

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS MYERS,
Appellant,
vs.
RICHARD M. REBOLLAL,
Respondent.

No. 45308

FILED

MAR 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a demand for change of venue. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

In August 2001, appellant, a Pahrump, Nevada, resident, borrowed \$40,000.00 from respondent, and signed a short loan agreement memorializing the transaction. To secure the loan, appellant executed two quitclaim deeds to two Nye County parcels, the Greenwater and Comanche properties. Respondent did not record the deeds.

In February 2002, appellant and respondent started the "RV Land" business in Pahrump, Nye County. The business was allegedly divided between the parties in the fall of 2002. After appellant sold the Greenwater property, he partially repaid his loan to respondent. In October 2002, before the RV Land business was divided, appellant contracted to sell the Comanche property. Although respondent allegedly agreed to be paid the rest of the debt owned to him from the sale proceeds, respondent recorded the quit claim deed, and the escrow failed.

After respondent placed mechanic's liens on appellant's other properties in Nye County, appellant sued respondent in Nye County in June 2004. In response, respondent filed a district court action against

appellant in Clark County in August 2004. Respondent, in his amended complaint, stated the following causes of action: breach of contract, unjust enrichment, fraud, breach of fiduciary duty, and conversion. The last two causes of action relate to the parties' RV Land business located in Nye County. Before serving appellant, respondent, ex parte, moved for and was granted a prejudgment writ of attachment in August 2004.

Appellant accepted service no earlier than October 1, 2004. Appellant then timely filed a demand for a change of venue on October 15, 2004, citing NRS 13.040 and NRS 13.050. Respondent did not oppose the demand and subsequently filed a motion for default. Appellant then opposed the motion and renewed his request for a ruling on his demand to change venue. The court subsequently entered an order, without findings or an explanation, denying the demand for a change of venue. This appeal followed.

This court reviews a district court order denying a demand for change of venue for manifest abuse of discretion.¹

Appellant argues that the district court improperly denied his demand for a change of venue because (1) appellant is a Nye County resident (NRS 13.040); (2) the dispute between the parties concerns property in Nye County (NRS 13.010); (3) the parties' agreement regarding respondent's loan to appellant was drafted in Nye County and was secured by Nye County properties (NRS 13.010); (4) appellant made a timely demand for change of venue (NRS 13.050); and (5) the RV Land business is located in Nye County. Appellant further argues that after he

¹Nat'l Collegiate Athletic Ass'n v. Tarkanian, 113 Nev. 610, 613, 939 P.2d 1049, 1051 (1997).

filed his timely demand for change of venue, the district court was divested of jurisdiction to address any motions before ruling on the change of venue demand.

Respondent asserts that the \$40,000 loan agreement was executed in Las Vegas, Clark County, and so appellant's obligation to perform was in Clark County. Thus, respondent contends, under NRS 13.010, the Clark County venue was proper. Respondent further argues that the court correctly denied appellant's demand for change of venue under NRS 13.050, as this dispute does not fit within the categories susceptible of change of venue under the statute. Notably, however, the loan agreement does not indicate where it was signed, and it does not specify where payment is to be made. To the contrary, the agreement specifically identifies the two Nye County parcels as security for the loan.

A demand for change of venue can be brought as a matter of right or as a matter of the district court's discretion.² Generally, under NRS 13.050, an action will be tried in the county in which the defendant resides when the complaint is filed,³ unless an exception applies. One possible exception is contained in NRS 13.010, which states that when a person resides in one county but contracts to perform an obligation in another county, the action generally must be commenced and tried in the county where the obligation is to be performed or in the county where the party resides.⁴ NRS 13.010 further provides that, unless there is a special

²NRS 13.050.

³See NRS 13.040.

⁴NRS 13.010.

contract to the contrary, the court will infer that an obligation is to be performed in the county where the obligation is incurred.⁵

When a plaintiff opposes a defendant's demand for change of venue under NRS 13.040, which requires an action to be tried in the county in which defendant resides, the plaintiff bears the burden of proving that the action was commenced within the proper venue.⁶ Further, if the plaintiff's opposition is based on NRS 13.010, which allows an action based on a contract to be commenced in the county where the contract is to be performed, the plaintiff has the burden of proving that either (1) the contract was to be performed in the county of original filing, or (2) the defendant does not reside in the county alleged to be the proper venue.⁷ Lastly, under NRS 13.010, venue generally lies at the place for payment (i.e., performance) specified in the contract, although a contract is not required to have a separate provision for venue.⁸

It is undisputed that appellant is a resident of Nye County and therefore, there is a general presumption that Nye County, not Clark County is the proper venue.⁹ It is further undisputed that the parties' business, RV Land, is located in Pahrump, Nye County. Since at least two of respondent's causes of action relate to the parties' partnership dispute

⁵Id.

⁶Washoe County v. Wildeveld, 103 Nev. 380, 741 P.2d 810 (1987).

⁷Id.

⁸Borden v. Silver State Equipment, 100 Nev. 87, 675 P.2d 995 (1984).

⁹NRS 13.040.

in a Nye County business and since appellant is a Nye County resident, it appears that Nye County is the proper venue, unless an exception allows for a different venue.

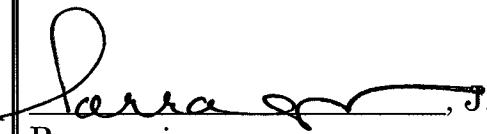
While respondent argues that Clark County was a proper venue under NRS 13.010 and that he presented evidence that rebutted the residence presumption, the record on appeal does not support this contention. In his answering brief, respondent refers to the parties' money loan contract and respondent's affidavit as proof that the actual contract took place and was to be performed in Las Vegas, Clark County. However, the parties' one page contract does not mention Las Vegas or indicate that appellant was to repay respondent in Clark County. Further, in the absence of a specific reference to Las Vegas or Clark County, the parties' contract cannot be reasonably tied to Las Vegas. Further, we are not convinced that respondent's affidavit, in the absence of any other evidence corroborating his statement, is sufficient to rebut the statutory presumption that venue properly lies in appellant's county of residence and in the county where the business is located.

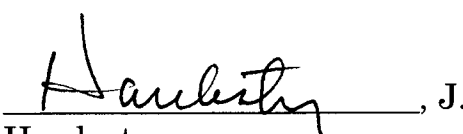
Accordingly, we conclude that the district court manifestly abused its discretion in denying appellant's demand for change of venue. We reverse the district court's order and remand this case for further proceedings consistent with this order.

It is so ORDERED.


_____, C.J.

Maupin


_____, J.
Parraguirre


_____, J.
Hardesty

cc: Eighth Judicial District Court Dept. 18, District Judge
Lester H. Berkson, Settlement Judge
Robert E. Glennen III
Meier & Fine, LLC
Eighth District Court Clerk