

IN THE SUPREME COURT OF THE STATE OF NEVADA

NETINVESTORS, LLC., A NEVADA  
LIMITED LIABILITY COMPANY, AG  
DOMAIN, LLC., A NEVADA LIMITED  
LIABILITY COMPANY,  
ATTORNEYGUIDE.COM, INC., A  
NEVADA CORPORATION, AND  
ATTORNEYGUIDE.COM, LLC., A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Appellants,  
vs.  
EDURUS, INC.,  
Respondent.

No. 37029

FILED

APR 10 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order refusing to change the place of trial. Because appellants' written demand to change venue as a matter of right was untimely, and the district court did not abuse its discretion in declining to change venue based on the convenience of witnesses and ends of justice, we affirm the district court's order.

Respondent commenced the underlying action for breach of contract in Clark County. Because all of the defendants resided in Washoe County at the relevant time, the proper county in which to try the action was Washoe County.<sup>1</sup> Under NRS 13.050(1), appellants therefore

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<sup>1</sup>See NRS 13.040. Appellants' reliance on NRS 13.010(1) is misplaced. That statute only applies if the contracting obligor resides in a Nevada county other than the county where the obligation is to be performed. Marshall Earth Resources v. Parks, 99 Nev. 251, 661 P.2d 875 (1983). Appellants, by their own assertions, claim that the contract at issue here was executed and to be performed in Washoe County and that they all reside in Washoe County. Therefore, NRS 13.010(1) is inapplicable.

had the right to demand that trial be had in Washoe County, but such a demand had to be made “before the time for answering expire[d].”<sup>2</sup> Here, appellants filed their demand for change of venue after the time for filing an answer expired, and we agree with respondent that they waived their right to compulsory change of venue.<sup>3</sup>

Appellants also contend that venue should have been changed under NRS 13.050(2)(a) and (c). These two provisions state that a district court may change venue when the action was filed in an improper county, or when the change would promote witness convenience and the ends of justice. While respondent did commence this action in the wrong county, we conclude that appellants did not demonstrate that a change of venue was necessary based on that ground, or to promote the convenience of

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<sup>2</sup>NRS 13.050(1).


<sup>3</sup>See Hood v. Kirby, 99 Nev. 386, 663 P.2d 348 (1983) (holding that demand for change of venue must be filed before the time to answer expires); Connolly v. Salsberry, 43 Nev. 182, 183 P. 391 (1919) (holding that an extension of the time to file an answer did not also extend time to demand change of venue).

witnesses and the ends of justice.<sup>4</sup> Accordingly, the district court did not abuse its discretion in denying the motion.<sup>5</sup> We

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Maupin

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Michael L. Douglas, District Judge  
Robertson & Benevento/Reno  
Vannah Costello Canepa Riedy Rubino & Lattie  
Clark County Clerk

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<sup>4</sup>An affidavit in support of a motion to change venue must set forth sufficient facts demonstrating promotion of convenience. See Kercheval v. McKenny, 4 Nev. 294, 3-4 Nev. 753 (1868); Corfee v. Southern California Edison Company, 20 Cal. Rptr. 870 (Ct. App. 1962). The convenience of witnesses who are parties or employees of parties is not to be considered in whether to grant a motion for change of venue. Chimarios v. Duhl, 543 N.Y.S.2d 681 (App. Div. 1989).

<sup>5</sup>See Fabbi v. First National Bank, 62 Nev. 405, 413-14, 153 P.2d 122, 125 (1944) (stating that this court will not disturb a district court's order denying change of venue absent a manifest abuse of discretion).