

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
Newbury Common Associates, LLC, <i>et al.</i> , ¹	Case No: 15-12507 (LSS) (Jointly Administered)
Debtors.	Proposed Hearing Date: February 29, 2016, at 10:00 a.m. Objection Deadline: TBD

**MOTION OF PATRIOT BANK, N.A. TO TRANSFER VENUE OF THESE
CHAPTER 11 CASES TO THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF CONNECTICUT**

Patriot Bank, N.A. (“Patriot Bank” or “Movant”), by and through its undersigned counsel, moves (the “Motion”) this Honorable Court for an order transferring venue of the bankruptcy cases (“Chapter 11 Cases”) filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) to the United States Bankruptcy Court for the District of Connecticut (“Connecticut Bankruptcy Court”) pursuant to 28 U.S.C. §§ 1404 and 1412 and Rule 1014 of the Federal Rules of Procedure (“Rules”). In support of the Motion, Patriot Bank respectfully states as follows:

¹ The “Original Debtors” in these chapter 11 cases, along with the last four digits of each Original Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); and Tag Forest, LLC (8974).

The “Additional Debtors” in these chapter 11 cases, along with the last four digit of each Additional Debtor’s tax identification number, are: Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); and 300 Main Street Associates, LLC (8501).

The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

PRELIMINARY STATEMENT AND SUMMARY

1. The Debtors are a group of related entities who own and/or control a portfolio of real properties located primarily in Stamford, Connecticut (collectively, the “Properties”).

2. On December 13, 2015, all of the Original Debtors except Tag Forest, LLC commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Tag Forest, LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on December 14, 2015. On February 3, 2016, all of the additional Debtors except 88 Hamilton Avenue Associates, LLC commenced a voluntary case under chapter 11 of the Bankruptcy Code. 88 Hamilton Avenue Associates, LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 4, 2016 (collectively with December 13, 2015, December 14, 2015 and February 3, 2016, the “Petition Dates”).

3. Fourteen (14) of the fifteen (15) Original Debtors are formed or incorporated in the State of Connecticut. Only one (1) of the Original Debtors, Newbury Common Associates, LLC, is formed in the State of Delaware. As a whole, more than half of all of the Debtors are formed or incorporated in the State of Connecticut. Moreover, the principal places of business for all of the Debtors are in Stamford, Connecticut.

4. As set forth in greater detail below, Patriot Bank is a party-in-interest and creditor in these Chapter 11 Cases.

5. Patriot Bank seeks a change of venue for these Chapter 11 Cases to the United States Bankruptcy Court for the District of Connecticut because, among other things, the Debtors’ Properties are located in Connecticut and the majority of the Debtors are domiciled exclusively in Connecticut. Two out of three of the Original Debtors’ principal managers, John DiMenna, Thomas Kelly and William Merritt (collectively, the “Managers”), are located in Connecticut and

the majority of the Additional Debtors' Equity Security Holders ("Owners") are located in Connecticut. Similarly, more than two-thirds (2/3) of the Debtors' creditors are located in Connecticut. The economic effect of these Chapter 11 Cases is felt most acutely in Connecticut, where the Debtors' Properties, Managers, Owners and creditors are located. Transfer of these Chapter 11 Cases to Connecticut would facilitate the participation of creditors and members/stakeholders in the determinations affecting the Debtors' debts and the future of the Debtors' assets.

6. In contrast, the only nexus to Delaware is the incorporation of less than half of the Debtors in Delaware. None of the Properties are located in Delaware. None of the Debtors' creditors reside in Delaware. None of the Managers or Owners are located in Delaware.

7. In short, the Connecticut Bankruptcy Court is a proper venue for the Debtors' Chapter 11 Cases, and these Chapter 11 Cases should be transferred to the Connecticut Bankruptcy Court in the interest of justice and for the convenience of all interested parties.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1337. "Motions to transfer venue are core proceedings." *In re DBSI, Inc.*, 478 B.R. 192, 194 (Bankr. D. Del. 2012); *see also* 28 U.S.C. § 157(b)(2).

9. Rule 1014(a)(1) provides:

If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on the notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

Fed. R. Bankr. P. 1014(a)(1).

10. The statutory predicate for the relief requested herein is 28 U.S.C. §§ 1404 (concerning change of venue generally), 1408 (concerning venue generally) and 1412 (concerning transfer of cases or proceedings “under title 11”). Section 1412 employs precisely the same language as Rule 1014(a)(1) when discussing situations in which transfer of venue is appropriate, namely: “in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. Section 1404 uses similar language, referencing the same two standards: the interests of justice and the convenience of the parties. 28 U.S.C. § 1404.

BACKGROUND

A. DEBTORS

11. On the Petition Dates, the Debtors commenced these Chapter 11 Cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code.

12. The meeting of creditors pursuant to section 341 of the Bankruptcy Code has yet to be held, and the United States Trustee has not appointed a statutorily authorized creditors’ committee in these Chapter 11 Cases.

13. The Debtors are a group of related entities who own and/or control the Properties, which is located primarily in Stamford, Connecticut. The principal place of business for each Debtor is in Connecticut, and the majority of the Debtors are domiciled exclusively in Connecticut.

B. MOVANT

14. Movant is a commercial bank with branches in south-eastern Connecticut and New York, near the Connecticut boarder. Movant’s main office is located in Stamford, Connecticut.

15. On or about July 18, 2014 Movant entered into a Commercial Revolving Loan and Security Agreement as well as a Commercial Revolving Line of Credit Promissory Note (collectively, the “Agreements”) with one of the Debtors, Seaboard Realty, LLC (“Seaboard

Realty”) and a non-Debtor, Seaboard Property Management, Inc.

16. Seaboard Realty, its principals or entities it manages serve as the manager under operating agreements for each of the Debtors. *See* Beilinson Declaration, D.I. 177, ¶ 8. Seaboard Realty is owned by the Managers. *Id.* According to the Additional Debtors’ Initial Filings, two (2) out of three (3) of the Managers is located in Connecticut. Moreover, all of the Properties managed by Seaboard Realty are located in Connecticut. *Id.* at ¶ 10-13.

RELIEF REQUESTED

17. By the Motion, Patriot Bank seeks the entry of an order transferring venue of these Chapter 11 Cases to the United States Bankruptcy Court for the District of Connecticut.

A. VENUE SHOULD BE TRANSFERRED TO CONNECTICUT.

18. Under 28 U.S.C. §§ 1404, 1408 and 1412, and under Rule 1014, a Court may transfer venue of a bankruptcy case in “the interest of justice or for the convenience of the parties.” 28 U.S.C. §§ 1404, 1408 and 1412; Fed. R. Bankr. 1014; *In re Qualteq, Inc.*, 2012 WL 527669, at *6 (Bankr. D. Del. 2012).

19. In *In re Qualteq, Inc.*, this addressed the following six “wellworn” factors to consider whether transferring a case is: a) in the interest of justice; or b) for the convenience of the parties:

- (1) proximity of creditors of every kind to the court;
- (2) proximity of the debtor;
- (3) proximity of witnesses who are necessary to the administration of the estate;
- (4) the location of the debtor's assets;
- (5) the economic administration of the estate; and
- (6) the necessity for ancillary administration in the event of liquidation.

Id. at *5.

20. Similarly, *In re Rehoboth Hospitality, LP*, 2011 WL 5024267 (Bankr. D. Del.

2011), this Court used the following eight-factors to determine whether to transfer venue:

- (1) the location of the plaintiff and defendant;
- (2) the ease of access to the necessary proof;
- (3) the availability of subpoena power for the unwilling witnesses;
- (4) the expense related to obtaining willing witnesses;
- (5) the enforceability of any judgment rendered;
- (6) the ability to receive a fair trial;
- (7) the state's interest in having local controversies decided within its borders; and
- (8) the economics of the estate administration.

Id. at *3.

21. Furthermore, courts have identified “the local interest in deciding local controversies at home” and “the familiarity of the trial judge with the applicable state law in diversity cases” as factors relevant to an analysis regarding transferring venue. *Zazzali v. Swenson*, 852 F. Supp. 2d 438, 449 (D. Del. 2012).

22. Movant has the burden of proving, by a preponderance of the evidence, that the transfer to the District of Connecticut is in the interest of justice or the convenience of parties. *Hechinger Inv. Co. of Del. vs. MGH Home Improvement, Inc.*, 288 B.R. 398, 402 (Bankr. D. Del. 2003).

23. While a debtor’s choice of venue is given deference, applying the above-referenced factors to the circumstances of these cases, it is clear that the preponderance of the evidence supports transferring venue to the District of Connecticut for the convenience of the parties and in the interest of justice. Each factor either weighs in favor of, or is neutral on, transfer of venue to the Connecticut Bankruptcy Court. No factor weighs in favor of maintaining venue in Delaware. Each of the relevant factors appear in bold below, with the applicable circumstances of this case following.

(a) **The location of the key parties:** The principal place of business for each of the Debtors is Connecticut. Moreover, all except one of the Original Debtors (Newbury Common Associates, LLC) are formed or incorporated in Connecticut. Furthermore, as a whole, the majority of the Debtors are domiciled exclusively in Connecticut. Similarly, the majority of the Debtors' creditors are located in Connecticut. Although no matrix has been uploaded in these cases, a review of the Original Debtors' Schedules of Assets and Liabilities (collectively, the "Schedules") and the Additional Debtors' Lists of Creditors who have the Thirty (30) Largest Unsecured Claims reveals at least fifty-one (51) distinct creditors. Thirty-five (35) of those fifty-one (51) creditors resides in Connecticut. In other words, approximately two-thirds (2/3) of the creditors in these Chapter 11 Cases reside in Connecticut. In contrast, none of the creditors reside in Delaware. Furthermore, every co-debtor listed on the Schedules resides in Connecticut. Two-thirds (2/3) of the Managers are also located in Connecticut. Additionally, none of the Additional Debtors' Equity Security Holders ("Owners") are located in Delaware; rather, the majority are located in Connecticut. In short, this factor favors transfer to the District of Connecticut.

(b) **Location of the assets.** The Debtors' principal assets are the Properties, which are located in Connecticut.

(c) **The availability of subpoena power for unwilling witnesses:** The District of Connecticut has subpoena power to the extent witnesses will be required to verify the Debtors' business operation. Moreover, the majority of the Managers and Owners are located in and subject to subpoenas in Connecticut.

(d) **The expense related to obtaining willing witnesses:** This factor favors the District of Connecticut because the creditors and the Debtors, being located primarily in Connecticut, are better served by participating in a venue where they live and conduct business.

(e) **The enforceability of any judgment rendered:** In the event a plan is confirmed, default of the plan, and its enforcement, is more appropriately carried out in Connecticut, where the Properties, the Debtors and most of the creditors, including the Movant, are located.

(f) **The ability to receive a fair trial:** This is not impacted unfavorably by either venue.

(g) **The state's interest in having local controversies decided within its borders:** This factor heavily favors venue in the District of Connecticut because Connecticut is the location of the Debtors, the Properties and most of the creditors. Additionally, the Agreements are governed by Connecticut law.

(h) **The economic and efficient estate administration:** This factor heavily favors the District of Connecticut because the Debtors' business operations take place exclusively in Connecticut. Creditors are better served by parties with whom they can meet personally in Connecticut. Therefore, these Chapter 11 Cases would not be interrupted if venue is transferred to the District of Connecticut.

(i) **Familiarity with applicable state law.** The law to be applied to determine the validity of claims against the Debtors is Connecticut law. Moreover, Patriot Bank's Agreements with Seaboard Realty contain Connecticut choice of law clauses.

(j) **Case precedents.** In addition to the cases cited above (*Qualteq* and *Rehoboth Hospitality*), cases decided by this Court approving transfers of venue of bankruptcy cases include:

- *In re Innovative Communication Co.*, 358 B.R. 120 (Bankr. D. Del. 2006), in which this Court transferred bankruptcy cases from Delaware to the Virgin Islands

because the corporate debtors' principal places of business, creditors, employees, shareholders, operating subsidiaries, and assets were in the Virgin Islands.

- *In re Ocean Properties of Delaware, Inc.*, 95 B.R. 304, 306 (Bankr.

D. Del. 1988), in which this Court transferred bankruptcy cases from Delaware to Florida *ex mero motu*, stating:

It would be more economical to administer the estate in Florida. The greater portion of applicable non-bankruptcy law is that of Florida. . . .

Moving these cases through a Delaware court would result in not only a waste of judicial time in becoming acquainted with Florida law but also a waste of Debtors' resources. There would be the expense of paying two or more sets of counsel. Local rules require local counsel. Local counsel must sign all pleadings and stand charged with certifying as to their content. This, even if local counsel did not actively participate in litigation, would result in duplication of attorney time and expenses.

The majority of creditors holding undisputed claims are in Florida. Creditors not holding disputed claims have a great interest along with those who do in the administration of a Chapter 11 case. For example, all creditors have the right to attend a 341 meeting and to participate in creditor activities. [Debtors'] creditors should [not] be put to the expense of having to travel to Delaware in order to participate in these reorganizations.

A summary of venue transfer decisions rendered by this Court as of 1996 appears in the Report of the Delaware State Bar Association to the National Bankruptcy Review Commission In Support of Maintaining Existing Venue Choices (October 3, 1996),² which states:

In cases where the "center of gravity" is far from Delaware, the Delaware bankruptcy court has transferred venue. Indeed, the bankruptcy court in the District of Delaware has granted eighteen (18) of the twenty-seven (27) motions to transfer venue that have been filed since 1988.

Id. p. 14 (footnote with citation to 18 cases omitted).

² A copy of the Report is available at: <http://govinfo.library.unt.edu/nbrc/report/d3.pdf>.

NOTICE

24. Notice of this Motion shall be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' top 20 creditors, and (c) those parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Movant respectfully submits that no further notice of this motion is necessary.

CONCLUSION

25. In short, venue should be transferred to the Connecticut Bankruptcy Court for the convenience of the parties and in the interest of justice. Each factor used by the Court to consider whether to transfer venue either weighs in favor of, or is neutral on, transfer of venue to the Connecticut Bankruptcy Court. No factor weighs in favor of maintaining venue in Delaware. Among other things, the Debtors' Properties are located in Connecticut. The Debtors' headquarters is in Connecticut, the majority of the Debtors are domiciled exclusively in Connecticut, and the majority of creditors are located in Connecticut. For the foregoing reasons, the Movant respectfully requests that the Court enter an order transferring venue of these Chapter 11 Cases to the United States Bankruptcy Court for the District of Connecticut.

WHEREFORE, the Movant respectfully requests the Court enter an order, substantially in the form attached hereto, transferring the venue of the Debtors' cases to the United States Bankruptcy Court for the District of Connecticut.

Dated: February 22, 2016
Wilmington, Delaware

GELLERT SCALI BUSENKELL & BROWN, LLC

/s/ Michael Busenkell

Michael Busenkell (No. 3933)

Shannon Dougherty Humiston (No. 5740)

1201 N. Orange St., Ste. 300

Wilmington, Delaware 19801

Telephone: (302) 425-5800

Facsimile: (302) 425-5814

Email: mbusenkell@gsbblaw.com

shumiston@gsbblaw.com

Attorneys for Patriot Bank, N.A.