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**IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, THIRD DISTRICT**

JSO SERVICES, LLC,
and JOHN S. ODOM,

Appellate Case No. 3D23-0985
L.T. Case No. 2022-002437-CA-01

Appellants,

v.

LAURA E. TRUJILLO as Personal
Representative of the ESTATE OF
CARLOS L. DIAZ FIGUERAS
(Deceased), et al.

Appellees.

_____ /

JSO SERVICES, LLC'S AND JOHN S. ODOM'S INITIAL BRIEF

Appeal from the Eleventh Judicial Circuit, Miami-Dade County

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PRELIMINARY STATEMENT

Appellants, JSO SERVICES, LLC and JOHN S. ODOM, shall be referred to herein as "JSO."

Appellant, IMPERIAL PAVING, LLC, shall be referred to herein as "Imperial Paving."

Appellee, LAURA E. TRUJILLO, shall be referred to herein as "Trujillo."

Appellee, T. Disney Trucking and Grading, Inc., shall be referred to herein as "T. Disney."

The Decedent, CARLOS DIAZ FIGUERAS, shall be referred to herein as "Decedent."

Appellee, Ruben Efrain Sanchez, shall be referred to herein as "Efrain Sanchez."

The at-fault driver, BILLY WALTER MURRAY, shall be referred to herein as "Murray."

Appellants cite to the Appendix filed by Imperial Paving, LLC and shall be referred to as (App.), followed by the page number in the Appendix.

References to the pleadings or other documents that are contained within the Supplemental Appendix shall be referred to as (Supp. App.), followed by the page number in the Supplemental Appendix.

STATEMENT OF THE CASE AND FACTS

The matter before this Honorable Court arises from a motor vehicle accident which occurred July 28, 2020. (App. 89 to App. 103; App. 1141) The accident occurred in Palatka, Putnam County, on State Road 19. (App. 89 to App. 103) On that date, three (3) trucks transporting cement entered and remained within the continuous turn lane of the northbound lanes of State Road 19. (App. 92 to App. 102; App. 1142) The vehicles were transporting cement to a construction site wherein a Captain D's restaurant was being built. (App. 92 to App. 95; App. 1141)

The drivers of the vehicles were Efrain Sanchez, the Decedent, and Ruben Sanchez.¹ Efrain Sanchez parked his vehicle in the left turn lane, with Ruben Sanchez immediately behind him. The Decedent parked behind Ruben Sanchez; his was the last vehicle in the queue. (App. 92 to App. 100) The drivers of the three trucks, including the Decedent, exited their vehicles and walked in the area immediately beside the trucks, in close proximity and within a few feet of each other. (App. 92 to App. 100; App 1145) Ruben Sanchez then leaned inside the cab of his truck to retrieve an item, with the truck's door open behind him. (App. 1394)

Billy Walter Murray was operating a truck in the southbound lanes of State Road 19. (App. 92 to App. 93; App. 96 to App. 98) He was transporting a heavy load of forestry equipment, some of which jugged out of the cargo area. (App. 92 to App.

¹ Ruben Sanchez is the father of Efrain Sanchez.

96; App. 1136 to App. 1137) As he drove past the three (3) aforementioned trucks in the southbound lanes, Murray's load struck the side mirror and door of Ruben Sanchez's truck², causing the door to partially close on Ruben Sanchez. (App. 95 to App. 98; App. 1145 to App. 1147) Seconds later, at approximately 10:50 a.m., a portion of the load protruding from Murray's truck struck the Decedent. (App. 95 to App. 98; App. 1318 to App. 1319; App. 1145; App. 1148)

Palatka Police Department personnel responded swiftly to the scene. Officer Branden Hornsby,³ Lieutenant Andy Snider,⁴ Lieutenant Scott Mast,⁵ Officer Matthew Hines,⁶ and Officer Caudell⁷ arrived within minutes, as well as agents of the Putnam County Fire and Rescue Department and Putnam County Sheriff's Office. (App. 1318 to App. 1320) The Decedent was pronounced deceased by Putnam County Fire Battalion Chief Paul Fleteau at 10:53 a.m. (App. 94; App. 1319). At 10:54 a.m., Captain Brad Forsyth requested the Putnam County Sheriff's

² The Florida Highway Patrol determined Ruben Sanchez's vehicle was unoccupied at the time of the collision. (app. 1460) Ruben Sanchez disputes that characterization, and has filed a personal injury lawsuit in Putnam County, to be discussed in greater detail on pages 10 through 11 herein.

³ Identified in the Putnam County Sheriff's Office Call Record as 1K28.

⁴ Identified in the Putnam County Sheriff's Office Call Record as 1L23.

⁵ Identified in the Putnam County Sheriff's Office Call Record as 1L13.

⁶ Identified in the Putnam County Sheriff's Office Call Record as 1PD4.

⁷ Identified in the Putnam County Sheriff's Office Call Record as 1PD47, first name unknown at this time.

Office⁸ communications operators advise Florida Highway Patrol of the fatality. (App. 92 to App. 93; App. 1319) Several Florida Highway Patrol troopers arrived at the scene at 11:07 a.m. and began conducting their investigation. (App. 90 to App. 103; App. 1319) The Putnam County Sheriff's Office closed the call at 12:04 p.m., while the troopers' investigation was ongoing. (App. 1320)

The accident was investigated by the following agents of the Florida Highway Patrol: Sergeant Austin Bennett; Lieutenant Ronald Lewis; Corporal Ralph Richards; Corporal Caleb Thompson; Trooper Adam Chism; Trooper Larry Favors; and Master Sergeant Rudy L. Waters. The foregoing were all affiliated with the Jacksonville division of the Florida Highway Patrol. (App. 92 to App. 103; App. 1351) The investigation was conducted with the assistance from Trooper Michael Locastro, who is affiliated with the St. Augustine division of the Florida Highway Patrol. (App. 94 to App. 95; App. 1351)

During the course of their investigation, law enforcement identified Kevin Kelley as the only known eyewitness to the impact between the Decedent and the load protruding from Murray's truck. (App. 96 to App. 97) Kevin Kelley was driving a pilot vehicle⁹ immediately behind Murray's truck when he witnessed the forestry

⁸ The Palatka Police Department and Putnam County Sheriff's Office have a combined communication system. Stated differently, the police communications operators (colloquially known as "dispatchers") dispatch for both agencies.

⁹ Chapter 14-26 of the Florida Administrative Code requires motorized escorts to accompany vehicles with overdimensional loads. Qualified escorts must comply

equipment jutting out from the rear of the truck strike the Decedent. (App. 96 to App. 97; App. 1129 to App. 1130) Kelley radioed Murray to stop after the impact occurred; Murray had not been aware that the load had struck the Decedent. (App. 96 to App. 97; App. 1150)

At the conclusion of the investigation, the Florida Highway Patrol issued Murray a non-criminal traffic citation for careless driving. (App. 101 to 103; App. 1755) A final judgment was entered against Murray on November 15, 2021, for violating Fla. Stat. §316.1925. (App. 1755)

Trujillo, on behalf of the estate of the Decedent, filed her original Complaint on February 8, 2022. (App. 10 to App. 46) In the Complaint, she alleged that:

- a. Trujillo is a resident of Miami-Dade County;¹⁰
- b. Decedent’s survivors are residents of Miami-Dade County;¹¹
- c. Imperial Paving is a Florida corporation conducting business throughout the state;¹²
- d. Ruben Sanchez and Efrain Sanchez are residents of Miami-Dade County;¹³

with Section 14-26.012(1)(c). These escorts are colloquially referred to as “pilot cars” or “pilot vehicles.”

¹⁰ Complaint, Paragraph 8.

¹¹ Complaint, Paragraph 9.

¹² Complaint, Paragraph 10.

¹³ Complaint, Paragraphs 11 and 12.

e. Captain D's, LLC, is a Florida corporation conducting business throughout the state;¹⁴ and

f. PF Purchaser Corp. is a Delaware corporation conducting business in Florida.¹⁵

(App. 11 to App. 12) Trujillo further asserted that venue was proper in Miami-Dade County because Trujillo, Ruben Sanchez, and Efrain Sanchez are residents of Miami-Dade County.¹⁶ (App. 12)

However, when Trujillo attempted to serve Ruben Sanchez and Efrain Sanchez, a resident at the Miami-Dade County location listed in the summons refused service. The relevant return of service did not specify what attempts, if any, were made to confirm whether Ruben Sanchez and Efrain Sanchez were still residents at that address. (App. 131 to App. 134) The return of service provides no information as to what attempts, if any, were made to serve Ruben Sanchez and Efrain Sanchez at any other addresses. (App. 131 to App. 134)

On April 14, 2022, Captain D's, LLC, and PF Purchaser Corp. filed a Motion to Dismiss for Improper Venue, or in the Alternative, Forum Non Conveniens. (App. 68 to App. 73)

¹⁴ Complaint, Paragraph 13.

¹⁵ Complaint, Paragraph 14.

¹⁶ Complaint, Paragraphs 15 through 17.

On April 20, 2022, Imperial Paving filed a Motion to Transfer Venue Pursuant to the Doctrine of Forum Non Conveniens. (App. 74 to App. 121) An affidavit appended to the Motion to Transfer Venue Pursuant to the Doctrine of Forum Non Conveniens and executed by Michael Goodman, the president of Imperial Paving, averred that at the time of the subject accident, Imperial Paving: (1) did not have an office or agency in Miami-Dade County; (2) did not own any property in Miami-Dade County; (3) did not own, use, possess, or hold a mortgage or other lien on any real property within Miami-Dade County; (4) did not directly do business in or solicit business in Miami Dade County; and (5) did not have any employees that work in or live in Miami-Dade County. (App. 111 to App. 112)

Trujillo responded by filing twelve (12) affidavits which purported to support venue in Miami-Dade County. (App. 135 to App. 184). With the exception of an affidavit by Richard Cabrera, P.E., all other witnesses are family members or counselors anticipated to testify predominantly as to elements of mental anguish other non-economic damages. Stated differently, Trujillo filed one (1) affidavit by an anticipated expert and eleven (11) affidavits for witnesses who would testify as to a limited scope of damages.

On July 21, 2022, Trujillo moved for leave to file an amended complaint. (App. 211 to App. 357) The proposed pleading added sixteen (16) defendants to the action, including La Cidra Trucking, a company owned by Ruben Sanchez. (App.

216 to App. 357) Leave to amend was granted on July 26, 2022. (App. 358 to App. 359)

Trujillo filed the First Amended Complaint on July 27, 2022. (App. 360 to App. 501) None of the new parties, other than La Cidra Trucking, were alleged to be residents of Miami-Dade County. Trujillo once again asserted the venue was proper in Miami-Dade County because Trujillo and the Decedent's survivors were residents of Miami- Dade, and "one or more of the Defendants resided and/ or maintained the principal place of business in Miami-Dade County, Florida, and one or more of the other Defendants conducted business in Miami-Dade County Florida."¹⁷ (App. 365) Trujillo further asserted that venue was proper in Miami-Dade because the Decedent was a Miami-Dade resident prior to his death.¹⁸ (App. 365)

On the same date that Trujillo filed her First Amended Complaint, she filed a wrongful death lawsuit *in Putnam County* against *the same individuals and corporate entities*, asserting *the same allegations* as those raised in the First Amended Complaint. (App. 749 to App. 866)¹⁹ At that time, Trujillo did not advise the Miami-Dade court or the Defendants involved in the Miami-Dade litigation that she had filed a suit in the venue for which they sought a transfer.

¹⁷ First Amended Complaint, Paragraph 33.

¹⁸ First Amended Complaint, Paragraph 14.

¹⁹ The Putnam County lawsuit has been stayed pending the disposition of this appeal.

On August 11, 2022, La Cidra Trucking was served with the First Amended Complaint at an address in Palm Coast, Flagler County. (App. 597 to App. 599) On August 19, 2022, Ruben Sanchez was served with the First Amended Complaint in Palm Coast, Flagler County. (App. 600 to App. 602) None of the new defendants were served in Miami-Dade County. (App. 583 to App. 596; App. 603 to App. 609; App. 879 to App. 887)

Imperial Paving filed its Answer and Affirmative Defenses to Plaintiff's Amended Complaint on August 12, 2022. (App. 502 to App. 530) Contemporaneously therewith, Imperial Paving filed its Motion to Transfer Venue Pursuant to the Doctrine of Forum Non Conveniens. (App. 535 to App. 582). Captain D's, LLC, PF Purchaser Corp., Efrain Sanchez, JSO Services, LLC, John S. Odom, T. Disney, and Ruben Sanchez joined in Imperial Paving's Motion to Transfer Venue. JSO Services, LLC, and John S. Odom also filed supplemental authority. (App. 609 to App. 610; App. 611 to App. 612; App. 637 to App. 639; App. 640 to App. 642; App. 643 to App. 648).

A hearing on Imperial Paving's Motion to Transfer Venue occurred on October 17, 2020, before Hon. Maria de Jesus Santovenia. (App. 1026 to App. 1059) Early in that proceeding, counsel for Imperial Paving advise Judge Santovenia that Ruben Sanchez had filed a personal injury lawsuit in Putnam County which named

as defendants several parties who were also involved in the Miami-Dade lawsuit filed by Trujillo:

However, Mr. Sanchez has filed his own personal injury action in Putnam County, and there are some similar Defendants between the two lawsuits. They are not identical but there is a significant overlap and when you consider the potential for Fabre parties in both cases, there is almost complete overlap...

(App. 1035) As counsel for Trujillo presented arguments for his client, Judge Santovenia inquired as to the lawsuit filed in Putnam County by Ruben Sanchez:

MR. REMUDO: There's some cases that talk about that, but I agree with you that's not the main determinative factor. We also have that two of the Defendants, Ruben Sanchez and Ruben Efrain Sanchez, who are also eyewitnesses, are in Miami-Dade County.

THE COURT: So there are two "Ruben Sanchezes?"

MR. REMUDO: Yes. Father and son.

THE COURT: One of them has filed a suit in Putnam County?

MR. REMUDO: Correct.

(App. 1041) Counsel for Trujillo had ample opportunity²⁰ to advise Judge Santovenia, and the Defendants in the Miami-Dade action, that he had also filed a suit in Putnam County on behalf of his client for the exact same sequence of events and alleged damages resulting therefrom. *He did not do so*. Said omission is salient, because of the issues being addressed by the parties at the hearing was the *possibility*

²⁰ Counsel for Trujillo spoke of overlapping defendants between Trujillo's wrongful death suit in Miami-Dade and Ruben Sanchez's personal injury suit, but *never* informed Judge Santovenia of the overlapping defendants in Trujillo's wrongful death suit in Putnam County. (App. 1045)

of inconsistent verdicts if Ruben Sanchez and Trujillo's cases were tried in different jurisdictions. (App. 1036 to App. 1051)

Judge Santovenia reserved ruling on Imperial Paving's Motion to Transfer Venue, and asked for additional briefing from the parties. (App. 1053 to App. 1058) Judge Santovenia did not enter an order before the instant case was transferred to Hon. Thomas J. Rebull.

On November 18, 2022, Kelley was deposed in the personal injury case filed by Ruben Sanchez in Putnam County. (App. 1122 to App. 1202) Kelley testified he is a resident of Starke, Florida. (App. 1128 to App. 1129) Starke is located in Bradford County. Bradford County is the county immediately northwest of Putnam County.

Then, Imperial Paving filed a Motion to Dismiss Plaintiff's First Amended Complaint for Improper Venue on December 15, 2022. (App. 888 to App. 1010) T. Disney, Efrain Sanchez, Captain D's, LLC, PF Purchaser Corp., JSO Services, and John S. Odom joined in Imperial Paving's arguments. (App. 1011 to App. 1013; App. 1014 to App. 1016; App. 1017 to App. 1018; App 1080 to App. 1118) Once again, JSO Services, Inc. and John S. Odom filed supplemental authority. (App. 1080 to App. 1081).

On March 23, 2023, Trujillo filed her Response in Opposition to Defendant Imperial Paving, LLC's Motion to Dismiss for Improper Venue & Defendant JSO

Services, LLC & John S. Odom's Notice of Joinder & Supplemental Authority. (App. 1226 to App. 1314). In her Response, Trujillo asserted Miami-Dade County was the proper venue because that is the county wherein she and the Decedent's survivors (her children) reside, and "where 3 of the defendants reside."²¹ (App. 1232) Trujillo specified the three (3) parties in question were Ruben Sanchez, Efrain Sanchez, and La Cidra Trucking. (App. 1234 to App. 1235) Trujillo's Response did not, in any capacity, address the fact that service of process was effected in Flagler County.

Imperial Paving filed a Reply to Plaintiff's Response in Opposition to Defendant Imperial Paving, LLC's Motion to Dismiss for Improper Venue on March 24, 2023. (App. 1377 to App. 1424) In support thereof, Imperial Paving filed the interrogatory responses completed by Ruben Sanchez, Efrain Sanchez, and La Cidra Trucking. All confirmed three Defendants are residents of Flagler County. (App. 1386 to App. 1424)

On April 19, 2023, Imperial Paving filed the Affidavit of Daniel DeWeese, a captain with the Florida Highway Patrol. (App. 1454 to App. 1455) Captain DeWeese attested that it would be a significant burden for the troopers who performed the traffic homicide investigation to participate in legal proceedings in

²¹ Trujillo used the present tense, "reside," despite the fact that service of process had been effected at Ruben Sanchez and Efrain Sanchez's residence in Palm Coast.

Miami-Dade County. He also asserted that it would be more convenient for the troopers to attend proceedings within Putnam County. (App. 1455)

T. Disney filed the affidavit of Affidavit of Stephen Disney on April 21, 2023. (App. 1474 to App. 1478) Stephen Disney attested that T. Disney has its offices in Hillsborough County only, and none of the corporations officers resided in Miami-Dade County. (App. 1477 to App. 1478)

On April 25, 2023, Imperial Paving filed the affidavits of five (5) employees: (1) Amilcar Bermudez; (2) Michael Goodman; (3) Pascual Juarez Santay; (4) Paulino Granados; and (5) Vincente Fabian. (App. 1479 to App. 1491) Bermudez testified she is the parent of a minor with diabetes, and it would be a substantial hardship to be away from child in the event of an emergency. (App. 1482 to App. 1483) Goodman attested that participating in proceedings in Miami-Dade County would interfere with his court-ordered time with his daughter. (App. 1484 to App. 1485) Santay, Granados, and Fabian asserted they do not own vehicles, and it would be difficult for them to travel to Miami-Dade County, in addition to causing economic hardship. (App. 1486 to App.1491)

A hearing as to the relevant motions concerning venue occurred on April 27, 2023. (App. 1495 to App. 1550). No live testimony was presented by any party.²²

²² Appellate courts acknowledge that the presumption of correctness given to a trial court's rulings is lessened where, as here, the trial court's findings are based on affidavits rather than live testimony. Bridgestone/Firestone North American Tire,

During the course of the presentation of Imperial Paving's arguments, Judge Rebull concentrated on criminal charges, if any, against Murray. (App. 1513 to App. 1517) Judge Rebull was advised that in November of 2021, Hon. Joe Boatwright entered a final judgment against Murray for violating Fla. Stat. §316.1925, and was found to have caused the accident which resulted in the death of the Decedent. (App. 1539; App. 1755)

Counsel for Trujillo asserted that Trujillo was "forced" to file in Putnam County, and the lawsuit was nothing more than a "statute of limitation preservation action." (App. 1528) Counsel for Trujillo admitted the Putnam County complaint conceded that Putnam was a proper venue. (App. 1529)

Interestingly, he postulated that *the location of the accident* was "totally irrelevant" to the analysis of the venue, and that transferring the litigation to Putnam County would result in Putnam "hosting a dispute among out-of-towners."²³ (App. 1532; App. 1520)

He then acknowledged that ultimately, the real issue was that Miami-Dade County was more convenient for Trujillo:

In summary, Judge -- and I know it's coming to that time -- you have a case involving the death of a Miami-Dade County resident. His wife is here. His children are here. The estate is being administered in Miami-

LLC v. Garcia, 991 So.2d 912, 916 (Fla. 4th DCA 2008) (*citing Woods v. Nova Cos. Belize Ltd.*, 739 So.2d 617, 621 (Fla. 4th DCA 1999)).

²³ A trial in Miami-Dade County would also result in a trial wherein the witnesses are predominantly "out-of-towners."

Dade County. The witnesses who are going to come and testify about the most important element in this case, which is the damages and including one who went to the scene and will testify also about the scene of the incident, are here.

(App. 1534)

At the conclusion of the hearing, the trial court denied the relevant motions, explaining that he did not believe the defendants had met the burden of proving substantial inconvenience or undue expense. (App. 1546 to 1548) The lower tribunal directed counsel for Trujillo to prepare proposed orders for the trial court's consideration. (App. 1548)

On May 2, 2023, Glenn Wilson joined in Imperial Paving's motions to dismiss and transfer venue. (App. 1550 to App. 1551)

On May 3, 2023, the trial court entered the Order Denying Motions to Transfer Venue Pursuant to Doctrine of Forum Non Conveniens Under Fla. Stat. § 47.122 for Intrastate Transfer Filed by Defendant Imperial Paving, LLC, and All Related Motions of the Joining Defendants. (App. 1557 to App. 1561)

On the same date, the trial court entered the Order Denying Motion to Dismiss for Improper Venue Filed by Defendant Imperial Paving, LLC, and All Related Motions of the Joining Defendants. (App. 1552 to App. 1556)

Imperial Paving filed its Motion for Rehearing and/ or Reconsideration of Orders Dated May 3, 2023, as required by Florida Rule of Civil Procedure 1.530(a). (App. 1636 to App. 1642) On May 26, 2023, the lower tribunal entered the Order

Denying Imperial Paving, LLC's Motion for Rehearing and/ or Reconsideration of Orders Dated May 3, 2023. (App. 1748 to App. 1750)

Imperial Paving timely filed a Notice of Appeal as to the Order Denying Motions to Transfer Venue Pursuant to Doctrine of Forum Non Conveniens Under Fla. Stat. §47.122 for Intrastate Transfer Filed by Defendant Imperial Paving, LLC, and All Related Motions of Joining Defendants. Imperial Paving also filed a Notice of Appeal regarding the Order Denying Motion to Dismiss for Improper Venue Filed by Defendant Imperial Paving, LLC and All Related Motions of the Joining Defendants within the timeframe prescribed in the Florida Rules of Appellate Procedure. (App. 1756 to App. 1771)²⁴ Captain D's, LLC, PF Purchaser Corp. and Glenn Wilson joined in Imperial Paving's appeal.²⁵

JSO Services, Inc. and John S. Odom also timely filed a Notice of Appeal as to the Order Denying Motion to Dismiss for Improper Venue Filed by Defendant Imperial Paving, LLC and All Related Motions of the Joining Defendants.²⁶ (Supp. App. 3 to App. 9) The three (3) appeals have been consolidated for all purposes. (Supp. App. 10 to Supp. App. 11)

²⁴ Case nos. 3D23-0985 and 3D23-0987.

²⁵ Case no. 3D23-0985.

²⁶ Case no. 3D23-0986.

SUMMARY OF THE ARGUMENT

The lower tribunal abused its discretion in denying Appellants' Motions to Transfer Venue Pursuant to Doctrine of Forum Non Conveniens and Motion to Dismiss for Improper Venue. The cause of action giving rise to the litigation accrued in Putnam County, wherein the fatal motor vehicle accident occurred.

Appellee, the Plaintiff and personal representative in the matter sub judice, relies on the alleged residency of three (3) Defendants to assert Miami-Dade is an appropriate venue. However, those Defendants are residents of Flagler County. In fact, none of the Defendants are residents of Miami-Dade County.

Liability in this matter is contested. All of the liability witnesses, officers from various law enforcement agencies and emergency medical personnel, are located in or near Putnam County. No first responders from Miami-Dade County were present at the scene of the accident. The convenience of the witnesses is paramount.

This matter should be litigated in Putnam County in the interest of justice and judicial economy. The judicial system in Putnam County has more available resources and lighter case load. The lower tribunal's orders should be reversed.

ARGUMENT

I. Standard of Review.

The decision to grant or deny a motion to dismiss for forum non conveniens rests in the sound discretion of the trial court, subject to review for abuse of discretion. *See* Ira Mex, Inc. v. Se. Interior Constr., Inc., 777 So.2d 1107, 1108 (Fla. 4th DCA 2001); Dlin v. Olin, 283 So.3d 985, 986 (Fla. 3d DCA 2019); Marques v. Garcia, 245 So.3d 900, 904 (Fla. 3d DCA 2018); *and* Tomac of Fla., Inc. v. Gunn's Quality Glass & Mirror, Inc., 17 So.3d 320, 321 (Fla. 4th DCA 2009)

In making a forum non conveniens determination, the trial court's discretionary power is subject to the test of reasonableness, which, in turn, requires a determination of whether there is logic and justification for the result. *See* Owens-Corning Fiberglas Corp. v. Ballard, 739 So.2d 603, 605 (Fla. 4th DCA 1998) (*citing* Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980) *and* Ciba-Geigy Ltd. v. Fish Peddler, Inc., 691 So.2d 1111, 1115 (Fla. 4th DCA 1997)).

However, where there are no material facts in dispute and proper venue turns on a question of law, the appellate court must review the trial court's orders on motions to dismiss or transfer venue de novo. *See* Dive Bimini, Inc. v. Roberts, 745 So.2d 482, 483-84 (Fla. 1st DCA 1999). *See also* Huber v. Huber, 314 So.3d 363, 365 (Fla. 3d DCA 2020).

II. The lower tribunal abused its discretion in denying Appellants' motions to dismiss or transfer; venue is proper in Putnam County pursuant to Fla. Stat. § 47.011.

Pursuant to Fla. Stat. § 47.122 (2022) actions shall be brought *only* in the county where the defendants reside, where the cause of action accrued, or where the property in litigation is located. *See Lowery v. McBee*, 322 So.3d 110, 113 (Fla. 4th DCA 2021).

As this action does not involve property, JSO will focus its inquiry on the residence of the parties to the litigation, as well as the location wherein the cause of action accrued.

a. The cause of action accrued in Putnam County.

"[A] tort claim is deemed to have accrued where the last event necessary to make the defendant liable for the tort took place. The last event occurred when the harmful force, set in motion by the defendant's negligence, first took effect on the body or the property of the plaintiff. Thus, a claim for tort arose where the harmful force first took effect, or where the plaintiff suffered injury." *Fontana v. Hugo Intern., Inc.*, 781 So.2d 433, 435 (Fla. 3d DCA 2001) (*quoting Tucker v. Fianson*, 484 So.2d 1370, 1371 (Fla. 3d DCA 1986)).

In order to determine where a plaintiff's injury occurred a court must look to the allegations laid out in the complaint. *See McDaniel Reserve Realty Holdings, LLC v. B.S.E. Consultants, Inc.*, 39 So.3d 504, 509-10 (Fla. 4th DCA 2010) (the

allegations in a plaintiff's complaint determine where the plaintiff is considered to have first suffered injury).

The Fourth District in Braun v. Stafford, 529 So.2d 735 (Fla. 4th DCA 1988) held that the trial court abused its discretion in denying motion for change of venue, since automobile collision giving rise to lawsuit occurred in Pinellas county, responding police officers and fire rescue team were from Pinellas county, injured parties received medical treatment in Pinellas county, and two passengers in plaintiff's vehicle were residents of Pinellas county.

Moreover, Florida courts have consistently held that it is error to deny a transfer a transfer of venue where a vehicular accident occurs in a Florida county other than the forum county and the witnesses are located outside of the forum county and many or most of the witnesses are located in the county in which the accident occurred. Morrill v. Lytle, 893 So. 2d 671, 673 (Fla. 1st DCA 2005).

In the instant case, the cause of action accrued in Putnam County, where the Decedent was injured. While the personal representative in this matter is the actual party and resides in Miami-Dade County that is not dispositive due to the fact that the accident which resulted in the Decedent's death occurred within the geographic bounds of Putnam County. *See* Pep Boys v. Montilla, 62 So.3d 1162 (Fla. 4th DCA 2011) (reversing trial court's order denying transfer wherein the while the personal representative resided in Broward but the decedent died in Charlotte County).

Despite the arguments advanced by counsel for Trujillo at the hearing of April 27, 2023,²⁷ the location wherein the accident occurred *is* significant in determining the proper venue for any action. The action accrued in Putnam County and should be litigated in that venue.

b. The Defendants do not reside in Miami-Dade County.

JSO Services, LLC is a limited liability company with its offices in Missouri. (App. 590 to App. 592)

John S. Odom is a resident of Missouri. (App. 590 to App. 592)

Imperial Paving is a Florida corporation located in Polk County. (App. 47 to App. 48) It does not have an office or agency in Miami-Dade County, has no agents or employees who reside in Miami-Dade County, and does not directly do business or solicit business in Miami-Dade County. (App. 111 to App. 112)

Ruben Sanchez and Efrain Sanchez are currently residents of Flagler County. The company owned by Ruben Sanchez, La Cidra Trucking, Inc., operates its business from Flagler County. (App. 597 to App. 597)

PF Purchaser is a Delaware corporation. (App. 47 to App. 48)

²⁷ “[L]et’s talk about the location of the project. That’s totally irrelevant. This project was finished over, approximately, three years ago.” (App. 1608)

T. Disney is a Florida corporation with its principal address in Hillsborough County. T. Disney has no offices outside of Hillsborough County. (App. 1477 to App. 1478)

Wanda Davis is a resident of Georgia. (App. 583 to App. 585)

Glenn Wilson is a resident of Tennessee. (App. 1023)

Reyling Design is a company with its offices in Illinois. (App. 606 to App. 608)

Todd J. Reyling is a resident of Illinois. (App. 603 to App. 605)

J-Beez Services, Inc. is a business with its offices in Nassau County. (App. 587 to App. 589)

James Matthew Blanchard resides in Nassau County. (App. 364)

Christopher McIntosh, LLC, and Christopher McIntosh Management, LLC, are Florida corporations with offices in Walton County. (App. 882 to App. 887) Christopher McIntosh, individually, is also a resident of Walton County. (App. 879 to App. 881)

In summation, *none* of the Defendants in the matter before the lower tribunal are residents of Miami-Dade County. Nevertheless, Trujillo continues to assert that Ruben Sanchez, Efrain Sanchez, and La Cidra Trucking are bona fide defendants²⁸

²⁸ There is no record evidence supporting Trujillo's assertions that Efrain Sanchez, Ruben Sanchez, or La Cidra Trucking were in any manner responsible for the incident giving rise to the instant litigation. Ruben Sanchez and Ruben Efrain

who reside or resided in Miami-Dade County because she needs a colorable nexus to Miami-Dade County under Fla. Stat. § 47.011 (2022). The other purported factors advanced by Trujillo, e.g., that venue is proper in Miami-Dade because the Decedent's estate is being administrated there, are immaterial under Fla. Stat. § 47.011.

Trujillo implicitly acknowledged the propriety of venue in Putnam County by filing a duplicate lawsuit in that jurisdiction. Venue is not proper in Miami-Dade County pursuant to Fla. Stat. § 47.011 simply because Trujillo seeks to make it so. The case before this Honorable Court should be transferred to Putnam County, where the cause of action accrued.

III. The lower tribunal abused its discretion in denying Appellants' motions to dismiss or transfer; venue is proper in Putnam County pursuant to Fla. Stat. §47.122.

The instant litigation should have been transferred to Putnam County pursuant to Fla. Stat. §47.122, which permits the transfer of a case from one county to another for convenience of the parties or witnesses, or in the interest of justice. Ford Motor Co. v. James, 33 So.3d 91, 92-93 (Fla. 4th DCA 2010). "[W]hile a plaintiff's choice of forum is entitled to respect, that choice *is not paramount*. The plaintiff's venue privilege *will not be honored* where the convenience of the parties or witnesses, or

Sanchez's culpability, if any, consists of being in the general vicinity as the Decedent when the accident occurred. La Cidra is the company that employed them.

the interests of justice, require the action to be transferred." P.V. Holding Corp. v. Tenore, 721 So.2d 430, 431 (Fla. 3rd DCA 1998).

a. The lower tribunal should have transferred the case to Putnam County, where the majority of the percipient witnesses

The plaintiff's venue privilege will not be honored where the convenience of the parties or witnesses, or the interests of justice, require the action to be transferred. P.V. Holding at 431. *See also* Burger King v. Koepfel, 564 So.2d 209 (Fla. 3d DCA 1990); Hu v. Crockett, 426 So.2d 1275 (Fla. 1st DCA 1983); Kelly–Springfield Tire Company v. Moore, 355 So. 2d 451 (Fla. 3d DCA 1978).

"Of the three factors, the convenience of the witnesses is probably the single most important consideration of the three statutory factors. The plaintiff's forum selection is no longer the factor of over-riding importance." Pep Boys at 1165 (internal citations omitted). *See also* Botta v. Ciklin, Lubitz & O'Connell, 222 So.3d 605, 608 (Fla. 4th DCA 2017). Unfortunately, many courts and practitioners seem to continue to view the plaintiff's forum selection as "the" paramount consideration, which it is not. Crockett at 1278 (*citing* 15 Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction § 3848 (1976)).

"When a trial court is presented with a motion to transfer venue based on the impropriety of the plaintiff's venue selection under section 47.011, the trial court must resolve any relevant factual disputes and then make a legal decision [as to] whether the plaintiff's venue is legally supportable." McDaniel Reserve at 508.

If the defendant sufficiently demonstrates that a plaintiff's choice of venue is improper and establishes the location of proper venue, the widely accepted practice in Florida courts is to transfer the case rather than dismiss it. Russomano v. Maresca, 220 So.3d 1269, 1271 (Fla. 4th DCA 2017).

The facts in this case illustrate precisely the reason a plaintiff's forum choice should not ultimately control. The Decedent was involved in a fatal accident in Putnam County. Liability is hotly contested. The non-party percipient witnesses, all of whom are employees of various governmental agencies, are located in or near Putnam County. As such, venue is proper and most convenient in that jurisdiction.

The instant case is similar to that presented in Pep Boys. Pep Boys involved a motor vehicle accident in Sarasota County that resulted in two fatalities. Pep Boys at 1162. The cause of the accident was an allegedly defective tire sold in Broward County by one of the six (6) defendants.

The Florida Highway Patrol troopers, Sarasota County Fire Department EMTs, and Sarasota County Paramedics personnel who assisted at the scene were all located in Sarasota County. Id. at 1164. The personal representative for the estate of the decedent filed suit in Broward County. Id. The defendants moved for the case to be transferred to Sarasota County, submitting affidavits from the first responders setting forth how costly and burdensome it would be for them to travel to Broward County for legal proceedings. Id. at 1164-1165. The personal representative opposed

the transfer and filed an affidavit stating that at the time of the accident, she was a resident of Broward County. Id. at 1165. The trial court denied the motions to transfer, and the defendants appealed. Id. at 1163-1164.

The Fourth District reversed the lower tribunal's order. The Fourth District pointed out that all the defendants supported the transfer, and the material witnesses to the accident and the resulting injuries were the emergency law enforcement and medical personnel, all of whom resided in Sarasota County. Id. at 1165-1166. The Fourth District rejected the personal representative's claim that the convenience of her expert witness was of utmost importance. Id. at 1166. The Court explained its position as follows:

It goes without saying that most expert witnesses travel for their work and are paid for doing so. There was no proof of any inconvenience to the expert witnesses in this case. This is in stark contrast to the affidavits of seven fact witnesses attesting to the inconvenience of having to travel to Broward County.

Id. The Court noted that "Florida courts have consistently found error in the denial of a motion to transfer where a vehicular accident occurs in a county other than the forum venue. Id. (*citing Morrill v. Lytle*, 893 So.2d 671, 673-74 (Fla. 1st DCA 2005)).

This Honorable Court in Burger King found that the trial court abused its discretion when it denied Burger King's motion to transfer venue to Broward County, where the action could have been filed originally. Burger King at 210. In

Burger King, plaintiff filed her wrongful death action in Dade County. Id. Burger King moved to transfer venue to Broward County, and in support of its motion to transfer, submitted the Pembroke Pines police report which showed that, of the more than twenty individuals named in the report, only one was a Dade resident, while the rest resided in Broward. Id. The police department which investigated the death, other police departments and rescue squads listed in the report, and the hospital where the deceased was taken are all located in Broward County. Id. The death occurred in Broward County, the plaintiff and twenty of the twenty-one witnesses reside in Broward County, and almost all the contacts (certainly all the *important* contacts) occurred in Broward County. Id. The only apparent contacts which Dade County has with this case is that defendant maintains an office here. This single contact with Dade County, standing alone, is indeed minimal, and appears to be even more so when contrasted with the Broward County contacts. Id. Clearly, transfer of this matter to Broward County best serves the convenience of the witnesses, as well as the plaintiff, under Section 47.122, with only a slight possible inconvenience to defendant. Id.

In the case at bar, the personal representative for the estate of the Decedent seeks to maintain the legal proceedings in the county wherein *she* resides, irrespective of the fact that the Captain and Special Operations District Commander for Group G of the Florida Highway Patrol executed an affidavit attesting to the fact

that it would be a burdensome, inconvenient, and financially difficult for the troopers who investigated the crash to be involved in legal proceedings in Miami-Dade County. The affidavit by Richard Cabrera, P.E., which Trujillo filed with the low tribunal is immaterial; Cabrera is an expert witness.²⁹ Furthermore, as in Pep Boys, *all* of the Defendants who have appeared in this action support the transfer to Putnam County.

Additionally, this Honorable Court in Peterson, found that the trial court abused its discretion by refusing to grant defendants' motion to change venue for the convenience of parties and witnesses from Dade County to Polk County. Peterson, Howell & Heather v. O'Neill, 314 So. 2d 808, 810 (Fla. Dist. Ct. App. 1975). This Honorable Court concluded that the purpose of the venue statutes, that the lawsuit should be tried in the area where the cause of action arose whenever consonant with the residence and convenience of the parties. Id.

Peterson involved a fatal collision in Polk County, Florida, where the deceased was taken to a hospital in Polk County, the accident was investigated by patrolmen assigned to Polk County, the two witnesses to the accident resided in Orange County and Seminole County, and the plaintiff nor defendant was domiciled in Florida. Id. at 809-810.

²⁹ Cabrera's office is located in Broward County, not Miami-Dade.

The facts in Peterson are analogous to the present case. Much like Peterson, Plaintiff was involved in a collision in Putnam County, the personnel from the law enforcement agencies who investigated the accident or rendered aid work were the Palatka Police Department, Putnam County Sheriff's Office, Florida Highway Patrol, or Putnam County Fire and Rescue Department, and the majority of the witnesses from the construction project which the Plaintiff alleges is related to the accident are located in or near Putnam County.

The Fourth District reached a similar conclusion more recently in Eagle Transport Corporation of North Carolina v. Roch-Hernandez, 324 So.3d 521 (Fla. 4th DCA 2021). In Eagle Transport, the personal representative of a decedent who died in a motor vehicle accident filed suit in Broward County, where one of the defendants had a principal address. Id. at 524. The defendants³⁰ moved to dismiss the action for improper venue or, alternatively, to transfer venue to Alachua County. The defendants argued that Alachua County was a more convenient forum because the accident had occurred there, and liability was contested. Ibid. The defendants were able to show the lower tribunal that the witnesses who were material to the element of liability, to wit, law enforcement officers, the medical examiner, and a toxicology expert, all resided in or near Alachua County. Id. at 523. Conversely, the personal representative had not identified any liability witnesses who resided in or

³⁰ The driver of the Eagle Transport vehicle was also named as a defendant.

near Broward County. Id. The Fourth District concluded that the defendants had satisfied their burden to establish the most convenient forum was Alachua County. Id. It is noteworthy that the court found it was sufficient that the defendants showed *most* of the material liability witnesses resided in or near Alachua County; it is not necessary for *all* of the liability witnesses to reside in or near the forum to which a case is to be transferred.

As in *Eagle Transport*, liability in this case is contested. The personnel from the law enforcement agencies who investigated the accident or rendered aid work were the Patka Police Department, Putnam County Sheriff's Office, Florida Highway Patrol, and Putnam County Fire and Rescue Department. However, no agencies from Miami-Dade County ever responded to the scene. In simple terms, most of the material liability witnesses identified by the Defendants work in or near Putnam County. Trujillo has not identified any liability witnesses who resided in or near Miami-Dade County.

The most instructive case on the issue of transfer of venue is the case recently decided by this Honorable Court in SMA Behavioral Health Services, Inc. v. Loewinger, 355 So.3d 988 (Fla. 3d DCA 2023). The decedent in SMA Behavioral suffered from mental health disorders and received ongoing psychiatric treatment. Id. at 989. He was arrested in Volusia County and admitted to the Volusia County jail following a probation violation. Weeks after being released, he attempted suicide

in Volusia County. Id. He ultimately passed way from his injuries in a hospital located in Volusia County. Id. The personal representative filed a wrongful death suit against the contractors which provided mental health treatment to incarcerated persons in the Volusia County jail, in addition to numerous individual medical practitioners. Ibid. The lawsuit was filed in Miami-Dade County, where one of the corporate contractors maintained its headquarters. Id.

This Honorable Court reversed and remanded the case for entry of an order transferring the case to Volusia County. As the Court explained:

After careful review, we conclude that Volusia County is a more appropriate venue for this case than Miami-Dade County. It is where all, or virtually all, of the alleged negligence and gross negligence occurred. Most of the witnesses and individual defendants reside in or near Volusia County. Given the fact that most, if not all, of the critical events occurred and most, if not all, of the fact witnesses reside in or near Volusia County, the location of Armor's corporate headquarters in Miami-Dade County does not negate Volusia County as the more appropriate forum.

Id. at 989-990.

JSO would submit to this Honorable Court that the same standard should be applied to the case currently before the Court. Putnam County is where all of the alleged negligence contributing to the accident occurred. Most of the liability witnesses reside or work in or near Putnam County. Moreover, *the singular known eyewitness, Kevin Kelley, resides in the county adjacent to Putnam County.* Given the fact that all of the critical events occurred in Putnam County, and most, if not all,

of the defendants are located outside of Miami-Dade County, Trujillo 's argument that La Cidra Trucking and its employees were residents of Miami-Dade County when the accident occurred does not negate Putnam County as the more appropriate forum.

"A trial court abuses its discretion when it denies a motion to transfer based on forum non conveniens where there is only an attenuated connection to a venue that bears no relation to the lawsuit's critical events." Water's Edge Dermatology, LLC v. Christopherson, 2023 WL 3856794, *2 (Fla. 4th DCA 2023). *See also* Braun v. Stafford, 529 So.2d 735, 736 (Fla. 4th DCA 1988) (transferring from county where only connection was a corporate office to county where cause of action occurred, and medical treatment was administered) *and* Botta at 609-610 (transferring from county where party's law firm was located to county where decedent lived and received treatment). The lower tribunal's orders should be reversed.

b. The interests of justice require that this case be transferred to Putnam County.

Fla. Stat. §47.122 permits the transfer of a case from one county to another in the interest of justice. As explained by the Fourth District:

The third factor, that of the interests of justice, is a catchall consideration including many considerations, and in some close cases this factor may be determinative. One consideration is the convenience of the attorneys which is usually accorded very little, if any, weight.... Other considerations include but are not limited to the avoidance of a

crowded court docket and the imposition of jury duty on an uninvolved community.

Pep Boys at 1165 (*citing* Hu v. Crockett, 426 So.2d 1275, 1279 (Fla. 1st DCA 1983)).

Over 25 years ago, when considering the transfer of a suit to the judicial circuit where the accident occurred the Florida Supreme Court held that the trial court was not precluded from dismissing an action based on forum non-conveniens, in part, when public interests are at stake. Kinney Sys., Inc. v. Cont'l Ins. Co., 674 So. 2d 86, 89 (Fla. 1996). The Supreme Court noted that a court must inquire about “whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources to it.” Id. at. 92 (quoting Pain v. United Technologies Corp., 637 F.2d 775, 771 (D.C. Cir. 1980)). The court also remarked that “[a]dministrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation.” Id. at 90.

This Honorable Court applied the precedent that was artfully laid out in Kinney to the Miami-Dade Circuit Court and its respective jury pool, holding:

[T]his Court now adopts both the literal and philosophical ethos of the Supreme Court wherein Florida should not be the forum for cases that, in reality, have no connection with Florida.

In this context, we extend the philosophical train of thought to its next and logical plane: Our district should not be a forum for cases that have little or no connection to Dade and Monroe counties. Therefore, it is the

stated policy of our Court to literally apply the doctrine of forum nonconveniens where there is little else other than the plaintiff's choice of venue and where witnesses reside in other more suitable venues.

It is "in the interest of justice," *that a Dade County jury, which is both a scarce and precious resource, should not be burdened with determining a case that has no connection with Dade County.*

Westchester Fire Insurance Co. v. Fireman's Fund Insurance Co., 673 So.2d 958, 959 (Fla. 3rd DCA 1996) (internal citations omitted, emphasis supplied). *See also* Water's Edge at *3 (an analysis of interests of justice should include a consideration as to whether the venue's courts are overloaded).

In Westchester, this Honorable Court affirmed the trial court's ruling to transfer venue in the interest of justice from Miami-Dade County to Hillsborough County, in relevant part because there was little else but the Plaintiff's choice of forum to tie the case to Miami Dade. Westchester at 959. Westchester is seamlessly analogous to the present matter. This Honorable Court should ultimately find, just as it did in Westchester, that a Dade County jury should not be burdened with determining a case that has no connection with Dade County and transfer the case to Putnam County.

In Water's Edge, the Fourth District held that transfer of venue was warranted on a basis of forum non conveniens underlining the statutory factor of "interests of justice." Water's Edge Dermatology, LLC v. Christopherson, No. 4D22-2209, 2023 WL 3856794, *3 (Fla. 4th DCA. 2023). The Fourth DCA parroted Pep Boys' interest

of justice observation that “Broward County is a larger, more populous county, has crowded dockets, and the community has virtually no connection to the case.” *Id.* at *3 (*citing Pep Boys* at 1166).

In Pep Boys, where a personal representative brought a wrongful death action against multiple defendants in the Seventeenth Judicial Circuit, but the deaths occurred in Sarasota County, the Fourth DCA found that the trial court abused its discretion in denying the defendant’s motion to transfer the venue to Sarasota County where the accident took place. Pep Boys, at 1163–64. The Fourth DCA began its well-founded opinion by simply stating, “[l]ocation, location, location.” *Id.*

Furthermore, in E.I. DuPont, the Second District considered whether “in the interest of justice” it would be too much of a burden on the Polk County Court to hear a case that has no nexus to the community. E.I. DuPont De Nemours & Co. v. Fuzzell, 681 So. 2d 1195, 1197 (Fla. Dist. Ct. App. 1996) (*citing Hu v. Crockett*, 426 So.2d 1275, 1280 (Fla. 1st DCA 1983)). While choice of venue is an important consideration, the trial court must balance this choice against the convenience of all the parties and the witnesses. *Id.* at 1197. By sworn affidavit, the appellants established that the majority of the witnesses resided in Lake County, along with the appellees. None of the witnesses live in Polk County. Furthermore, all of the allegations concerning exposure, damage, and treatment occurred in Lake County. Clearly, Lake County would be more convenient for the witnesses and the parties.

The Second District held that there was nothing in the case to connect the cause of action to Polk County other than the fact that the appellees' lawyer has an office in Polk County. Id. at 1197–98. Similarly, this Honorable Court should find that it is in the interest of justice to transfer this action to Putnam County. There is nothing in this case to connect the cause of action to Miami-Dade County, other than the fact that the Plaintiff and the Decedent's survivors (her children) reside in Miami-Dade County.

In addition to a Miami-Dade jury's lack of connection to this cause of action, Miami-Dade County is a larger, more populous county than Putnam County, with crowded court dockets. The United States Census Bureau indicates the population of Miami-Dade County is approximately 2.67 million.³¹ By contrast, Putnam County has a population of approximately 75,000.³² The Eleventh Judicial Circuit of Florida is the largest in the state and the fourth largest trial court in the nation.³³ The Miami-Dade Clerk of the Courts manages the largest and highest volume of court filings

³¹ United States Census Bureau, July 11, 2023 (www.census.gov/quickfacts/miamidadecountyflorida).

³² United States Census Bureau, July 11, 2023 (www.census.gov/quickfacts/putnamcountyflorida).

³³ Eleventh Judicial Circuit of Florida - About the Court (<https://www.jud11.flcourts.org/About-the-Court/About-Us>)

and official records in the State of Florida.³⁴ In comparison, Putnam County processes approximately 120,000 cases *annually*.³⁵

Although this Court does not require the lower tribunal to apply a fourth prong to the three (3) part test under Fla. Stat. §47.122 (2022), the contrast between the two court systems could not be more evident. In the spirit of Kinney, the case should be transferred to the venue with more available judicial resources. In the case sub judice, that venue is in Putnam County. Kinney at 86.

The issue of the burden on the Miami-Dade court system was addressed by counsel for JSO at the April 27, 2023 hearing. (App. 1406 to App. 1407) However, the lower tribunal did not include *any* analysis or evaluation of the subject in its orders. (App. 1552 to App. 1561)

The trial court's disregard for the logistics of litigating the case in Putnam County versus Miami-Dade County should not be condoned. "It is an abuse of discretion for a trial judge, notwithstanding such an adequate showing, to retain jurisdiction on the basis of a willingness to have the case added to his docket. This is so because denial of such a motion where the elements are present upon which the doctrine should be applied amounts to a refusal to give due effect to the law of this

³⁴ Miami-Dade County Clerk of the Courts About (<https://www.miamidadeclerk.gov/clerk/about.page>)

³⁵ Seventh Judicial Circuit Court of Florida Home (<https://circuit7.org/>)

state under which the doctrine of forum non conveniens is accepted." Southern Railway Company v. McCubbins, 196 So.2d 512, 516-17 (Fla. 3d DCA 1967).

The uncontradicted evidence in this case and relevant case law further solidifies that the action should be transferred to Putnam County. The lower tribunal's orders should therefore be reversed.

CONCLUSION

Fla. Stat. §47.011 (2022) requires that actions be brought in the county where the defendants reside, where the cause of action accrued, or where the property in litigation is located. None of the Defendants in the instant case reside in Miami-Dade County. Trujillo has repeatedly asserted that La Cidra Trucking and its two employees are residents of Miami-Dade County in order to maintain the litigation in her preferred venue. However, neither Ruben Sanchez nor Efrain Sanchez, and La Cidra by extension, contributed to the incident which resulted in the Decedent's injuries. They are not true defendants, but rather decoys used to achieve Trujillo's ends.

Assuming, *arguendo*, that La Cidra Trucking, Ruben Sanchez, and Efrain Sanchez were residents of Miami-Dade County, Trujillo's premise fails. The overwhelming majority of the witnesses in this action are not residents of Miami-Dade County. The law enforcement personnel, emergency medical services, and the eyewitness to the accident are located in or near Putnam County. As such, the venue

most convenient for the percipient and liability witnesses is Putnam County, where the cause of action accrued.

Finally, the instant litigation should be transferred to Putnam County in the interest of judicial economy. Miami-Dade County dockets are overcrowded. Putnam County dockets are a fraction of those in Miami-Dade County. The case should be transferred to a venue with greater availability in the dockets.

In light of the foregoing, the lower tribunal abused its discretion when it entered the Order Denying Motions to Transfer Venue Pursuant to Doctrine of Forum Non Conveniens Under Fla. Stat. §47.122 for Intrastate Transfer Filed by Defendant Imperial Paving, LLC, and All Related Motions of the Joining Defendants, and the Order Denying Motion to Dismiss for Improper Venue Filed by Defendant Imperial Paving, LLC, and All Related Motions of the Joining Defendants.

WHEREFORE, the Appellants, JSO SERVICES, LLC and JOHN S. ODOM, respectfully request this Honorable Court enter an order dismissing the First Amended Complaint, thereby permitting the wrongful death action filed by the Plaintiff in Putnam County to move forward in the most appropriate venue. In the alternative, JSO SERVICES, LLC and JOHN S. ODOM would respectfully request the entry of an order reversing and remanding the lower tribunal's orders as to the issue of venue, requiring the trial court to transfer the case to Putnam County.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-served through the Florida Courts E-filing Portal to: **Karel Remudo, Esq.**, Remudo Law Firm, 782 NW Le Jeune Road, Suite 530, Miami, FL 33126 at courtdocuments@remudolaw.com (counsel for Plaintiff); **Amado Alan Alvarez, Esq.**, The Alvarez Trial Law Firm, The Concorde Town Building, 66 West Flagler Street, 12th Floor, Miami, FL 33130 (co-counsel for Plaintiff); **Geoffrey B. Marks, Esq.**, The Law Offices of Geoffrey B. Marks, 6960 Sunrise Drive, Coral Gables, FL 33133 at gmarks@gbmlegal.com and service@gbmlegal.com (counsel for Appellee); **Michael P. Maguire, Esq.**, Maguire and Friend P.A., 5975 Sunset Drive, Suite 502, South Miami, FL 33143 at lawpro70@aol.com; lawfirm2020@gmail.com (Limited Appearance on behalf of non-party Karla Diaz, daughter of Deceased Carlos Diaz); **Ela M. Hernandez, Esq. and Gina Romanik, Esq.**, Mintzer, Sarowitz, Zeris, Ledva & Meyers, LLP; the Waterford at Blue Lagoon, 1000 NW 57th Court, Suite 300, Miami, FL 33126 at ehernandez@defensecounsel.com; gromanik@defensecounsel.com; lcleveland@defensecounsel.com; miamipleadings@defensecounsel.com (counsel for Captain D's LLC, PF Purchaser and Glenn Wilson); **Carla M. Sabbagh, Esq. and Michael S. Rywant, Esq. and Matthew M. Holtsinger, Esq.**, Rywant, Alvarez, Jones, Russo & Guyton, P.A., 2440 SW 76th Street, Ste. 130, Gainesville, FL 32608 at msrywant@rywantalvarez.com; service@rywantalvarez.com; ebridgewater@rywantalvarez.com; mholtsinger@rywantalvarez.com; smcgloun@rywantalvarez.com; csabbagh@rywantalvarez.com; dbridgewater@rywantalvarez.com (counsel for Imperial Paving) **Samuel Basch, Esq., Joe Goldberg, Esq., and Tyler J. Canfield, Esq.** Cole Scott & Kissane, PA, 9150 South Dadeland Boulevard, Suite 1400, Miami, FL 33256 at joe.goldberg@csklegal.com; samuel.basch@csklegal.com; tyler.canfield@csklegal.com; nicholas.molina@csklegal.com; linn.signori@csklegal.com; carol.joslin@csklegal.com; silvia.navarrete@csklegal.com (counsel for Ruben Efrain Sanchez); **H. Jacey Kaps, CIPP/US, PCIP**, Rumberger, Kirk & Caldwell, P.A., Brickell City Tower, Suite 3000, 80 Southwest 8th Street, Miami, FL 33130 at jkaps@rumberger.com; docketingmiami@rumberger.com and jkapssecy@rumberger.com AND **Michael L. Forte, Esq.**, Rumberger, Kirk & Caldwell, P.A., 100 North Tampa Street, Suite 2000, Tampa, FL 33602-5853 at mforte@rumberger.com; docketingtpa@runberger.com; and mfortesecy@rumberger.com (Counsel for T. Disney Trucking and Grading, Inc.); **Shawn J. Davis, Esq.**, Falk, Waas, Hernandez, Solomon, Mendlestein & Davis, P.A., 1900 NW Corp. Blvd, Suite 210-E, Boca Raton, FL 33431 at serviceSDavis@falkwaas.com (counsel for Ruben Sanchez and

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the foregoing adheres to the format and content requirements as set forth in Fla. R. App. P. 9.210.

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