

**IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO**

**SECOND NATIONAL BANK** : **CASE NO. 10-CV-00914**  
**Plaintiff,** :  
**vs.** : **JONATHAN P. HEIN, JUDGE**  
**ERIK R. BYER, et. al.** :  
**Defendant.** : **JUDGMENT ENTRY –**  
**Defendant’s Motion to Transfer Venue**

This matter came before the Court upon the motion of Defendant Christy Dailey to transfer venue of this matter to Van Wert County, Ohio. The Plaintiff has filed its objection and the matter is now ready for decision pursuant to the Scheduling Order filed herein.

Regarding the facts of this case, the location of Plaintiff’s business premises is in Darke County, Ohio. The Defendants signed the promissory note in Allen County, Ohio, as part of an automobile purchase. The Defendants both reside in Van Wert County, Ohio. The Plaintiff claims that Darke County is a proper venue since (1) the note calls for payments to be made in Darke County; (2) payments were actually made at the Darke County location; and (3) Defendants were aware of this requirement and previously made payments at the Darke County location.

*Venue "relates to the geographic division where a cause can be tried . "Morrison v. Steiner (1972), 32 Ohio St.2d 86.* The Court is guided by the provisions of Civil Rule 3(B), which provides:

### **RULE 3. Commencement of Action; Venue**

#### **(B) Venue: where proper.**

*Any action may be venued, commenced, and decided in any court in any county. When applied to county and municipal courts, "county," as used in this rule, shall be construed, where appropriate, as the territorial limits of those courts. Proper venue lies in any one or more of the following counties:*

- (1) The county in which the defendant resides;*
- (2) The county in which the defendant has his or her principal place of business;*
- (3) A county in which the defendant conducted activity that gave rise to the claim for relief;*
- (4) A county in which a public officer maintains his or her principal office if suit is brought against the officer in the officer's official capacity;*
- (5) A county in which the property, or any part of the property, is situated if the subject of the action is real property or tangible personal property;*
- (6) The county in which all or part of the claim for relief arose; or, if the claim for relief arose upon a river, other watercourse, or a road, that is the boundary of the state, or of two or more counties, in any county bordering on the river, watercourse, or road, and opposite to the place where the claim for relief arose;*
- (7) In actions described in Civ.R. 4.3, in the county where plaintiff resides;*
- (8) In an action against an executor, administrator, guardian, or trustee, in the county in which the executor, administrator, guardian, or trustee was appointed;*
- (9) In actions for divorce, annulment, or legal separation, in the county in which the plaintiff is and has been a resident for at least ninety days immediately preceding the*

filing of the complaint;

(10) In actions for a civil protection order, in the county in which the petitioner currently or temporarily resides;

(11) In tort actions involving asbestos claims, silicosis claims, or mixed dust disease claims, only in the county in which all of the exposed plaintiffs reside, a county where all of the exposed plaintiffs were exposed to asbestos, silica, or mixed dust, or the county in which the defendant has his or her principal place of business.

(12) If there is no available forum in divisions (B)(1) to (B)(10) of this rule, in the county in which plaintiff resides, has his or her principal place of business, or regularly and systematically conducts business activity;

(13) If there is no available forum in divisions (B)(1) to (B)(11) of this rule:

(a) In a county in which defendant has property or debts owing to the defendant subject to attachment or garnishment;

(b) In a county in which defendant has appointed an agent to receive service of process or in which an agent has been appointed by operation of law.

The Court concludes that venue is proper in Darke County pursuant to the provisions of Civil Rule 3(B)(3) and 3(B)(6). The note specifies payments are to be made in Darke County and payments were previously made here. The failure to made payments also occurred in Darke County. Plaintiff's citations to *Meslat v. Amster-Kirtz Co.*, 2008-Ohio-4058 and *Oxford Sys. Integration, Inc. v. Smith-Boughan Mechanical Servs.*, (2005), 159 Ohio App.3d 533 (Miami App.) are helpful.

**IT IS THEREFORE ORDERED AND DECREED** that the Defendant's

motion to transfer venue to Van Wert County is denied.

**IT IS FURTHER ORDERED AND DECREED** that this matter is scheduled for telephone scheduling conference on **April 28, 2011 at 2:30 p.m.** as initiated by the Court. If counsel wish to be contacted at a number other than listed in their pleadings, the Court should be notified by 4:00 p.m. on the prior day.

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**Jonathan P. Hein, Judge**

cc: Nicole Harrison, Attorney for Plaintiff (via fax)  
Scott Gordon, Attorney for Christy Dailey (via fax)  
Erik Byer, Box 171, Ohio City, OH 45874

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Research:

where venue is proper in more than one county, the plaintiff may chose the venue. GM Accept Corp. V. Jacks (1971), 27 Ohio Misc. 115.