2012 IL App (2d) 120039-U
No. 2-12-0039
Order filed June 13, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LAKES REGION BUSINESS RENTALS, LLC, DALE BERGER, and WESLEY SCHUHKNECHT,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellants,	)	
v.	)	No. 11-MR-1757
THE VILLAGE OF LAKEMOOR, and NORTHERN MORAINE WATER RECLAMATION DISTRICT,	)	Honorable Christopher C. Starck,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: Trial court erred in granting defendants' motion to transfer venue.

¶ 1 Plaintiffs, Lakes Region Business Rentals, LLC, Dale Berger, and Wesley Schuhknecht, filed a three-count complaint against defendants, the Village of Lakemoor and Northern Moraine Water Reclamation District, in Lake County. Defendants moved to transfer venue to McHenry County. On December 13, 2011, the trial court granted defendants' motion to transfer venue. On February

15, 2012, this court granted plaintiffs' petition for leave to appeal. Ill. Sup. Ct. R. 306(a)(4). For the following reasons, we reverse and remand the cause.

¶ 2 I. BACKGROUND

¶ 3 Lakes Region Business Rentals, LLC, leases storage space to small businesses. Plaintiffs Berger and Schuhknecht are members/managers of Lakes Region; both reside in Lake County.

¶ 4 The Village of Lakemoor, a municipal corporation, is comprised of land in both McHenry and Lake Counties. The village hall, where the Village's Board of Trustees meets and conducts business, is located in the McHenry County portion of the Village.

¶ 5 Northern Moraine Water Reclamation District is a municipal corporation that services both McHenry and Lake Counties. The District's corporate office, where its board of trustees meets and conducts business, is located in McHenry County.

¶ 6 Lakes Region currently holds title to property in Lake County. On February 22, 2001, pursuant to an annexation agreement with the Village, that Lake County property was annexed into the Village. Under the terms of the annexation agreement, the property was to be connected to and served by a Village-owned sanitary sewer system. However, as the Village's sewer system did not, at the time of the agreement, extend to the property, plaintiffs agreed to construct on both their property (onsite sewer improvements) and neighboring properties (offsite sewer improvements) a sewer line extending from the property to the Village's sewer system. Because the improvements would require building on property owned by third parties, the agreement required the Village to obtain easements from affected property owners. All easements for offsite sewer improvements concerned property in Lake County. Further, the anticipated sewer line running from the subject property, over easements on offsite property, and to the Village's existing sewer line, would be

located in Lake County. Plaintiffs could not commence construction of offsite improvements until the Village obtained the necessary easements. Further, the agreement required the Village to obtain a permit from the Illinois Environmental Protection Agency. The agreement provided that the Village engineer was to determine which offsite areas could reasonably be anticipated to connect to the sanitary sewers constructed for the subject property and to perform the survey work and prepare the design drawings for the offsite sanitary sewer system. Finally, the Village agreed to assist plaintiffs in recapturing costs if the development of the sewer system improved and benefitted other properties.

¶ 7 By 2003, plaintiffs had constructed buildings on the subject property and established occupancy. However, because the Village had not acquired the easements necessary to install offsite sewer improvements and, therefore, plaintiffs could not connect its property to the Village's sewer line, plaintiffs obtained temporary sewer service by storing sewage in onsite sewer pipes and twice weekly pumping out the manhole and transporting the sewage to an area treatment facility. This solution, expected to be temporary, continued for multiple years (and, presumably, continues to date).

¶ 8 In 2006, the Village transferred ownership of its sewer facilities to the District. Accordingly, if constructed, the anticipated sewer line will ultimately connect plaintiffs' property with District-owned facilities. The Village also transferred to the District responsibilities to acquire the easements and permits necessary for plaintiffs' construction. On January 21, 2010, the District obtained a permit for a low-pressure sewer line to connect plaintiffs' property to the District's sanitary sewer facilities.

¶ 9 The 10-year term of the annexation agreement was set to expire in February 2011. In January 2011, plaintiffs informed the Village that they were ready to install the low-pressure sanitary sewer line for which the District had obtained the permit, but that they needed easement rights in order to do so. In February 2011, the Village provided the easements, which had been obtained by the District. In March 2011, plaintiffs and their contractor were onsite with equipment and were prepared to construct the low-pressure sewer line, but defendants refused to allow construction to proceed. Specifically, instead of a low-pressure line, defendants required that plaintiffs construct a gravity line large enough to serve other properties. Plaintiffs allege that the gravity line costs approximately $1 million more than a low-pressure line and is designed to serve 12,000 to 14,000 population equivalent (P.E.), whereas the subject property needs only 20 P.E. Plaintiffs allege that, unless plaintiffs build the gravity line, defendants refuse to: (1) release the easements; (2) allow construction of the low-pressure sewer line; (3) allow plaintiffs to connect to the District's sewer line; (4) allow, pursuant to the annexation agreement, plaintiffs to recapture, from other properties that will benefit therefrom, the costs of constructing a gravity sewer line; or (5) allow plaintiffs to contribute an amount of money equal to the cost of the low-pressure sewer line toward the cost of the gravity line, which the Village or District can then construct.

¶ 10 On October 5, 2011, plaintiffs sued defendants in Lake County, raising declaratory judgment, *mandamus*, and breach-of-contract (*i.e.*, the annexation agreement) claims. Defendants moved to transfer venue on the basis that, although their boundaries encompass areas in both Lake and McHenry Counties, none of the relevant actions occurred in Lake County. Rather, they argued, their decisions concerning the annexation agreement, easements, requiring a gravity sewer line, etc., occurred in McHenry County, where their offices are located and their meetings are held.

Defendants further argued that the location of the subject property is not relevant to the venue analysis.

¶ 11 On December 13, 2011, the trial court heard oral argument and granted defendants' motion to transfer venue. Although the record does not contain a transcript from that hearing, the order reflects the court's determination that the "acts giving rise to the cause of action all occurred in McHenry County and that[,] therefore[,] venue is proper in McHenry County as a matter of right." Further, on January 11, 2012, the court clarified its order, specifying that it had determined as a matter of law that venue in Lake County is improper, and that, rather than resolving any factual disputes, it accepted as true the facts presented by the parties. On January 12, 2012, plaintiffs petitioned for leave to appeal and, on February 15, 2012, we granted the petition.

¶ 12 II. ANALYSIS

¶ 13 Section 2-103(a) of the Code of Civil Procedure provides "Actions may be brought against a public, municipal, governmental or quasi-municipal corporation in the county in which its principal office is located, *or* in the county in which the *transaction or some part thereof* occurred out of which the cause of action arose." (Emphasis added.) 735 ILCS 5/2-103(a) (West 2010). Relying on section 2-103's second basis for venue, *i.e.*, the transactional test, plaintiffs argue that the trial court erred and should have respected their choice of venue because part of the transactions that gave rise to their causes of action occurred in Lake County. They note that their residence, the property, anticipated sewer line, and required easements are all located in Lake County, and that the annexation agreement required actions by the Village in Lake County (*e.g.*, the Village engineer was to perform survey work there). Plaintiffs further argue that, under the transaction test, venue is proper in the place were a contract is to be performed, and they note that the complaint alleges: (1)

that defendants breached their contract (annexation agreement) with plaintiffs by not providing required easements in *Lake County*; (2) a declaration regarding the type of sewer line that plaintiffs must install in *Lake County* is necessary; and (3) the District should be ordered via *mandamus* to tender to plaintiffs the easements on offsite *Lake County* property so that plaintiffs can construct the offsite water improvements in *Lake County* and connect plaintiffs' *Lake County* property with the District's *Lake County* facilities. Accordingly, plaintiffs assert, if the relief requested in their complaint is granted, the effects will be felt in Lake County.

¶ 14 Defendants, in contrast, argue that the trial court's ruling was proper because all of the acts and decisions that gave rise to plaintiffs' actions (defendants' failure to release easements, issue permits, etc.) occurred in their offices in McHenry County. They argue that the location of plaintiffs' real estate is irrelevant to transactional venue and that, instead, venue depends solely upon the acts of the parties and, specifically, the acts taken by defendants. Defendants conclude that plaintiffs can prove their causes of action by looking solely to defendants' McHenry County actions and, therefore, nothing that occurred in Lake County is relevant to venue.

¶ 15 When reviewing a trial court's determination of proper statutory venue, we defer to the court's factual findings and review *de novo* its conclusion of law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). Here, the trial court accepted as true the facts (which are undisputed) presented by the parties and found, as a matter of law, that venue in Lake County was improper. Reviewing *de novo* that determination, we disagree.

¶ 16 Venue statutes enable plaintiffs to determine where to commence their lawsuits and the conditions under which defendants may obtain a transfer based on improper venue. *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 333 (1994). "The purpose behind venue statutes is to protect defendants against

a plaintiff's *arbitrary* selection of forum." (Emphasis added.) *Lake County Riverboat*, 313 Ill. App. 3d at 951; see also *Peile*, 163 Ill. 2d at 335-36 ("In most instances, the plaintiff[']s initial choice of forum will prevail, *provided venue is proper* and the inconvenience factors attached to such forum do not greatly outweigh the plaintiffs substantial right to try the case in the chosen forum) (Emphasis added.) Venue may be proper in more than one county. See *id.* at 952 (citing, as an example of venue being proper in more than one county, where a state agency has its principal office in one county, but contracts to purchase supplies in another county). However, "[w]here witnesses to some part of the transaction will be convenienced by the plaintiff's choice of one of two or more available jurisdictions, it should not be disturbed." *Servicemaster Co. v. Mary Thompson Hospital*, 177 Ill. App. 3d 885, 890 (1988). Therefore, while a defendant has the right to insist that a lawsuit proceed in a proper venue, it is the defendant's burden to prove that the plaintiff's venue selection was improper. *Corral*, 217 Ill. 2d at155; see also *Bell v. School District No. 84*, 407 Ill. 406, 416 (1950).[1]

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[1]It is slightly unclear by what specific burden the defendant must prove that the plaintiff's chosen venue is statutorily improper. Our supreme court in *Corral* simply stated that it is the defendant's burden to prove improper venue and cited, for that proposition, *Bell*. *Bell*, in turn, explained that the burden of proof is "on the party having the affirmative of a proposition and it abides with him until a final determination of the proposition. Where a party asks a court to believe a proposition and to base a finding thereon in his favor, the law casts the burden on him of furnishing the evidence upon which such finding can legally rest. It is incumbent upon a plaintiff on the trial of the cause to prove all the material allegations contained in his complaint by a preponderance of the evidence." *Bell*, 407 Ill. at 416. Here, we conclude that, under any standard, the undisputed facts reflect that venue in Lake County is statutorily proper.

In doing so, the defendant must set out specific facts showing a "clear right" to the relief requested. *Id.*; see also *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285 (1987) (the plaintiff is not required to plead and prove that its selected venue is proper; rather, a defendant, as movant, has the burden to prove that the plaintiff's selected venue is improper by setting out specific facts that "show a clear right to the relief asked for").[2]

¶ 17 Here, the question is not whether venue in McHenry County is proper (indeed, as McHenry County is where defendants' principal offices are located, venue there is clearly proper under section 2-103(a)). In fact, for purposes of our inquiry here, it matters not whether McHenry County is a proper or improper venue. Instead, the foregoing authority reflects that the critical question here is simply whether Lake County, where plaintiffs filed their cause of action, is an *improper* place of venue. See *Lake County Riverboat*, 313 Ill. App. 3d at 952. If it is *not* an improper venue, then plaintiff's venue choice is respected.[3]

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[2] *Weaver* relied on the aforementioned authority in *Bell* for the proposition that the defendant, as movant, has the burden to prove that the plaintiff's selection of venue was improper. Further, we note that, in *Weaver*, the court held that the defendant in that case failed to meet its burden to show that the plaintiff's venue selection was improper because it did not demonstrate that: (1) it was *not* doing business in the county the plaintiff chose; or (2) that the plaintiff had *not* sustained injuries in the county that it chose.

[3]It is critical to note that defendants did *not* move to transfer venue based on *forum non conveniens* principles and, therefore, the court made no rulings in that regard. Indeed, a trial court is not vested with discretion to consider transferring venue based on *forum non conveniens* principles until it has made the legal determination that: (1) there is more than one proper venue; and (2) the

¶ 18 Defendants have not established that Lake County is an improper venue and that they have, instead, a "clear right" to be sued *only* in McHenry County. *Corral*, 217 Ill. 2d at155. In sum, defendants argue that, because McHenry County is where they made the *decisions* that formed the basis of the complaint, Lake County is an improper venue. We reject this claim outright. Not only would this interpretation of transactional venue leave McHenry County as the *only* possible place of venue, thereby effectively rendering redundant the transactional provision of section 2-103(a) (if the location of the board meetings is the only fact that matters, then the transaction prong of section 2-103(a) is redundant to the first prong that makes venue proper where defendants have their principal place of business), it simply reads too narrowly the statute's provision that venue is also proper in the county in which the transaction "or some part thereof" giving rise to the cause of action occurred.

¶ 19 For purposes of section 2-103(a), "transaction" is not to be "so narrowly interpreted to include only those immediate facts out of which the cause of action arose." *Southern & Central Illinois Laborers' District Council v. Illinois Health Facilities Planning Board*, 331 Ill. App. 3d 1112, 1117 (2002). "Transaction" has been defined to include every fact that may be an integral part of the cause of action, including the place where the parties engaged in direct adversarial dealings, or the place where an event or act occurred that altered the parties' legal relationship. *Id.* Thus, to determine whether venue is proper, we are to consider two variables: (1) the nature of the cause of

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venue in which the plaintiff filed the action is a proper one. *Lake County Riverboat L.P. v. Illinois Gaming Board*, 313 Ill. App. 3d 943, 952 (2000). Here, as the court determined that the venue in which plaintiffs filed their complaint was an *improper* venue, *forum non conveniens* principles are inapplicable.

action; and (2) the place where the cause of action "springs into existence." *Id.* Further, in a breach-of-contract action, venue does not lie only in the county in which the actual breach occurred; indeed, venue is also proper where the contract was set to be *performed*. *Servicemaster*, 177 Ill. App. 3d at 891, 894 (noting that transactional venue encompasses not only the situs of the breach, but also where the contract was to be performed, *i.e.*, "where it was"). These broad definitions of "transaction" make clear that venue in Lake County is not improper here. Indeed, the complaint alleges that defendants, who engage in business and own property in Lake County, entered into a contractual relationship with plaintiffs, who reside in Lake County. The entire purpose of the contractual relationship was to annex Lake County property into the Village. Further, the agreement required construction, on that newly annexed Lake County property and other Lake County properties, of sewer lines that will, ultimately, connect to equipment (now owned by the District) in Lake County. The agreement required the Village engineer to perform survey work in Lake County. Finally, the complaint alleges that plaintiffs were prepared onsite to begin construction when defendants refused permission, *i.e.*, failed to act in accordance with the agreements provisions in prohibiting construction on Lake County property. Accordingly, the aforementioned facts reflect that the contract, *i.e.*, transaction, between the parties concerned events and acts in Lake County.

¶ 20 Similarly, as to the *mandamus* count, defendants argue that the only place they could comply with a *mandamus* order would be at their principal offices in McHenry County. However, although complying with a *mandamus* order would involve procedures in McHenry County, the actions that defendants would be ordered to perform, such as releasing easements, are for the sole benefit of determining events and actions in Lake County. In *Illinois Health Facilities*, the defendant, which held meetings in Cook County, approved construction of a hospital in Williamson County. When

issues arose related to permit violations, the defendant held meetings and hearings in Cook County regarding the alleged violations and, when the plaintiff thereafter sued the defendant in Williamson County, the defendant argued that venue was instead proper in Sangamon County, the location of its principal office. The trial and appellate courts disagreed. On appeal, the court noted that the events that altered the parties' legal relationship included the defendant's issuance of a permit for construction in Williamson County, followed by allegations of permit violations related thereto. *Illinois Health Facilities*, 331 Ill. App. 3d at 1118. The court noted that the relief sought in the *mandamus* action involved the defendant's failure to follow certain procedures in its Cook County hearing, but that the entire purpose for following those procedures in the Cook County hearing was to determine events and actions that occurred or might occur in Williamson County. *Id.* In affirming the trial court's venue determination, the court relied on *Iowa-Illinois Gas & Electric Co. v. Fisher*, 351 Ill. App. 215 (1953), which held, under the facts of that case:

> "There is no doubt that the [plaintiff] is doing business in Rock Island, and the order issued by the *** Commission would take effect in that county. [Therefore], part of the transaction in the present case, out of which the cause of action arose, occurred in Rock Island [C]ounty***. It is where the shaft strikes [plaintiff], not where it is drawn, that counts." *Id*. at 221-22.

¶ 21 Here, defendants' decisions regarding their agreement with and/or their obligations to plaintiffs may be "drawn" or decided in McHenry County, but those decisions will "strike" plaintiffs in Lake County. Plaintiffs are doing business in Lake County, any relief granted pursuant to the complaint will be effected in Lake County, and the events that altered the parties' legal relationship included defendants' entry into an annexation agreement with plaintiffs—all Lake County

residents—involving Lake County property. Therefore, Lake County is not an arbitrary forum (*Lake County Riverboat*, 313 Ill. App. 3d at 951) and, as some witnesses to some part of the transaction (here, plaintiffs) will be "convenienced" by their choice of the Lake County forum (*Servicemaster*, 177 Ill. App. 3d at 890), we will not disturb plaintiffs' venue choice.

¶ 22 We note that defendants' reliance on *Lake County Riverboat* does not alter our conclusion. There, the plaintiff, seeking to open a casino in Lake County, mailed from Lake County an application for a casino gaming license to defendant at its principal office in Cook County. The plaintiff later sued defendant in Lake County, raising a constitutional challenge and seeking declaratory and injunctive relief. The defendant moved to transfer venue to Cook County, and the motion was granted. The court held that Lake County was an improper venue, in part because the plaintiff, a mere applicant for a license, had no direct dealings with the defendant when it filed its complaint and, due to the nature of the plaintiff's claims, any action taken by the defendant would not occur in Lake County. *Lake County Riverboat*, 313 Ill. App. 3d at 955-96. In contrast, here, defendants did not simply receive a mailing from plaintiffs; rather, the parties had direct dealings and a contractual relationship, the result of which gave rise to plaintiffs' causes of action.

¶ 23 In sum, the trial court erred in concluding that venue was improper in Lake County. Specifically, we conclude that defendants did not satisfy their burden of showing that plaintiffs' selection of venue in Lake County was improper and we reverse the trial court's order.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed and the cause is remanded.

¶ 26 Reversed and remanded.