

EDWARD J. O'SHEEHAN
Member Florida Bar
(954) 847-3841 Direct Telephone
(954) 888-3071 Direct Facsimile

E-MAIL ADDRESS:
eosheehan@shutts.com

November 18, 2009

Mark P. Bockstein, Esquire
8751 W. Broward Boulevard
Suite 305
Plantation, Florida 33324

**Re: Brian Styles vs. Gary Pronman and Dan Pronman
Broward Circuit Court Case No.: 09-043833 (02)**

Dear Mr. Bockstein:

Enclosed is Plaintiff's Motion for Attorney's Fees and Costs pursuant to section 57.105, Florida Statutes, relative to your clients' Motion to Abate/Dismiss (the "Motion") and objections to discovery.

Pursuant to section 57.105, Florida Statutes, we are serving this motion for sanctions (but not yet filing with the Court) and thus, you have twenty-one (21) days within which to withdraw the Motion by filing an answer on behalf of the Defendants, or face a potential judgment for attorney's fees and costs. The filing of an answer on behalf of the Defendants will obviate the need to respond to the "venue" discovery, however, we will still require responses to the discovery served with the initial complaint.

Please govern yourselves accordingly.

Sincerely,

SHUTTS & BOWEN LLP


Edward J. O'Sheehan

Enclosure

FTLDOCS 5482324 1

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD, COUNTY, FLORIDA

CASE NO.: 09-043833 (02)

BRIAN STYLES,

Plaintiff,

vs.

MOVIE STAR MUSCLECARS, INC., a foreign
Corporation; GARY PRONMAN, individually;
and DAN PRONMAN, individually,

Defendants.

PLAINTIFF BRIAN STYLES' MOTION FOR ATTORNEY'S FEES AND COSTS

Pursuant to section 57.105(1), Florida Statutes, Plaintiff, BRIAN STYLES ("Plaintiff"), by and through undersigned counsel hereby moves this Court for the imposition of attorney's fees in equal amounts against Defendants, MOVIE STAR MUSCLECARS, INC., ("MSMC") GARY PRONMAN, and DAN PRONMAN (collectively, "Defendants"), and their counsel, MARK P. BOCKSTEIN, ESQ. In support hereof, Plaintiff states as follows:

1. Plaintiff filed his Complaint in the instant action on August 7, 2009, and subsequently, an Amended Complaint on October 6, 2009.

2. This action arises out of a transaction wherein Plaintiff tendered full and proper payment of \$84,000.00 for the purchase of a classic car from an unknown seller. As directed by the broker, Gary Pronman, Plaintiff paid the money via wire transfer to the account of MSMC, but has never received delivery of the car, nor has he received, after proper demand was made, return of his \$84,000.00.

3. Defendants served their Motion to Abate/Dismiss on October 13, 2009 (the “Motion”), however, the assertions and claims raised in the Motion are without basis in law or fact.

4. Further, after objecting to venue in the Motion, Defendants then objected to Plaintiff’s discovery addressing factual issues concerning venue which would be necessary for affidavits or an evidentiary hearing on venue.

5. The Amended Complaint alleges that Plaintiff dealt solely with Gary Pronman on this transaction (like prior transactions) and that unbeknownst to Plaintiff, Gary Pronman, along with his brother Dan Pronman, used MSMC as a means to defraud Plaintiff out of \$84,000.00.

6. Defendants’ Motion argues that venue is improper because MSMC is a Canadian corporation. However, MSMC is a foreign corporation and therefore the second sentence of section 47.051, Florida Statutes, applies:

47.051 Actions against corporations.--Actions against domestic corporations shall be brought only in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located. *Actions against foreign corporations doing business in this state shall be brought in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located.* (Emphasis added.)

7. The relevant language, “where such corporation has an agent or other representative” has been interpreted by case law to mean where a corporation has an office. *See Sinclair Fund, Inc. v. Burton*, 623 So. 2d 587, 588 (Fla. 4th DCA 1993); *see also Tropicana Products, Inc. v. Shirley, Jr.*, 501 So. 2d 1373, 1375 (Fla. 2d DCA 1987) (venue for the foreign corporation is proper in either of the two counties where the corporation maintained an office); *Macasphalt Corp. v. Gen. Dev. Corp.*, 353 So. 2d 878 (Fla. 3d DCA 1977) (venue for a foreign corporation was proper in one of the two counties where corporation had an office).

8. Defendants’ objection to venue as to MSMC is frivolous and unsupported by the

facts. Namely, and as specifically alleged in the Complaint, MSMC's website, which is accessible world-wide and maintained by MSMC for the purpose of luring customers for commercial gain, clearly states, as to MSMC, "[o]ur offices and Shop are located at 1245C LaPlace St Vincent De Paul Laval Quebec H7C2N6 *with offices also at 5754 NW 120th Ave Coral Springs Fl 33076.*" (Emphasis added.)

9. Further, since Defendant, Gary Pronman, resides in Coral Springs, Florida, venue is proper in Broward County pursuant to section 47.011, Florida Statutes. Moreover, under section 47.021, Florida Statutes, an action "against two or more defendants residing in different counties may be brought in any county where the defendant resides." Thus, venue for an action against multiple defendants is proper in any county in which one of the defendants resides.

10. The Florida courts have made it clear that imposition of sanctions is appropriate where claims are not fairly supported by the law and the facts. *Barthlow v. Jett*, 930 So. 2d. 739, 742 (Fla. 1st DCA 2006) (affirming trial court's imposition of sanctions pursuant to 57.105, Florida Statutes, where a party filed a motion with no factual or legal basis).

11. There are no facts or legal basis to justify Defendants' Motion. Accordingly, Defendants' Motion is disingenuous, and serves no purpose but to unreasonably delay this proceeding.

12. Likewise, there is no legal basis to justify the Defendants' objection to discovery related to venue. *See Interactive Retail Management, Inc. v. Microsoft Online, L.P.* 988 So. 2d 717 (Fla. 2d DCA 2008) (instructing that "on remand the trial court should permit the parties to conduct discovery addressing the factual disputes in order that the venue issue may be determined"); *see also Dep't of Mgmt. Servs. v. Fastrac Constr., Inc.*, 701 So. 2d 1200, 1201 (Fla. 5th DCA 1997). Defendants' objections to the discovery serve no purpose but to unreasonably delay

this proceeding.¹


13. Based on the foregoing, an award of attorneys' fees against Defendants and their Counsel is appropriate because they know, or should know, that there is no factual basis for the Motion or the objections to discovery.

14. This motion was served at least twenty-one (21) days prior to its filing with the Court in accordance with section 57.105(4), Florida Statutes.

WHEREFORE, Plaintiff, BRIAN STYLES, hereby requests that the Court enter an order in favor of Plaintiff and against Defendants, MOVIE STAR MUSCLECARS, INC., GARY PRONMAN, and DAN PRONMAN, and their counsel, MARK P. BOCKSTEIN, ESQ., (1) awarding reasonable attorneys' fees and costs in accordance with 57.105, Florida Statutes, (2) reserving jurisdiction to determine these amounts, and (3) for such other and further relief as the Court deems just and proper.

SHUTTS & BOWEN LLP
Attorneys for Plaintiff
200 East Broward Boulevard
PNC Center, Suite 2100
Fort Lauderdale, Florida 33301
Telephone: (954) 524-5505
Facsimile: (954) 888-3071
eosheehan@shutts.com
ajohnson@shutts.com

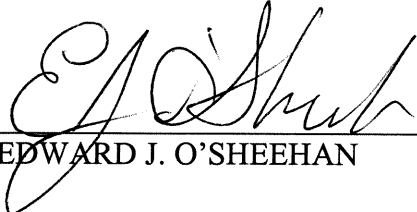
By:


EDWARD J. O'SHEEHAN
Florida Bar No. 0056790
AHMAND R. JOHNSON
Florida Bar No.: 0038905

¹ Although not raised in the pleadings, if Defendants attempt to couch the basis of their motion as one of jurisdiction, the Florida Supreme Court has held that discovery on jurisdiction is also allowed (as it is a factual issue) prior to a hearing on a motion to dismiss. *See Gleneagle Ship Management, Co. v. Leondakos*, 602 So. 2d 1282, 1284 (Fla. 1992).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served (*but not filed with the Court*) via U.S. Mail this 18th day of November, 2009, **Mark P. Bockstein, Esquire**, 8751 West Broward Boulevard, Suite 305, Plantation, Florida 33324.

By: 
EDWARD J. O'SHEEHAN