

**NOT DESIGNATED FOR PUBLICATION**

**PAYPHONE/ATM** \* **NO. 2014-CA-1097**  
**CONNECTION PLUS, INC.** \*  
**VERSUS** \* **COURT OF APPEAL**  
\*  
**ABDELMAJID, ABDELAZIZ** \* **FOURTH CIRCUIT**  
**AND AWNI, INC. D/B/A** \*  
**FAMILY FARM MARKET** \* **STATE OF LOUISIANA**  
**FARM/CLAIBORNE MARKET** \* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2012-05391, DIVISION "M"  
Honorable Paulette R. Irons, Judge

\* \* \* \* \*

**Judge Dennis R. Bagneris, Sr.**

\* \* \* \* \*

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Paul A. Bonin, Judge Joy Cossich Lobrano)

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FARM/CLAIBORNE MARKET**

**VACATED AND REMANDED**

**MARCH 18, 2015**

Awni, Inc. d/b/a/ Family Farm Market/Claiborne Market (“Awni”), seeks review of the judgment of the trial court that found in favor of plaintiff, Payphone Connection Plus d/b/a/ Payphone/ATM Connection Plus, Inc. (“Payphone”) and awarded \$35,610.00 in damages. For the reasons that follow, we vacate the judgment and remand the matter to Division “M” of the New Orleans Civil District Court (“CDC”), the division to which this case was originally randomly assigned.

## **FACTS**

On May 31, 2012, Payphone filed a petition for breach of contract, permanent injunction and preliminary injunction alleging that Awni breached a contract it had with it for the exclusive use and operation of an ATM machine at 2541 N. Claiborne Avenue, New Orleans, Louisiana. Specifically, Payphone’s petition alleges that “[a]lthough no termination has ever been tendered to plaintiff [Payphone], defendants [Awni and Abdelaziz Abdelmajid<sup>1</sup>] have placed an ‘out of order’ sign on plaintiffs’ [sic] machine and rendered it useless. At the same time, defendants have arranged for the installation with a competing atm machine in

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<sup>1</sup> Abdelaziz Abdelmajid is an officer of Awni. The judgment of the trial court rendered on June 26, 2014 dismissed him with prejudice; however, that part of the judgment has not been appealed.

violation of the exclusive right of plaintiff ....” The civil action was randomly allotted to Division “M” of the CDC presided over by Judge Paulette Irons. On May 1, 2013, Judge Irons held a hearing on Payphone’s motion for summary judgment whereby she denied the motion and granted defendants “leave of Court to amend their fact pleading and/or response.” On July 10, 2013, the parties entered into a scheduling order setting the matter for a one day judge trial on June 25, 2014 at 9:00 a.m.

The record indicates a trial was held on June 25, 2014 before Judge Christopher J. Bruno, Division “F,” and that counsel for defendant, Morris Reed, was not present. The trial transcript states as follows, in pertinent part:

THE COURT:

So we have a matter here that was assigned to Division M.

\* \* \*

I note this case again was assigned to Division M. I understand you are consenting to a transfer of this matter to be heard by Division F?

MR. DAVIDSON [Counsel for plaintiff]:

Yes.

THE COURT:

I note that Mr. Reed - - did he get contacted?

MR. LAW CLERK:

No, Your Honor. We made multiple attempts to contact him as well as opposing counsel.

\* \* \*

THE COURT:

I’m not concerned about that. I read the record. It shows there is a scheduling order where Mr. Morris Reed signed off on the document indicating he was aware of the trial. Let’s see what we have. This is a trial, not a default.

After a trial on the merits, Judge Bruno signed a judgment on June 26, 2014, in favor of Payphone and against Awni and awarded damages of \$35,610.00. The judgment also dismissed the claims against defendant Abdelaziz Abdelmajid with prejudice. Awni now appeals this final judgment.

## **DISCUSSION**

In his first assignment of error, Awni avers that the trial court erred in allowing Payphone to have a trial in Division “F” [Judge Bruno’s courtroom] of the CDC instead of Division “M” [Judge Irons’ courtroom], where the case was originally assigned, without the consent of all parties. In response, Payphone argues that Awni waived the right to object to the transfer to Judge Bruno’s division when he failed to appear in court on the morning of trial. For the following reasons, we find merit in Awni’s appeal.

Whether Judge Bruno had the authority to hear a case that was assigned to another division presents a question of law. Questions of law are decided *de novo*. See *Russell v. Mosquito Control Bd.*, 06–0346, p. 8 (La. App. 4 Cir. 9/27/06), 941 So.2d 634, 640.

La. C.C.P. art. 253.1, regarding the random assignment of cases provides that “[a]ll pleadings filed shall be randomly assigned to a particular section or division of the court.” After assignment of a case to a particular division or section of the court, “it may not be transferred from one section or division to another section or division within the same court, unless agreed to by all parties, or unless it is being transferred to effect a consolidation for purpose of trial pursuant to Article 1561.” La. C.C.P. art. 253.2. This article further provides that the Supreme Court “by rule, may establish uniform procedures for reassigning cases

under circumstances where an expeditious disposition of cases may be effectuated.” La. C.C.P. art. 253.2.

Rule 9.2 of the Uniform Rules of the District Courts provides, in relevant part:

Except as allowed by La. Code Civ. Proc. art. 253.3, all contested matters shall be heard by the judge to whom the matter was allotted. The judge to whom the action has been allotted may designate the order-signing judge or any other judge to sign such orders and set such hearings, and in his or her absence, to hear such matters where necessary to comply with law, or when deemed to be an emergency, in accordance with La. Code Civ. Proc. Arts. 253.2 and 253.3.

Rule 9.3 of the Uniform Rules of the District Courts provides, in relevant part:

All pleadings filed shall be randomly assigned to a particular section or division of the court in accordance with La. Code Civ. Proc. art. 253.1 before presentation of a pleading to any judge.

The codal articles and district court rules require Judge Irons, to whom the case was randomly allotted, to preside over the trial in this matter. Judge Bruno was without authority to hear the case unless (a) all parties agreed, or (b) if it was “necessary to comply with law” or “deemed to be an emergency.”

In this case, there was no consent from Awni to transfer the case from Division “M” to Division “F”. In order for Judge Bruno to have had authority, Judge Bruno had to be designated by Judge Irons and the matter had to be heard for the purpose of complying with the law or the matter had to be deemed an emergency. However, there is nothing in the record on appeal to indicate Judge Irons designated Judge Bruno to hear the matter. Accordingly, we find that Judge Bruno erred in holding a trial in a case allotted to another division of court without

the consent of all parties, or without the designation by Judge Irons to hear the matter.

For these reasons, we hereby vacate the judgment in favor of Payphone and against Awni, in the amount of \$35,610.00 and remand the case to CDC Division "M," the division to which this civil matter was randomly assigned.

**VACATED AND REMANDED**