintiffs to agree to the
extensions, renewals or refinancings" of the Note, "to lull Plaintiffs into a false sense of confidence and conceal their
planned flight from the State . . .," and that they "created false and deceptive business records to divert assets from the
business for their own use and benefit . . . with the knowledge and intent that they be relied on by others, including
plaintiffs." See Sixth Cause of Action, Seventh Cause of Action, and Eighth Cause of Action of the Complaint.

1 plus interest at the rate of 12% per annum from January 10,
2 1996, on the Note;⁹ (b) recovery of \$32,787.73, plus interest,
3 and special and exemplary damages for breach of the stock pledge
4 agreement;¹⁰ and (c) recovery of unspecified damages for
5 conversion of assets that were subject to the stock pledge
6 agreement.¹¹ Additionally, plaintiffs seek damages in excess of
7 \$900,000 related to these false representations which they
8 allege caused them to alter their financing arrangements.¹²

9 On May 29, 1996, plaintiffs filed their Transfer Motion.
10 The Transfer Motion essentially contends that the debtors
11 conducted a scheme over the course of several years to loot
12 their businesses and that the debtors' actions defrauded their
13 creditors in Wyoming. Moreover, plaintiffs contend that debtors
14 purposefully transferred assets from Wyoming to California and
15 created residence and domicile in California for the purpose of
16 creating venue in a forum distant from their creditors. In
17 addition to these "improper" motives ascribed to the debtors,
18 plaintiffs also contend the convenience of the parties and
19 efficiency dictate that the case be transferred to Wyoming

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21 ⁹ Plaintiffs allege that debtors are in default on a \$1,100,000 promissory note dated September 1, 1991, as amended
on November 4, 1993 and March 8, 1994, and that \$852,600.73 is due and owing as of January 10, 1996.

22 ¹⁰ See Fourth Cause of Action of the Complaint.

23 ¹¹ Plaintiffs contend that debtors "intentionally, knowingly, and fraudulently sold, transferred, or otherwise conveyed
24 assets of Mountain House, a Wyoming corporation, . . . to their own use and benefit, in violation of the said Stock Pledge
Agreement . . .," thereby impairing and reducing the value of plaintiffs' collateral. See Fifth Cause of Action of the
25 Complaint.

26 ¹² Plaintiffs allege that these false representations were made by debtors "to induce plaintiffs to agree to the
27 extensions, renewals or refinancings" of the Note, "to lull Plaintiffs into a false sense of confidence and conceal their
planned flight from the State . . .," and that they "created false and deceptive business records to divert assets from the
28 business for their own use and benefit . . . with the knowledge and intent that they be relied on by others, including
plaintiffs." See Sixth Cause of Action of the Complaint.

1 because most of the witnesses relevant to the underlying
2 disputes between the plaintiffs and debtors, and most of the
3 creditors, are located there.

4 Pursuant to the "Trustee's Statement Regarding
5 Administration of Case," filed on September 10, 1996, the
6 Trustee has apparently identified all assets of the estate, and
7 the remaining administration of the case includes claims review
8 and adjudication, and preference analysis.¹³ A determination of
9 whether debtors' discharge should be denied pursuant to
10 plaintiffs' Complaint must also be made before the case is
11 closed.

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13 **IV. DISCUSSION**

14 **A. Venue of the Case and the Adversary Proceeding is**
15 **Proper in the Northern District of California.**

16 Venue of a case under title 11 is governed by 28 U.S.C.
17 §1408, which provides that a case under title 11 may be
18 commenced in the district court for the district in which: (1)
19 a person or entity is domiciled, resided, had its principal
20 place of business or principal assets in the United States for
21 180 days immediately preceding such commencement; or (2) there
22 is pending a case under title 11 concerning such person's
23 affiliate, general partner, or partnership. Because the debtors
24 have been domiciled in and resided in California for 180 days
25 preceding commencement of the case, there is no question that

26 _____
27 ¹³ On October 23, 1996, while the matter was under submission, the Chapter 7 trustee requested that the court delay
28 its decision on the Transfer Motion because the trustee had arranged a sale of substantially all of the personal property
assets to the debtors. An order approving the sale was entered on November 27, 1996.

1 venue is proper in this court.

2 **B. A Case or Adversary Proceeding may be Transferred in**
3 **the "Interest of Justice" or "Convenience of the**
4 **Parties."**

5 Even if venue is proper, "[a] district court may transfer a
6 case or proceeding under title 11 to a district court for
7 another district, in the interest of justice or for the
8 convenience of the parties." 28 U.S.C. § 1412;¹⁴ see, e.g., In
9 re Weber, 118 B.R. 441, 444 (Bankr.E.D.Va. 1990) (case
10 transferred in interest of justice and for convenience of
11 parties); A.R.E. Mfg. Co. v. D & M Nameplate, Inc. (In re A.R.E.
12 Mfg. Co.), 124 B.R. 912, 914 (Bankr.M.D.Fla. 1991) (adversary
13 proceeding transferred to Federal District Court in California
14 in the interest of justice and for convenience of parties).¹⁵
15 The party seeking a change of venue has the burden of proof
16 which must be carried by a preponderance of the evidence.
17 Commonwealth of Puerto Rico v. Commonwealth Oil Refining Co. (In
18 re Commonwealth Oil Refining Co., Inc.), 596 F.2d, 1239, 241
19 (5th Cir. 1979), cert. denied 441 U.S. 1045, 100 S.Ct. 732, 62
20 L.Ed.2d 731 (1980).

21 The decision whether to approve a motion for transfer of

22 ¹⁴ A similar standard is applied to change of venue motions involving civil actions filed in the district court:

23 For the convenience of parties and witnesses, in the interest of justice, a district court may transfer
24 any civil action to any other district or division where it might have been brought.

25 28 U.S.C. § 1404(a).

26 ¹⁵ Although the express language of 28 U.S.C. § 1412 authorizes the "district court" to transfer a case or an adversary
27 proceeding, the majority view is that the bankruptcy judge is authorized to enter an order transferring either the entire
28 bankruptcy case or an adversary proceeding. See, Federal Rule of Bankruptcy Procedure 1014(a)(1) (providing that the
court may transfer a case to another district if the transfer is in the "interest of justice or for the convenience of the
parties").

1 venue is within the sound discretion of the court. Gulf States
2 Exploration Co. v. Manville Forest Products Corp. (In re
3 Manville Forest Products Corp.), 896 F.2d 1384, 1391 (2nd Cir.
4 1990) (change of venue denied because lessee failed to show that
5 interests of justice were served). The determination whether to
6 transfer a case or an adversary proceeding must be made upon an
7 "individualized, case by case consideration of convenience and
8 fairness." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 108
9 S.Ct. 2239, 2244, 101 L.Ed.2d 22 (1988) (construing 28 U.S.C. S
10 1404(a)), quoting Van Dusen v. Barrack, 376 U.S. 612, 622, 84
11 S.Ct. 805, 812, 11 L.Ed.2d 945 (1964); In re Manville Forest
12 Products Corp.), 896 F.2d at 1391.

13 In determining whether to transfer either a case or an
14 adversary proceeding, the court should not afford the debtor's
15 choice of forum any special deference. In re Abacus
16 Broadcasting Corp., 154 B.R. 682, 687 (Bankr.W.D.Tx. 1993).
17 (Chapter 11 case transferred to the District of Utah.)¹⁶
18 Nonetheless, where venue of a case is proper, courts should
19 exercise their discretion with caution and transfer a case only
20 if there is clear and proper justification. In re Commonwealth
21 Oil Refining, at 1241 (denial of a motion to change venue based
22 on the convenience of the parties is not an abuse of discretion
23 where the interest of justice militated against a transfer).

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26 ¹⁶ The Court in Abacus stated: "Pursued by a chapter 7 trustee with obvious limitations on his resources, and
27 having fared badly in the Utah bankruptcy courts, the debtor settles on El Paso, Texas, where its principal, Mr. Haston
28 has enjoyed some (though not unalloyed) success, and is at least a known quantity. Never mind that the station's
employees will never be able to attend a hearing (they were not even listed in the debtor's schedules as creditors), and
never mind that the court has no earthly idea what the Salt Lake City market is like. Indeed, the lawyer that filed the case
for Abacus was from Salt Lake City. The attempt at forum shopping is obvious. It is also impermissible."

1 The factors to be considered in determining whether to
2 transfer a case include: (1) the proximity to the court of the
3 estate's creditors, assets, and the debtor, as well as the
4 witnesses and evidence that might have to be adduced for
5 hearings; (2) the relative economic harm to debtors and
6 creditors if the case were transferred; (3) the economics of
7 administering the estate; (4) the effect of a transfer on the
8 willingness or ability of parties to participate in the case;
9 and (5) the availability of compulsory process and the cost
10 associated with obtaining the testimony of witnesses unwilling
11 to testify voluntarily. In re Abacus Broadcasting Corp., 154
12 B.R. at 687. (Chapter 11 case transferred to the District of
13 Utah.) The most important consideration in this instance is
14 whether the requested transfer will promote the economic and
15 efficient administration of the estate. In re Commonwealth Oil
16 Refining, 596 F.2d at 1247.

17 In addition, bankruptcy courts properly consider other fac-
18 tors depending upon the circumstances of a particular case. For
19 example, the court in which the motion to transfer is pending
20 may consider the extent to which the bankruptcy judge in the
21 community in which the debtor conducted its business would be
22 better able to effectively and efficiently administer the case.
23 In re Abacus Broadcasting Corp., 154 B.R. at 687. Similarly,
24 bankruptcy courts may consider the relative economic harm to
25 debtors and creditors caused by a transfer, In re Ofia Realty
26 Corp., 74 B.R. 574, 576 (Bankr.S.D.N.Y. 1987), and a state's
27 interest in having local controversies decided within its
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1 borders. In re 19101 Corp., 74 B.R. 34, 35 (Bankr.D.R.I. 1987).

2
3 **C. Transfer of the Case and Adversary Proceeding Satisfies**
4 **the Interests of Justice and Convenience of the**
5 **Parties.**

6 In considering the various factors for requests to transfer
7 a case, including whether the transfer will promote the economic
8 and efficient administration of the estate, the court finds that
9 transfer of this case and the pending adversary proceeding is in
10 the interest of justice and the convenience of the parties.

11 The majority of debtors' scheduled creditors are located
12 outside of this venue. Debtors Schedule "F" lists 391 unsecured
13 creditors, and all but thirteen of the creditors appear to be
14 creditors of the Wyoming Mountain House business. Of the
15 thirteen personal obligations of the debtors contained in
16 Schedule "F," seven relate to personal guarantees of Mountain
17 House debts; and of the remaining six scheduled unsecured
18 creditors, only two are located in California. Debtors
19 scheduled two secured creditors on Schedule "D," which are the
20 plaintiffs herein, who reside in Wyoming. Plaintiffs appear to
21 be the largest scheduled creditors in the case, holding secured
22 claims totaling \$844,695.90.¹⁷ The scheduled priority claims
23 include the Internal Revenue Service and Wyoming Dept. of
24 Revenue, relating to Mountain House, and the third priority
25 creditor scheduled is the Internal Revenue Service, with an
26 address indicated in Utah. [See Schedule "E."] Thus, while

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27 ¹⁷The court does not know the amount of each scheduled unsecured creditor's claim because each of the 13 personal
28 obligations reflect "unknown" in the amount of claim column, with the exception of Porsche Credit Corp. located in
Illinois, which is listed as having an unsecured claim of \$45,000. With respect to the scheduled priority claims, debtors
also indicate that the amounts of the claims are "unknown."

1 this court is clearly the most convenient venue for the debtors,
2 it is not convenient for the creditors located in Wyoming, or
3 who have a claim pertaining to the Wyoming-based business, who
4 wish to participate in this case. An argument was made that
5 testimony could be provided through depositions pursuant to
6 Fed.R.Civ.Proc. 32(a) (permitting party to use deposition
7 testimony if witness is more than 100 miles from place of trial
8 or hearing). While testimony by deposition is permissible, the
9 court believes that the credibility of witnesses may well be at
10 the heart of the underlying dispute. In that event, the ability
11 of the trier of fact to observe the witnesses and to form an
12 opinion concerning their credibility is of the utmost
13 importance. The court believes the willingness of witnesses to
14 participate in the case and adversary proceeding will also be
15 greater if the case is transferred to Wyoming. Moreover, in
16 view of Mr. Thomas' post-bankruptcy salary, the court does not
17 believe the debtors' ability to participate in the case and
18 contest the adversary proceeding will be adversely affected by
19 transfer of the case to Wyoming.

20 The effective and efficient administration of the estate is
21 also served by transferring the case and adversary proceeding to
22 Wyoming. As already discussed, the majority of debtors' sched-
23 uled debts relate in some manner to Mountain House, and the
24 events underlying plaintiffs' adversary proceeding, including
25 the basis for denial of the debtors' discharge, took place
26 substantially (if not entirely) in Wyoming. The Mountain House
27 records, witnesses and non-debtor parties are located in
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1 Wyoming, therefore making administration arguably more efficient
2 by a Wyoming trustee than a trustee located in California.

3 Counsel for the trustee initially argued against transfer
4 of the case because of the allegations that there were
5 undisclosed assets located in California, and a trustee in
6 California would have an easier time recovering any undisclosed
7 assets. However, the trustee indicates in his subsequent
8 statement regarding his intentions for administration of the
9 case, that no additional assets have been discovered or are
10 believed to exist. The trustee's statement provides that a
11 standard "asset locator" search through an on-line service will
12 be conducted, however no further investigation is contemplated.
13 Certainly a Wyoming trustee could conduct a similar on-line
14 asset search.

15 There are no significant assets that require adminis-
16 tration. Counsel for the trustee initially indicated that the
17 value of the debtors' nonexempt assets was believed to be in the
18 neighborhood of \$20,000. The trustee subsequently disposed of
19 substantially all of the debtors' personal property through a
20 court approved compromise with the debtors for the sum of
21 \$10,500.

22 The trustee has also indicated his administration of the
23 case would include filing a blanket objection to a number of
24 claims filed by alleged Mountain House creditors on the basis
25 that the debtors have no personal liability for those debts.
26 According to the trustee, approximately 20 of 52 such claims are
27 Wyoming-based creditors. A trustee located in Wyoming would be
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1 closer in proximity to the Mountain House records that may
2 require review in resolving the objections to claims.

3 The trustee has also indicated that he would review
4 debtors' bank records to determine if any preference actions
5 exist. A possible preference action against plaintiffs is
6 alluded to. If such an action does exist, a trustee in Wyoming
7 could efficiently conduct any necessary discovery since
8 plaintiffs are located in that state.

9 Taking into consideration all of these factors, the court
10 finds no compelling reason why the bankruptcy case should remain
11 in this venue. There are multiple reasons, on the other hand,
12 why this case and plaintiffs' adversary proceeding should be
13 transferred to Wyoming. The court concludes that the
14 convenience of the parties, as well as the interests of justice,
15 are served by granting plaintiffs' motion to transfer the case
16 to Wyoming. Because the venue of an adversary proceeding is
17 generally proper in the district in which the bankruptcy case is
18 pending,¹⁸ which is particularly true in this case because two of
19 the causes of action seek to deny the debtors their discharge,
20 the court will also transfer plaintiffs' adversary proceeding to
21 the United States Bankruptcy Court for the District of Wyoming.

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24 **v. CONCLUSION**

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27 ¹⁸ See, e.g., Continental Airlines, Inc. v. Chrysler (In re Continental Airlines, Inc.), 133 B.R. 585, 587 (Bankr.D.Del. 1991)
28 (providing that there is a "strong presumption" of maintaining venue where the bankruptcy case is pending).

1 For the above reasons, the court hereby grants plaintiffs'
2 motion to transfer the debtors' bankruptcy case, and Adversary
3 Proceeding No. 96-5313, to Wyoming. The present Chapter 7
4 trustee shall file an interim accounting, and all professionals
5 seeking compensation or reimbursement of expenses through the
6 date of this order shall file their fee applications, by April
7 30, 1997. On May 1, 1997, the court will transfer the case and
8 Adversary Proceeding No. 96-5313 to the Bankruptcy Court for the
9 District of Wyoming.

10 DATED: _____

JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

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