**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| BRIAN J. STENGER<br><br>Appellant<br><br>v.<br><br>RONALD VOLZ AND ARLENE VOLZ, H/W, TURNEY'S TAVERN, R & A REAL ESTATE, LLC AND 825 RGV, INC.<br><br>Appellees | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br><br>No. 2021 EDA 2012 |

Appeal from the Order June 8, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): January Term, 2012 No. 0437

BEFORE: FORD ELLIOTT, P.J.E., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.: Filed: March 4, 2013

Appellant, Brian J. Stenger, appeals from the June 8, 2012 order dismissing Ronald Volz and Arlene Volz (Mr. and Mrs. Volz) from the action he filed against Turney's Tavern (the Tavern), R & A Real Estate, LLC (R & A) and 825 RGV, Inc. (RGV) (collectively Appellees), and transferring venue to Montgomery County. After careful review, we affirm.

The trial court aptly summarized the factual and procedural background of this case as follows.

> On February 19, 2010, [Appellant] was injured when he slipped and fell on the sidewalk in front of [the Tavern], located in Glenside, Montgomery County. [Appellant] alleges that he suffered bodily

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* Former Justice specially assigned to the Superior Court.

> injury as a result of the slip and fall and seeks damages for both known and unknown injuries.
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> [Appellant] commenced this action by filing his [c]omplaint on January 5, 2012 in Philadelphia County. The [c]omplaint contains two claims. Count I is a claim for [n]egligence and Count II is a claim of [*r*]*espondeat* [*s*]*uperior*. Both claims are against [Appellees].
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> [Appellant] is a resident of Wyndmoor, Montgomery County. [The Tavern] is a business located in Glenside, Montgomery County. [R & A] is [a] Pennsylvania business located in Glenside, Montgomery County. [RGV] is a Pennsylvania business located in Glenside, Montgomery County. [Mr. and Mrs. Volz] reside in Philadelphia, and represent the case's only connection to Philadelphia.
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> [Appellees] filed [p]reliminary [o]bjections to the [c]omplaint on January 23, 2012. [Appellant] filed an [a]mended [c]omplaint on February 13, 2012. [Appellees] [p]reliminary [o]bjections were marked moot on February 16, 2012.
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> [Appellees] filed [p]reliminary [o]bjections to [Appellant]'s [f]irst [a]mended [c]omplaint on February 16, 2012. [Appellees] raise[d] two issues in their [p]reliminary [o]bjections. First, they argue[d] that venue should be transferred to Montgomery County because [Appellant], [Appellees] and the site of the accident are located in Montgomery County.
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> Second, [Appellees] aver[red] that [Appellant] wrongfully included [Mr. and Mrs. Volz], residents of Philadelphia, in the [c]omplaint. [Appellees] argue[d] that [the Tavern] is incorporated and the only way [Mr. and Mrs. Volz] could be held liable is to pierce the corporate veil. [Appellees] contend[ed] that [Appellant] made no allegation in the [c]omplaint that [the Tavern] engaged in any conduct that would justify piercing the corporate veil.

[Appellant] filed his [r]esponse to the [p]reliminary objections of [Appellees] to the [f]irst [a]mended [c]omplaint on March 7, 2012. [Appellant] contend[ed] that venue [was] proper in Philadelphia since [the Tavern] is a sole proprietorship owned by [Mr. and Mrs. Volz] who reside in Philadelphia. [Appellant] contend[ed] that service [was] proper on [Mr. and Mrs. Volz] in Philadelphia, therefore per [Pa.R.C.P.] 1006(a)(1), venue is proper in Philadelphia.

On March 14, 2012, [Appellees] filed a [s]ur [r]eply in support of their [p]reliminary [o]bjections. In their reply, [Appellees] reiterate[d] that [the Tavern] is not a sole proprietorship. Rather, [the Tavern] is merely a trade name for [RGV]. [Mr. and Mrs. Volz] are shareholders in [RGV] and therefore are not proper parties to th[e] litigation.

On March 21, 2012, th[e trial c]ourt issued an [o]rder that stayed [Appellees'] [p]reliminary [o]bjections pending discovery on the issue of whether [the Tavern] is a sole proprietorship or whether it is a corporate entity under [RGV]. On May 3, 2012, [Appellees] filed a brief in support of their [p]reliminary [o]bjections. On May 21, 2012, [Appellant] filed a brief in opposition to the [Appellees'] [p]reliminary [o]bjections. On May 31, 2012, [Appellees] filed a reply in support of their [p]reliminary [o]bjections.

Th[e trial c]ourt issued an [o]rder on June 8, 2012, sustaining the [p]reliminary objections of the [Appellees] and transferring venue to Montgomery County.

Trial Court Opinion, 9/13/12, at 1-4 (footnote and internal citations omitted). On July 9, 2012, Appellant filed a timely notice of appeal.[1]

On appeal, Appellant raises two issues for our review.

> 1. Did the [t]rial [c]ourt commit an error of law and/or abuse its discretion by not reviewing the [f]irst [a]mended [c]omplaint in a light favorable to [Appellant] when determining that [Mr. and Mrs. Volz], should be dismissed from the case?
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> 2. Did the [t]rial [c]ourt abuse its discretion by sustaining [Appellees]' [p]reliminary [o]bjections and transferring venue from Philadelphia County to Montgomery County?

Appellant's Brief at 4.[2]

We begin by noting our well-settled standard of review.

> The trial court is accorded considerable discretion in determining whether or not to grant a petition for change of venue, and the standard of review is one of abuse of discretion. The plaintiff's choice of forum is given great weight. Thus, the party seeking a change of venue bears the burden of proving that a change of venue is necessary, while a plaintiff

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[1] We note that the 30th day for Appellant to file his notice of appeal fell on Sunday, July 8, 2012. When computing the 30-day filing period "[if] the last day of any such period shall fall on Saturday or Sunday ... such day shall be omitted from the computation." 1 Pa.C.S.A. § 1908. Therefore, the 30th day actually fell on Monday, July 9, 2012, and Appellant's notice of appeal was timely. We also note that both Appellant and the trial court have complied with Pa.R.A.P. 1925. We further observe that an appeal from an order granting a change of venue in a civil case is an interlocutory appeal of right. ***See*** Pa.R.A.P. 311(c).

[2] Although we state the issues as Appellant has presented them to us in his brief, we have reversed their order for ease of disposition.

> generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied.

***Zampana-Barry v. Donoghue***, 921 A.2d 500, 503 (Pa. Super. 2007) (internal quotation marks and citations omitted), *appeal denied*, 940 A.2d 366 (Pa. 2007). Furthermore, in reviewing the trial court's grant of the preliminary objections in the nature of a demurrer filed by Mr. and Mrs. Volz, we are guided by the following.

> In determining whether the trial court properly sustained preliminary objections, the appellate court must examine the averments in the complaint, together with the documents and exhibits attached thereto, in order to evaluate the sufficiency of the facts averred. The impetus of our inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven. This Court will reverse the trial court's decision regarding preliminary objections only where there has been an error of law or abuse of discretion. When sustaining the trial court's ruling will result in the denial of claim or a dismissal of suit, preliminary objections will be sustained only where the case is free and clear of doubt.

***Conway v. The Cutler Group, Inc.***, --- A.3d ---, 2012 WL 5383161, *2 (Pa. Super. 2012) (citation omitted).

We first address Appellant's assignment of error regarding the trial court's decision to dismiss Mr. and Mrs. Volz from the case. Appellant avers that the trial court committed an error of law when it concluded that the Tavern was merely a trade name for R & A and RGV, rather than a sole proprietorship. Appellant's Brief at 15. Appellees counter that the trial court

correctly determined that the Tavern "is nothing more than a trade name for [RGV], which is an incorporated entity." Appellees' Brief at 5.

In dismissing Mr. and Mrs. Volz from the case, the trial court examined the documents produced by Appellee during discovery on this issue and concluded the following.

> [Appellees] provided ample documentation through discovery that [the Tavern] is a trade name for [R & A and RGV]. … Attached is a commercial insurance policy that specifically states that [R & A and RGV], trading as [the Tavern] were insuring a restaurant that served alcoholic beverages. Also attached were copies of Pennsylvania Liquor Licenses that listed [RGV] and not [the Tavern] as the license holder. The liquor license renewal application listed [RGV] as the applicant, [R & A] as the property owner, and [Mr. Volz] as President of [RGV]. Finally, the Articles of Incorporation for [RGV] listed [Mrs. Volz] as the sole incorporator. Based on this information th[e trial] court determined that [the Tavern] is a trade name for [RGV], which is a corporation not a sole proprietorship.

Trial Court Opinion, 9/13/12, at 6-7 (emphasis removed).

Based upon our review of the certified record, we agree with Appellees that the trial court's conclusions were entirely proper. The documentation produced by Appellees was sufficient for the trial court to conclude that the Tavern was merely a trade name, and that the business was run by RGV and the property owned by R & A. Therefore, the trial court properly concluded that the Tavern "is not operated as a sole proprietorship." Appellees' Brief at 7 (emphasis removed).

As the trial court noted, because the Tavern is a trade name for RGV the only way for Appellant to proceed against Mr. and Mrs. Volz in their personal capacity was to pierce the corporate veil of RGV. ***See id.*** at 7.

> Piercing the corporate veil is a means of assessing liability for the acts of a corporation against an equity holder in the corporation. The party seeking to establish personal liability through piercing the corporate veil must show the person in control of a corporation [used] that control, or [used] the corporate assets, to further his ... own personal interests .... Pennsylvania law has a strong presumption against piercing the corporate veil. Any inquiry involving corporate veil-piercing must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception.

***Allegheny Energy Supply Co., LLC v. Wolf Run Mining Co.***, 53 A.3d 53, 58 n.7 (Pa. Super. 2012) (some internal quotation marks and citations omitted). Our Supreme Court has recognized that the corporate veil may be pierced if the party seeking to pierce the veil can show "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." ***Lumax Indus., Inc. v. Aultman***, 669 A.2d 893, 895 (Pa. 1995) (citation omitted).

After reviewing Appellant's first amended complaint, we agree with the trial court that Appellant has not alleged any facts that would warrant piercing the corporate veil in this case. ***See*** Trial Court Opinion, 9/13/12, at 8. Nor has Appellant advanced any argument in his brief that would warrant

piercing the corporate veil. We do not agree with Appellant that the trial court "abdicated its duty to review all evidence in a light most favorable to [Appellant] …." Appellant's Brief at 15. Reading Appellant's complaint and the record in a light most favorable to Appellant, the trial court properly concluded the Tavern is a trade name owned and operated by RGV, a corporate entity, and was not a sole proprietorship.[3] As a result, Mr. and Mrs. Volz are entitled to the protection of the corporate veil. ***See Allegheny Energy Supply Co., LLC***, ***supra*** at 58 n.7. We therefore conclude that the trial court did not abuse its discretion or commit an error of law when it dismissed Mr. and Mrs. Volz from the case in their personal capacity.

We now turn to Appellant's issue regarding the transfer of venue to Montgomery County. Pennsylvania Rule of Civil Procedure 2179 governs venue generally, and provides in relevant part, the following.

**Rule 2179. Venue**

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[3] To the extent that Appellant argues that the Tavern is not corporately owned because it is not registered as a fictitious name pursuant to the Pennsylvania Fictitious Names Act (FNA), this argument is unavailing. ***See*** Appellant's Brief at 14. As this Court has previously explained, the FNA "precludes instituting an action or gaining recovery by the noncomplying party until the requirements for registration are met." ***W.F. Meyers Co., Inc. v. Stoddard***, 526 A.2d 446, 448 (Pa. Super. 1987), *appeal denied*, 535 A.2d 84 (Pa. 1987). A failure to register a name under the FNA does not automatically give rise to personal liability on a corporate entity's officers and shareholders. ***See id.*** at 449 (holding where a "corporation [does] exist but the individuals referred to the corporation by a name which was not registered … [the officers of the corporation] cannot be held [personally] liable for the corporate debts[]").

> (a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in
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> > (1) the county where its registered office or principal place of business is located;
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> > (2) a county where it regularly conducts business;
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> > (3) the county where the cause of action arose;
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> > (4) a county where a transaction or occurrence took place out of which the cause of action arose, or
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> > (5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa.R.C.P. 2179(a).

In the case *sub judice*, the trial court explained its decision to grant Appellees' preliminary objections and transfer venue to Montgomery County utilizing the factors enumerated in Rule 2179.

> In applying [Rule 2179] to [R & A and RGV], th[e trial] court note[d] that both businesses are located in Glenside, Montgomery County. [Appellant] does not assert that either [R & A or RGV] regularly conduct[] business in Philadelphia. Furthermore, the slip and fall accident occurred in Montgomery County, and it is not alleged that any transaction or occurrence giving rise to the cause of action took place in Philadelphia. Consequently, venue would be proper as to [R & A and RGV] in Montgomery County but not Philadelphia County.

Trial Court Opinion, 9/13/12, at 5.

Upon our review of the record, we agree with the trial court that venue is appropriate in Montgomery County. The only connection the instant case has to Philadelphia County is that Mr. and Mrs. Volz personally reside in Philadelphia. As we explained above, the trial court properly concluded that Mr. and Mrs. Volz should be dismissed from the case. Because that decision was correct, the only connection of the case to Philadelphia County has been eliminated. As a result, Appellant is not entitled to relief.

Based on the foregoing, we conclude that the trial court did not abuse its discretion or commit an error of law when it dismissed Mr. and Mrs. Volz from the instant case and transferred venue to Montgomery County. ***See Conway***, ***supra*** at *2; ***Zampana-Barry***, ***supra*** at 503. Accordingly, we affirm the trial court's June 8, 2012 order.

Order affirmed.