

DEC 17 2012

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OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NV-11-1305-PaJuH
)		
TIMOTHY L. BLIXSETH,)	Bk. No.	11-15010
)		
Alleged Debtor.)		
_____)		
STATE OF MONTANA, Department)		
of Revenue,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
TIMOTHY L. BLIXSETH,)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 20, 2012
at Pasadena, California

Filed - December 17, 2012

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding

Appearances: _____
Lynn Hamilton Butler, of Brown McCarroll, LLP,
argued for Appellant; Charles D. Axelrod, of Fox
Rothschild LLP, argued for Appellee.

Before: PAPPAS, JURY, and HOLLOWELL, Bankruptcy Judges.

Opinion by Judge Pappas
Dissent by Judge Hollowell

1 PAPPAS, Bankruptcy Judge:
2

3 The Montana Department of Revenue ("MDOR") appeals the order
4 of the bankruptcy court dismissing the involuntary bankruptcy
5 petition it and others filed against the alleged debtor, Timothy
6 Blixseth (Blixseth), for improper venue. We REVERSE.

7 **FACTS**

8 On April 5, 2011, MDOR, along with the Idaho State Tax
9 Commission and the California Franchise Tax Board, filed an
10 involuntary chapter 7¹ bankruptcy petition (the "Petition")
11 against Blixseth in the bankruptcy court for the District of
12 Nevada. The Petition listed Blixseth's residence and mailing
13 address as Medina, Washington, and Blixseth's "county of
14 residence or principal place of business" as Las Vegas, Nevada.
15 The box on the Petition titled "Location of Principal Assets of
16 Business Debtor (if different from previously listed address)"
17 was left blank. The "Venue" box on the Petition indicated that
18 venue in the District of Nevada was appropriate because Blixseth
19 had been domiciled, had a residence, principal place of business,
20 or had principal assets, in the District of Nevada for the longer
21 part of 180 days before the petition was filed.

22 In the Petition, MDOR asserted a claim against Blixseth in
23 the amount of \$219,258,² the Idaho State Tax Commission asserted
24

25 ¹ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

27 ² MDOR asserts this amount is the undisputed portion of its
28 (continued...)

1 a claim against Blixseth for \$1,117,914, and the California
2 Franchise Tax Board asserted a claim against Blixseth for
3 \$986,957.95, all for unpaid taxes. Just a few days later, on
4 April 20, after settling their claims with Blixseth, the Idaho
5 State Tax Commission and the California Franchise Tax Board
6 withdrew as petitioning creditors in the Petition, leaving MDOR
7 as the sole petitioning creditor.

8 Meanwhile, on April 8, 2011, the bankruptcy court, acting
9 sua sponte, had entered an "Order to Show Cause Why Venue in This
10 District is Proper And Why Transfer of Case is Not Appropriate"
11 (the "OSC"). In the OSC, the bankruptcy court noted that
12 Blixseth's Washington street and mailing address were listed in
13 the Petition. The court expressed concern that venue in Nevada
14 was not proper "because of the paucity of the connection between
15 Blixseth and the petitioning creditors' selected venue." The OSC
16 required the petitioning creditors to present admissible evidence
17 sufficient to support a finding that venue in Nevada complied
18 with 28 U.S.C. § 1408. That statute provides in pertinent part
19 that:

20 [A] case under title 11 may be commenced in the
21 district court for the district -
22 (1) in which the domicile, residence, principal place
23 of business in the United States, or principal assets
24 in the United States, of the person or entity that is
25 the subject of such case have been located for the one
26 hundred and eighty days immediately preceding such

25 ²(...continued)
26 larger claim held against Blixseth. Blixseth and MDOR are
27 engaged in litigation before the Montana State Tax Appeals Board
28 regarding the balance of MDOR's tax claim, which exceeds \$56
29 million. That litigation was stayed, however, when the
30 bankruptcy case was filed pursuant to MDOR's stay motion.

1 commencement . . .;

2 The petitioning creditors responded to the OSC on April 18,
3 2011. In their response they asserted that, based on a thorough
4 review of public records, the only indicator they had to
5 determine proper venue for the involuntary bankruptcy case under
6 28 U.S.C. § 1408 was their discovery that Blixseth recently "had
7 transferred most of his assets out of his personal name and into
8 two Nevada corporate entities." The petitioning creditors
9 asserted that Blixseth's principal assets consisted of his 98%
10 partner's interest in Desert Ranch LLLP, a Nevada limited
11 liability limited partnership ("Desert Ranch"), and his 40%
12 member's interest in Desert Ranch Management LLC, a Nevada
13 limited liability company ("Desert Management"). The creditors
14 contended, because Blixseth's equity interests in the two Nevada
15 entities were his principal assets, venue was proper in Nevada.
16 Additionally, the petitioning creditors outlined several factors
17 that they argued militated against transfer of the case to
18 another district.

19 In response to the OSC, Blixseth filed a motion to dismiss
20 ("MTD") the Petition.³ Blixseth asserted that there was no basis
21 for venue for the bankruptcy case in Nevada. Blixseth stated
22 that he had resided in Washington since 2007, after previously
23 residing in California. Moreover, Blixseth asserted that he
24
25

26 ³ Blixseth also challenged MDOR's status as an eligible
27 petitioning creditor and asserted that MDOR filed the involuntary
28 petition in bad faith as a tactic to gain a litigation advantage
in the state tax court.

1 conducted no business in Nevada, had no place of business in
2 Nevada, and had no property in Nevada.

3 Importantly, though, in a declaration filed to support the
4 MTD, Blixseth acknowledged that his primary asset was indeed his
5 98% limited partnership interest in Desert Ranch. Blixseth
6 Supplemental Omnibus Declaration at ¶ 21, May 4, 2011 ("All of my
7 income derives from entities held by Desert Ranch LLLP.").
8 However, he explained that Desert Ranch is a holding company for
9 a number of non-Nevada entities whose principal assets are real
10 estate holdings located in Idaho, Washington, California, Mexico
11 and the Turks & Caicos. He stated that the business records and
12 original partnership agreement for Desert Ranch are maintained in
13 Idaho; its bookkeeping is done in California; and the company
14 conducts no business in Nevada.

15 Blixseth also admitted that his 40% member's interest in
16 Desert Management comprised the rest of his principal assets.
17 Blixseth explained that Desert Management is the general partner
18 of Desert Ranch, and its only asset is a 2% interest in Desert
19 Ranch. Blixseth noted that he and his son co-manage Desert
20 Management, and that the LLC has no offices or place of business,
21 and does not conduct business, in Nevada. Other than the
22 interests in Desert Ranch and Desert Management, Blixseth stated,
23 he owns only his personal effects.

24 A hearing on the OSC was conducted by the bankruptcy court
25 on April 22, 2011. MDOR, by then the only petitioning creditor,
26 argued that, based on Nevada's charging order statutes for LLCs
27 and LLLPs, and a decision by a Washington appellate court
28 interpreting a statute similar to the Nevada laws, for venue

1 purposes, the location of a debtor's uncertificated interest in a
2 limited liability company or a limited liability partnership is
3 the entity's state of registration. The bankruptcy court
4 continued the hearing so that the parties could submit briefs to
5 more fully: (1) address the location of Blixseth's equity
6 interests in Desert Ranch and Desert Management; (2) analyze the
7 Nevada statutes regarding the right to obtain a charging order
8 against a limited partner's partnership interest; and (3) discuss
9 how Article 9 of the Uniform Commercial Code ("UCC") would treat
10 Blixseth's interests in Desert Ranch and Desert Management.

11 At the initial hearing, the bankruptcy court also asked MDOR
12 to address why the interests of justice and convenience to the
13 parties required that the case remain in Nevada, rather than
14 transferring the case to a different venue. MDOR conceded that,
15 as to the convenience of the parties, venue in Nevada made little
16 difference since the petitioning creditors were not located in
17 Nevada. However, MDOR argued that "the heart of a creditor's
18 concern is the transfer of the assets . . . into Nevada vehicles
19 that are created for asset protection measures." Hr'g Tr. (Apr.
20 22, 2011) at 28:21-23. MDOR argued that because Nevada law could
21 apply to unwind the transfer, Nevada had a greater interest in
22 the case than another state. Thus, MDOR argued that transfer to
23 another venue was not in the interests of justice.

24 On April 27, 2011, Blixseth filed a renewed motion to
25 dismiss and a motion for sanctions.⁴ Blixseth and MDOR submitted

26
27 ⁴ The non-venue related issues raised in the MTD were
28 deferred by the bankruptcy court to be considered with the motion
(continued...)

1 their supplemental briefs on May 4, 2011, and the continued
2 hearing on the OSC was held May 18, 2011.

3 At the hearing on May 18, the bankruptcy court identified
4 the issue before it as when "all someone has is an equity
5 interest in a Nevada limited-liability, limited-partnership and a
6 membership interest in an LLC, can you say for purposes of [28
7 U.S.C. §] 1408 that his principal assets are in Nevada?" Hr'g
8 Tr. (May 18, 2011) at 20:23-21:1. In its arguments to the court,
9 MDOR asserted that Blixseth had a statutory connection with
10 Nevada with respect to the governance and operation of Desert
11 Ranch and Desert Management. Furthermore, MDOR reiterated its
12 position that, based on the Nevada charging order statutes that
13 require a creditor to enforce a judgment against a debtor's
14 interest in an LLLP or LLC solely in a Nevada court, the location
15 of the debtor's interest is the state of registration. Blixseth,
16 however, argued that the common law principle that intangible
17 assets are located at the person's domicile applied in this case
18 and was supported by case law and the UCC.

19 At the close of the second hearing, the bankruptcy court
20 announced its findings of fact and conclusions of law and ruled
21 that venue of the bankruptcy case in Nevada was improper. While
22 Blixseth had not argued so, the bankruptcy court concluded that
23 intangible ownership interests have no physical location.
24 Therefore, the bankruptcy court determined that, in this case,
25 venue based on the location of Blixseth's principal assets was

26 _____
27 ⁴(...continued)
28 for sanctions. Proceedings concerning both motions have been
stayed pending this appeal.

1 unavailable. And because it was undisputed that Blixseth did not
2 reside, was not domiciled, and did not have a principal place of
3 business in Nevada, there was no other basis for venue in Nevada.

4 In the alternative, the bankruptcy court noted that because
5 courts have, for various non-venue purposes, ascribed a location
6 for intangible assets, the bankruptcy court could also in this
7 case determine the location of Blixseth's ownership interests in
8 Desert Ranch and Desert Management. The court decided, applying
9 the common law, that "you look to the residence of the owner of
10 the intangible." Hr'g Tr. (May 18, 2011) at 62:16-17. In the
11 court's opinion, this view was "supplemented and buttressed by"
12 the notion that creditors would look to Article 9 of the UCC to
13 determine where to perfect a security interest in a borrower's
14 intangible asset and that, under the UCC, general intangibles are
15 located at the owner's residence. Hr'g Tr. (May 18, 2011) at 62-
16 63. Thus, to the extent they had any cognizable situs at all,
17 the bankruptcy court held that, for the purpose of determining
18 the proper venue for an involuntary case against him, Blixseth's
19 intangible ownership interests in the Nevada entities were not
20 located in Nevada. Based upon this analysis, the bankruptcy
21 court ruled that venue in the District of Nevada was improper.

22 An order dismissing the Petition against Blixseth was
23 entered on May 27, 2011, and MDOR timely appealed.

24 **JURISDICTION**

25 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
26 § 157(b)(1) and 28 U.S.C. § 1334. We have jurisdiction under 28
27 U.S.C. § 158.

28 ///

1 **ISSUE**

2 The sole issue in this appeal is whether, for venue purposes
3 under 28 U.S.C. § 1408(1), Blixseth's principal assets,
4 consisting of his intangible equity interests in Desert Ranch and
5 Desert Management, were located in Nevada.

6 **STANDARDS OF REVIEW**

7 We review a bankruptcy court's conclusions of law de novo
8 and its factual findings for clear error. Hopkins v. Cerchione
9 (In re Cerchione), 414 B.R. 540, 545 (9th Cir. BAP 2009). Unless
10 there are pertinent factual disputes, a bankruptcy court's
11 interpretation of the venue statutes and its determination of
12 whether a case is filed in an improper venue are reviewed de
13 novo. Kerobo v. Sw. Clean Fuels, Corp., 285 F.3d 531, 533 (6th
14 Cir. 2002); Modaressi v. Vedadi, 441 F. Supp. 2d 51, 53-54
15 (D.D.C. 2006).

16 **DISCUSSION**

17 A. Venue Law

18 The statute 28 U.S.C. § 1408(1) provides that venue for a
19 bankruptcy case may be based upon any of four alternatives: the
20 debtor's (1) domicile, (2) residence, (3) principal place of
21 business in the United States, or (4) principal place of assets
22 in the United States. Proper venue is determined by reference to
23 the facts existing within the 180-day period prior to the filing
24 of the bankruptcy petition. 28 U.S.C. § 1408(1). Any one of the
25 four bases is sufficient to support proper venue. Broady v.
26 Harvey (In re Broady), 247 B.R. 470, 472 (8th Cir. BAP 2000); In
27 re Shelton, 2001 WL 35814440, at *3 (Bankr. D. Idaho Oct. 12,
28 2001). Even so, the "ground of location of assets will not

1 frequently provide a real alternative because the residence of an
2 individual is likely to be located in the district in which the
3 individual's principal assets are located." 1 COLLIER ON
4 BANKRUPTCY, ¶ 4.02[c] (Alan N. Resnick & Henry J. Sommer eds.,
5 16th ed., 2012).

6 Venue statutes "speak[] to an appropriate, geographically
7 identified forum for the effective administration of the
8 bankruptcy process." In re Murrin, 461 B.R. 763, 782 n.36
9 (Bankr. D. Minn. 2012), rev'd on other grounds, Murrin v. Hanson
10 (In re Murrin), 477 B.R. 99 (D. Minn. 2012); see also VE Holding
11 Corp. v. Johnson Gas Appliance Co., 917 F.2d 1574, 1576 (Fed.
12 Cir. 1990) (venue statutes protect a defendant "from the
13 inconvenience of having to defend an action in a trial court that
14 is either remote from the defendant's residence or from the place
15 where the acts underlying the controversy occurred"); In re
16 Washington, Perito & Dubuc, 154 B.R. 853, 861 (Bankr. S.D.N.Y.
17 1993) ("The purpose of statutory venue requirements is to ensure
18 that a case is filed in a forum that is convenient for the
19 parties in interest."). Even when a bankruptcy petition is filed
20 in a proper district, the bankruptcy court may still transfer the
21 case to another district "if the court determines that the
22 transfer is in the interest of justice or for the convenience of
23 the parties." Rule 1014(a)(1). If a petition is filed in an
24 improper district, the court "may dismiss the case or transfer it

1 to any other district" to accommodate the interest of justice or
2 convenience of the parties. Rule 1014(a)(2).⁵

3 Here, MDOR asserts that the fourth alternative under 28
4 U.S.C. § 1408(a)(1) provides the basis for venue for this
5 bankruptcy case in Nevada. In explaining the decision to file
6 the Petition in Nevada, the petitioning creditors explained that
7 it was unclear whether Blixseth resided or was domiciled in
8 Washington because the public real property records indicated his
9 residence there was owned by a corporation. See Hr'g Tr. (May
10 18, 2011) at 17-19. On the other hand, because they discovered
11 that Blixseth had transferred all of his valuable assets into
12 Desert Ranch, which is co-managed by Blixseth and his son through
13 Desert Management, the creditors felt justified in asserting in
14 the Petition that Blixseth's principal assets were located in
15 Nevada.⁶ The creditors' decision to file the Petition in Nevada
16 gives rise to the substantive question in this appeal: whether
17 Blixseth's principal assets, consisting of his equity interests
18
19

20 ⁵ The authority to transfer cases is governed by the Rules;
21 there is no bankruptcy-specific venue statute similar to 28
22 U.S.C. § 1406(a) requiring transfer or dismissal of a case if
23 venue is improper. U.S. Tr. v. Sorrells (In re Sorrells), 218
B.R. 580, 585-86 (10th Cir. BAP 1998).

24 ⁶ MDOR does not argue that Blixseth's principal place of
25 business was located in Nevada as a result of his ownership of
26 Desert Ranch and Desert Management. According to Blixseth's
27 declaration, it appears that Desert Ranch and Desert Management
28 conduct no business in Nevada. Blixseth Dec. (May 4, 2011) at 3.
See also In re Murrin, 461 B.R. at 787 (ownership interests in
entities that hold real estate outside the state are eliminated
as "business" for venue purposes).

1 in the entities Desert Ranch and Desert Management, are located
2 in Nevada for purpose of venue of the bankruptcy case.

3 B. The Location of Blixseth's Principal Assets

4 It is undisputed that Desert Ranch and Desert Management
5 were established under, and exist pursuant to, Nevada law.
6 N.R.S. 88.350–88.415 [LLLP] and N.R.S. 86.011 et seq. [LLC].
7 Blixseth also does not contest that his interests in these Nevada
8 entities constitute his "principal assets." Thus, because the
9 bankruptcy court decided no questions of fact, we review de
10 novo its legal conclusion that Blixseth's ownership interests in
11 Desert Ranch and Desert Management were not located in Nevada for
12 bankruptcy venue purposes.

13 Of course, Blixseth's uncertificated member's interests in
14 the Nevada LLC and partner's interest in the LLLP are intangible.
15 Intangible property has no physical location; the location or
16 situs of intangible property is a "legal fiction." Delaware v.
17 New York, 507 U.S. 490, 498 (1993) ("intangible property is not
18 physical matter which can be located on a map"); Office Depot
19 Inc. v. Zuccarini, 596 F.3d 696, 702 (9th Cir. 2010) ("attaching
20 a situs to intangible property is necessarily a legal fiction");
21 In re Murrin, 461 B.R. at 788 (intangible property is "almost
22 completely independent of physical presence"); In re Shelton,
23 2001 WL 35814440 at *4 (intangible property has no physical
24 characteristics that would serve as a basis for assigning it to a
25 particular locality). As a result, we are tempted to agree with
26 the bankruptcy court's primary holding in this case that because
27 intangible property has no physical location, the fourth basis to
28 support venue in a bankruptcy case where a debtor's principal

1 assets consist of intangible property is simply inapplicable, and
2 therefore, bankruptcy venue must be based on one of the other
3 three alternatives in 28 U.S.C. § 1408(1).

4 However, though intangible property has no physical
5 location, courts have frequently ascribed a location to
6 intangible assets for various purposes. Thus, the Ninth Circuit
7 has held in a case involving internet domain names that, in
8 determining the location of intangible property for venue
9 purposes, a trial court must adopt a "context-specific" analysis
10 that employs a "common sense appraisal of the requirements of
11 justice and convenience in particular conditions." Office Depot
12 Inc., 596 F.3d at 702 (citation omitted). Indeed, the Ninth
13 Circuit made clear that a single intangible property may be
14 located in multiple places for different purposes. Id.

15 MDOR and Blixseth both acknowledge that assigning a location
16 to Blixseth's intangible ownership interests in this bankruptcy
17 case requires a common sense, context-specific analysis. But
18 while the cases that the parties cite may address what location
19 should be ascribed to intangible property in different scenarios,
20 none address the situs of intangible property based on the
21 principal place of a debtor's assets in a bankruptcy case. See,
22 e.g., Delaware v. New York, 507 U.S. 490 (dispute among states
23 over right to escheat intangible personal property); Office Depot
24 Inc., 596 F.3d 696 (quasi in rem jurisdiction challenge to
25 complaint for turnover of internet domain names owned by judgment
26 debtor to satisfy a judgment); Koh v. Inno-Pac. Holdings, Ltd.,
27 54 P.3d 1270 (Wash. Ct. App. 2002) (judgment creditor seeking to
28 enforce foreign judgment via a charging order against a debtor's

1 interest in an LLC); Oliner v. Canadian Pac. Ry. Co., 311
2 N.Y.S.2d 429 (N.Y. App. Div. 1970) (jurisdictional challenge in
3 ownership dispute of stock certificates). We, also, have been
4 unable to locate case law discussing the location of intangible
5 assets for bankruptcy venue purposes in general, nor more
6 particularly, the location of a member's interest in an LLC or a
7 partner's interest in an LLLP.

8 Because the approach dictated by the Ninth Circuit mandates
9 a context-specific analysis for the particular purpose at issue,
10 in gauging the venue for a bankruptcy case, we believe that the
11 "principal place of assets" should "[l]ogically . . . be
12 construed in a way most resonant with the functional concerns of
13 the administration of the bankruptcy estate [since] all assets in
14 question will be administered by a trustee serving under the
15 jurisdiction of the forum court." In re Murrin, 461 B.R. at 788.
16 In contrast to this approach, the bankruptcy court opted for
17 alternative "bright-line" rules for determining the location of
18 intangible property for bankruptcy venue purposes. It held that
19 intangible assets either have no location at all or are always
20 located at the debtor's residence.

21 Because the Ninth Circuit instructs that, in this situation,
22 we must examine the context of a particular case, and that we
23 apply "common sense" notions of justice and convenience based
24 upon the particular circumstances, we respectfully disagree with
25 the bankruptcy court's "one-size-fits-all" approach. Moreover,
26 while the bankruptcy court's particular conclusions may be
27 justified under other facts, under the circumstances in this
28 case, we disagree that Blixseth's interests in Desert Ranch and

1 Desert Management should either have no situs at all, or should
2 be deemed to be located in Washington, where Blixseth resides.

3 We first consider the context of this contest. This venue
4 issue arises in a creditor's action to place Blixseth into
5 involuntary bankruptcy so that his available assets may be
6 liquidated for the benefit of his creditors, including MDOR.
7 Viewed in this way, an involuntary bankruptcy case is, at bottom,
8 a creditor collection device. If successful in prosecuting the
9 Petition, Blixseth's creditors, acting through a bankruptcy
10 trustee, will seize and sell Blixseth's interests in Desert Ranch
11 and Desert Management to satisfy their collective claims. Given
12 that goal, it is important to consider what rights a bankruptcy
13 trustee would have to seize and liquidate Blixseth's interests in
14 the Nevada LLLP and LLC.

15 An LLC is governed by the laws of the state in which it is
16 organized. See generally Weddell v. H2O, Inc., 271 P.3d 743
17 (Nev. 2012) (discussing Nevada's enactment of the uniform LLC
18 statute found in the N.R.S. at Chapter 86 and the applicability
19 of that statute to Nevada's LLC's). An LLC is formed in Nevada
20 by the execution and filing of articles of organization, along
21 with paying a filing fee, with the Secretary of State. Id. at
22 749. The owners of an LLC are called members. A member is "the
23 owner of a member's interest in a limited-liability company."
24 Id. A "member's interest" is defined by statute as "a share of
25 the economic interests in a limited-liability company, including
26 profits, losses and distributions of assets." N.R.S. 86.091.
27 "The interest of each member of a limited-liability company is
28 personal property." N.R.S. 86.351. A Nevada LLC is a separate

1 entity from its members. N.R.S. 86.371 (“[N]o member or manager
2 of any limited-liability company formed under the laws of this
3 State is individually liable for the debts or liabilities of the
4 company.”).

5 Under Nevada law, a partnership, including an LLLP, is “an
6 association of two or more persons to carry on as co-owners a
7 business for profit[.]” N.R.S. 87.060(1), 88.606(1). A
8 partnership may register as an LLLP at the time of filing its
9 certificate of limited partnership by filing a combined
10 certificate of limited partnership and limited liability limited
11 partnership with the Nevada Secretary of State. N.R.S.
12 88.606(4). An LLLP comes into existence with the filing of the
13 LLLP certificate of registration. N.R.S. 88.606(5). The owners
14 of an LLLP are referred to as “Partners,” and may be either
15 General Partners or Limited Partners. N.R.S. 88.315(6); (7).
16 General Partners participate in the control of the partnership;
17 Limited Partners do not. N.R.S. 88.455. A partner in an LLLP,
18 General or Limited, is a separate entity from the LLLP, “unless
19 the trier of fact determines that adherence to the fiction of a
20 separate entity would sanction fraud or promote a manifest
21 injustice.” N.R.S. 88.608(1).

22 Importantly, the Nevada legislature has made clear that a
23 creditor, looking to seize a debtor’s member interest in an LLC,
24 or a partner interest in an LLLP, as a means of satisfying the
25 debtor’s debts, can do so in only one way. Under N.R.S. 86.401,
26 upon “application to a court of competent jurisdiction by any
27 judgment creditor of a member, the court may charge the member’s
28 interest [in a Nevada LLC] with payment of the unsatisfied amount

1 of the judgment with interest." N.R.S. 86-401(1) (LLCs). This
2 remedy is referred to as a "charging order." Weddell, 271 P.3d
3 at 749-50. "No other remedy . . . is available to the judgment
4 creditor attempting to satisfy the judgment" N.R.S. 86-
5 401(2). The same exclusive remedy is provided for creditor
6 actions targeting a partner's interest in a Nevada LLLP. N.R.S.
7 88.535(1) (the same wording as N.R.S. 86-401(1), except
8 substituting "partner" for "member"). Like N.R.S. 86-401(2),
9 N.R.S. 88-535(2) is the exclusive remedy by which a judgment
10 creditor of a limited liability limited partner (or an assignee
11 of the partner) may satisfy a judgment out of the partnership
12 interest of the judgment debtor.

13 As can be seen, Blixseth's creditors' rights to seize his
14 assets as a member in Desert Management and Limited Partner in
15 Desert Ranch are prescribed exclusively by Nevada's statutes. In
16 a bankruptcy case, employing the powers granted by § 544(a)(1),⁷
17 Blixseth's bankruptcy trustee could assert the same rights as his

18
19 **⁷ § 544. Trustee as lien creditor and as successor to**
20 **certain creditors and purchasers**

21 (a) The trustee shall have, as of the commencement of
22 the case, and without regard to any knowledge of the
23 trustee or of any creditor, the rights and powers of,
24 or may avoid any transfer of property of the debtor or
any obligation incurred by the debtor that is voidable
by--

25 (1) a creditor that extends credit to the debtor at the
26 time of the commencement of the case, and that obtains,
27 at such time and with respect to such credit, a
28 judicial lien on all property on which a creditor on a
simple contract could have obtained such a judicial
lien, whether or not such a creditor exists[.]

1 creditors to pursue his interests in the LLC and LLLP. Under
2 Nevada's statutes, because a creditor seeking to realize the
3 value of Blixseth's interests would be limited to asking a Nevada
4 court for a charging order, the trustee must also resort solely
5 to the state court to secure a charging order. In our opinion,
6 when this involuntary bankruptcy case is viewed in context, we
7 are persuaded that because Blixseth's interests in the LLC and
8 LLLP were created and exist under, and his creditor's remedies
9 are limited by, Nevada state law, that is sufficient reason to
10 deem Blixseth's interests to be located in Nevada.

11 The case law, while sparse, is not to the contrary. While
12 there are no similar bankruptcy decisions, one case involving
13 facts closely aligned with this one is Koh, 54 P.3d 1270. There,
14 in determining whether Washington's courts could exercise quasi
15 in rem jurisdiction in a creditor's action for a charging order
16 concerning a nonresident's member's Washington LLC interest, the
17 state court held that the proper situs of that member's interest
18 was Washington, the state in which the LLC was created.
19 Referring to the language in the Washington statutes which, like
20 Nevada, are based on the uniform laws, specifying that a
21 collecting creditor is limited to the remedy of a charging order,
22 the court concluded that "where a partnership organizes under the
23 laws of a state, the partnership interest is located within that
24 state." Id. at 1272.

25 In addition to pursuing a charging order, a bankruptcy
26 trustee in Blixseth's case may have other methods of liquidating
27 his interests in Desert Ranch and Desert Management. As a
28 practical matter, since these interests would constitute property

1 of the bankruptcy estate under § 541(a), by standing in
2 Blixseth's shoes as a member or partner in the entities, the
3 trustee could seek to judicially dissolve the companies and
4 distribute their assets to the members. But just as they do with
5 creditor actions seeking entry of a charging order, the Nevada
6 statutes grant exclusive jurisdiction for such a proceeding to
7 the Nevada district courts.⁸ In analogous settings, the courts
8 of several states have held that jurisdiction to dissolve a
9 corporation rests only in the courts of the state of
10 incorporation. Young v. JCR Petroleum, Inc., 423 S.E.2d 889, 892

11
12 ⁸ The trustee may seek to dissolve either Desert Ranch, an
13 LLLP, Desert Management, an LLC, or both. The legal mechanisms
14 for judicial dissolution of the two business structures are
nearly identical.

15 N.R.S. 88.550 lists five situations in which an LLLP must be
16 dissolved. The first four are initiated within the partnership.
17 The fifth provides for judicial dissolution: "A limited
18 partnership is dissolved and its affairs must be wound up upon
19 the happening of the first of the following to occur: . . .
20 5. Entry of a decree of judicial dissolution under NRS 88.555."
21 N.R.S. 88.550(5). N.R.S. 88.555, in turn, provides that "On
22 application by or for a partner the district court may decree
23 dissolution of a limited partnership whenever it is not
24 reasonably practicable to carry on the business in conformity
25 with the partnership agreement."

26 In nearly identical language, N.R.S. 86.491 provides for
27 judicial dissolution of an LLC. Three situations are initiated
28 within the company. The fourth provides that "A limited-
liability company must be dissolved and its affairs wound up: . .
29 . (d) Upon entry of a decree of judicial dissolution pursuant to
30 NRS 86.495." N.R.S. 86.491(d). N.R.S. 86.495(1) then provides
31 the authority to dissolve the company in the Nevada district
32 court: "Upon application by or for a member, the district court
33 may decree dissolution of a limited liability company whenever it
34 is not reasonably practicable to carry on the business of the
35 company in conformity with the articles of organization or
36 operating agreement."

1 (W. Va. 1992) (“The courts of one state do not have the power to
2 dissolve a corporation created by the laws of another state.”);
3 Valencia Bartels de Nunez v. Valencia Bartels, 684 So. 2d 1008,
4 1012 (La. Ct. App. 1996); Warde-McCann v. Commex, Ltd., 522
5 N.Y.S.2d 19, 19 (N.Y. App. Div. 1987); Spurlock v. Santa Fe
6 P.R.R. Co., 694 P.2d 299, 313 (Ariz. Ct. App. 1984); see also 19
7 C.J.S. CORPORATIONS § 932 (1990) (“[T]he courts of one state or
8 country have no jurisdiction or power to dissolve a corporation
9 created by another state or country[.]”). Of special interest
10 here, in a case dealing with an action to dissolve a Nevada LLC,
11 an Ohio court held that there was no basis for concluding that an
12 Ohio court has the authority to dissolve a Nevada LLC. Durina v.
13 Filtroil, Inc., 2008 WL 4307892, at *2 (Ohio Ct. App. 2010)
14 (citing, inter alia, Kulp v. Fleming, 62 N.E. 334, 339 (Ohio
15 1901) (“[O]ur courts have no jurisdiction to adjudicate the
16 affairs of a foreign corporation, and any attempt to wind up its
17 business by a comprehensive decree in our courts would be
18 futile.”)).

19 In sum, the Nevada legislature has made it clear that, to
20 sell Blixseth’s member interests, a bankruptcy trustee must
21 resort to the Nevada courts either to obtain a charging order
22 against Blixseth’s interest in the LLLP or LLC, or to dissolve
23 those entities. Through these restrictions, in our opinion, the
24 statutes implicitly reflect the legislature’s assumption that a
25 member’s or partner’s interests are “located” in Nevada.
26 Consistent with that assumption, in the context of this case, we
27 believe Nevada should be deemed the location of Blixseth’s
28 interests in Desert Ranch and Desert Management.

1 For several reasons, our conclusion that Nevada is the
2 proper venue for this case is also bolstered by notions of
3 justice and convenience of the parties under these facts.

4 First, it is undisputed that Blixseth availed himself of the
5 benefits of establishing the Nevada LLLP and LLC. It is also
6 uncontradicted that he then transferred all of his valuable
7 assets into those entities. Presumably, in organizing the Nevada
8 entities, and conveying his valuable properties to them, Blixseth
9 desired to take advantage of the separate legal identities
10 bestowed on Desert Ranch and Desert Management under Nevada law
11 in his future dealings with business associates and personal
12 creditors. Given Blixseth's strategy in dealing with his assets,
13 we find it disingenuous that he now argues that, although he
14 chose to take advantage of the Nevada statutory scheme in
15 creating the LLLP and LLC, into which he then transferred all of
16 his valuable assets, now Nevada is not a proper venue for his
17 creditors to pursue their efforts to seize and liquidate those
18 assets. Surely, if notions of justice carry any weight,
19 Blixseth's conduct warrants a conclusion that venue in Nevada is
20 proper.

21 Moreover, as noted above, if Blixseth is eventually
22 adjudicated an involuntary debtor, it is obviously more
23 convenient for a Nevada trustee to administer his bankruptcy
24 case. Put another way, how can it be anything other than
25 inconvenient, assuming as Blixseth apparently argues that
26 Washington is a proper venue for the bankruptcy case, for a
27 trustee appointed there to have to come to a Nevada court to
28 obtain a charging order or to dissolve Desert Ranch and Desert

1 Management. Under these facts, as compared to Washington, Nevada
2 would seem to be the much more convenient venue for the
3 bankruptcy case.⁹

4 Again, we acknowledge that the bankruptcy court's decision
5 that intangible assets may have no situs or that, if they do
6 possess a "location," it should be the same as the debtor's
7 residence, may be defensible when founded on different facts.
8 However, the Ninth Circuit has instructed that, in determining
9 where a debtor's assets are located for venue purposes, common
10 sense, context, justice and convenience must guide a trial court.

11
12 ⁹ We respectfully disagree with our dissenting colleague
13 that the common law, or provisions of the Uniform Commercial
14 Code, compel a different result in determining the venue of an
15 involuntary bankruptcy case prosecuted under these facts.
16 Indeed, as to the common law, one of the cases cited in the
17 dissent (involving a lien perfection dispute, not a venue
18 contest), quoting Justice Cardozo, states that, in determining
19 the appropriate situs for general intangibles, "the root of the
20 selection is generally a common sense appraisal of the
21 requirements of justice and convenience in particular
22 conditions." In re Iroquois Energy Mgmt., LLC, 284 B.R. 28, 31
23 (Bankr. W.D.N.Y. 2002) quoting Severnoe Sec. Corp. v. London &
24 Lancashire Ins. Co., 174 N.E. 299, 300 (N.Y. 1931). Moreover,
25 the UCC provisions cited in the dissent govern perfection of a
26 security interest in a debtor's assets by a secured creditor, not
27 the collection rights of unsecured creditors like MDOC. In
28 applying the UCC, the bankruptcy court in In re Washington,
Perito & Dubuc, 154 B.R. 853 (Bankr. S.D.N.Y. 1993), the other
case cited in the dissent, found that the accounts receivable
were located at the principal place of business of the debtor, a
dissolving law firm, not where some of the account debtors were
located. We agree with that bankruptcy court that, given the
fact that the law firm had an established place of business, the
accounts should be deemed located there. We also agree with the
court's observation that the bankruptcy court should avoid "venue
being placed in distant locations having only attenuated
connections to the [debtor] or its creditors." Id. at 862.

1 When we consider those factors and this record, we think
2 Blixseth's interests in Desert Ranch and Desert Management should
3 be deemed to be located in Nevada, and that venue for this
4 involuntary bankruptcy case is proper there.

5 **VI. CONCLUSION**

6 We REVERSE the order of the bankruptcy court dismissing this
7 involuntary bankruptcy case for improper venue.

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11 Dissent begins on next page.
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1 HOLLOWELL, Bankruptcy Judge, Dissenting:

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3 I agree with the majority that resolution of this appeal
4 requires a "context specific" analysis. However, the majority
5 has distorted that analysis by interpreting context-specific as
6 "case-specific."

7 "Context" is defined as the "interrelated conditions in
8 which something exists or occurs." MERRIAM-WEBSTER'S COLLEGIATE
9 DICTIONARY 250 (Frederick C. Mish, ed., 10th ed. 2000). The
10 majority's conclusion that the location of an intangible asset
11 for bankruptcy venue purposes is the jurisdiction where
12 collection must be pursued focuses on what may happen during (or
13 at the end) of a case instead of on conditions as they exist at
14 the commencement of the case. Thus, the majority's analysis is
15 based on what may happen if an order for relief is actually
16 entered against Blixseth, but that was not the question the
17 bankruptcy court had to address. The issue at the beginning of
18 the case was not how to collect Blixseth's assets but simply
19 where those assets were located. I believe that the bankruptcy
20 court correctly looked to Article 9 of the Uniform Commercial
21 Code (UCC) to decide the location of Blixseth's intangible
22 personal property interest in the LLLP and LLC.

23 At common law, intangible property follows the person
24 (mobilia sequuntur personam) and is located where a person is
25 domiciled. Delaware v. New York, 507 U.S. 490, 503 (1993). Like
26 the Uniform Limited Liability Company Act (and Revised ULLCA),
27 the UCC has been adopted by Nevada. Article 9 of the UCC follows
28 the common law doctrine by locating, for perfection purposes,

1 intangible property at a debtor's residence. See Nev. Rev. Stat.
2 § 88.528 (describing interest in limited partnership as personal
3 property); Nev. Rev. Stat. § 104.9102(pp) (defining general
4 intangibles); Nev. Rev. Stat. § 104.9301 (perfection principles).
5 As the bankruptcy court noted, the UCC governs how Blixseth would
6 have pledged or otherwise encumbered his partnership interests.
7 Because it also governs the perfection of any pledged interest,
8 it provides notice to competing creditors and parties in interest
9 of the existence and priority of any encumbrances. A number of
10 courts have, therefore, determined that using the place of
11 perfection is the best approach for determining the location of a
12 debtor's intangible property for purposes of venue of a
13 bankruptcy case. In re Iroquois Energy Mgmt., Inc., 284 B.R. 28,
14 32 (Bankr. W.D.N.Y. 2002); In re Washington, Perito & Dubuc, 154
15 B.R. 853, 861 (Bankr. S.D.N.Y. 1993).

16 I fail to see why the majority assumes that Nevada's
17 enactment of the ULLCA or its laws regarding limited partnerships
18 should determine the location of an intangible asset. Nevada has
19 also adopted the UCC which, unlike the uniform LLC statute, has a
20 specific provision that answers the question of where an
21 intangible asset is located.

22 When venue is based on the location of a debtor's principal
23 assets, using the UCC to make that determination is straight
24 forward and predictable. The majority's approach is neither.
25 Instead it requires courts to reach into a case and engage in
26 speculation about facts that have not yet been established.
27 Therefore, I respectfully dissent.