

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

TERESA G. HENDERSON,
Plaintiff,

vs.

FARMERS STATE BANK,
Defendant and Third Party
Plaintiff,

vs.

**MIDWEST BANK N.A., Creighton, Knox
County, Nebraska, fna AMERICAN
NATIONAL BANK, CAROL HOLBERT
and MELISSA L. REGAN, co-personal
representatives of the Estate of Marsha
Scarberry, and DON GROSS,**
Third Party Defendants.

Case No. CI00-133

**ORDER DENYING MOTION
FOR RECONSIDERATION**

DATE OF HEARING: February 26, 2001.
DATE OF RENDITION: March 7, 2001.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
APPEARANCES:
For plaintiff: John Thomas without plaintiff.
For defendant: Forrest F. Peetz.
For third party defendants: No appearances.
SUBJECT OF ORDER: Plaintiff's motion to reconsider taxing expenses.
PROCEEDINGS: See journal entry previously entered.
MEMORANDUM:

1. By interlocutory order, the court previously taxed costs against plaintiff following the defendant's successful motion to transfer upon a claim of improper venue. The plaintiff, by the current motion, again raises this interlocutory issue, and urges that the defendant was a resident of the Knox County under § 25-403.02(1) declaring a corporation to be "a resident of any county in which it has a registered office or other office or is doing business." NEB. REV. STAT. § 25-403.02(1) (Reissue 1995).

2. The plaintiff presented evidence showing that some of the defendant's depositors reside in Knox County, that some of the defendant's borrowers reside or have business operations located in Knox County, and that the defendant has taken security documents from borrowers concerning Knox County real estate and caused such documents to be recorded in Knox County. The plaintiff asserts that such constitutes "doing business" within the meaning of § 25-403.02(1).

3. There is no evidence that the defendant has a registered or other office anywhere other than Ewing, Holt County, Nebraska. Although the evidence is not absolutely clear on this point, it appears that the chartered location of the defendant is Ewing, Nebraska, which is located in Holt County.

4. This court agrees that taking deposits constitutes part of "doing business" by a bank. Section 8-157 requires that "the general business of every bank shall be transacted at the place of business specified in its charter." NEB. REV. STAT. § 8-157(1) (Reissue 1997). Thus, § 8-157 requires a bank to accept deposits at the location specified in its charter. There is no evidence that the bank has taken deposits at any location other than its chartered location in Ewing, Holt County, Nebraska. That constitutes the location of the bank's business of taking deposits. The residence of the depositor is immaterial.

5. Making loans also constitutes part of a bank's actions in "doing business." A bank is authorized to conduct a loan closing at a location other than the place of business specified in the charter. NEB. REV. STAT. § 8-157(9) (Reissue 1997). However, the evidence does not establish that this was done either in Knox County generally or in Knox County as to the specific transactions noted by the plaintiff in the offered evidence. The acknowledgments on deposition exhibits 5 and 6 show that the respective instruments were executed in Holt County. E13, at deposition exhibits 5 and 6. That evidence strongly suggests that the loan closing as to the transaction or transactions involved therein occurred in Holt County. The bank's business of making a loan is done where the loan is made, not where the borrower resides or where the security is located. The bank's address on the security documents and the recitation of venue of the acknowledgments are all consistent with the bank's claim that it does business in Holt County.

6. The recording of a security document in the county where the security is located does not constitute "doing business" in that county. A bank is in the business of receiving deposits and making loans. That "business" occurs where the bank conducts it, which is generally required to be the chartered location. Virtually every business participates in transactions in places other than the location where business is

conducted. For example, corporations are required to file state income tax returns with the Department of Revenue in Lincoln. That act does not constitute “doing business” in Lancaster County within the meaning of § 25-403.02(1). In other words, incidental transactions which are purely ancillary to the conduct of business do not constitute “doing business” within the meaning of that section. The recording of a security document falls into that category and does not, of itself, constitute “doing business.”

7. Section 25-403.02(1) defines a corporation’s residence for purposes of specifying the locations where the Legislature has determined that it is fair and appropriate to require a corporation to defend itself. The plaintiff’s construction stretches that definition beyond the breaking point, and would render § 25-403.01 essentially meaningless.

8. The motion for reconsideration lacks merit and should be denied. Of course, this order is also interlocutory in character and remains subject to modification at any time prior to entry of final judgment.

ORDER: IT IS THEREFORE ORDERED that:

1. The plaintiff’s motion for reconsideration is denied.
2. This order is interlocutory and subject to modification at any time prior to entry of final judgment.

Signed in chambers at Ainsworth, Nebraska, on March 7, 2001.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- 9 Enter judgment on the judgment record.
Done on _____, 20__ by ____.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed “Order Denying Motion for Reconsideration” entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge