

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Greta Bruzga, individually and as special	)	
administrator of the estate of	)	
Donatas Bruzga, deceased,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 8942
	)	
Marius Januzis, an individual, Mindaugas	)	
Lapelis, an individual, Auto Data, Inc., an	)	
Illinois corporation, A1 Auto & Truck	)	
Collision, Inc., an Illinois corporation, and	)	
Arturas Maksimavicius, an individual,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Venue is proper in a county in which a defendant resides or a transaction occurred, and a corporate defendant is considered a resident of any county in which it is doing business. The record indicates that none of the individual defendants lives in Cook County or were properly served, and that the corporate defendants were either improperly served or do no business in Cook County. For those reasons, the defendants' motion to transfer venue to Will County is granted.

**Facts**

On December 13, 2019, Arturas Maksimavicius and his company, A1 Auto & Truck Collision, Inc., owned a building at 2020 North Raynor Avenue in Crest Hill, Will County. The building housed three units for car and truck repairs. Mindaugas Lapelis leased unit A for his company, Auto Data, Inc., while Donatas Bruzga leased and operated a shop in unit C.

Lapelis owned a CZ nine-millimeter handgun that he stored loaded in an unlocked desk drawer in Auto Data's office in unit A. On the evening of December 13, 2019, Marius Januzis and other persons consumed a bottle of whiskey in unit A, and Januzis became intoxicated. Januzis then requested access to Auto Data's office to get the keys to the Mercedes he had brought to Auto Data for repair. Lapelis permitted Maksimavicius to unlock the Auto Data office door for Januzis, and Lapelis told Januzis to get the keys out of the desk. Januzis took the gun out of the desk drawer and subsequently shot Bruzga in the chest, killing him.

On August 20, 2020, Greta Bruzga, as independent administrator of Donatas' estate filed a 24-count complaint against the defendants pursuant to the Survival Act, 755 ILCS 5/27-6, the Wrongful Death Act, 740 ILCS 180/1, *et seq.*, and the Family Expense Act, 750 ILCS 65/15. The complaint alleges venue is proper in Cook County because both A1 Auto and Auto Data do business here. The summons' service list attached to the complaint gives the defendants' addresses as: (1) Januzis, 19537 Dinner Key Drive, Boca Raton, Florida; (2) Lapelis, 32 Pin Oak Court, Lemont, Cook County; (3) Lapelis, as Auto Data's corporate officer, same; (4) Maksimavicius, 1704 Brighton Lane, Plainfield, Will County; and (5) Maksimavicius, as A1 Auto's registered agent, 2020 North Raynor Avenue, Unit B, Crest Hill, Will County.

The Cook County sheriff attempted to serve both Lapelis and Auto Data at 32 Pin Oak Court in Lemont. As to Lapelis, the sheriff's service affidavit indicates a September 19, 2020 die date, but a service date of September 20, 2020 at 8:35 a.m. The sheriff's service affidavit further shows substitute service for Lapelis on Carolina Keirsieviciete, a 19-year-old white female. As to Auto Data, the sheriff's service affidavit indicates a September 22, 2020 die date and a service date of September 20, 2020 at 9:20 a.m. The affidavit indicates corporate service for Auto Data on Kerolina Kerseviciute, a 17-year-old white female. The sheriff's service affidavit does not indicate that Kerseviciute is Auto Data's

registered agent or is authorized to accept service for Auto Data. The Illinois Secretary of State's website indicates Auto Data had been involuntarily dissolved on October 9, 2015.

Attached as an exhibit to the defendants' motion is an affidavit from Maksimavicius. Maksimavicius avers that he runs A1 Auto out of 2020 North Raynor Avenue in Crest Hill. He further avers that Lapelis operated his business at that address only up until June 1, 2020, after which time Maksimavicius did not see Lapelis at the building. Maksimavicius avers it is his understanding that by August 2020, Lapelis was living and working in Florida. In addition, A1 Auto's venue discovery responses identified a single purchase from a Cook County entity in August 2020 in the amount of \$349.88, representing 1.4 percent of all purchases. A1 Auto further identified a single sale to a Cook County entity in the amount of \$1,080.91, representing three percent of all sales.

The electronic docket shows that on September 2, 2020, a Palm Beach County sheriff served a copy of the summons and complaint on Januzis at his Boca Raton, Florida address.

### Analysis

Maksimavicius and A1 Auto bring their motion to transfer venue to Will County pursuant to the Code of Civil Procedure. In Illinois, venue is a product of statute. As stated:

Except as otherwise provided in this Act, every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

735 ILCS 5/2-101. The statute does not define “residence,” but the common law defines it on a case-by-case basis. *Long v. Gray*, 306 Ill. App. 3d 445, 449 (1st Dist. 1999) (citing *Webb v. Morgan*, 176 Ill. App. 3d 378, 386 (5th Dist. 1988)). As explained:

Residence is generally understood to include the intent of the party whose residence is in question as well as his permanency of abode and mere physical presence. The party’s intent, the controlling factor, is gathered primarily from his actions. Residence also means residence at the time suit was filed rather than when process of service was made or when the incident arose.

*Id.* (citations omitted) (citing *Webb*, 176 Ill. App. 3d at 386 and *Wilson v. Central Ill. Pub. Serv. Co.*, 165 Ill. App. 3d 533, 537 (5th Dist. 1988)).

Proper venue for a corporate defendant is “any county in which it has its registered office or other office or is doing business.” 735 ILCS 5/2-102(a). Further, a private corporation may be served,

(1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

735 ILCS 5/2-204.

If a defendant challenges a lawsuit’s venue, “[m]otions for transfer to a proper venue may be supported and opposed by affidavit. In determining issues of fact raised by affidavits, any competent evidence adduced by the parties shall also be considered. . . .” 735 ILCS 5/2-104(c). If a party fails to file a counteraffidavit or other proof to refute facts asserted in a defendant’s affidavit, those facts will be deemed admitted.

*Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 65 (as to a record on a section 2-619 motion to dismiss).

Proper service of process may also affect venue contests. It is axiomatic that a purported defendant's residence is irrelevant as to proper venue absent proper service of process. To that end, although a sheriff's service affidavit is *prima facie* evidence of substitute service, such service may be set aside based on clear and satisfactory evidence. *Nibco Inc. v. Johnson*, 98 Ill. 2d 166, 172 (1983).

#### Venue as to Januzis

It is uncontroverted that Januzis is a resident of Boca Raton, Florida; therefore, Januzis' residence in Florida does not make venue proper in Cook County.

#### Venue as to Lapelis and Auto Data

The sheriff's service affidavit for Lapelis provides a September 19, 2020 die date, yet the sheriff did not achieve substitute service on Lapelis until September 20, 2020. The die date on a summons is the date after which a sheriff or process server may not attempt service. *Pecoraro v. Kesner*, 217 Ill. App. 3d 1039, 1041 (1st Dist. 1991). In this instance, the substitute service on Lapelis is void because the sheriff served after the die date. It is also important to note that Greta has never filed a motion for default against Lapelis, perhaps knowing that such a motion would be futile. In short, Lapelis is not a party to this lawsuit; consequently, his residence for purposes of venue is irrelevant.

As to Lapelis's company, Auto Data, the sheriff obtained corporate service within that summons' die date. Yet the service affidavit does not indicate in what role Kerseviciute accepted corporate service for Auto Data, either as a registered agent or a person authorized to accept service for Auto Data. Indeed, there is no other evidence in the sheriff's affidavit, and Greta has not

provided other evidence that Kerseviciute had anything to do with Auto Data or could accept service for the company.

Further problematic for venue purposes is the Illinois Secretary of State's involuntarily dissolution of Auto Data on October 9, 2015, more than four years before Donatas's death. The law is plain that service of process on a dissolved corporation must be made through the Secretary of State. *Pehr v. Metz, Train & Youngren*, 274 Ill. App. 3d 218, 225-26 (1st Dist. 1995) (conforming 735 ILCS 5/13-217 with 805 ILCS 5/12.80). Thus, even if Kerseviciute had some previous relationship with Auto Data, she could not accept corporate service for an involuntarily dissolved company. The only possible conclusion is, as with Lapelis, since Greta did not serve Auto Data properly through the Secretary of State, the company's residence for purposes of venue is irrelevant.

#### Venue as to Maksimavicius and A1 Auto

The venue dispute as it relates to Maksimavicius and A1 Auto does not depend on residence. The service list for Greta's summons shows Maksimavicius's residence in Plainfield, Will County, and also shows him as A1 Auto's registered agent with an address at the North Raynor Avenue building in Crest Hill. Rather, Greta argues venue is proper in Cook County as to both Maksimavicius and A1 Auto based on the "doing business" prong of section 2-201(a). Greta argues that the allegation in her complain—that A1 Auto does business in Cook County—stands unrefuted and, therefore, venue is proper here. Maksimavicius and A1 Auto argue they have submitted unrefuted evidence to the contrary.

As noted above, a corporation is a resident of any Illinois county in which it is doing business. 735 ILCS 5/2-102(a). As the Supreme Court has explained:

[T]o establish that a defendant is doing business within a county for purposes of venue, quantitatively more

business activity within the county must be demonstrated than where the question is whether the defendant has transacted any business within the State for purposes of service of process. . . . The defendant must, in short, be conducting its usual and customary business within the county in which venue is sought. In the words of one Federal court faced with a similar problem of construction, “the activity must be of such a nature so as to localize the business and make it an operation within the district.”

*Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 329-30 (1977) (citing *Remington Rand, Inc. v. Knapp-Monarch Co.*, 139 F. Supp. 613, 617 (E.D. Pa. 1956)). For venue purposes, it is not enough that a defendant purchase or provide services in another county incidental to its customary business. *Hartung v. Central Ill. Pub. Serv. Co.*, 110 Ill. App. 3d 816, 820 (5th Dist. 1982).

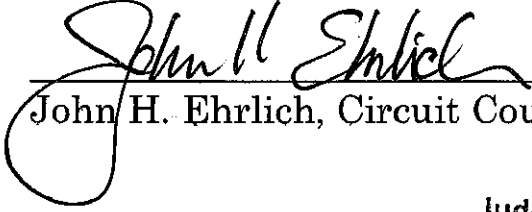
In this case, Maksimavicius avers that he runs his business out of the 2020 North Raynor Avenue building in Crest Hill. Further, A1 Auto’s venue discovery responses identified a single purchase from a Cook County entity in August 2020 in the amount of \$349.88, representing 1.4 percent of all purchases. A1 Auto further identified a single sale to a Cook County entity in the amount of \$1,080.91, representing three percent of all sales. As either absolute numbers or percentages of purchases and sales, it is plain that A1 Auto does not conduct anything other than incidental business in Cook County. The minimal amount of purchases of sales is insufficient to make venue proper in Cook County. Moreover, Greta has failed to provide a counteraffidavit or other evidence refuting A1 Auto’s discovery responses; therefore, A1 Auto’s evidence stands unrefuted.

Given that venue is improper in Cook County, this court need not address the defendants’ motion to transfer venue based on the *forum non conveniens* doctrine.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer venue is granted;
2. This case is transferred to the 12th Judicial District in Will County; and
3. The plaintiff will pay for the transfer.

  
\_\_\_\_\_  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

AUG 23 2021

Circuit Court 2075