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# Venue Provisions Fail to Provide Relief in Smaller Dollar Preference Cases

Article By:

Dylan Trache

Almost two years ago, the Small Business Reorganization Act of 2019 (SBRA) was enacted. While the provisions regarding the new Subchapter V reorganization received the most press (streamlined chapter 11 for businesses with debts of no more than $7,500,000), the SBRA also included other important changes to the Bankruptcy Code. Among these additional changes was an increase in the venue threshold under 28 U.S.C. § 1409(b) to $25,000.00 as follows:

> (b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding **arising in or related to** such case to recover a money judgment of … against a noninsider of less than $25,000, **only in the district court for the district in which the defendant resides.**

28 U.S.C. § 1409(b) (emphasis added).

The intent of this amendment seems to be to limit the amount of small dollar preference cases brought by trustees and debtors in possession in jurisdictions far from where a vendor operates so as to reduce the burden on these smaller preference targets. It has become common practice for trustees and post-confirmation trusts to utilize the preference powers under 11 U.S.C. § 547 to demand repayment of amounts paid to the debtor within 90 days of the petition date. The Bankruptcy Code provides numerous defenses to such demands, such as the ordinary course of business defense and the subsequent new value defense. However, in small cases, vendors face the difficult task of defending these demands without incurring legal cost in excess of the demand itself. Accordingly, reports have indicated that Congress intended to raise the prior limit of $13,650.00 to $25,000.00 and have this limit apply to preference cases.

However, the technical language used in the venue provision created ambiguity. Bankruptcy Courts exercise subject matter jurisdiction in three ways — “arising in, arising under and related to” a bankruptcy proceeding. Yet the limitation in § 1409(b) applies only in cases arising in or related to a bankruptcy proceeding. Preference lawsuits commenced under § 547 are generally considered proper under a court’s “arising under” jurisdiction because they seek to enforce rights created by the

actual filing of a bankruptcy case. Accordingly, the majority of courts to consider the matter have held that a trustee may bring a preference case in the jurisdiction where the bankruptcy has been filed even if the demand is less than $25,000.00.

For example, in *In re Tadich Grill of Washington DC LLC*, 598 B.R. 65 (Bankr. D.D.C. 2019), the District of the District of Columbia considered the statutory language and found unpersuasive arguments that Congress unintentionally omitted “arising under” jurisdiction — and therefore preference cases — from the ambit of the venue limitations. It similarly rejected arguments that the phrase “arising in” could also include “arising under” noting among other things Congress expressly used referenced “arising under” jurisdiction earlier in the statute and that such a conclusion would produce odd results such as possibly precluding trustees from proceedings to avoid security interests on property. Thus, the Court rejected all arguments to the contrary and ruled that preference actions of less than $25,000.00 may be brought in the trustee’s home court.

While a minority of courts have found that trustees are precluded from bringing these smaller dollar cases, vendors facing smaller dollar preference claims face the difficult decision as to whether to mount a defense or settle quickly even if their defenses are strong. Even attempting to invoke the venue threshold can result in significant cost to the preference defendant — although often these preference targets hire the same firm to mount such a venue attack in order to spread the costs.



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