

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

**CASE NO. 3D23-2054
L.T. CASE NO. 23-020556**

THE PALMS PORTFOLIO, LLC

Appellant/Defendant,

v.

**RE 18 LLC, MATT PRESS REV. TRUST,
NISSAN REAL ESTATE SF LLC,
ASSETS EXCHANGE LLC, HELLER
AND COMPANY, INC., MAXROI REAL
ESTATE LLC, YL REAL ESTATE
INVESTMENTS 3, LLC, and
RIVERSIDE ABSTRACT, LLC,**

Appellees/Plaintiffs.

APPELLEES' ANSWER BRIEF

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STATEMENT OF THE CASE

On November 16, 2023, appellant, The Palms Portfolio LLC (“Palms,” “Defendant” or “Appellant”), defendant below, filed a Notice of Appeal from a non-final Order Denying its Amended Motion to Transfer Venue, rendered on October 17, 2023 (“Order Denying Motion to Transfer”). Appx. 240-47.

Appellees’ Appendix to the Answer Brief will be referenced herein as “Appx. ”, where “ ” refers to the specific page of the Appellees’ Appendix.

STATEMENT OF THE FACTS

The underlying lawsuit is predicated upon a Membership Interest Purchase Agreement (“MIPA”) entered into by and between Appellant, as the Purchaser, and the Appellees, as the Sellers. Appx. 12-62. For ease of reference, “Sellers” will be used interchangeably with “Appellees,” and “Purchaser” will be used interchangeably with “Appellant.”

The Sellers and Purchaser entered into the MIPA in April 2023. Appx. 12-62. As set forth in the MIPA, the Sellers hold membership interests in three limited liability companies, to wit: Windrush FM Apartments LLC; Lost Tree Apartments LLC, and Heronwood Apartments LLC (collectively, the “Companies”). The Companies own a 100% fee simple interest in certain real properties located in Lee County. The MIPA contemplates the Purchaser’s purchase of these membership interests. Appx. 20-21.

The MIPA refers to a purchase price of \$36,500,000.00. Appx. 21. Pursuant to Section 3.02 thereof, Purchaser was obligated to place in escrow an earnest money deposit (“Earnest Money Deposit”), and to pay the balance of the purchase price on the closing date, without financing contingency. Appx. 21-22. Purchaser placed the Earnest Money Deposit into escrow. Due to various issues, the parties went on to execute a First Amendment to the MIPA and a Second Amendment to the MIPA. Appx. 64-67. Via the amendments, closing was extended to July 13, 2023. *Id.*

Closing did not happen to July 13, 2023. As of that time, Purchaser had not satisfied any closing obligations nor moved towards closing. Purchaser also had not placed the balance of the purchase price into escrow. Appx. 64-72. Under the circumstances, Sellers notified the Purchaser of default under the MIPA. Appx. 76-79. Sellers also asked for disbursement of the Earnest Money Deposit, in accordance with the following provisions:

(c) If Escrow Agent receives a notice signed by Purchaser or Sellers (the “**Noticing Party**”) stating that this Agreement has been canceled or terminated and that the Noticing Party is entitled to the Earnest Money Deposit, or that the other Party hereto (the “**Non-Noticing Party**”) has defaulted in the performance of its obligations hereunder, Escrow Agent shall deliver a copy of such notice to the Non-Noticing Party. The Non-Noticing Party shall have the right to object to such request for the Earnest Money Deposit by notice of objection delivered to and received by Escrow Agent within ten (10) days after the date of Escrow Agent’s delivery of such copy to the Non-Noticing Party, but not thereafter. If Escrow Agent shall not have so received a notice of objection from the Non-Noticing Party, Escrow Agent shall deliver the Earnest Money Deposit to the Noticing Party. If Escrow Agent shall have received a notice of objection from the Non-Noticing

Section 18.02 Sellers' Remedies in Event of Purchaser's Breach or Default.

(a) THE PARTIES AGREE THAT SELLERS' SOLE REMEDY, AT LAW OR IN EQUITY, IN THE EVENT OF A MATERIAL DEFAULT OR BREACH BY PURCHASER, IS FOR SELLERS TO KEEP THE EARNEST MONEY DEPOSIT AND ALL INTEREST EARNED THEREON AS LIQUIDATED DAMAGES (NOT AS A PENALTY), AND THEREAFTER THIS AGREEMENT SHALL TERMINATE AND SELLERS SHALL HAVE NO FURTHER RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT EXCEPT FOR THOSE THAT ARE EXPRESSLY STATED TO SURVIVE THE TERMINATION HEREOF. THE PARTIES AGREE THAT THESE LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER RELIEF TO WHICH SELLERS MIGHT BE ENTITLED BECAUSE OF PURCHASER'S BREACH OR DEFAULT AND THAT SELLERS HEREBY WAIVE ANY RIGHT THEY MIGHT HAVE HAD TO AN ACTION FOR SPECIFIC PERFORMANCE.

Appx. 25, 47. The Purchaser objected to the release of the Earnest Money Deposit, even though it had defaulted in the performance of its obligations under the MIPA. Appx. 7.

On July 31, 2023, Sellers commenced the underlying lawsuit, alleging Purchaser had breached the MIPA and seeking recovery of the Earnest Money Deposit. Appx. 3-79. Sellers alleged, in pertinent part, the failure to perform certain obligations under the MIPA and the failure to release the Earnest Money Deposit to the Sellers the default in performance. Appx. 34-39.

Shortly after the underlying lawsuit was filed, the Purchaser commenced a separate action against the Sellers for specific performance, in Lee County, Florida. Appx. 82.

Then, on September 12, 2023, Purchaser filed its Amended Motion to Transfer, arguing Lee County is the proper venue for the underlying lawsuit

because that is the location of real properties owned by the Companies and that is where its specific performance action had been commenced under the local action rule. Appx. 80-84.

On September 14, 2023, the office of the counsel for the Appellant requested hearing dates for its motion to transfer, indicating fifteen minutes were needed for the hearing. Upon agreement of the parties, the lower court issued a Notice of Special Set Hearing providing for a 15-minute hearing on the transfer motion on October 5, 2023. Appx. 205-09; 173-75.

On September 27, 2023, Appellees filed a detailed response in opposition to the motion to transfer. Appx. 85-172. Included in the opposition was an affidavit from an authorized representative of the Appellees. Appx. 94-99. Appellant did not file a reply, separate legal memoranda, or any affidavit testimony.

The hearing on the motion to transfer took place on October 5, 2023. 176-99. After counsel presented their arguments, the lower court indicated it was “going to look at a little deeper into this,” and asked for the submission of competing orders on October 11, 2023 by 5 pm, including the case law being relied upon and the basis of the argument. Appx. 196.

On October 12, 2023, both sides submitted proposed orders in Microsoft Word via e-mail to the lower court’s judicial assistant, due to the

inability to simply upload them via the case management system. Appx. 200-22. Each side was copied on the communications to the judicial assistant, such that the competing versions were immediately accessible to each party. Appx. 200-22.

At no point after the submission of the proposed orders on October 11, 2023 did Appellant take issue with the form or substance of Appellees' version. No e-mails or letters to this effect were sent, not to counsel for Appellees and not to the lower court.

On October 17, 2023, approximately six days after submission of the competing orders, the lower court entered the Order Denying Motion to Transfer. Appx. 234-39. The version entered by the court corresponded to the version submitted by the Appellees. Appx. 223-228. Again, Appellant took no issue with the form or substance of the entered order, and simply commenced this appeal thirty days later.

SUMMARY OF ARGUMENT

The Order Denying Motion to Transfer should be affirmed.

Even if the trial court adopted Sellers' proposed order verbatim, that is not a violation of the principles of *Perlow v. Berg-Perlow*, 875 So. 2d 383, 390 (Fla. 2004) nor other cases that rely upon *Perlow*. The facts of this case are distinguishable from the facts of *Perlow*; most notably, in the case at bar, the Purchaser had complete access to the Sellers' proposed order and had ample opportunity to object to the same before it was entered. Indeed, the Purchaser had ample opportunity to challenge the order after it was entered, to raise any *Perlow* concerns. Purchaser failed to do so. Assuming, *arguendo*, there is any *Perlow*-related defect here, the denial of the Motion to Transfer is supported by the law. This Court has ample standalone reason to affirm the denial.

The trial court properly ruled that venue is proper in Miami-Dade County. As a preliminary matter, Purchaser does not reside in Florida, and does not have the benefit of forcing the Sellers to sue it in one of the locations set forth in the general venue statute. Even if Purchaser somehow held that benefit, the record reflects that the breach of the contract that is the subject of this action occurred in Miami-Dade County. This is in line not only with the "place of payment rule," but also the fact that

the MIPA calls for the payment of escrow funds to the Sellers, who are Florida entities, in the event of a default. This is further in line with the principle that once a party plaintiff chooses a venue to litigate its case, that is presumed to be correct, and a complaint is sufficient to allege venue unless a defendant by affidavit challenges venue. See *I-Net Techs., Inc. v. Salazar*, 82 So. 3d 1007, 1008 (Fla. 4th DCA 2011). That presumption exists here and has never been challenged by any affidavit. Having never met its own burden, Purchaser is not entitled to the transfer relief it has sought.

STANDARD OF REVIEW

“When a party seeks to transfer or dismiss for improper venue under section 47.011, Florida Statutes (2015), the trial court's legal conclusions on venue are reviewed *de novo*.” [Hartford Fire Ins. Co. v. Smith](#), 203 So. 3d 1013, 1015-16 (Fla. 4th DCA 2016). “[W]here there are no material facts in dispute and proper venue turns on a question of law, we review such an order on *de novo*.” [Huber v. Huber](#), 314 So. 3d 363, 365 (Fla. 3d DCA 2020). See also [Tobin v. A&F Engineering](#), 979 So. 2d 967, 968 (Fla. 3d DCA 2008) (where the facts relating to a plaintiff’s choice of venue are not in dispute, a trial court’s order on a motion to transfer venue turns on a question of law and is reviewed *de novo*).

The standard of review for the denial of a motion to transfer venue “is whether the trial court's factual determinations are supported by substantial, competent evidence or are clearly erroneous. The trial court's legal conclusions are reviewed *de novo*.” [I-Net Techs.](#), 82 So. 3d at 1008 (citing [Vrchota Corp. v. Kelly](#), 42 So. 3d 319, 321 (Fla. 4th DCA 2010)).

ARGUMENT

I. THE LOWER COURT'S ADOPTION OF THE APPELLEES' PROPOSED ORDER DOES NOT WARRANT REVERSAL.

A. *Perlow* is factually distinguishable from this case.

Appellant argues the Order Denying Motion to Transfer should be vacated pursuant to [Perlow v. Berg-Perlow, 875 So. 2d 383, 383 \(Fla. 2004\)](#). However, *Perlow* does not govern this case, and is not a cause for reversal.

Perlow was a dissolution of marriage action. *Perlow*, 875 So. 2d at 383. Following an extensive fifteen-day trial, and two hours after the conclusion of closing arguments, the trial court entered a twenty-five-page proposed final judgment that had been submitted by the wife's counsel. *Id.* at 385-86. The judgment was signed without modification by the trial judge, and thus adopted verbatim. *Id.* The trial judge did not make any findings of fact or conclusions of law on the record, but also had "actively discouraged" the husband from filing a proposed judgment. *Id.* at 388. The trial judge did not provide the husband with the opportunity to comment or to object. *Id.* at 390. The Florida Supreme Court concluded that the lower court had erred, noting as follows:

While a trial judge may request a proposed final judgment from either or both parties, the opposing party must be given an

opportunity to comment or object prior to entry of an order by the court. Moreover, the better practice would be for the trial judge to make some pronouncements on the record of his or her findings and conclusions in order to give guidance for preparation of the proposed final judgment.

Id.

The facts of *Perlow* do not arise in the instant case. The lower court presided over the hearing and then directed both sides to submit proposed orders, with case law. Appx. 196. Appellees and Appellant had equal access to their respective proposed orders immediately, because they were submitted via e-mail. Appx. 200-22. Appellant could have objected to the language of Appellees' proposed order, but never did, not in the subject e-mail chain, in any other e-mail correspondence, or by way of motion with the court. There was ample opportunity to both comment and assert an objection, but Appellant did neither.

Importantly, *Perlow* did not establish a bright-line rule against the adoption of a party's proposed judgment. See *M.D. v. Dep't of Child. & Fam. Servs. (In the Interest of T.D.)*, 924 So. 2d 827, 829 (Fla. 2d DCA 2005). Nor did it hold that a trial court's adoption of a proposed final judgment verbatim is improper per se. *Strand v. Escambia Cty.*, 992 So. 2d 150, 155 (Fla. 2008). Thus, the Florida Supreme Court in *Strand* reiterated *Perlow's* holding that "[w]hile a trial judge may request a proposed final judgment from either or both parties, the opposing party must be given an

opportunity to comment or object prior to entry of an order by the court.”
Strand, 992 So. 2d at 155 (quoting *Perlow*). Again, here, Appellant had ample opportunity, from the time of submission of the proposed orders to the date of the entry of Appellees’ proposed order, to comment and object. It did not.

In *Strand*, the Florida Supreme Court rejected the argument that a circuit court’s adoption of a proposed final judgment provided by one of the parties had been an improper delegation of its authority under *Perlow*, noting as follows:

Rather than ruling within hours of the hearing as occurred in *Perlow*, the circuit court in this case deliberated for six weeks before adopting the County’s proposed order. Although the trial court did not specifically ask Dr. Strand for a proposed final judgment, the circuit court reserved judgment until receiving legal memoranda from the parties, thereby giving Dr. Strand an opportunity to object and to propose a final order. Thus, Dr. Strand was afforded a meaningful opportunity to review the County’s proposed final judgment, make objections, and make his own proposals. Therefore, the circuit court’s adoption of the County’s proposed final judgment was not improper.

Strand, 992 So. 2d at 155. In the case at bar, the lower court asked the parties for their proposed orders and did not rule until several days after all such orders had been received. Appx. 200-22; 234-39. Further, by the time the orders were submitted, the lower court already had in its possession Purchaser’s motion to transfer, and Sellers’ legal memoranda. Appellant

could have made a request to submit additional memoranda, but it did not. Appellant expressed no objection and did not make any comments upon the Appellees' version of the order. Appellant's failure to lodge any objection, or make any comment, was not a result of a lack of meaningful opportunity to respond, review, and object but rather a result of its own chosen inaction.

The instant case is factually closer to other cases where district courts have confirmed the inapplicability of *Perlow*. See, e.g., *Beharry v. Drake*, 52 So. 3d 790, 792 (Fla. 5th DCA 2010) (noting *Perlow* did not warrant reversal of a final judgment where the trial court received proposed final judgments from both parties and did not enter its final judgment until six days after the submission of the proposed judgments, and the record reveals no facts to support any claim of impropriety on the part of the trial court); *Ginnell v. Pacetti*, 31 So. 3d 217, 219 (Fla. 4th DCA 2010) (rejecting claim that final judgment violated *Perlow* because "unlike the Judge in *Perlow*," the lower court had provided the parties with the opportunity to submit proposed orders" without discouraging appellant from doing so); *In the Interest of T.D.*, 924 So. 2d at 831 (noting that the presiding judge gave all parties sufficient time after the trial to prepare and submit judgments; waited seven days after receiving their proposals to announce his ruling,

thereby providing losing party with the ample time to object to the other side's submission, but no objections were forthcoming).

Appellant's reliance upon *King v. Farah & Farah, P.A.*, 358 So. 3d 1271, 1272 (Fla. 5th DCA 2023) is misplaced. In *King*, the trial judge specifically instructed the parties to not circulate their proposed orders to each other, thereby directly affecting the ability of both sides to object to the orders of the other. 358 So. 3d at 1272. The trial judge there did not provide the opportunity to comment or object prior to entry of the order, in violation of *Perlow*. That is not what happened in the case at bar, which is why reversal is not warranted. Further, in *King*, the trial judge took two hours to adopt a factually and legally detailed forty-page final summary judgment order, whereas the lower court here took several days following a relatively brief hearing, and already had the benefit of legal memoranda. *Id.* at 1271.

Also misplaced is the Appellant's reliance upon *West v. West*, 228 So. 3d 727, 728 (Fla. 5th DCA 2017). *West* was a marital dissolution proceeding where the husband submitted a final judgment ex parte, which the judge adopted. *Id.* at 728. Given the ex parte submission, the wife had no opportunity to review, comment on, or object to any aspect of the proposed judgment, which was entered with errors. *Id.* Contrary to *West*,

Appellant here most certainly had a meaningful opportunity to review Appellees' version and to make objections. The record is devoid of Appellant exercising such right at any point in time. Accordingly, there is nothing improper about the lower court's adoption of the Appellees' proposed order.

Ultimately, the *Perlow* argument Appellant is raising on appeal could have been promptly addressed with the lower court, via correspondence or via motion practice. Appellant failed to do either.

Because there is no evidence whatsoever of the lower court's purported impropriety or failure to conduct an independent judicial analysis, and the facts of this case do not correspond to *Perlow* or other similarly situated cases, Appellant's *Perlow* attack should be rejected outright.

B. Assuming, arguendo, that the trial court delegated its decision-making authority, the denial of the Motion to Transfer should nevertheless be affirmed.

Affirmance is appropriate under the tipsy coachman doctrine.

Under the tipsy coachman principle, “[i]f a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.” *Dade Cty. Sch. Bd. v. Radio Station Wqba*, 731 So. 2d 638, 644 (Fla. 1999) (collecting various case law

reflecting adherence to this principle). See also *Sousa v. Zuni Transp., Inc.*, 286 So. 3d 820, 822 (Fla. 3d DCA 2019).

The principle applies even in the *Perlow* context. See *Funderdome v. Woolbright Dev.*, 358 So. 3d 1250, 1252 (Fla. 4th DCA 2023) (affirming a summary judgment order based upon the tipsy coachman doctrine notwithstanding a *Perlow*-related issue involving violation of *Perlow*'s proposed order requirements). Even if this Court finds any fault with the trial court's reasoning on account of *Perlow*, this Court can nevertheless affirm the lower court's decision denying the request to transfer venue if it is supported by the record—which it is. As argued below, there are multiple theories that support the trial court's denial of the Appellant's transfer request. As a matter of law, and without even delving into any evidentiary matters, the motion was properly denied.¹

II. THE TRIAL COURT PROPERTY UPHELD VENUE IN MIAMI-DADE COUNTY.

A. Venue is proper in Miami-Dade County by operation of Section 20.09 of the MIPA.

Section 20.09 of the MIPA provides, in pertinent part, as follows:

¹ Assuming, arguendo, that the lower court's reference to *Mabie v. Garden Street Management Corporation*, 397 So. 2d 920, 921 (Fla. 1981) was misplaced, it was clearly not the sole basis for the lower court's ruling. The Court has before it multiple other legal theories that warrant affirmance.

TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS OR **TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 20.09.**

(emphasis added). Section 20.09 required the Appellees to bring suit in Florida, which they did. Appellees chose Miami-Dade County as the venue for their breach of contract action. The express language of Section 20.09 precludes Appellant from objecting to that chosen venue. *See supra*. As a matter of contract, the lawsuit was properly filed in Miami-Dade County and should continue to be litigated there.

B. Venue is proper in Miami-Dade County by operation of Fla. Stat. § 47.011 because Appellee is a New Jersey entity, i.e. a non-resident.

Fla. Stat. § 47.011, the general venue statute, provides that actions shall be brought only in the county (1) where the defendant resides, or (2) where the cause of action accrued, or (3) where the property in litigation is located. *See Sales v. Berzin, 212 So. 2d 23, 24 (Fla. 4th DCA 1968)*. The statute does not apply to non-residents. *Id.* “By removing nonresidents from the scope of the legislatively created venue privilege, a nonresident over whom personal jurisdiction can be obtained consistent with constitutional considerations can, at a plaintiff's election, be sued in any

county in this state, subject only to the doctrine of forum non conveniens as codified in section 47.122, Florida Statutes.” *Holton v. Prosperity Bank of St. Augustine*, 602 So. 2d 659, 662 n.2 (Fla. 5th DCA 1992).

By Appellant’s own admission, it is not a Florida resident; it is a New Jersey limited liability company. Appx. 230-31. As such, it was not entitled to accommodation under the general venue statute. For this reason alone, the denial of the Motion to Transfer was correct.

C. Even if Appellant fell within the scope of the general venue statute, venue was satisfied under Fla. Stat. § 47.011 because that is where Appellees’ cause of action of breach of contract accrued.

Appellant argues that the allegations of the Complaint are insufficient to establish venue. However, “[a] plaintiff’s venue selection is presumed to be correct and will not be disturbed on appeal “as long as that selection is one of the statutory alternatives” *Intercapital Funding Corp. v. Gisclair*, 683 So. 2d 530, 532 (Fla. 4th DCA 1996) (quoting *Oliver v. Severance*, 542 So. 2d 408, 409 (Fla. 1st DCA 1989)). Moreover, “[a] complaint is sufficient to allege venue, unless a defendant, by affidavit, challenges venue. Then, the burden shifts to the plaintiff to establish the propriety of the venue selected.” *I-Net Techs.*, 82 So. 3d at 1008. Here, Appellant filed a breach of contract action and noted in the Complaint that venue is proper under the MIPA. Appx. 4. Moreover, the MIPA references payment of the Earnest

Money Deposit to the Sellers. Appx. 25. Against that background, Appellant has challenged venue superficially, without ever filing any affidavit. In effect, while Appellees met their burden below, Appellant did not. Accordingly, the complaint is deemed to have sufficiently alleged venue.

Fla. Stat. § 47.011 “affords the defendant a privilege to be sued in one of the three specified locations, but does not give the defendant a right to elect which of the locations may be most convenient for him. The election of the place for the suit reposes in the plaintiff, and may not be dictated by the defendant, provided the election is properly exercised under the statute.” See *Sales*, 212 So. 2d at 24 (citations omitted). Accordingly, if the Appellees argue venue is proper in Miami-Dade County, Appellant cannot force venue transfer to Lee County because that may be more convenient for it. Indeed, the transfer is not appropriate regardless of the filing of a specific performance action in Lee County, as Appellant was not required to file its specific performance action there and could have just as easily counterclaimed for the same in Miami-Dade County. See *Jutagir v. Marlin*, 453 So. 2d 503, 504 (Fla. 3d DCA 1984) (“[A]n action for specific performance of an agreement to sell land is purely an in personam action which need not be brought in the county where the land is located.”). See also *Sales v. Berzin*, 212 So. 2d 23, 24 (Fla. 4th DCA 1968) (when a

complaint is for the payment of money, there is no “property in litigation” and the third alternative location specified in the venue statute is not available).

Actions for breach of contract, for venue purposes, accrue where the breach occurred. See *Schultz Bldrs. & Pools, Inc. v. Icon Welding & Fabrication, LLC*, 370 So. 3d 355 (Fla. 2d DCA 2023). A “place of payment venue rule applies for the breach of contract to pay money.” *Id.* (citing *Dep’t of Transp. v. Cone & Graham, Inc.*, 884 So. 2d 224, 226 (Fla. 2d DCA 2004)). “If a plaintiff alleges breach of a covenant to pay money due or already earned under a contract, the cause of action accrues where performance of the act of payment was to occur.” *Dep’t of Transp.*, 884 So. 2d at 226; *Schultz Bldrs. & Pools, Inc.*, 370 So. 3d at 355.

“Additionally, where . . . a contract involves the payment of money and the contract fails to specify the place of payment, payment is due where the creditor resides.” *Schultz Bldrs. & Pools, Inc.*, 370 So. 3d at 355. This rule applies “when a debtor-creditor relationship exists between the plaintiff and defendant and the promise sued on is for the payment of a specified amount of money,” i.e. the damages are liquidated. See *Koslow v. Sanders*, 4 So. 3d 37, 38 (Fla. 2d DCA 2009). Damages are “liquidated” “[w]hen an amount due is fixed by contract” and “when the proper amount

to be awarded can be determined with exactness from the cause of action as pleaded.” See *Schultz Bldrs. & Pools, Inc.*, 370 So. 3d at 355 (citation to definitions from various sources).

Appellant argues that payment was not due and owing in Miami-Dade County, and thus the cause of action could not accrue in Miami-Dade County. However, as already argued above, Appellant as a non-Florida entity cannot seek transfer under 47.011, and Appellant clarified that transfer was not for purposes of convenience. Appx. 197.

Setting that aside, among the Appellant’s breaches is the failure to consent to release of a liquidated amount, i.e., the Earnest Money Deposit, to the Sellers, several of whom are based in Miami-Dade County. Appx. 3-4. That is not only where funds were due to be paid under the contract, see MIPA at section 3.02(b) referring to payment of balance of purchase price to Sellers, but also where the Earnest Money Deposit was supposed to be released. See MIPA at section 18.02(a) (sellers’ remedy in the event of a material default or breach by the purchaser is “for sellers to keep the earnest money deposit and all interest earned thereon”). This language signifies payment was due in Miami. Assuming there is any ambiguity in this language, which Appellant does not argue, payment is still due—as a matter of Florida law—where the creditor resides. See *Schultz Bldrs. &*

Pools, Inc., 370 So. 3d at 355. The Complaint confirms that several of the Appellees reside in Miami-Dade County. Appx. 3-4. One way or the other, venue is proper in Miami-Dade County.

Appellees offered affidavit testimony as part of their response in opposition to the Motion to Transfer, which solidified that payment of the purchase funds were due to be paid in Miami. Appx. 98. However, there is no indication on the record here that the trial court made its ruling based upon the affidavit testimony. The Complaint, along with the MIPA, set forth sufficient allegations to establish that the breach of contract occurred in Miami-Dade County. The record is devoid of any affidavit or other filing by the Appellant capable of defeating those allegations. As a matter of contract and basic principles of pleading, and without even considering any affidavits, the lower court properly confirmed venue lies in Miami-Dade County.²

² Appellant either faults the lower court for not holding an evidentiary hearing, or for having one inappropriately. To the extent Appellant faults the lower court for not holding an evidentiary hearing, Appellees note that Appellant never requested an evidentiary hearing. Appellant never filed any affidavit so as to create a triable issue on venue. To the extent Appellant claims the lower court engaged in an improper evidentiary hearing, which is erroneous, Appellant waived this argument by never bringing that argument before the lower court. "[I]t is not appropriate for a party to raise an issue for the first time on appeal." *Sunset Harbour Condominium Ass'n v. Robbins*, 914 So. 2d 925 (Fla. 2005) (citations omitted). "In order to be preserved for further review by a higher court, an issue must be presented

CONCLUSION

For the foregoing reasons, the Order Denying Motion to Transfer Venue should be affirmed.

to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Id.* at 92.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served upon the following parties/counsel on this day, January 29, 2024 as set forth below.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Arial, 14-point font, in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Yanina Zilberman