

2013 IL App (2d) 120611-U
No. 02-12-0611
Order filed August 27, 2013

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

YOUNG AMERICA’S FOUNDATION, a not-)	Appeal from the Circuit Court
for-profit corporation,)	of Du Page County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-L -1165
)	
ALICE M. WOOD,)	Honorable
)	Patrick J. Leston,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff, as a foreign, not-for-profit corporation, was required to seek authority from the Secretary of State before conducting affairs in this state; its failure to comply with this requirement barred it from maintaining a suit in the courts of this state; however, this deficiency was curable, and plaintiff did cure it; and further, plaintiff refiled its previously voluntarily dismissed claim in a timely fashion in accordance with section 13-217 of the Civil Practice Law (735 ILCS 5/13-217 (West 2010)).

¶ 2 Plaintiff, Young America’s Foundation (a not-for-profit corporation), appeals the judgment of the circuit court of Du Page County dismissing its complaint alleging professional negligence on behalf of defendant, Alice M. Wood. At issue in this case is whether plaintiff’s failure to seek

authority from the Secretary of State prior to conducting affairs in Illinois precluded plaintiff from maintaining the instant suit. See 805 ILCS 105/113.05, 113.70 (West 2010). For the reasons that follow, we reverse and remand.

¶ 3 This appeal came to us at approximately the same time as another appeal filed by plaintiff in a related matter. See *Young America's Foundation v. The Doris A. Pistole Revocable Living Trust*, 2013 IL App (2d) 121122. That case was dismissed by the trial court for similar reasons as the instant case. In the related case, we held that plaintiff was required to seek authority as specified in section 113.05 of the General Not For Profit Corporation Act of 1986 (805 ILCS 105/113.05 (West 2010)) in order to maintain a law suit (see 805 ILCS 105/113.70 (West 2010)). *Id.* at ¶ 42. We further held that plaintiff's failure to comply with this statute was curable and that plaintiff had, in fact, cured this deficiency. *Id.* at ¶ 45. Therefore, we concluded, plaintiff was entitled to maintain an action against the defendants in that case and that, in accordance with section 13-217 of the Civil Practice Law (735 ILCS 5/13-217 (West 2010)), its refiled complaint (that it had earlier voluntarily dismissed) was timely. *Id.* at 63.

¶ 4 For the reasons set forth in *Young America's Foundation v. The Doris A. Pistole Revocable Living Trust*, 2013 IL App (2d) 121122, we reach the same result here. As in that case, plaintiff cured its noncompliance with the requirement that it seek authority prior to conducting affairs in this state. Further, plaintiff's refiled complaint was timely. Accordingly, we reverse and remand for further proceedings.

¶ 5 Before closing, we wish to make an additional observation. In addition to the issues upon which we resolve this appeal, plaintiff raised two constitutional arguments, one based on the commerce clause (U.S. Const., art. I, §8, cl. 3) and the other on the first amendment's speech

provisions (U.S. Const., amend. I). Normally, we avoid constitutional issues where a case can be decided on other grounds. *Morr-Fritz, Inc.*, 2012 IL App (4th) 110398, ¶ 50. Indeed, as Justice Schostok points out in *Young America's Foundation v. The Doris A. Pistole Revocable Living Trust*, 2013 IL App (2d) 121122, ¶ 64, plaintiff agreed that we need not address its constitutional arguments if we resolve its nonconstitutional arguments in its favor. This concession is equally applicable in this case.

¶ 6 Nevertheless, regarding plaintiff's first-amendment argument, we note that facial attacks on overbroad statutes are possible in this context. See *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 436-38 (2006). Despite having resolved the nonconstitutional issues in this appeal in plaintiff's favor, the manner in which we have done so leaves a potential burden on speech in place. We have held that before plaintiff can come to this state and conduct affairs, it must seek authority from the Secretary of State to do so. This would arguably include the activities that plaintiff seeks to engage in that are protected by the first amendment. Thus, our resolution of plaintiff's nonconstitutional arguments does not completely avoid this issue.

¶ 7 That said, to say that an issue is cognizable says nothing about its merits. Plaintiff flatly contends that laws that burden speech are subject to strict scrutiny. See *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 464 (2007). However, the statute at issue here is content neutral (see 805 ILCS 105/113.05 (West 2010)) in that it "does not differentiate first amendment actors from nonfirst amendment actors, and is not tailored to discriminate against a small group or even one first amendment actor." *American Multi-Cinema, Inc. v. City of Warrenville*, 321 Ill. App. 3d 349, 359 (2001). As such, it is subject only to rational basis review. *Id.* at 358-59. The state has an obvious interest in regulating the affairs of corporations acting within its boundaries.

Thus, a clear rational basis exists for the statute. Accordingly, though our decision leaves an arguable—though minimal—burden on speech, the burden is not such that it offends the first amendment..

¶ 8 In light of the foregoing, the order of the circuit court of Du Page County dismissing plaintiff's claims is reversed and this cause is remanded for further proceedings.

¶ 9 Reversed and remanded.