

RYAN MCCROSKEY

NO. 20-C-338

VERSUS

FIFTH CIRCUIT

WAYNE MUNLIN, NICHOLAS MUNLIN, AND

COURT OF APPEAL

WIDOWS SONS BIG EASY, INC.

STATE OF LOUISIANA

March 11, 2021

Susan Buchholz

First Deputy Clerk

IN RE WAYNE MUNLIN, NICHOLAS MUNLIN, AND WIDOWS SONS BIG EASY, INC.

APPLYING FOR SUPERVISORY WRIT FROM THE FIRST PARISH COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE REBECCA M. OLIVIER, DIVISION "A", NUMBER 167-192

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Hans J. Liljeberg

WRIT GRANTED; REMANDED WITH INSTRUCTIONS

Applicants, Wayne Munlin, Nicholas Munlin, and Widow Sons Big Easy, Inc., seek supervisory review of the trial court’s judgment denying their declinatory exception of improper venue. Plaintiff is domiciled in Orleans Parish and is the non-occupying lessor of immovable property located in Jefferson Parish. Defendant Wayne Munlin is domiciled in St. Tammany Parish. Defendants Nicholas Munlin and Widows Sons Big Easy, Inc. are domiciled in Tangipahoa Parish. Plaintiff filed suit in Jefferson Parish. For the following reasons we grant this writ, reverse the trial court’s judgment denying Applicants’ exception of improper venue and remand this matter to the trial court for further action consistent with this disposition.

In his Petition for Declaratory Judgment and Injunctive Relief, Plaintiff Ryan McCroskey seeks to enjoin Applicants from using the trade name “Widow Sons Big Easy”, alleging that he owns that trade name, which Defendants Wayne Munlin and

Nicholas Munlin have intentionally, and in bad faith, misappropriated. In his petition, Plaintiff further alleges that on approximately January 7, 2017, he began organizing and operating a Louisiana non-profit charitable corporation under the name “Widow Sons Big Easy” (hereinafter WSBE). Plaintiff obtained a tax identification number, as well as an approval of 501C (3) non-profit charitable corporation status from the Internal Revenue Service (IRS) on January 18, 2017. On that same date, Plaintiff also opened a corporate bank account and Post Office Box for WSBE. However, Plaintiff, allegedly through a clerical error, failed to execute or file articles of incorporation for WSBE with the Louisiana Secretary of State. Approximately fourteen months later, on March 11, 2019, Defendants Wayne and Nicholas Munlin allegedly filed paperwork with the Louisiana Secretary of State, preserving the trade name “Widows Sons Big Easy” and incorporating their own, distinct non-profit charitable organization in Tangipahoa Parish.

On July 25, 2019, Plaintiff filed the instant suit in Jefferson Parish. On October 23, 2019, Defendants filed numerous exceptions, including an exception for improper venue. On March 11, 2020, all exceptions came before the trial court for hearing.

At the hearing, Plaintiff confirmed that he was not seeking to recover damages against the Defendants and only sought injunctive relief. He asserted that venue in Jefferson Parish is proper pursuant to La. C.C.P. art.74, which states that an action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.¹ Plaintiff argued that through filing corporate papers with the Secretary of State in Baton Rouge, Defendants were

¹ La. C.C.P. art. 74 provides:

An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.

prohibiting Plaintiff from using the name “Widows Son Big Easy” in Jefferson Parish, where he allegedly had already been conducting WSBE’s business. During the hearing, Plaintiff testified that he regularly conducts WSBE business at his office on Metairie Road in Jefferson Parish. Plaintiff further argued that even though WSBE’s articles of incorporation were never signed or filed with the Secretary of State, they list the Metairie Road office as WSBE’s domicile such that Jefferson Parish is WSBE’s principal place of business. Defendants contended, and Plaintiff conceded, that some WSBE business meetings were also held out of Plaintiff’s house in Orleans Parish. Moreover, copies of Plaintiff’s federal 501C (3) approval clearly lists WSBE’s address as located in Orleans Parish, and Plaintiff likewise testified that WSBE’s Post Office Box is located in Orleans Parish.

After considering the parties’ arguments and La. C.C.P. art. 74, the trial court judge, ruling from the bench, found venue to be proper in Jefferson Parish as the effects of Defendants’ infringement could be felt in Jefferson Parish where WSBE allegedly conducts business. On May 18, 2020, the trial court issued judgment denying all of Defendants’ exceptions. Thereafter, Applicants timely sought supervisory review of the trial court’s denial of their exception for improper venue.²

A party may seek supervisory review of a trial court’s interlocutory ruling denying an exception of venue pursuant to La. C.C.P. art. 2201. See also *Chambers v. LeBlanc*, 598 So.2d 337 (La. 1992) and *Herlitz Construction Co. Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878, n.1 (La. 1981). The exception of

² On June 16, 2020 Applicants timely filed their Notice of Intent to Take Supervisory Writs and sought a return date from the trial court. On June 22, 2020 the trial court issued an order setting a return date of August 7, 2020. On August 3, 2020 the trial court issued an Order extending the return date to September 30, 2020. The trial judge violated Uniform Rules-Courts of Appeal 4-3 in setting a return date outside the 30 day permitted period. Nevertheless, in instances in which the applicant files the writ with the court of appeal within the improvidently set delay period, appellate courts are loath to penalize the applicant. La. Unif. R. Ct. App. 4-3; see *Crutcher-Tufts Corp. v. Coleman et.al.*, 15-0340, (La. 05/22/2015), 170 So.3d 972 (Although the trial court set the return date more than thirty days from the date of the ruling, the court has the authority to extend the deadline under Rule 4-3). “Accordingly, since it was the trial court who violated Rule 4-3 and since relator filed his application within the time limit authorized in the order of the trial court, there is no justification for penalizing relator or his client by refusing to consider the application.” *Barnard v. Barnard*, 96-0859, (La. 06/24/1996), 675 So.2d 734.

improper venue presents a question of law. *Ryan Gootee Gen. Contractors, LLC v. Plaquemines Par. Sch. Bd. & One Const., Inc.*, 15-325 (La. App. 5 Cir. 11/19/15), 180 So. 3d 588, 592. Questions of law are reviewed by the appellate court *de novo*, without deference to the legal conclusions of the trial court. *Kaye v. Karp*, 17-397 (La. App. 5 Cir. 12/27/17), 237 So. 3d 614, 619, *writ denied sub nom. Kate v. Karp*, 18-0136 (La. 3/9/18), 237 So. 3d 1193.

The general rules of venue provide that an action against a domestic corporation shall be brought in the parish where its registered office is located. La. C.C.P. art. 42. We reiterate that WSBE, Plaintiff's unincorporated organization, and Defendant Widows Sons Big Easy, Inc., are two distinct non-profit charitable organizations with separate tax identification numbers, bank accounts, and the like. The clear and unambiguous language of La. C.C.P. art. 42 states that venue is proper in the parish where the defendant corporation has its registered office. *See* La. C.C. art. 9; *see also* La. C.C.P. art. 42 (emphasis added). Defendant Widows Sons Big Easy, Inc. is registered in Tangipahoa Parish; thus, venue is proper in Tangipahoa Parish.

However, the general rules of venue are subject to the exceptions provided by La. C.C.P. arts. 71–85 and as otherwise provided by law. La. C.C.P. art. 43. The exceptions supplement the Code of Civil Procedure's art. 42 general venue provision and plaintiffs may choose any venue available under the general or supplementary venue provisions "that fits the particular circumstances of their claims." *Cacamo v. Liberty Mutual Fire Ins. Co.*, 99–3479 (La. 6/30/00), 764 So.2d 41.

In cases alleging unfair trade practices venue has been found to be proper under La. C.C.P. art. 74, in the parish where the wrongful conduct occurred. *Novelaire Techs., L.L.C. v. Harrison*, 06-94 (La. App. 5 Cir. 7/25/06), 939 So. 2d 437, 443. The allegations of Plaintiff's petition make it clear that the act complained of is an alleged misappropriation and wrongful use of the name "Widows Sons Big

Easy.” Nevertheless, the correlation between Defendants’ alleged misappropriation and Jefferson Parish is tenuous. Considering Plaintiff’s argument that Defendants have misappropriated the name “Widow Sons Big Easy” by incorporating their own entity using that name, one could find the alleged wrongful conduct at issue occurred in Tangipahoa Parish where the registered office is located. Alternatively, if this Court were to purport that the wrongful conduct at issue was Defendants’ filing of corporate papers with the Secretary of State in Baton Rouge, thereby allegedly infringing upon Plaintiff’s rights, it would then seem that the “wrongful conduct” occurred in East Baton Rouge Parish, where the articles of incorporation were filed, not Jefferson Parish.

The trial court stated in its oral reasons in support of its ruling that venue in Jefferson Parish was proper because Plaintiff “could be affected or could be damaged by something that has occurred or may have occurred in Jefferson Parish.” Pursuant to La. C.C.P. art. 74, the factors the court must consider in an action to enjoin conduct is where the wrongful conduct occurred or may occur; the parish where the plaintiff has been or may be affected or damaged is not relevant in a matter seeking injunctive relief. The evidence contained in the record does not indicate that Defendants engaged in or may engage in wrongful conduct in Jefferson Parish. Rather, the evidence presented involved only Plaintiff’s activities in Jefferson Parish.

Furthermore, the Official Revision Comments to article 74 make it clear that, in the instant case, venue would be improper in Jefferson Parish. Specifically, La. C.C.P. art. 74, cmt. (e) provides: “Insofar as this article is concerned, the venue of an action to enjoin the commission of an offense or quasi offense is restricted to the parish where the wrongful conduct occurred or may occur. This was done to require the most convenient forum in such cases...” La. C.C.P. art. 74, cmt. (e). Because we do not find evidence that any wrongful conduct occurred or may occur in

Jefferson Parish, this Court cannot find that venue would be proper in Jefferson Parish under La. C.C.P. art. 74.

Therefore, on *de novo* review, we find that venue is not proper in Jefferson Parish. Accordingly, the trial court's judgment denying the exception of improper venue is reversed, the exception is granted, and this matter is remanded to the trial court to determine, in accordance with La. C.C.P. arts. 121 and 932(B), whether to transfer the matter to a court of proper venue or to dismiss the action.

Gretna, Louisiana, this 11th day of March, 2021.

FHW
HJL

RYAN MCCROSKEY

NO. 20-C-338

VERSUS

FIFTH CIRCUIT

WAYNE MUNLIN, NICHOLAS MUNLIN, AND

COURT OF APPEAL

WIDOWS SONS BIG EASY, INC.

STATE OF LOUISIANA

WINDHORST, J., DISSENTS WITH REASONS

I respectfully disagree with the majority’s opinion, and would defer to the trial court’s findings. Therefore, I would deny the writ, or alternatively, decline to exercise our supervisory jurisdiction.

La. C.C.P. art. 74 states in pertinent part:

An action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.

In applying La. C.C.P. art. 74, the majority’s opinion considers only “where the wrongful conduct occurred,” while disregarding the phrase “or may occur,” which is equally a part of this law. Thus, La. C.C.P. art. 74 is broader than the majority’s application by including parishes in which alleged offenses “may occur.”

The trial judge heard voluminous testimony on this point. I do not find that she misapplied the law or abused her discretion, and would defer to her determination that the alleged wrongful conduct “may occur” within the territorial jurisdiction of First Parish Court for the Parish of Jefferson.

Further, this particular issue is not one of venue, but of jurisdiction. La. R.S. 13:2561.2 specifically defines the civil subject matter *jurisdiction* of First Parish Court as limited to cases “within its territorial boundaries.”³ Location “within its territorial boundaries” is, by statutory definition, an indispensable element of First Parish Court's jurisdiction. First Parish Court’s territorial boundaries determine

³ [La. R.S. 13:2561.1](#) specifies as “territory of parish [sic] of Jefferson lying east of the Mississippi River.”

jurisdiction, not venue, because that is how the law reads. Thus, unless the cause of action occurs within the territorial boundaries of First Parish Court, the case is not within the court's civil *jurisdiction* as defined by law, and the court has no authority to act on the case.

Lack of jurisdiction, or the lack of authority to adjudicate a particular case, can be noticed at any time by the trial or appellate court. The exception of lack of jurisdiction can be re-urged or raised at any time. Therefore, if as the case proceeds or as the evidence is more fully developed, it becomes apparent to the First Parish Court trial judge that the court is without jurisdiction, the exception may be sustained and/or the case dismissed *sua sponte*, even during or after trial.

The issue of subject matter jurisdiction may be raised at any time or at any stage of the proceedings. Dickens v. La. Corr. Inst. For Women, 11-176 (La. App. 1 Cir. 9/14/11), 77 So.3d 70, 73. Moreover, it is the duty of a court to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. Boudreaux v. Dept. of Transp. and Dev., 01-1329 (La. 2/26/02), 815 So.2d 7, 13. Lack of subject matter jurisdiction renders a judgment absolutely null. The issue of subject matter jurisdiction addresses the court's authority to adjudicate the cause before it. Id. If the court lacks the authority to render judgment, said judgment has no legal existence. Taylor v. Hixson Autoplex of Alexandria, Inc., 00-1096 (La. App. 3 Cir. 3/28/01), 781 So.2d 1282, writ not considered, 01-1539 (La. 9/14/01), 796 So.2d 670.

Considering that La. C.C.P. art. 74 allows an action to be brought in a parish where the commission of an offense may occur, and the continuing prerogative to later dismiss for lack of jurisdiction if the evidence indicates, I would deny this writ.

SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **03/11/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

20-C-338

E-NOTIFIED

First Parish Court (Clerk)
Honorable Rebecca M. Olivier (DISTRICT JUDGE)
Douglas D. Brown (Relator)
John F. Lee (Respondent)

MAILED

Raymond B. Landry (Respondent)
Attorney at Law
2341 Metairie Road
Metairie, LA 70001