

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 08-cv-02367-RPM

HEARTLAND BUSINESS CREDIT CORPORATION,

Plaintiff,

v.

SIMPLY SKIN, INC., d/b/a SIMPLYSKIN MEDSPA, INC.,
SARA V. WEBB, and
JONATHAN L. WEBB,

Defendants.

ORDER FOR DISMISSAL OF DEFENDANTS SIMPLY SKIN, INC., AND SARA V.
WEBB AND FOR TRANSFER TO EASTERN DISTRICT OF TENNESSEE AS TO
REMAINING DEFENDANT JONATHAN L. WEBB

This is a collection case filed under diversity jurisdiction provided by 28 U.S.C. § 1332. The named defendants are alleged to be residents of Knoxville, Tennessee. There has been no appearance by defendants Simply Skin, Inc., and Sara V. Webb. The plaintiff withdrew its application for entry of default and default judgment as to those defendants and has proceeded no further as to them. Because of this failure to prosecute as to those defendants, dismissal as to them is to be ordered. The defendant Jonathan L. Webb filed a motion to dismiss or for change of venue on June 9, 2009, denying that the lease of equipment was signed by him. The plaintiff's response asserts that the lease and subsequent documents were executed by Sara Webb, the defendant's wife, who is alleged to have been authorized to act for him. There is then a factual dispute as to the defendant's liability for the obligations alleged by the plaintiff.

The venue provision of 28 U.S.C. § 1391(a) requires that this civil action be filed

in the District where the defendant resides or where a substantial part of the events giving rise to the claim occurred. The plaintiff has asserted venue in Colorado based on a consent to jurisdiction and venue provision in the disputed lease agreement. Because the validity of that agreement is in question, it should not be accepted as an appropriate basis for venue in this District and it is clear that the subject property was for installation in a spa located in Knoxville, Tennessee. Under these circumstances, the defendant Jonathan L. Webb should not be required to defend this action in Colorado. It is

ORDERED that this civil action is dismissed as to the defendants Simply Skin, Inc., and Sara V. Webb and transferred to the United States District Court for the Middle District of Tennessee as to the remaining claims against defendant Jonathan L. Webb.

DATED: August 17th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge