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Venue Transfer: Types of Jurisdiction and the Applicability of 28 U.S.C § 1412

Title 28 of the U.S. Code contains two provisions authorizing a change of venue even where current venue is otherwise proper.¹ Section 1404 governs general civil litigation transfers, while § 1412 specifically addresses transfers of bankruptcy cases and related proceedings. The existence of a bankruptcy-specific provision has led to confusion regarding the appropriate standard for venue-transfer motions in bankruptcy cases.

Section 1412 permits a district court to “transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.”² This provision provides more flexibility than § 1404, which *only* permits transfer to a district where the action “might have been brought” originally, or upon consent of all parties.³

Appellate-level authority interpreting the full scope of § 1412 is limited.⁴ Consequently, bankruptcy and district courts have reached varying conclusions when determining the appropriate criteria for transferring bankruptcy-related cases under this section. This article describes the three main approaches and underlying rationales. Many of the distinctions among the three approaches overlap, providing the opportunity for a strategic lawyer to argue either for or against transfer of venue.

Types of Jurisdiction

Interpretation of § 1412 turns on three categories of jurisdiction: (1) arising under; (2) arising in; and (3) related to. Actions considered

“arising under Title 11” encompass “any matter under which a claim is made under a provision of title 11.”⁵ As such, “[t]his is distinguishable from ‘arising in’ jurisdiction, which covers claims that are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy.” The final category, “related-to jurisdiction,” provides “bankruptcy jurisdiction to any action if the outcome might have any conceivable effect on the bankrupt estate.”⁶ These three categories relate to the core/non-core jurisdictional limitation that 28 U.S.C. § 157 imposes on bankruptcy.⁷ “Core” proceedings encompass both “arising under” and “arising in.”⁸ “Related to” jurisdiction is non-core.

The Strict Statutory Analysis: The “Arising In” Test

Two comprehensive and insightful opinions by Hon. Michael E. Wiles of the U.S. Bankruptcy Court for the Southern District of New York provide a thorough analysis of what the court considers a relatively straightforward exercise in statutory interpretation.⁹ In *Onewoo Corp. v. Hampshire*



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1 28 U.S.C. §§ 1404, 1412.

2 28 U.S.C. § 1412.

3 28 U.S.C. § 1404(a).

4 See *Gibbs v. Rees*, No. 3:17-cv-386, 2018 WL 1460705, at *7 (E.D. Va. March 23, 2018) (“Nationally, no appellate court has directly decided the issue.”).

5 *Zohar CDO 2003-1 Ltd. v. Patriarch Partners LLC*, 620 B.R. 456, 462 (S.D.N.Y. 2020) (citation modified).

6 *Id.* at 462, n.3 (citation modified).

7 “Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). As no discussion of bankruptcy court jurisdiction would be complete without alluding to *Stern v. Marshall*, 564 U.S. 462 (2011), note that the U.S. Supreme Court has held that certain applications of § 157 are unconstitutional — even if they comply with the statute on its face. In *Stern*, the Court found the bankruptcy court’s entry of final judgment on a state court counterclaim for tortious interference with a contractual relationship (“core” by the terms of § 157 because the counterclaim defendant had filed a bankruptcy proof of claim) was nevertheless unconstitutional because such common law claims fall within Article III jurisdiction and could not be withdrawn by Congress.

8 *In re Robert Plan Corp.*, 777 F.3d 594, 596 (2d Cir. 2015).

9 Other courts have independently conducted similar analyses. See, e.g., *EnSource Inv. LLC v. Tatham*, No. 17-cv-00079, 2017 WL 3923784 (S.D. Cal. Sept. 7, 2017).

Brands Inc.,¹⁰ the plaintiffs in a civil action sought to transfer venue to the U.S. Bankruptcy Court for the District of Delaware, where the chapter 11 cases for certain defendants were pending, pursuant to § 1412.

The court began its analysis by noting that § 1412 omits the phrases “arising in” or “related to,” which distinguishes it from broader jurisdictional provisions such as §§ 1334 (“civil proceedings arising under title 11 or arising in or related to a case under title 11”¹¹) and 157 (“all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11”¹²). Because the underlying action involved common law fraud and breach of contract, which predated the bankruptcy petition and asserted claims against both the debtor entities and individual nondebtors. The court adhered to the Southern District of New York precedent limiting § 1412 to cases “arising under” title 11 and declined to transfer the case to Delaware.¹³

Approximately 18 months later, in *Multibank Inc. v. Access Global Capital LLC*, the same court once again considered the scope of § 1412, further supplementing the *Onewoo* analysis and reaching the same conclusion.¹⁴ While the facts of *Multibank* differed, the conceptual foundation of the analysis was the same: Statutory language must be accorded proper weight. “Treating the statute as though the limiting language [‘under’] simply does not exist is not a proper way of interpreting the statute.”¹⁵

Likewise, differences in statutory language from prior, similar statutes warrant the presumption that Congress intended such changes to be deliberate: “If Congress changed the language [between the venue transfer statutes], the presumption ought to be that the change was deliberate.”¹⁶ Since then, courts around the country — including those in Florida,¹⁷ Kansas¹⁸ and Wisconsin¹⁹ — have cited *Onewoo* and/or *Multibank*’s detailed analyses when adopting a strict interpretation of § 1412 and limiting transfer of venue.

The Middle-of-the-Road Test: The “Core” Proceedings Analysis

Other courts employ the “core” status test to determine the applicability of

§ 1412.²⁰ This approach considers whether the proceeding is core to the bankruptcy process itself regardless if it “arises under” or “arises in,” suggesting a broader application of § 1412 than the pure “arising under” test alone.²¹

A recent example is *Exyte U.S. v. Athenex Inc.*,²² where the Western District of New York adopted the core status framework to determine the applicable venue-transfer statute. The case originated in the New York Supreme Court as a breach-of-contract suit of Exyte U.S. Inc. against Athenex Inc. and ImmunityBio Inc. Following Athenex’s bankruptcy filing in the Southern District of Texas and the confirmation of a liquidating plan, Athenex removed the state court action to the U.S. District Court for the Western District of New York. The court there subsequently had to determine which venue-transfer statute was applicable.

The Western District of New York applied the Second Circuit’s standard test “to determine whether a state law contract action is a core proceeding.”²³ Noting that the Exyte proof of claim “mirrors” the civil suit, and the ImmunityBio proof of claim arises from that same civil suit, the court cited *In re Iridium Operating LLC*²⁴ in support of its conclusion that “the core and noncore claims are inextricably intertwined, and proofs of claim [were] filed,” transforming the noncore ImmunityBio claims into core matters.²⁵ Accordingly, the Western District of New York concluded that § 1412 was the applicable venue-transfer statute.

Dicta in *Onewoo* hints at application of the core test: “There may be an argument that *Onewoo*’s claims against the two Debtors themselves are now core matters to be resolved in Delaware, but no such argument can be made as to the fraud claims against the individual defendants who are not debtors in any bankruptcy case.”²⁶ What distinguishes the nondebtor co-defendants in *Onewoo* (whose issues were *not* core) and ImmunityBio, the nondebtor co-defendant in *Exyte* (whose claim was so intertwined it became core)? The likely answer is their relation to the bankruptcy at issue: *Onewoo* does not suggest that the individual co-defendants had filed proofs of claim or participated in the bankruptcy proceeding, unlike ImmunityBio.

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10 *Onewoo Corp. v. Hampshire Brands Inc.*, 566 B.R. 136 (Bankr. S.D.N.Y. 2017).

11 28 U.S.C. § 1334(b).

12 28 U.S.C. § 157(b)(1). See *supra* n.7 regarding implications of *Stern*.

13 But see n.27-29 and accompanying text.

14 *Multibank Inc. v. Access Global Capital LLC*, 594 B.R. 618 (Bankr. S.D.N.Y.).

15 *Id.* at 623.

16 *Id.*

17 *Southstar Cap. Grp. I LLC v. 1662 Multifamily LLC*, No. 18-cv-1453, 2019 WL 3752892 (M.D. Fla. Aug. 8, 2019).

18 *Yellow Corp. v. Int’l Bhd. of Teamsters*, No. 23-1131, 2023 WL 6645803 (D. Kan. Oct. 12, 2023).

19 *Eurochem N. Am. Corp. v. Ganske*, No. 18-cv-16, 2020 WL 7447136 (W.D. Wis. Dec. 18, 2020).

20 The Southern District of Indiana declined to transfer a proceeding that did not satisfy the Seventh Circuit’s definition of a “core” proceeding “because it involves contract and tort theories under Indiana state law — not the Bankruptcy Code — and exists outside the bankruptcy context.” *Estimating Grp. LLC v. Rickey Conrad Inc.*, No. 19-00586, 2021 WL 9958472, at *1 (S.D. Ind. March 16, 2021). Likewise, the U.S. Bankruptcy Court for the Southern District of Texas held that § 1412’s “application is limited to core matters.” *Longhorn Partners Pipeline LP v. KM Liquid Terminals LLC*, 408 B.R. 90, 97 (Bankr. S.D. Tex.); see also *id.* (“Section 1412 specifically excludes any references to ‘related to’ proceedings.”).

21 In contrast, the *Zohar* decision, while applying the core test, acknowledged this distinction. *Zohar*, 620 B.R. at 462, n.4. *Zohar* comes from the Southern District of New York and notes the “common practice” in that district of “look[ing] to whether the action is ‘core’ or ‘non-core.’” *Id.*

22 *Exyte U.S. v. Athenex Inc.*, No. 24-00242, 2025 WL 726628 (W.D.N.Y. March 7, 2025).

23 *Exyte*, 2025 WL 726628, at *4.

24 *In re Iridium Operating LLC*, 285 B.R. 822, 830 (S.D.N.Y. 2002).

25 *Exyte*, 2025 WL 726628, at *6.

26 *Onewoo*, 536 B.R. at 139.

The Southern District of New York recently dismissed the argument that § 1412 is strictly limited to “arising under” cases.²⁷ Although acknowledging the “long line of decisions” supporting a narrow application,²⁸ the Southern District of New York noted that “the cases relied on in *Onewoo* reinforce the Court’s position that § 1412 applies to core proceedings, and cases that arise in bankruptcy proceedings are core.”²⁹ Thus, the choice between the “core” framework and the strict “arising under” test remains subject to varying judicial discretion.

The Expansive Test: Transfers of Any “Related” Proceedings

The majority interpretation of § 1412 is the broadest and extends its application to any “related” proceeding.³⁰ Courts applying this standard often reason that a narrower reading of § 1412 would “thwart transfer” in many cases and undermine the practical efficiency of bankruptcy administration that supports litigating related proceedings in the same court,³¹ as well as specific statutory language³² and relation to other statutory provisions.³³ These courts have evaluated the statutory construction arguments raised in *Onewoo* and *Multibank* yet reached the opposite conclusions, finding that the specific statutory language and its interplay with related provision support a more-expansive application.³⁴

Because some courts recognize that noncore proceedings may become core if sufficiently intertwined,³⁵ the distinction between § 1412 tests considering “related to” and “core” appears only slightly less porous than the distinction between “arising under” and “core.” *Collier on Bankruptcy* cited *Exyte* as a primary example of this trend, illustrating the judicial shift toward endorsing the broader “related to” analysis for venue transfer.³⁶

“It Depends.”

Currently, the application of § 1412 remains unsettled, allowing parties to advocate for either a broad or narrow interpretation depending on their strategic objectives. Few courts are subject to binding authority, and the blurred boundary between a strict “arising under” requirement and an analysis of “core” matters means that even districts ostensi-

bly applying the same test might reach seemingly conflicting decisions. Although this lack of predictability complicates strategic planning, the inherent flexibility of the “core” and “related to” tests provides significant latitude opportunities for creative legal arguments. **abi**

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27 *Diligent Enter. Mgmt. LLC v. AML Global Eclipse LLC*, No. 24-2228, 2025 WL 1502032, at *9 n.8 (S.D.N.Y. May 27, 2025).

28 *Onewoo*, 536 B.R. at 140.

29 *Diligent Enter.*, 2025 WL 1502032, at *9 n.8.

30 “Numerous cases” hold that § 1412 “applies to all types of civil proceedings.” 1 *Collier on Bankruptcy* ¶ 4.05[2] (2025). The *Collier* treatise appears to endorse the “related to” interpretation. See *id.* (“dubious” whether limitation of § 1412 to “arising under” proceedings “is supportable”).

31 *Gibbs*, 2018 WL 1460705, at *8.

32 See, e.g., *BRH-Garver Constr. LLC v. BankFinancial NA*, No. 22-1449, 2023 WL 5334610, at *4-5 (N.D. Ill. Aug. 18, 2023) (distinguishing between “proceedings” and “cases” as part of its analysis).

33 *HRV Santa Fe LLC v. Wolf*, No. 24-01002, 2024 WL 4009406, at *5 n.5 (Bankr. D.N.M. Aug. 30, 2024) (“[T]he phrase is unique; it is not simply the language in § 1334(b) minus the “related to” portion. In the Court’s opinion, the most reasonable reading of the phrase is that § 1412 includes all adversary proceedings [including “related to” adversary proceedings].”); *Gibbs*, 2018 WL 1460705, at *8 (“[E]valuation of § 1412 in conjunction with 28 U.S.C. § 1409 (enacted at the same time) convincingly undergirded “application of “related to” interpretation).

34 See *Gibbs*, 2018 WL 1460705, at *8 (referring to “a thorough contextual analysis of the choice-of-venue statute that governed before § 1412”); *HRV Santa Fe*, 2024 WL 4009406, at *5 n.5 (“[T]he predecessor of § 1412, § 1475, gave bankruptcy courts authority to transfer all proceedings, including “related to” proceedings. It is unlikely Congress intended to reduce the transfer authority when it gave it to the district courts instead of the bankruptcy courts.”).

35 *Exyte*, 2025 WL 726628, at *6.

36 1 *Collier on Bankruptcy* ¶ 4.05[2] (2025).