

NOT DESIGNATED FOR PUBLICATION

D. DOUGLAS DEPP	*	NO. 2001-CA-1147
VERSUS	*	COURT OF APPEAL
MICHAEL A. NORTON AND BULL'S CORNER LAKEFRONT, L.L.C.	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
	*	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-1566, DIVISION "L-15"
Honorable Mickey P. Landry, Judge Pro Tempore

Judge David S. Gorbaty

(Court composed of Judge Miriam G. Waltzer, Judge Michael E. Kirby,
Judge David S. Gorbaty)

KIRBY, J. – DISSENTING

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AFFIRMED

In this appeal, defendants contend that the trial court erred in overruling their exceptions of improper venue and improper joinder of parties. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

Between 1968 and 1993, plaintiff conducted a food service business under the name Bull's Corner and operated restaurants throughout the greater New Orleans area. Since 1993, plaintiff has continued his food service and restaurant business by rendering food consulting, management, and catering services. In 1981, plaintiff registered the name "Bull's Corner" with the Louisiana Secretary of State as a trade name protected under La. R.S. 51:211 *et seq.* Plaintiff learned that defendants were operating a restaurant located on Old Hammond Highway in Metairie called "Bull's Corner Lakefront." On January 29, 2001, plaintiff filed a petition in Civil

District Court for the Parish of Orleans seeking an injunction protecting his right to the exclusive use of the trade name “Bull’s Corner” and prohibiting defendants from using the name.

Subsequently, Bull’s Corner Lakefront filed an exception of improper venue, and Michael Norton filed an exception of improper joinder of parties. After a hearing, the trial court overruled both exceptions. In its reasons for judgment, the court held that venue was proper in Orleans Parish under La. C.C.P. art. 74, which provides that “[a]n 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.” The court further concluded that the joinder of Norton was not improper because as the manager of Bull’s Corner Lakefront, he is able to direct the affairs of the L.L.C., including the use or misuse of the registered name “Bull’s Corner.” Defendants subsequently filed this appeal.

DISCUSSION

Michael Norton argues that he cannot properly be named as a defendant in the suit because he is an officer of the limited liability

company, and La. R.S. 12:1320 bars a suit against him individually.

La. R.S. 12:1320 provides:

A. The liability of members, managers, employees, or agents, as such, of a limited liability company organized and existing under this Chapter shall at all times be determined solely and exclusively by the provisions of this Chapter.

B. Except as otherwise specifically set forth in this Chapter, no member manager, employee, or agent of a limited liability company is liable in such capacity for a debt, obligation, or liability of the limited liability company.

C. A member, manager, employee, or agent of a limited liability company is not a proper party to such a proceeding by or against a limited liability company, except when the object is to enforce such a person's rights against or liability to the limited liability company.

D. Nothing in this chapter shall be construed as being in derogation of any rights which any person may by law have against a member, manager, employee, or agent of a limited liability company because of any fraud practiced upon him, because of any breach of professional duty or other negligent or wrongful act by such person, or in derogation of any right which the limited liability company may have against any such person because of any fraud practiced upon it by him.

Plaintiff has alleged that through his efforts, the name "Bull's Corner" has become known in the New Orleans and Metairie areas. The public associates the name "Bull's Corner" with food and restaurant goods of a particular quality. Defendants' use and advertisement of the name "Bull's Corner" will cause confusion among members of the general public, and deceive them as to the source of the goods and services provided, plaintiff

argues.

Without ruling on the merits of the claim against Norton, we find that the conduct complained of by plaintiff falls within the ambit of the “wrongful acts” described in La. R.S. 12:1320(D). As such, Norton is deprived of the protections afforded by La. R.S. 12:1320(C), and is a proper party to the lawsuit.

Bull’s Corner Lakefront argues that it has no registered office or other presence in Orleans Parish and thus, under La. C.C.P. art. 42(2), venue is proper only in St. John Parish, where its registered office is located.

An action against a domestic limited liability company shall be brought in the parish where its registered office is located. La. C.C.P. art. 42 (2). An action against an individual who is domiciled in the state shall be brought in the parish of his domicile. La. C.C.P. art. 42(1). An action against joint and solidary obligors may be brought in a parish of proper venue, under Article 42 only, as to any obligor who is made a defendant. La. C.C.P. art. 73.

Michael Norton is domiciled in Orleans Parish. Plaintiff has alleged that Norton and Bull’s Corner Lakefront are jointly using, displaying,

publishing, and broadcasting a name registered to plaintiff. Consequently, the provisions of article 73 apply. Since Orleans Parish is a proper venue for suit against Norton, it is also the proper venue for suit against Norton and Bull's Corner Lakefront as joint obligors.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED