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'S AMENDED MOTION TO STRIKE DEFENDANTS' AMENDED MOTION TO DISMISS

Plaintiff, BRIAN STYLES, by and through undersigned counsel, hereby moves to strike Defendants' Amended Motion to Dismiss, and states:

Background:

Defendants have unjustifiably delayed justice in this case for nearly a year by the filing of a series of frivolous and morphing motions and by changing counsel. In response to the complaint the Defendants initially raised "venue" as their argument. After a motion calendar hearing on venue, the next argument added by the Defendants was, in addition to venue, lack of personal jurisdiction. Next, after an amended complaint, was filed – Defendants re-raised the venue and jurisdiction arguments. Then Defendants filed an Amended Motion to Abate/Dismiss – in that amended motion the Defendants raised, for the first time, their third frivolous argument – the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). After delaying the case for over 9 months and causing Plaintiff to incur over 100 hours of attorney time and associated costs seeking to defeat and disprove the defenses raised by the

Defendants, and as Plaintiff was about to have his day in court (at least on this beginning procedural issue), new counsel for the Defendants appeared and announced the three previous serial arguments (venue, jurisdiction, and CISG) were simply being withdrawn. Then, after announcing the supposed "strength" of his clients' case and informing the Court that he wanted to get to the "merits" of the case, new counsel for the Defendants filed and introduced a new Amended Motion to Dismiss based upon entirely new theories that are in absolute contradiction to the sworn testimony provided by Defendants Dan Pronman and Gary Pronman in previously filed affidavits and in deposition testimony in this case.

Procedural History

1. Plaintiff originally filed suit against Dan Pronman, individually, and d/b/a/ Movie Star Muscle Cars and Gary Pronman, individually, and d/b/a/ Movie Star Muscle Cars on August 7, 2009.

2. On August 26, 2009, Defendants Dan and Gary Pronman filed a motion to abate and motion to dismiss arguing that Movie Star Muscle Cars, ("MSMC"), a valid Canadian corporation, is the proper party, not the individuals.

3. Plaintiff filed an amended complaint on October 6, 2009, that named Dan Pronman and Gary Pronman, as well as adding the corporation, Movie Star Musclecars, Inc. ("MSMC"), as a defendant.

4. On October 13, 2009, Defendants (including MSMC) filed a "Motion to Abate Amended Complaint and Motion to Dismiss Amended Complaint and Memorandum of Law."

5. Both the October 13, 2009, motion and the December 4, 2009, motions continued to raise the initial argument of venue and the second argument of lack of jurisdiction.

6. Both the October 13, 2009, motion and the December 4, 2009, motions were signed under penalty of perjury by both Dan and Gary Pronman.

7. Both the October 13, 2009, motion and the December 4, 2009, motion argued that the case should be dismissed against the individual defendants and asserted that the only proper party/defendant is MSMC.

8. On December 4, 2009, Defendants (including MSMC) filed an amended motion to abate/dismiss that raised a new third argument citing that the United Nations Convention on Contract for the International Sale of Goods ("CISG") that covered business-to-business transactions applied to this case.

9. The motion to abate was set for hearing on December 15, 2009, motion calendar. At the December 15th hearing, counsel for the Defendant argued that with the addition of the new CISG argument, the motion needed to be specially set. The Court agreed and said to get a special set hearing. The first special set hearing available was July 8, 2010 – over 7 months later. The Court ordered that discovery concerning only venue and jurisdiction could go forward pending the hearing on the Motion to Abate/Dismiss.

10. On April 9, 2010, Plaintiff files notice of hearing to recover attorney's fees and costs. This motion was served at least 21 days prior to filing with the Court in accordance with section 57.105(4) Florida Statutes.

11. On April 13, 2010, Defendants retained new council.

12. The Court's calendar had an opening on June 3, 2010, and the hearing dates was moved up to that day.

13. At the courthouse while waiting to go into the hearing, the Defendants' new counsel presented an amended motion to dismiss that raised a fourth and totally new theory that had not previously been raised in response to the Amended Compliant. Counsel then went into the hearing on the motion to abate/dismiss based upon jurisdiction and venue and announced to

the Court that the prior filed motion was being withdrawn (after delaying the prosecution of the case for 276 days to that point).

Motion to Strike

14. Defendants' June 3, 2010, must be struck as it has been filed in disregard of long established law in Florida. A motion such as the one filed by Defendants that is directed to an amended complaint cannot raise objections to retained portions of original complaint when those objections were available and were not urged or were unsuccessfully urged on motion to dismiss original complaint. *County of Volusia v. Atlantic International Investment Corp.*, 394 So. 2d 477 478 (Fla. 1st DCA 1981) and *Beach Development Corp v. Stimson*, 159 So. 2d 113, 115 (Fla. 2d DCA 1964) (same). Copies of these cases are attached to the Motion for ease of reference as **Composite Exhibit "A."**

15. The Defendants (including MSMC) filed two verified motions to abate/dismiss the amended complaint in this action- each motion was supported by affidavits of Gary Pronman and Dan Pronman that were provided under oath and "under penalty of perjury." The June 3, 2010, amended motion to dismiss raises entirely new objections that were not urged in the motion to dismiss the original complaint – and in fact contradict the position previously taken by defendants, under oath.

16. As noted above, the amended complaint that joined MSMC as a party-defendant was filed/served on October 6, 2009 – the pleading in response to this motion was a motion to abate/dismiss filed on October 13, 2009. Contrary to the representations made by the Defendants' counsel at the June 3, 2010, hearing, the prior Motions to Abate/Dismiss the Amended Complaint were in fact brought by and on behalf of all defendants, including MSMC. As mentioned above - both the October 13th and December 4th motions filed by the Defendants urged that the only proper defendant should be none other than MSMC (which counsel for

Defendants represented to this Court had not filed a motion to dismiss previously). A copy of the October 13, 2009, motion to abate/dismiss is attached hereto as **Exhibit "B."**

17. The assertions in Defendants' new motion to dismiss directly contradicts their prior affidavits and prior deposition testimony and this is another reason this Motion should be stricken from the record. *Ellison v. Anderson*, 74 So. 2d 680, 681 (Fla. 1954) (holding that a party may not file an affidavit directly contradicting the affiant's sworn testimony in order to create a question of fact and thus avoid the entry of summary judgment). However, "[a]n exception to the rule arises where there is a 'credible explanation by the affiant as to the reason for the discrepancy between his earlier and later opinions.' " *Cary v. Keene Corp.*, 472 So. 2d 851, 853 (Fla. 1st DCA 1985) (*quoting Croft v. York*, 244 So. 2d 161, 165 (Fla. 1st DCA 1971)). In *Cary*, the court held that the explanation must either appear in the affidavit or be supported by the record. *Cary,* 472 So. 2d at 853. Although the cited cases deal with changing positions in order to avoid a summary judgment, the same rule applies and should apply when Defendants attempt to change their prior sworn testimony, with no explanation whatsoever, in an apparent attempt to avoid sanctions for the frivolous positions previously taken.

18. As the assertions/theories raised in the latest motion to dismiss could have been asserted and raised as to the original complaint, these new assertions/theories should not be allowed at this late date.

WHEREFORE, Plaintiff, respectfully requests that this Court enter an Order striking Defendants June 3, 2010, Motion to Dismiss/Strike and require Defendants to file an Answer to the Amended Complaint within 10 days, and for such other and further relief as this Court deems necessary and proper.

SHUTTS & BOWEN LLP
Counsel for Plaintiff
200 East Broward Boulevard
PNC Center, Suite 2100
Fort Lauderdale, Florida 33301
Telephone: (954) 524-5505
Facsimile: (954) 888-3071

By: _____
EDWARD J. O'SHEEHAN
Florida Bar No. 0056790
eosheehan@shutts.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail upon: **Lorne A. Kaiser, Esquire,** Kaiser Romanello, P.A., 1560 Sawgrass Corporate Parkway, 4th Floor, Sunrise, Florida 33323, this 1st day of July, 2010.

By: _____
EDWARD J. O'SHEEHAN

FTLDOCS 5562360 1

District Court of Appeal of Florida, First District.
COUNTY OF VOLUSIA, Appellant,
v.
ATLANTIC INTERNATIONAL INVESTMENT CORP. et al., Appellees.
No. UU-342.

Feb. 13, 1981.
Rehearing Denied March 18, 1981.

Investment company filed complaint against county and other state agencies in action for declaratory judgment and additional relief regarding an alleged breach of its contract with county and subsequently filed amended complaint which consolidated contract cause of action with another suit by company against various state agencies, divisions, and subdivisions, including county, and which claimed that defendant's actions through series of numerous independent and inconsistent acts constituted unlawful taking of plaintiff's property without due process or just compensation and county filed motion to dismiss as recommended and supplemented complaint alleging as one of its grounds, improper venue. The Circuit Court, Leon County, Victor M. Cawthon, J., denied motion, and county appealed. The District Court of Appeal held that county waived its venue privilege by failing to raise defense of improper venue in its motions to dismiss contract action.

Affirmed in part and reversed in part and remanded.

West Headnotes

[1] **Venue** 17
401k17 Most Cited Cases
County waived its venue privilege by failing to raise defense of improper venue in its motions to dismiss contract action.

[2] **Pretrial Procedure** 621
307Ak621 Most Cited Cases
Motion directed to amended pleading cannot raise objections to retained portions of original pleading when such objections were available and not urged or unsuccessfully urged on motion to original pleading.

[3] **Counties** 215
104k215 Most Cited Cases
County, as state political subdivision, would be entitled to be sued in county where it maintained its principle headquarters.

[4] **Action** 60
13k60 Most Cited Cases
Inasmuch as complaint alleged only that actions of county and of agencies taken in the aggregate amounted to a taking and there were no allegations of the concert of action generally recognized in a "joint" theory of liability, actions of county were not joint with those of other state agencies so that cause of action was not severable.

[5] **Pretrial Procedure** 551
307Ak551 Most Cited Cases

[5] **Venue** 46
401k46 Most Cited Cases
Transfer, not dismissal is favored remedy for improper venue.
***478** Daniel D. Eckert, Deland, for appellant.

Peter J. Winders of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tampa, for appellees.

PER CURIAM.

Appellant, County of Volusia, appeals from an order of the trial court denying its motion to dismiss for improper venue or in the alternative to transfer venue to Volusia County. We affirm in part and reverse in part.

Atlantic International Investment Company (AIIC) filed a complaint against Volusia County and other state agencies on February 7, 1975 in an action for declaratory judgment and additional relief regarding an alleged breach of its contract with Volusia County. Thereafter, Volusia filed motions to dismiss on March 5, 1975, and April 14, 1975, to the complaint and amended complaint. These motions to dismiss did not raise the defense of improper venue. Volusia answered the complaint on February 9, 1976 and also failed to raise improper venue as a defense.

On August 3, 1979, AIIC filed an amended and supplemented complaint pursuant to court order which consolidated the above contract cause of action with another suit by AIIC against various state agencies, divisions, and subdivisions, including Volusia County. This second cause of action contended that the defendant's actions through a series of numerous independent and inconsistent acts constituted the unlawful taking of the plaintiff's property without due process or just compensation.

On October 12, 1979, Volusia filed a motion to dismiss and strike the amended and supplemented complaint alleging as one of its grounds improper venue. On February 22, 1980 the trial judge denied several of Volusia's motions including the motion to dismiss for improper venue.

[1] Volusia appealed the denial of the motion regarding improper venue, relying on Carlile v. Game and Fresh Water Fish Commission, 354 So.2d 362 (Fla.1977), arguing that as a state political subdivision it had the right to be sued at the principal place of its headquarters, Volusia County. Carlile, supra held that absent waiver or exception, venue in civil actions brought against the state or one of its agencies or subdivisions properly lies in the county where the state, agency, or subdivision, maintains its principle headquarters. However, in this case, Volusia County waived its venue privilege by failing to raise the defense of improper venue in its motions to dismiss the contract action on March 5, 1975 and April 14, 1975.

> Under Florida Rule of Civil Procedure 1.140 the failure to raise improper venue in a motion to dismiss filed under the rules waives any right to have the cause dismissed on venue grounds. Inverness Coca-Cola Bottling Company v. McDaniel, 78 So.2d 100 (Fla.1955) ...

Gross v. Franklin, 387 So.2d 1046 (Fla. 3d DCA 1980). See also Straske v. McGillicuddy, 388 So.2d 1334 (Fla. 2d DCA 1980).

[2] However, Volusia argued on appeal that since the contract action was consolidated with the action for inverse condemnation, it may now raise its venue privilege to the contract action in addition to its venue privilege for the inverse condemnation action. This contention is not correct. "A motion directed to an amended pleading cannot raise objections to retained portions of an original pleading when such objections were available and not urged or unsuccessfully urged on motion to the original pleading." Beach Development Corp. v. Stimson, 159 So.2d 113 (Fla. 2d DCA 1964). Having failed to timely object to improper venue concerning the contract action, Volusia County may not now do so.

***479** [3] Regarding the count as to inverse condemnation, Volusia has not waived its right to assert its venue privilege. Therefore, Volusia County, as a state political subdivision, is entitled to be sued in the county where it maintains its principal headquarters Volusia County. Florida Public Service Commission v. Triple "A" Enterprises, 387 So.2d 940 (Fla.1980); Carlile v. Game and Fresh Water Fish Commission, supra; Lake County v. Friedel, 387 So.2d 514 (Fla. 5th DCA 1980).

[4] AIIC argues that the actions of Volusia were joint with those of the other state agencies and, therefore, this cause of action is not severable. However, the complaint alleges only that the actions of Volusia County and of the agencies taken in the aggregate amounted to a taking. There are no allegations of a concert of action generally recognized in a "joint" theory of liability. See, Standard Phosphate Co. v. Lunn, 66 Fla. 220, 63 So. 429 (1913).

We recognize that allowing Volusia to exercise its venue privilege will necessitate two trials, but as the court in State Department of Transportation v. Bromante, 365 So.2d 388 (Fla. 4th DCA 1978) stated: "This, of course, necessitates the plaintiff's maintaining two suits instead of one, which is certainly not ideal but the remedy perhaps lies with the legislature."

[5] Since transfer, not dismissal, is the favored remedy for improper venue, Gross v. Franklin, 387 So.2d 1046 (Fla. 3d DCA 1980), we instruct the trial judge to transfer the cause for inverse condemnation against Volusia County to the circuit court for Volusia County. Accordingly, the order is affirmed in part and reversed in part. This cause is remanded for proceedings consistent with this opinion.

MILLS, C. J., and McCORD and THOMPSON, JJ., concur.

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159 So.2d 113
(Cite as: 159 So.2d 113)

District Court of Appeal of Florida, Second District.
BEACH DEVELOPMENT CORP., Appellant,
v.
D. C. STIMSON and Pearl M. Stimson, husband and wife, and First Federal Savings & Loan Association of Sarasota, Appellees.
No. 4263.

Dec. 4, 1963.
Rehearing Denied Jan. 7, 1964.

The Circuit Court for Sarasota County, Robert E. Willis, J., entered an order disposing of certain of the motions of defendant to strike amended complaint and amendments to the amended complaint, and the defendant appealed. The District Court of Appeal, Allen, J., held that motion to strike, directed to amended complaint, could not raise objections to retained portions of original complaint when those objections were available and were not urged or were unsuccessfully urged on motion to dismiss original complaint.

Affirmed.

West Headnotes

Equity 150 ⚿263

150 Equity
150IV Pleading
150IV(E) Demurrer, Exceptions, and Motions
150k261 Motions Relating to Pleadings
150k263 k. Striking Out Pleading. Most Cited Cases
Motion to strike, directed to amended complaint, could not raise objections to retained portions of original complaint when those objections were available and were not urged or were unsuccessfully urged on motion to dismiss original complaint. 30 F.S.A. Florida Rules of Civil Procedure, rule 1.11(a).
***114** Charles E. Early, of Early & Early, Sarasota, for appellant.

Worth Dexter, Jr., of Dexter, Conlee & Bissell, Sarasota, for appellees.

ALLEN, Judge.

Appellant, defendant in equity proceedings below, brings interlocutory appeal from an order disposing of certain of its motions to strike appellees' amended complaint and amendments to the amended complaint. Appellees Stimson are plaintiffs and appellee Federal Savings & Loan Association is a defendant below. Abstracting the significant factors from the morass of pleadings, amendments to pleadings and motions presented below, the following circumstances provide the context of the appeal.

On May 21, 1962, appellees filed a complaint (consisting of one claim embodied in 48 numbered paragraphs, 9 prayers for relief and 2 alternative prayers.) Appellant's motion to dismiss this complaint on the ground, *inter alia*, of failure to state a cause of action, was filed on June 13th, and was denied on July 19, 1962. Thereafter appellant filed an answer.

The apparent conclusion of pleading effected by the answer was premature and, on October 1, 1962, appellees moved to amend their complaint by adding a 10th prayer for relief. On November 15, 1962, appellees moved to further amend by adding a second claim (embodying 54 paragraphs, 13 prayers for relief and 2 alternative prayers). Both of these motions were granted on December 26, 1962, and appellant was given 20 days to plead to the complaint as amended.

On January 15, 1963, appellant filed, *inter alia*, a 'motion to strike' various portions of the amended complaint on the grounds of failure to state a cause of action, irrelevancy, immateriality, vagueness, impertinence and inconsistency with the applicable rules of pleading. This latter motion was directed both to the second claim embodied in the amendment of November 15th and to portions of the original complaint now embodied in the amended complaint. After hearing on this motion, the court, in an order of February 11, 1963, indicated that it considered the second claim unfounded, but allowed appellees 20 days to plead further. This order did not mention those portions of appellant's 'motion to strike' directed to the first claim of the complaint as amended. (At this point the amended complaint consisted of the 'first

claim'; embodied in 48 paragraphs, 10 prayers for relief and 2 alternative prayers, and the dubious 'second claim' embodied in 54 paragraphs, 12 prayers and 2 alternative prayers.)

On February 19th appellees filed amendments to the 'first claim,' adding paragraphs 55-58 and prayers numbered 13-16. (Inasmuch as these purportedly amended the first claim, they should have been numbered 49-52 and 11-14 respectively.) No amendments to the dubious 'second claim' were filed.

***115** Appellant, on March 11th, moved to strike all of these most recent amendments. At a hearing on May 8, 1963, the appellant apparently contended that both this last motion, directed to the recent misnumbered amendments, and the January 15th motion, directed to the earlier amended complaint, required disposition. The lower court, however, disagreed and, on May 20th, entered an order which struck the second claim, denied the motion to strike the most recent amendments and held that the 'motion to strike,' which had been filed on January 15th, was not preserved in that it had not been renewed after the amendments of March 11, 1963. Appellant brought appeal from this latter ruling.

The appellant argues that since the motion of January 15, 1963, was directed to portions of the amended complaint which were unaffected by the March 19th amendments, it was not necessary to renew the motion after these amendments. Appellee argues that not only was it necessary to renew the motion after amendments were made, but that even had it been renewed it would have been beyond consideration since it was directed, insofar as it is here significant, to portions of the amended complaint which had existed in the original complaint and had been attacked in the unsuccessful motion to dismiss of June 13, 1962.

Accordingly, two questions are apparently presented; whether portions of an original complaint unsuccessfully attacked prior to amendment can be attacked after amendment on grounds available or urged on the first attack, and whether unadjudicated portions of a defensive motion need be renewed after amendments which do not substantially affect the portions of the complaint subject to the unadjudicated motion.

Considering the first of these questions, it is apparent that the motion to strike filed on January 15, 1963, insofar as directed to the 'first claim,' raised defenses and objections which were available on June 13, 1962, when appellant first moved to dismiss the complaint. Having failed to include all objections available at that time, defendant waived the right to later raise them. Rule 1.11(a), Florida Rules of Civil Procedure, 30 F.S.A. A motion directed to an amended pleading cannot raise objections to retained portions of an original pleading when such objections were available and not urged or unsuccessfully urged on motion to the original pleading. See Keefe v. Derounian, 6 F.R.D. 11, (D.C.N.D.Ill.1946); 2 Moore's Federal Practice, para. 12.22 at 2324 (2d ed. 1962).

In the Keefe case, the court discussed the Federal rule analogous to Florida Rule 1.11(a) and the right to object by motion to an amended complaint:

'Clearly, of course, if the amendment to the complaint contains new matter which, had it originally been in the complaint, would have allowed the defendant to object by motion, the defendant's right to object by motion to the complaint as amended cannot have been waived by any prior motion. In the present case, however, the amendment merely corrected an insufficient allegation of diversity jurisdiction. It does not revive the defendant's right to challenge the sufficiency of the complaint, which motion made to the original complaint had already been denied, and should likewise not revive his right to object to the service of process, which is an objection that existed at the beginning of the case and should have been raised then. * * *'

The apparent departure from this interpretation in Sidebotham v. Robison, 216 F.2d 816 (9th Cir. 1954), is, in fact, no departure. It involves an entirely different problem and merely represents an application of the principle of testing a postamendment motion in terms of the availability of the objections at the time of a pre-amendment motion.

***116** Having determined that the January 15th motion was improper and insufficient when filed, it is unnecessary to consider whether, had it been proper, it would have been a pleading and needed to have been renewed after amendment. See Scarfone v. Denby, Fla.App.1963, 156 So.2d 694. Cf. Bernstein v. N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, 76 F.Supp. 335 (D.C.S.D.N.Y., 1948),

and Stork v. Townsend, 1 F.R.D. 597 (D.C.W.D.Ohio 1940) aff'd 132 F.2d 859 (6th Cir. 1941).

In view of the correctness of the result in the lower court, irrespective of the stated reason therefor, the order is affirmed.

Affirmed.

SMITH, C. J., and SHANNON, J., concur.
Fla.App. 1964
Beach Development Corp. v. Stimson
159 So.2d 113

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

BRIAN STYLES,

Plaintiff,

vs.

GARY PRONMAN, individually
and dba Moviestar Musclecars and
DAN PRONMAN, individually
and dba Moviestar Musclecars,

Defendants
_____/

CASE NO.: 09-043833 02
FLORIDA BAR NO.: 291791

DEFENDANTS' MOTION TO ABATE AMENDED COMPLAINT AND MOTION TO DISMISS AMENDED COMPLAINT AND MEMORANDUM OF LAW

Defendants, **GARY PRONMAN** and **DAN PRONMAN** move to Abate and Dismiss this action for improper venue and states as follows:

MOTION TO ABATE

1. The cause of action alleged accrued in Quebec, Canada.

2. Moviestar Musclecars, a Canadian corporation, does not have any registered office or registered agent in the United States pursuant to Florida Statute 617.1507; thus it is not authorized to conduct its affairs in the State of Florida and has no registered agent appointed, pursuant to §617.1507.

3. Defendants do not maintain an office for the transaction of its customary business in Florida or in the United States, but does maintain such an office in Quebec, Canada.

4. The Bill of Sale attached hereto as Exhibit "A" shows Seller is Moviestar Musclecars located at 169 Mozart Street, D.D.O. QC. H9G2Z5. (This is the same document as the Amended Complaint's Exhibit "E").

5. The subject matter of the lawsuit, Moviestar Musclecars, is a Canadian corporation. Attached hereto find the Certificate of Incorporation of Moviestar Musclecars in Quebec, Canada marked as Exhibit "B" and attached hereto find sworn Affidavits from Gary Pronman and Dan Pronman marked as Exhibit "C" and "D".

6. The motor vehicle which is the subject matter of this lawsuit, a 1969 ½ Dodge Superbee, at all times was located in Canada and still remains in Canada.

7. The funds wired in this case, were wired to the account of Moviestar Musclecars, a Canadian

corporation, at the Laurentian Bank of Canada, 865 Decarie Blvd, Montreal, Quebec. H4L 3M2.

8. The Bill of Sale marked Exhibit "E" in the Amended Complaint and Exhibit "A" attached to this Motion to Abate is clear and convincing evidence, according to the Rules of Civil Procedure Rule 1.061, the trial court can find that an adequate alternative forum exists which possessed jurisdiction over the whole case, which would be in Quebec, Canada.

9. A trial court can find, from the four corners of the Complaint, that all relevant factors favor the alternative forum in Quebec, Canada. The Plaintiff himself does not live in Broward County; he lives in Delray Beach, Palm Beach County, Florida. All remaining relevant factors such as the location of the corporation, the stated address of Dan Pronman, the wire-transfer of the money to a bank in Canada, the location of the automobile, the existence of a valid Canadian company, Moviestar Musclecars, are all factors in favor of abating this action in that the proper forum is in Quebec, Canada.

10. Defendants state the decision to grant or deny the Motion to Abate rests in the sound discretion of the trial court, subject to review for abusive discretion and states all the factors above stated, provide an overwhelming balance test in favor of Defendants' Motion to Abate.

MOTION TO DISMISS

11. All the relevant facts of all the exhibits and attachments to the Amended Complaint marked "A" through "I" disclose the proper party is Moviestar Musclecars, not the individuals, Gary Pronman and Dan Pronman. The Canadian corporation, Moviestar Musclecars, insulates the individuals, Gary Pronman and Dan Pronman and, therefore, the suit against them individually should be dismissed.

WHEREFORE, Defendants, Gary Pronman and Dan Pronman, ask this Honorable Court abate this action in its entirety and/or dismiss this action against the individuals personally, due to the existence of a valid Canadian corporation.

Under penalty of perjury we declare we have read the foregoing Motion and the facts stated in it are true.

GARY PRONMAN

DAN PRONMAN

MEMORANUM OF LAW

Florida Statute 47.051 "Actions against corporations" ... "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."

Primary purpose of venue statutes is to require that litigation be instituted in that forum which will

cause least amount of inconvenience and expense to those parties required to answer and defend action. Polar Ice Cream and Creamery Co. v. Andrews, App. 1 Dist., 146 So.2d 609 (1962).

A statutory standard for pending venue in actions against a foreign corporation is that venue may be obtained where such corporation has an agent or other representative, and the fact of "doing business" is not the test. Walt Disney World Co. v. Leff, App 4 Dist., 323 So.2d 602 (1975).

"Doing business" is not the test for determining if foreign corporation has agent in the county for venue purposes. Magical Cruise Co. Ltd. v. Lohinski, App. 3 Dist., 829 So.2d 925 (2002).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing was mailed by U.S. mail to Edward J. O'Sheehan, Esq., Shutts & Bowen LLP, 200 East Broward Boulevard #2100, Fort Lauderdale, FL 33301 this 13th day of October, 2009.

MARK P. BOCKSTEIN, ESQ.
Attorney for Defendants
8751 West Broward Blvd. #305
Plantation, FL 33324
(954) 370-3862

Bill of Sale

April 25 2009

Buyer: Brian Styles
1033 Waterway Lane
Delray Beach Fl
33482

Seller: Moviestar Musclecars
169 Mozart Street
D.D.O. QC.
H9G 2Z5

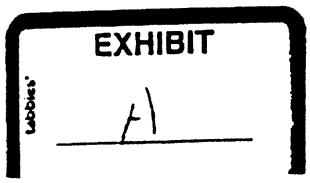
Item: 1969 ½ Dodge Superbee
Vin# WM23M9A301690
440 6 pack 4 speed numbers matching.
Documented with build sheet and
Galen visual inspection.Car is sold as is with a
Clear title no moneys owed.

Sale price is $84000.00USD.

Please wire fund to the account of Moviestar Musclecars.
Laurentian Bank of Canada
865 Decarie Blvd montreal Qc. H4L 3M2
Account number 00321 039 877725 01
Transit swift code BLCMCAMM

Seller _____

Buyer _____



Québec

CERTIFICAT DE MODIFICATION

Loi sur les compagnies, Partie IA
(L.R.Q., chap. C-38)

J'atteste par les présentes que la compagnie

SOCIÉTÉ MOVIE STAR MUSCLECARS INC.

et sa ou ses version(s)

MOVIE STAR MUSCLECARS INC.

a modifié ses statuts le **3 NOVEMBRE 2003**, en vertu de la partie IA de la Loi sur les compagnies, comme indiqué dans les statuts de modification ci-joints.

Déposé au registre le 10 novembre 2003
sous le matricule 1161587093

Inspecteur général des institutions financières Québec

Jean St. Gelais
Inspecteur général des institutions financières

E030S13M90S71NA

EXHIBIT "B"

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

BRIAN STYLES,

Plaintiff,

vs.

GARY PRONMAN, individually
and dba Moviestar Musclecars and
DAN PRONMAN, individually
and dba Moviestar Musclecars,

Defendants
_____/

CASE NO.: 09-043833 02
FLORIDA BAR NO.: 291791

AFFIDAVIT OF GARY PRONMAN

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, GARY PRONMAN, state the following:

1. Plaintiff, Brian Styles, conducted business in this matter with Moviestar Musclecars, a valid Canadian corporation.

2. I did not conduct business individually with Brian Styles regarding this transaction of the 1969 ½ Dodge Superbee.

3. Brian Styles has conducted prior business for the purchase of automobiles with Moviestar Musclecars and in each of those transactions, Brian Styles arranged to pick up the vehicles.

4. At all times material hereto, Moviestar Musclecars was the seller in this transaction, was a valid Canadian corporation and was located at 169 Mozart Street, D.D.O. Q. H9G2Z5, Montreal, Canada.

5. Brian Styles wired the funds in this matter to the account of Moviestar Musclecars at the Laurentian Bank of Canada.

6. The Bill of Sale attached to the Complaint as Exhibit "A" dated April 25th, 2009 shows the buyer as Brian Styles located at 1033 Waterway Lane, Delray Beach, FL 33482 and the seller has Moviestar Musclecars at its Canadian address. The Bill of Sale itself states the funds are to be wired to the account of Moviestar Musclecars in Canada.

7. At all times material hereto the automobile, a 1969 ½ Superbee was located in Canada.

8. Moviestar Musclecars, a Canadian corporation, does not have any registered office or registered

EXHIBIT "C"

agent in the United States pursuant to Florida §617.1507 and has no registered agent in the state of Florida.

9. I conducted business with Brian Styles as president of Moviestar Musclecars in this matter and not in my individual capacity.

10. At all times material hereto, Brian Styles knew Moviestar Musclecars was a Canadian corporation. He knew he wired funds to the Canadian corporation; he knew the car was located in Canada; and he knew we conducted business out of Canada because he had previously conducted business with Moviestar Musclecars in the past as evidenced by the invoices he attached to the Complaint.

GARY PRONMAN

On October 15, 2009, before me the undersigned, a Notary Public in and for said state, personally appeared **GARY PRONMAN**, to me known to be the person who executed the foregoing Affidavit, or who provided as proof of identity, and acknowledges he executed same.

I HEREBY AFFIX my name and official seal this 15 day of October, 2009.

MY COMMISSION EXPIRES:

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA MARK P. BOCKSTEIN MY COMMISSION EXPIRES September 20, 2009 #DD 473808 Bonded Thru Notary Public Underwriters

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

BRIAN STYLES,

Plaintiff,

vs.

GARY PRONMAN, individually
and dba Moviestar Musclecars and
DAN PRONMAN, individually
and dba Moviestar Musclecars,

Defendants
_____/

CASE NO.: 09-043833 02
FLORIDA BAR NO.: 291791

AFFIDAVIT OF DAN PRONMAN

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, DAN PRONMAN, state the following:

1. Plaintiff, Brian Styles, conducted business in this matter with Moviestar Musclecars, a valid Canadian corporation.

2. I did not conduct business individually with Brian Styles regarding this transaction of the 1969 ½ Dodge Superbee.

3. Brian Styles has conducted prior business for the purchase of automobiles with Moviestar Musclecars and in each of those transactions, Brian Styles arranged to pick up the vehicles.

4. At all times material hereto, Moviestar Musclecars was the seller in this transaction, was a valid Canadian corporation and was located at 169 Mozart Street, D.D.O. Q. H9G2Z5, Montreal, Canada.

5. Brian Styles wired the funds in this matter to the account of Moviestar Musclecars at the Laurentian Bank of Canada.

6. The Bill of Sale attached to the Complaint as Exhibit "A" dated April 25th, 2009 shows the buyer as Brian Styles located at 1033 Waterway Lane, Delray Beach, FL 33482 and the seller has Moviestar Musclecars at its Canadian address. The Bill of Sale itself states the funds are to be wired to the account of Moviestar Musclecars in Canada.

7. At all times material hereto the automobile, a 1969 ½ Superbee was located in Canada.

8. Moviestar Musclecars, a Canadian corporation, does not have any registered office or registered

EXHIBIT "D"

agent in the United States pursuant to Florida §617.1507 and has no registered agent in the state of Florida.

9. I conducted business with Brian Styles as Treasurer of Moviestar Musclecars in this matter and not in my individual capacity.

10. At all times material hereto, Brian Styles knew Moviestar Musclecars was a Canadian corporation. He knew he wired funds to the Canadian corporation; he knew the car was located in Canada; and he knew we conducted business out of Canada because he had previously conducted business with Moviestar Musclecars in the past as evidenced by the invoices he attached to the Complaint.

Under penalty of perjury I declare I have read the foregoing Motion and the facts stated in it are true.

DAN PRONMAN

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

On October 15, 2009, before me the undersigned, a Notary Public in and for said state, personally appeared **DAN PRONMAN**, to me known to be the person who executed the foregoing Affidavit, or who provided as proof of identity, and acknowledges he executed same.

I HEREBY AFFIX my name and official seal this 15 day of October, 2009.

MY COMMISSION EXPIRES:

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA MARK P. BOCKSTEIN MY COMMISSION EXPIRES September 20, 2009 #DD 473808 Bonded thru Notary Public Underwriters