

Georgia State University College of Law Reading Room


Georgia Business Court Opinions

3-17-2015

Michael D. Sullivan, Order on Directed Verdict in Favor of Defendant Marc Cello and the Cello Law Group and Order Transferring Case to the Superior Court of Cherokee County

Elizabeth E. Long
Fulton County Superior Court, Judge

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

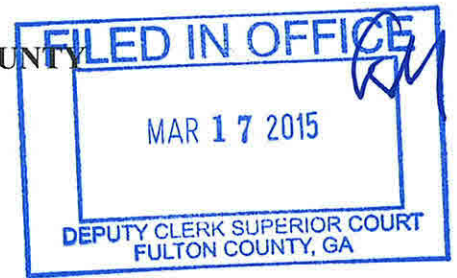
 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

Institutional Repository Citation

Long, Elizabeth E., "Michael D. Sullivan, Order on Directed Verdict in Favor of Defendant Marc Cello and the Cello Law Group and Order Transferring Case to the Superior Court of Cherokee County" (2015). *Georgia Business Court Opinions*. 334.
<https://readingroom.law.gsu.edu/businesscourt/334>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



MICHAEL D. SULLIVAN,

Plaintiff,

v.

JAMES A. TORCHIA, *et al.*,

Defendant/Third-Party Plaintiffs

v.

SULLIVAN PROPERTIES, LP and
BMLS CORPORATION,

Third-Party Defendants.

Civil Action File No: 2013-CV-229283

COPY

**ORDER DIRECTING VERDICT IN FAVOR OF
DEFENDANTS MARC CELELLO AND THE CELELLO LAW GROUP
AND TRANSFERRING CASE TO THE SUPERIOR COURT OF CHEROKEE COUNTY**

This matter came before this Court for jury trial beginning on Monday, February 23, 2015. During the trial, counsel for the parties stipulated that: (a) Defendant The Ceello Law Firm (the “Ceello Firm”) and Defendant Marc A. Ceello are residents of Fulton County, Georgia; and (b) Defendant James A. Torchia, Defendant National Viatical, Incorporated and the remaining corporate defendants in this action are residents of Cherokee County, Georgia. Plaintiff Michael Sullivan filed suit in this Court on the basis that: (i) the Ceello Firm, Mr. Ceello, and the other named defendants are co-conspirators and joint tortfeasors (see, e.g., Plaintiff’s Complaint at ¶ 19); and (ii) as referenced above, the Ceello Firm and Mr. Ceello are residents of Fulton County, Georgia.

During the second day of trial, after the close of the direct examination of Plaintiff, this Court expressed its concern that, given the evidence presented by Mr. Sullivan and the

anticipated evidence Plaintiff would present during the remainder of his case-in-chief, Plaintiff would be unable to survive a Motion for Directed Verdict on his claims against the Ceello Firm and Defendant Marc Ceello. Plaintiff's counsel stated that, if the Court directed a verdict in favor of the Ceello Firm and Mr. Ceello, such verdict would create a vanishing venue problem with respect to Plaintiff's claims against the remaining defendants. Rather than continue with several more days of Plaintiff's case-in-chief, and after consultation with Defendants' counsel, Plaintiff's counsel offered to make a proffer of the remaining evidence and legal argument that Plaintiff would make supporting his claims against Mr. Ceello and the Ceello Firm. Plaintiff's counsel and Defendants' counsel agreed that, if the Court indicated that such evidentiary proffer was insufficient to support Plaintiff's claims against Mr. Ceello and the Ceello Firm, then this Court should: (a) grant a directed verdict in favor of Mr. Ceello and the Ceello Firm (subject to Plaintiff's right to challenge any such directed verdict on appeal); and (b) transfer this case to the Superior Court of Cherokee County, Georgia.

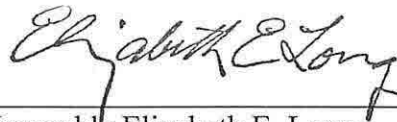
Thereafter, Plaintiff made a proffer of evidence and legal argument in support of his claims against Mr. Ceello and the Ceello Firm. At the conclusion of that proffer, this Court determined that Plaintiff's evidence and legal argument were insufficient to support Plaintiff's claims against Mr. Ceello and the Ceello Firm. Accordingly, based on argument presented to this Court, the facts stipulated by the parties' respective counsel and the parties' consent to the transfer of this action to the Superior Court of Cherokee County, Georgia, this Court ORDERS AS FOLLOWS:

1. This Court hereby grants a directed verdict in favor of Mr. Ceello and the Ceello Firm on all counts of Plaintiff's Complaint for the reasons stated on the record at the conclusion of Plaintiff's proffer of evidence and legal argument. Plaintiff's claims against these defendants are hereby DISMISSED WITH PREJUDICE. The Court understands that Plaintiff challenges

the factual and legal bases of this grant of directed verdict, and nothing in this Order shall prejudice Plaintiff's right to challenge this grant of directed verdict on appeal.

2. Pursuant to the agreement of the parties, this action is hereby transferred to the Superior Court of Cherokee County, Georgia. Pursuant to Uniform Transfer Rule T-10, Plaintiff is hereby advised that, if costs are not paid within twenty (20) days as provided in Uniform Transfer Rule T-11, this action shall be automatically dismissed without prejudice.

SO ORDERED THIS 16th day of March, 2015.



The Honorable Elizabeth E. Long
Judge, Fulton County Superior Court