2012 IL App (2d) 110617-U
No. 2-11-0617
Order filed March 9, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DEBRA UNTERFRANZ	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-SR-3947
	)	
BENITA GARLAND,	)	Honorable
	)	Paul M. Fullerton,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Bowman and Birkett concurred in the judgment.

ORDER

Held: (1) The defendant forfeited the issue of improper venue; and (2) the trial court's determination that the parties had an agreement to share equally their business's debts was not against the manifest weight of the evidence.

¶ 1 On November 18, 2010, the plaintiff filed a small-claims complaint against the defendant seeking $10,000. The plaintiff made the following allegations: She and the defendant were each 50% partners in Pro-Sport. The defendant had unilaterally dissolved the business, "leaving past and present customers unattended." The defendant refused to return or sell the inventory to the plaintiff, thereby making it impossible to satisfy present sales or future sales in order to decrease the

accumulated debt. The plaintiff incurred credit card debt to make loans to Pro-Sport. These liabilities were to be shared between the parties based on a shareholder agreement as well a letter that the defendant sent the plaintiff in July 2009 indicating that she would pay half of the debt. In support of her complaint, the plaintiff attached a July 19, 2009 e-mail from the defendant to her. The e-mail provided in pertinent part:

> "I [the defendant] will arrange to start a payment plan for my share of the debt and hope to pay it off in a timely manner. We should s[e]t up an agreement to divide the debt in half. I know it is in your name unfortunately but that will never happen again. It was never my intention to have this happen. I have been trying with you to pay my fa[i]r share for everything and I know you have money and credit issues as do I."

¶ 2 On January 13, 2011, both the plaintiff and the defendant appeared and the trial court set a trial date of February 23, 2011. On February 23, both parties appeared and the defendant filed an answer and defenses. As part of the answer, the defendant asserted the following defense:

> "Defendant suggests that the venue for this cause of action is improper for the following reasons:
>
> 1. Plaintiff resides in Indian Head Park which is Cook County.
>
> 2. Defendant resides at 10731 Somonauc Road, Hinckley, IL which is DeKalb County.
>
> 3. All business conducted by Pro-Sport, Inc. was from 48 Timberlake Drive, Oswego, IL which is Kendall County."

¶ 3 Prior to conducting the trial, the trial court addressed the defendant's objections to venue. The defendant argued that venue was improper because she did not live in Du Page County and the

parties' business was not located in Du Page County. The plaintiff asserted that venue was proper in Du Page County because their business had sold some goods in Du Page County. The trial court agreed with the plaintiff and found that venue was proper.

¶ 4 The trial court then considered the parties' oral testimony and arguments. The plaintiff testified that the parties incorporated their business in 2006. It was involuntarily dissolved in 2010. The business sold mouth guards. The plaintiff explained that she would incur debts on behalf of the business on her personal credit cards and that the business would reimburse her. She asserted that the parties' shareholder agreement as well as the July 2009 e-mail that the defendant sent her established that the parties agreed to share the business's debts equally. The plaintiff submitted documents that indicated she had incurred $24,464 in business-related debts that had not been reimbursed. She requested that she be awarded $10,000—the jurisdictional limit of the small claims court.

¶ 5 The defendant asserted that the plaintiff had made loans to the corporation, not to her. Thus, she could not be personally liable for those debts. The defendant further argued that she could not be liable under a shareholder agreement because the parties had never signed such an agreement. The defendant additionally asserted she was not liable for any of those debts because the plaintiff had not followed proper procedures in making loans to the corporation. The defendant acknowledged that on one occasion she had sold corporate assets without the plaintiff's approval and had used the proceeds to pay her own personal debts.

¶ 6 At the close of the trial, the trial court ruled in favor of the plaintiff. The trial court explained that the evidence established that the parties were equal owners of the corporation, and hence equally liable for the corporation's debt. Although the parties had never signed a shareholder agreement,

the parties oral testimony in conjunction with the July 2009 e-mail established that the parties intended that they would share the corporation's debts equally. The trial court therefore awarded the plaintiff $10,000 in damages. Following the denial of her motion to reconsider, the defendant filed a timely notice of appeal.

¶ 7 The defendant's first contention on appeal is that the trial court erred in not transferring venue to a proper county. The defendant argues that because neither of the parties lived in Du Page County and because none of the transactions at issue between the parties occurred in that county, venue was not proper in Du Page County.

¶ 8 Section 2-101 of the Code of Civil Procedure (735 ILCS 5/2-101 (West 2010)) provides that, for proper venue, every action must be commenced (1) in the county where the defendant resides or (2) where the transaction giving rise to the cause of action occurred. A defendant has the right to insist that a lawsuit proceed in a proper venue, provided the defendant timely raises a venue objection. 735 ILCS5/2-104(b) (West 2010); *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24, 40 (1990). However, no request for a change of venue is effective unless it contains a request for a transfer to a proper venue. *Springfield Mechanical Corp. v. Ronel Technetics, Inc.*, 129 Ill. App. 3d 733, 735 (1984). The venue statute is to be mandatorily applied to all venue questions, with only exceptions being expressly provided by the Civil Practice Act. *Martin-Trigona v. Roderick*, 29 Ill. App. 3d 553, 555 (1975).

¶ 9 Here, although the defendant raised the issue of venue in the trial court, she never requested that the cause be transferred to a proper venue. Rather, she just "suggested" that venue was improper in Du Page County. The defendant's "suggestion" was not sufficient to comply with the requisites of section 2-104(b) of the Code. See *Springfield Mechanical Corp.*, 129 Ill. App. 3d at 735.

Although the defendant requests that we overlook her failure to comply with section 2-104(b) of the Code because she represented herself *pro se* at trial, we decline to do. See *Martin-Trigona*, 29 Ill. App. 3d at 555. Accordingly, we find that the defendant has forfeited the issue of venue for our review. See *Horn v. Rincker*, 84 Ill. 2d 139, 145-46 (1981) (a defendant may forfeit an objection to improper venue).

¶ 10 We now turn to the defendant's argument that the trial court erred in ruling in the plaintiff's favor. The defendant contends that the trial court erred in determining that the parties had a valid agreement whereby she agreed to be liable for half of the business's debts. The defendant asserts that, according to the plaintiff's complaint, the basis of her purported liability was the parties' shareholder agreement. However, as that document was never signed, it does not comply with the statute of frauds (740 ILCS 80/1 (West 2010)) or the Illinois Business Corporation Act (805 ILCS 5/7.71 (West 2010)), and thus is not enforceable. Further, the defendant insists that the July 2009 e-mail does not constitute a written agreement because that e-mail references setting up an agreement in the future—which demonstrates that the parties had no current agreement.

¶ 11 We find the defendant's argument unpersuasive. First, we note that the defendant mischaracterizes the plaintiff's complaint. The defendant suggests that plaintiff was trying to recover based solely on the existence of the shareholder agreement. However, the plaintiff also referred to their business as a "50/50" partnership. The plaintiff also indicated that she was seeking to recover damages based on the e-mail the defendant sent her in July 2009. As such, it is apparent that the plaintiff was pleading alternate theories of recovery.

¶ 12 Second, we do not believe that the lack of a signed shareholder agreements between the parties is fatal to the plaintiff's complaint because it is apparent that both parties did not always treat

their business as a corporation. The defendant points outs that the plaintiff did not properly document the expenses that she incurred on the corporation's behalf. The defendant also acknowledges that on one occasion, she sold corporate assets without the plaintiff's approval and kept all the proceeds for herself. Further, the fact that the parties did not have a signed shareholder agreement also reflects that the parties were not always running their business as a corporation.

¶ 13 Although both the Frauds Act and the Business Act refer to a writing requirement, the purpose of the writing requirement is not to enable parties " 'to repudiate contracts that they have in fact made; it is only to prevent the fraudulent enforcement of asserted contracts that were in fact not made.' " *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1097 (2003), quoting A. Corbin, Contracts §§ 317 through 320, at 393 (1952). Here, there was ample evidence to establish that the parties had a contract to share equally the parties' business-related debts. The plaintiff testified that the expenses that the business incurred were put on her personal credit card. The defendant made contributions to the business, which in turn were used to repay the plaintiff for the debts she incurred. This arrangement was confirmed by the defendant's e-mail that she sent in July 2009—three years after the parties had started their business together— in which she acknowledged that the plaintiff had been placing business charges on her personal credit card and that she intended to share half of the debt with the plaintiff.

¶ 14 The defendant points out that in the e-mail, she stated that the parties should set up an agreement to divide the debt. Thus, since the e-mail referenced a future agreement, the defendant argues that it necessarily means that a current agreement did not exist. We disagree with the defendant's characterization of the e-mail. The e-mail confirms the existing financial arrangement that the parties had. Although the letter evidenced an intent to have a more formal written

agreement, this does not change the fact that the parties' existing oral agreement was sufficient to establish that the defendant was obligated to reimburse the plaintiff for 50% of the debts that the plaintiff was incurring on behalf of the business.

¶ 15 For the foregoing reasons, the trial court's determination that the parties had an oral agreement to equally share the debts that their business incurred was not against the manifest weight of the evidence. See *Prignano v. Prignano*, 405 Ill. App. 3d 801, 810 (2010) (trial court's finding as to oral agreement will not be disturbed unless it is against the manifest weight of the evidence). We therefore affirm the trial court's decision.

¶ 16 Affirmed.