[Cite as *Internatl. Language Bank, Inc. v. Ryan*, 2010-Ohio-6060.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

INTERNATIONAL LANGUAGE BANK, INC.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-A-0018**
- vs -	:	
DANIEL J. RYAN,	:	
Defendant-Appellant.	:	

Civil Appeal from the Conneaut Municipal Court, Case No. 09 CVF 184.

Judgment: Affirmed.

Nicholas A. Iarocci, The Iarocci Law Firm, L.L.C., 213 Washington Street, Conneaut, OH 44030 (For Plaintiff-Appellee).

Daniel J. Ryan, pro se, 1370 Ontario Street, #2000, Cleveland, OH 44113 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellant, Daniel Ryan, appeals the Judgment Entry of the Conneaut Municipal Court, ordering Ryan to pay appellee, International Language Bank (ILB), $635.19, plus interest, for interpretation services, and $3,172 for appellee's attorney fees and collection costs. For the following reasons, we affirm the decision of the court below.

{¶2} ILB, a corporation with its office located in Conneaut, Ohio, provides interpreters to private individuals and government agencies. On May 12, 2006, Michelle

Eski, a part-owner and interpreters' coordinator for ILB, received a phone call at ILB's office from a man claiming to be attorney Daniel Ryan. He requested interpretation services for a trial, *Shevchenko v. Sopko*, which was taking place in the Cuyahoga County Court of Common Pleas on May 15, 2006. Eski faxed an agreement detailing the services to be provided, the fee, and additional terms, from ILB's office to the fax number provided. The agreement was returned to Eski with a signature purported to be Ryan's. The agreement contained a provision stating, in part, that "if the account is not paid within 6 months of the date of service[,] client will be responsible for any legal fees ILB incurs during the collection process in a court of law at a location chosen by ILB."

{¶3} On May 15, 2006, ILB sent an interpreter, Natalia Yorosh, to Judge Russo's courtroom in the Cuyahoga County Court of Common Pleas, where the *Shevchenko* trial was being held. Ryan placed Yorosh on the witness stand and asked several questions necessary to qualify Yorosh as an interpreter. At trial on the present matter, Ryan testified that he told Yorosh her services were not needed. Eski, testifying on behalf of ILB, asserted that interpretation services were performed by Yorosh on May 15 for four hours and additional interpretation services were performed on the following day, May 16, for five hours. Ryan disputed that Yorosh provided any services at all but admitted that he signed two assignment sheets, acknowledging Yorosh was present on both days. The assignment sheets, created by ILB and given to individual interpreters, are used to document the hours worked by an interpreter. Ryan testified that he signed the documents and that the "hours worked" portion of the documents had not been filled out at the time he signed them.

{¶4} Beginning on June 20, 2006, and continuing through 2007, ILB sent Ryan invoices for the interpretation services fees. Ryan did not pay these fees but did bill the Shevchenkos, his clients, for the services. In 2007, ILB filed suit against the Law Office of Daniel Ryan and obtained a judgment against the law office. ILB was unable to collect from this judgment and filed suit against Ryan personally on May 8, 2009.

{¶5} On December 2, 2009, the trial on this matter was held in Conneaut Municipal Court. Ryan testified that he did not place a phone call to ILB requesting interpretation services. He also testified that he did not sign a fee agreement with ILB for such services. He did admit that he signed the assignment sheets at the request of Yorosh. Eski testified that she believed it was Ryan who she spoke with on the phone and faxed the agreement to the fax number provided by Ryan.

{¶6} On January 13, 2010, the court ruled that Ryan must pay ILB $635.19 for interpretation services, and a reasonable amount for attorney fees and collection costs. The court found that Ryan had arranged with ILB to receive the services of an interpreter in the *Shevchenko* case and signed and faxed the fee agreement to ILB. The court concluded that this agreement required Ryan to pay ILB $75 per hour of interpretation services, mileage, parking, and "attorney fees if the bill was not paid within six months and the matter was taken to court for collection." On March 16, 2010, the court found that a reasonable amount for attorney fees and collection costs was $3,172, with the attorney fees totaling $2,775 of the total amount.

{¶7} After the court's ruling and prior to this appeal, Ryan paid the amount of the interpretation service fees, as ordered by the court. He has not paid the attorney fees and related collection costs.

{¶8} Ryan timely appeals and raises the following assignments of error:

{¶9} "[1.] It is error to assess attorney fees on a matter that does not involve intentional acts nor required significant legal issues and, if handled properly, should have been resolved in small claims court; yet the lower court permitted the attorney for the appellee [to] use the matter to abuse the system to create an exorbitant fee.

{¶10} "[2.] Without any evidence to support the claim, it is error for the municipal court to return judgment against the appell[ant].

{¶11} "[3.] The municipal court wrongfully found it was the proper venue to hear the matter, when it did not even have jurisdiction nor anything occurred within the territory of the municipal court."

{¶12} In his first assignment of error, Ryan asserts that assessing attorney fees was not proper because under the American Rule, attorney fees generally are not recoverable in contract actions. He also argues that allowing attorney fees to be awarded in this matter is against public policy and that contracts for payment of counsel fees upon default in payment of a debt should not be enforced.

{¶13} ILB argues that a prevailing party may recover attorney fees if there is a contractual obligation for such recovery. ILB asserts that the contract signed by Ryan obligated him to pay legal fees incurred by ILB if Ryan failed to pay the amount owed within six months.

{¶14} "'When an award of attorney fees is not authorized by statute or by contract, the award is a matter of the trial court's sound discretion. See *Pasco v. State Auto Mut. Ins. Co.,* 10th Dist. No. 04AP-696, 2005-Ohio-2387, at ¶9. The interpretation of a written contract, however, is a question of law. See *Alexander v. Buckeye Pipe*

Line Co. (1977), 49 Ohio St.2d 158 ***, paragraph one of the syllabus. Therefore, in this case, the trial court's interpretation *** [of the contract] is subject to de novo review. See *Long Beach Assn., Inc. v. Jones,* 82 Ohio St. 3d 574, 576, 1998-Ohio-186, ***, citing *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 145, 147 ***. Absent ambiguity in the language of the contract, the parties' intent must be determined from the plain language of the document. See *Hybud Equip. Co. v. Sphere Drake* (1992), 64 Ohio St.3d 657, 665 ***.'" *J.B.H. Properties, Inc. v. N.E.S. Corp.*, 11th Dist. No. 2007-L-024, 2007-Ohio-7116 , at ¶8 citing *Keal v. Day,* 164 Ohio App.3d 21, 2005-Ohio-5551, at ¶7. (Parallel citations omitted.)

{¶15} "Ohio has adopted the 'American Rule' in which each party to a lawsuit must pay his or her own attorney fees. See *Sorin v. Warrensville Hts. School Dist. Bd. of Edn.* (1976), 46 Ohio St.2d 177, 179." *Keal,* 2005-Ohio-5551, at ¶5. "[I]n Ohio, attorney fees generally are not recoverable as costs in a contract action." *Windsor v. Riback*, 11th Dist. Nos. 2007-G-2775 and 2007-G-2781, 2008-Ohio-2005**,** at ¶75, citing *First Bank of Marietta v. L.C. Ltd.*, 10th Dist. No. 99AP-304, 1999 Ohio App. LEXIS 6504, at *21 (citation omitted). "Exceptions to the rule allow fee-shifting and taxing attorney fees as costs (1) if there has been a finding of bad faith; (2) if a statute expressly provides that the prevailing party may recover attorney fees; and (3) if the parties' contract provides for fee-shifting." *Keal,* 2005-Ohio-5551, at ¶5.

{¶16} Here, the trial court determined that Ryan signed an agreement with ILB regarding interpretation services. This agreement stated that if Ryan did not pay for such services within six months, he would be responsible for any legal fees incurred while ILB attempted to collect the debt. Such an agreement creates an exception to the

American Rule, which typically requires each side to pay its own attorney fees. Ryan, as an attorney, should have read the agreement and been aware of the fee-shifting provision. As there was unambiguous language in the agreement, by signing the agreement, Ryan agreed to pay legal fees if he failed to pay for the interpretation fees within six months.

{¶17} Although Ryan argues that agreements for attorney fees upon the default in payment of a debt should not be enforced and that they are usurious, this court has held otherwise. This court has held that attorney fees are appropriate in cases where parties have contracted for such fees and the indebted party has defaulted. See *W. Reserve Farm Coop., Inc. v. Agarwal*, 11th Dist. No. 2009-G-2892, 2010-Ohio-2950, at ¶¶57-78 (Appellee recovered attorney fees when provision in contract entitled appellee to collect such fees associated with collecting a balance that was past due).

{¶18} As the parties both agreed to this fee arrangement, the trial court did not err in awarding attorney fees to ILB.

{¶19} The first assignment of error is without merit.

{¶20} In his second assignment of error, Ryan argues that the trial court erred because there was no direct testimony or evidence supporting ILB's claim that Ryan contracted to obtain ILB's services. Ryan also contends that the amount of interest requested by ILB and ordered by the court was excessive.

{¶21} ILB asserts that the second assignment of error is moot because Ryan paid the interpretation fees awarded by the trial court, satisfying the judgment and rendering the appeal moot.

{¶22} "It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot." *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, 245. If a "judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away *** the right to appeal or prosecute error or even to move for vacation of judgment." *Marotta Bldg. Co. v. Lesinski*, 11th Dist. No. 2004-G-2562, 2005-Ohio-558, at ¶18, quoting *Lynch v. Bd. of Edn. of City School Dist. of Lakewood* (1927), 116 Ohio St. 361, paragraph three of the syllabus. See *JPMorgan Chase Bank v. Ritchey*, 11th Dist. Nos. 2007-L-017 and 2007-L-018, 2007-Ohio-5913, at ¶7 ("In the cases at hand, since the nonappealing party has successfully obtained a satisfaction of judgment and there is no indication that appellant's satisfaction of judgment was anything other than voluntary, it is clear that the instant appeals are moot and must be dismissed.")

{¶23} Ryan states in his appellate brief that he has already paid the amount of the damages awarded by the trial court, although he has not paid the attorney fees. Ryan stated that "when an amount was determine[d] after no real basis [was] offered, the appellant immediately paid the amount" and "[a]ll that is outstanding and owed is for attorney fees." Ryan has satisfied the interpretation services amount awarded by the trial court on January 13, 2010.

{¶24} As Ryan has satisfied the judgment against him regarding the interpretation fees, Ryan may not appeal an error related to these fees. This court cannot make a ruling on whether the court erred in accepting certain testimony regarding the interpretation fees because the issue is moot.

{¶25} The second assignment of error is without merit.

{¶26} In his third assignment of error, Ryan first argues that the trial court did not have subject matter jurisdiction in this matter and that the appellee was forum shopping when it chose to file this case in the Conneaut Municipal Court.

{¶27} ILB argues that there are sufficient facts to establish a territorial connection to the Conneaut Municipal Court and, therefore, the court had subject matter jurisdiction.

{¶28} "The existence of the court's own subject-matter jurisdiction in a particular case poses a question of law which the court has the authority and responsibility to determine." *Swift v. Gray*, 11th Dist. No. 2007-T-0096, 2008-Ohio-2321, at ¶38, citing *Burns v. Daily* (1996), 114 Ohio App.3d 693, 701 (citations omitted). "We review that determination *de novo* without any deference to the conclusion reached below." Id.

{¶29} "Unlike courts of common pleas, which are created by the Ohio Constitution and have statewide subject-matter jurisdiction, *** municipal courts are statutorily created, *** and their subject-matter jurisdiction is set by statute." *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, at ¶7. "R.C. 1901.18(A) limits municipal court subject-matter jurisdiction to actions or proceedings that have a territorial connection to the court." Id. at ¶22.

{¶30} Negotiating a contract through facsimile to a party's office located within the jurisdiction of the court provides a sufficient connection for subject matter jurisdiction to exist. *Cheap Escape Co., Inc. v. Tri-State Constr., LLC*, 173 Ohio App.3d 683, 2007-Ohio-6185, at ¶¶ 26-27. See *Beckett v. Wisniewski*, 3rd Dist. No. 5-09-17, 2009-Ohio-6158, at ¶18 (Factors relevant to determining whether a territorial connection exists include whether "Appellee's business operated in the county, the research and work for

Appellant was performed in the county, and Appellant contacted Appellee and discussed the work in the county.").

{¶31} Here, ILB's business operates within the city of Conneaut. ILB performed the service of locating an interpreter within the city of Conneaut. Ryan contacted ILB through a telephone call to its Conneaut office. He also received a faxed agreement from ILB's office and faxed an agreement to the office's fax number as well. Under these facts, there was a sufficient territorial connection with Conneaut such that subject matter jurisdiction was proper in the Conneaut Municipal Court.

{¶32} Additionally, Ryan asserts that the Conneaut Municipal Court was not a proper venue to hear this matter. Ryan failed to assert improper venue as a defense in his Answer to the original complaint and asserted the claim later in a Motion For Change of Venue. Although this would normally constitute waiver, the trial court had both parties argue venue and the trial court ultimately ruled on the Motion For Change of Venue. As the trial court ruled on the issue of venue, we will address the merits of Ryan's venue argument. See *Harrold v. Homsher*, 3rd Dist. No. 5-02-13, 2002-Ohio-4688, at ¶12 (where the trial court "could have considered the defense to have been waived" but **"**the trial court considered the defense and ruled on it," the appellate court considered the merits of the defense.)

{¶33} "A reviewing court reviews a trial court's decision on a motion to change venue to determine if the trial court abused its discretion*." Patterson & Simonelli v. Silver*, 11th Dist. No. 2003-L-055, 2004-Ohio-3028, at ¶19, citing *State ex rel. McCoy v. Lawther* (1985), 17 Ohio St. 3d 37, 38 (citation omitted).

{¶34} Civ.R. 3 governs venue. It provides, in part, that **"**[a]ny action may be venued, commenced and decided in any court in any county. *** Proper venue lies in any one or more of the following counties: *** (3) A county in which the defendant conducted activity which gave rise to the claim for relief; *** (6) The county in which all or part of the claim for relief arose." Civ.R. 3(B).

{¶35} ""In a contract collection action, [proper venue] may include the location where the appellant was required to deliver money to the appellee." *Meslat v. Amster-Kirtz Co.*, 5th Dist. Nos. 2007 CA 00189 and 2007 CA 00190, 2008-Ohio-4058, at ¶62, citing *Soloman v. Excel Marketing, Inc.* (1996), 114 Ohio App.3d 20, 25-26 ("In an action alleging breach of contract, the cause of action arises where the breach took place. *** [T]he refusal to pay money due on a contract results in a breach of that contract at the place where the money was to be paid."); *First Merit v. Boesel*, 9th Dist. No. 21667, 2004-Ohio-1875, at ¶7.

{¶36} As a general rule, "absent an express agreement to the contrary, proper venue is presumed to lie in the county in which the payee's place of business is located." *Williams v. Jarvis*, 8th Dist. No. 74580, 1999 Ohio App. LEXIS 3964, at *3; *Thompson v. G & D Transport, Inc*., 4th Dist. No. 88-CA-12, 1989 Ohio App. LEXIS 3277, at *9 ("A cause of action on a contract accrues and venue is proper in the county where performance is required. *** Where the default involves failure to pay money and no place of payment is expressly agreed upon, it is generally implied that payment is to be made in the county where the payee resides.").

{¶37} In the current case, Ryan was obligated, by contract, to provide payment to ILB for services provided. The suit filed by ILB was a contract collection action.

Although the contract does not explicitly state that payment is to be sent to ILB's office, it is presumed that payment was to occur at the payee, ILB's, place of business, located in Conneaut. Therefore, the trial court did not abuse its discretion in determining that the Conneaut Municipal Court was a proper venue.

{¶38} For the foregoing reasons, the Judgment Entry of the Conneaut Municipal Court, requiring Ryan to pay ILB's interpretation service fees and attorney fees, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J., concurs,

TIMOTHY P. CANNON, J., concurs in judgment only with a Concurring Opinion.

TIMOTHY P. CANNON, J., concurring in judgment only.

{¶39} I respectfully concur with the decision of the majority. However, I reach the conclusion that appellant's third assignment of error has merit for a different reason.

{¶40} In this day of abusive solicitations of senior citizens and others, I believe great caution should be exercised in allowing venue to be established if the *only* fact established is one of the following: (1) the place where a debtor mailed a payment; (2) the location where the defendant placed a call; or (3) the place where the defendant faxed or mailed a contract. If the intent of the rule was to allow venue to be in a jurisdiction where the payee mailed payment, where he or she mailed the contract, or to where he or she placed a telephone call, it could have easily been stated that way.

Unsuspecting consumers may find themselves defending a suit in a county hours away, even though they have never been physically present in that location. I do not think that should be considered "conducting activity" in a location, nor do I think that a "claim for relief" arises when an e-mail or telephone call is transmitted from the comfort of one's own home to order a product that may be 280 miles away.

{¶41} An interpretation of Civ.R. 3(C) that allows venue to be established for one of the above isolated actions is too broad. The potential scenarios that could permit an abuse of this rule by a nefarious creditor from across the state are endless. This may compel an otherwise innocent, unsuspecting shopper to travel to defend themselves in a potentially remote, unfamiliar venue. This clearly is contrary to the spirit and intent of Civ.R. 3.

{¶42} In this case, I feel there are two reasons why the trial court did not abuse its discretion in overruling the motion for change of venue. First, appellant filed an "Answer and Counterclaim" on May 18, 2009. Although there was no counterclaim set forth in this document, appellant added "Defenses to the Claims Set Out in Complaint and Counterclaim." Appellant, however, never asserted the affirmative defense of improper venue in this original answer. Therefore, under Civ.R. 8(C), the trial court could have simply determined that it was waived.

{¶43} In addition, appellant, although it is his duty to do so, never established the basis for the defense in the record. In a motion filed after the affirmative defense had been waived, and without leave of court, appellant simply stated that plaintiff did not put anything in his complaint establishing venue in Conneaut. However, attached to plaintiff's complaint is a copy of the contract at issue. In that document, alleged to be

signed by appellant, who is an attorney at law, it clearly stated that the "collection process" would be "in a court of law at a location chosen by ILB." This was at least sufficient to put the burden on appellant to establish to the trial court why venue was not proper. Appellant did not meet that burden and failed to affirmatively demonstrate on the record why the trial court abused its discretion.