

Judge sends Spanish Peaks bankruptcy case back to Montana

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A federal judge on Tuesday ruled that the Spanish Peaks bankruptcy case will be transferred from Delaware to Montana.

Ten creditors — or companies owed money — requested the venue change last month. Eight of them are based in Montana.

The hearings were being held in Delaware, where one of three companies associated with the Spanish Peaks resort is based.

The decision comes after the trio of Spanish Peaks companies filed for

Creditor attorneys wrote that the case should be heard in Montana because, among other reasons, “the debtors (Spanish Peaks) made and broke promises of payment in Montana. The debtors were unjustly enriched by work done in Montana for which they have not paid.”

Chapter 7 bankruptcy in October 2010, citing a troubled real estate market and substantial operating losses. At that time, the resort closed, and its employees were laid off.

The Club at Spanish Peaks was a ritzy, 5,700-acre private residential community in Big Sky that offered access to local ski areas and included a private Tom Weiskopf-designed 18-hole golf course.

The companies requesting the venue

change include Morrison Maierle, Kenyon-Noble Lumber Company and Walker Excavation Inc. Their attorneys wrote that the case should be heard in Montana because, among other reasons, “the debtors (Spanish Peaks) made and broke promises of payment in Montana. The debtors were unjustly enriched by work done in Montana for which they have not paid.”

The Spanish Peaks companies had

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opposed the request for a venue change, noting that work has been ongoing on the case for months. Moving the case to Montana, attorneys argued, would be inefficient and counterproductive.

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Any delays could also “chill buyers’ interest in the (Spanish Peaks) assets,” attorneys wrote, adding that a sale of the club should be completed this spring to realize its full value.

“A prospective buyer will need time to ramp up, renovate, and properly restart operations,” they wrote.

In his ruling, U.S. Bankruptcy Judge Brendan Linehan Shannon wrote that the sale process is not far enough along to convince him that a transfer would disrupt it.

“Were a sale scheduled to take place imminently, it is likely that the Court’s determination today would be different,” he wrote.

The creditors also argued that the case should be held in Montana because it is where many of them live.

The Spanish Peaks attorneys countered that the claims for the 10 companies were about \$2,140,078 — only 1.1 percent of the \$193 million the companies owe in total to creditors. Preference of venue should be given to larger creditors in eastern states, such as Dick Construction Company, which is owed more than \$9 million.

But the judge wrote that the court must consider “creditors of every kind” in its decision, and a significant number of creditors live in western states, whether they’re owed the most money or not.

The creditors’ attorneys also wrote that although one entity, Spanish Peaks Holdings II, is a Delaware company, “it has no

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Delaware contacts, no office in Delaware and does not do business in Delaware.”

Additionally, they wrote, Spanish Peaks’ businesses are in Montana. The three companies own, sell and develop real estate in Montana. They operate a resort in Montana and employ Montana residents.

The judge agreed with those points, writing that “the debtors have extensive contacts with Montana.” He wrote that two of the three Spanish Peaks companies are Montana-based, and their primary asset is located here.

“The (creditors) have satisfied their burden to show that these Chapter 7 cases should be transferred to Montana,” Shannon wrote.

Other reasons the creditors’ attorneys gave for moving the case to Montana included:

■ Spanish Peaks Holdings was a Montana limited liability company from 2002 until 2010, when it renegotiated a loan with Citigroup. At that time Citigroup required the company to

base itself out of Delaware for reasons that are still unclear.

■ The proof and witnesses needed in the case are primarily located in Montana, and none are located in Delaware, which would be too far for some of the witnesses to travel. If the hearings were held in Montana, the court could subpoena witnesses and require their presence.

■ The Montana Bankruptcy Court “has knowledge of bankruptcies,” such as the Yellowstone Club, Moonlight Basin and Black Bull Run cases. Judges who would hear the Spanish Peaks case have “a depth of experience handling the administration of the bankrupt estates of ski and golf resort developments.”

In other litigation, Spanish Peaks companies have requested a transfer from Pennsylvania to Montana. “The debtors themselves agree that Montana is the proper forum to hear these issues and should be bound by that admission.”

Other reasons Spanish Peaks’ attorneys opposed the move included:

■ The fact that the Spanish Peaks assets are in Montana is not significant enough to change the venue.

■ The witnesses and documents needed in the case are located in many places outside Montana, particularly for the parties with the biggest claims.

An attorney for the creditors declined to comment, and an attorney for Spanish Peaks could not be reached.

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