

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

IN RE: ) CHAPTER 7  
 ) CASE NO. 04-11803-JDW  
DONALD HUGH GRAY, )  
 )  
DEBTOR. )

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor: F. Anthony Blakey  
Post Office Box 70879  
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For Creditor: Patrick S. Flynn  
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## MEMORANDUM OPINION

This matter comes before the Court on the motion of Eddie May Simpson and Wendell Kim Glover to dismiss the bankruptcy case due to improper venue. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

### Findings of Fact

Debtor filed a Chapter 7 petition on August 11, 2004. On the petition, Debtor listed his address as 149 S. Butler Street, Camilla, Georgia 31730. That address is also the address of Debtor's mother. Debtor has lived and worked in Puerto Vallarta, Mexico, since May 2001. According to his bankruptcy schedules, Debtor owns no real property and his only items of personal property are household goods and furnishings worth \$1,000, clothing worth \$600, 50 shares of a resort in Mexico (no value), a ½ survivorship interest in his mother's savings account worth \$2,000, one dog worth \$200, and cash on hand of \$200. Of the physical assets, only the household furnishings—a bedroom suit—is located in the United States; it is being held in storage in Camilla. His mother's savings account also is located in Camilla.

Debtor is a citizen of the United States. He holds a U.S. passport and a Georgia driver's license. He is registered to vote in Georgia. He holds a Mexican FM.3 certificate, which is a work visa that requires him to maintain his U.S. address and citizenship. Debtor testified that he considers Camilla his home, and that he intends to return there when his

employment tenure in Mexico ends.

### **Conclusions of Law**

At issue is the creditors' motion to dismiss due to improper venue. The relevant statute offers four alternative bases for venue: (1) the debtor's domicile, (2) the debtor's residence, (3) the debtor's principal place of business in the United States, and (4) the debtor's principal assets in the United States, each of which is examined in relation to the 180 days preceding the filing of the bankruptcy petition. 28 U.S.C.A. § 1408(1) (West 1993).

It is undisputed that Debtor resided in Mexico for the majority of the 180 days preceding the bankruptcy filing. Therefore, venue cannot be based on residence. In addition, venue cannot be based on principal place of business in the United States because there is no evidence that Debtor has any business assets in the United States.

Thus, venue must be premised on either domicile or principal assets in the United States. In In re Farmer, 288 B.R. 31 (Bankr. N.D.N.Y. 2002), the debtor was a citizen of the United States who resided in and was domiciled in the Bahamas. However, she kept a small amount of money in bank accounts located in the Northern District of New York. These accounts were the sum of her assets in the United States, although she held more valuable assets—including joint ownership of a house—in the Bahamas. Id. at 32-33. Even though the bank accounts were de minimis, the court found that in the absence of any other more substantial assets in the United States, the accounts were a sufficient basis for venue. Id. at 34.

In this case, Debtor's only assets in the United States—a bedroom suit and a survivorship interest in a savings account—are located in the Middle District of Georgia.

Therefore, venue is proper in this District on the basis of principal assets in the United States, and the Court need not determine where Debtor is domiciled. Because venue is proper in this case, the Court will deny the motion to dismiss.

An Order in accordance with this Opinion will be entered on this date.

Dated this 1<sup>st</sup> day of March, 2005.

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James D. Walker, Jr.  
United States Bankruptcy Judge

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**ORDER**

In accordance with the Memorandum Opinion entered on this date, the Court hereby DENIES the motion of Eddie May Simpson and Wendell Kim Glover to dismiss for improper venue.

So ORDERED, this 1<sup>st</sup> day of March, 2005.

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James D. Walker, Jr.  
United States Bankruptcy Judge