

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

CASE No.: 2D2024-1780

ARC GLOBAL INVESTMENTS II LLC AND PATRICK ORLANDO,

Appellants/Defendants,

v.

DIGITAL WORLD ACQUISITION CORPORATION, ET AL.,

Appellees/Plaintiffs.

On Appeal From the Twelfth Judicial Circuit, Sarasota County,
Florida, L.C. No.: 2024-CA-001061

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Introduction

This case does not belong in Sarasota County, Florida. Before any lawsuit was filed, counsel for Appellants ARC Global Investments II LLC (“ARC II”) and Patrick Orlando (“Orlando”) (collectively the “ARC II Defendants”) shared a draft complaint to be filed immediately in Delaware chancery court with counsel for Appellees Digital World Acquisition Corporation (“DWAC”) and Trump Media & Technology Group Corporation (“TMTG”) (collectively “Trump Media”). Trump Media’s former counsel pleaded with ARC II’s counsel not to file until the parties could talk settlement. ARC II agreed and postponed the Delaware filing. But it was all a ruse. Trump Media quickly filed its own Complaint in Sarasota County raising the same disputes ARC II asserted in its Delaware Complaint and abandoned all settlement discussions.

ARC II filed the Delaware case it always intended and then moved in the trial court below to dismiss, or alternatively to transfer or stay, Trump Media’s Sarasota County case for improper venue, under the principle of priority, and for *forum non conveniens*. The trial court erroneously denied ARC II’s motion. This Court should reverse

with instructions to dismiss this action or alternatively to stay or transfer this action.

Statement of the Case and of the Facts

A. The ARC II Defendants prepare to file an action in Delaware; Trump Media pleads with them to wait and then files in Florida.

DWAC is a special purpose acquisition company, a publicly traded company that raises money via an initial public offering with the sole purpose of combining with another private company. Appx. (“A.”) 7, 16. It is incorporated in Delaware, with a principal place of business in Miami-Dade County. A. 8-9.

ARC II is DWAC’s “sponsor,” the entity that provides initial capital in exchange for a percentage of Class B “founder shares.” A. 11. ARC II is a Delaware limited liability company with its principal place of business in Miami-Dade County. A. 9. Orlando is ARC II’s principal and managing member and DWAC’s former chairman, director, and chief executive officer. Orlando resides in Miami-Dade County. A. 9.

In October 2021, DWAC and ARC II entered into a Merger Agreement with the then-private TMTG (“Old TMTG”). A. 12. Orlando was removed as DWAC’s CEO in March 2023. A. 12. Disagreements

ensued over the calculation of the conversion ratio of Class B to Class A shares upon a merger. DWAC's Charter set forth the correct conversion calculation. A. 19-24; A. 407-11. But on February 16, 2024, DWAC filed a proxy statement publicly disclosing the wrong conversion ratio to the substantial detriment of ARC II and its members and threatened that the ratio could be adjusted even further downward. A. 112-13; 584-85.

On February 26, 2024, ARC II's counsel sent DWAC's then-lawyer a draft complaint against DWAC and others to be filed in the Chancery Court of Delaware that day unless DWAC stipulated to ARC II's conversion ratio calculation. A. 464-66. The same day, DWAC's counsel wrote ARC II's lawyer that DWAC's "senior litigation partner . . . wishes to speak with you before you proceed forward with filing" and was "available to speak tomorrow afternoon [February 27] or later." A. 464. ARC II agreed to "hold off until tomorrow [February 27] on filing the complaint." A. 463.

But when Trump Media's senior litigation partner responded that he could not speak until Wednesday, February 28, ARC II's counsel responded, "I'm happy to speak on Wednesday morning, **but we'll need to file in the interim.**" A. 462 (emphasis added).

Trump Media’s counsel implored ARC II to wait, asking, “What is the urgency of filing tomorrow?” A. 461. Counsel claimed the draft complaint was supposedly “riddled with inaccurate information, which [he would] be pleased to discuss” on February 28, and threatened, “[i]f you file tomorrow with notice that [the complaint] contains inaccurate information, we will file a motion against you and your client for sanctions.” A. 461. He pleaded, “I am merely asking to have until Wednesday [February 28] to speak with you to walk through the issues, inaccuracies, and hopefully resolve the situation.” A. 461.

ARC II’s counsel responded, “To be clear, ***we are filing tonight***,” and explained that the agreement to wait until February 27 was contingent on Trump Media’s counsel agreeing to talk the following afternoon. A. 461 (emphasis added). He added, “[W]e intend to seek expedited relief in the Court of Chancery, and we cannot wait until Wednesday [February 28], given the stockholder vote next month.” A. 461. Trump Media’s counsel seemingly relented, promising, “I will make every effort so I can speak with you on Tuesday [February 27] at 5:00 pm.” A. 458. ARC II’s counsel agreed

therefore not to file in Delaware until they spoke at 5:00 p.m. the next day, on February 27. A. 458.

Counsel for ARC II and Trump Media spoke as planned at 5:00 p.m. on February 27. A. 1099-1102. Because settlement discussions seemed promising, ARC II agreed to continue talking and wait one more day on its Delaware filing. A. 1099. Unbeknownst to ARC II, at 5:24 p.m. on February 27, *while* discussing settlement, Trump Media filed a complaint against ARC II and Orlando in Sarasota County, Florida, asking for a declaration that DWAC's conversion ratio was correct. A. 7; *see also* A. 19-26.

The complaint accused the ARC II Defendants of supposedly “attempt[ing] to kill the merger in its entirety by preventing a necessary closing condition—unless DWAC agreed to a series of unconscionable demands.” A. 15. These supposed “unconscionable demands” included insisting on the correct conversion ratio under DWAC's Charter and alleged demands by Orlando to DWAC's management for more shares and compensation. A. 15.

Old TMTG was a named Plaintiff (with DWAC) in only two counts—count II for tortious interference with the Merger Agreement and count III for alleged “conspiracy to tortiously interfere” with the

Merger Agreement. A. 26-28. The complaint did not attach the Merger Agreement but incorporated it by reference. A. 12, 14-15. The Merger Agreement contains an arbitration clause, a choice of law provision making New York the governing law, and a mandatory forum selection clause, providing that “all Actions arising out of or relating to this Agreement shall be heard and determined *exclusively in any state or federal court located in New York, New York*[.]” A. 920, 981 (emphasis added). ARC II, though named a Defendant with Orlando in the alleged “tortious interference” counts, is a named party to the Merger Agreement, with Orlando acting as signatory. A. 999.

DWAC by itself separately alleged breaches of the fiduciary duty of loyalty and care against ARC II and Orlando. A. 28-29. The complaint alleged Orlando had made TMTG a predetermined merger target in alleged violation of SEC “blank check company” regulations. A. 29. DWAC sought to recover an \$18 million fine it paid the SEC in a settlement, plus alleged legal expenses and lost business opportunities arising from the SEC investigation. A. 12, 29.

The complaint alleged venue in Sarasota County, where Old TMTG allegedly had an office, under § 47.051, Florida Statutes. The complaint alleged ARC II and Orlando’s actions supposedly had the

effect of injuring TMTG in Sarasota, and that certain unidentified causes of action supposedly “accrued” in Sarasota County. A. 10 ¶ 13. ARC II and Orlando did not learn about the Florida case until Orlando was served in Miami-Dade County during the afternoon of February 28, 2024. A. 48.

After an exchange of emails on February 27 (the day Trump Media planned secretly to file its Florida case), DWAC abruptly stopped communicating about the settlement. A. 1099-1102. ARC II promptly filed its complaint in Delaware Chancery Court on February 29, 2024 and moved to expedite the case. A. 1074-85. ARC II sought to hold DWAC to the plain terms of the Charter with respect to the conversion ratio. A. 1132-51. The lawsuit also addressed claims of breaches of fiduciary duty of the directors of DWAC. A. 1149-50.

The Delaware court entered its first order on March 1, 2024, A. 1354, Tr. 67:5-6, and held a hearing on expedition four days later, on March 5, 2024. A. 1259-60. DWAC appeared in the Delaware case and opposed the motion for expedition. *Id.* The Delaware court ruled on expedition on March 18, 2024. A. 435-39.

DWAC injected the same allegations and claims in the Delaware Chancery court that it asserted in Florida, contending that Orlando

had supposedly “engaged in illegal conduct, breaches of fiduciary duty, personal animus and ad hominem attacks on the directors.”

A. 1282-83.

DWAC has never contested jurisdiction or venue in Delaware.

A. 1256-84. DWAC’s Charter, in addition to setting forth the key conversion ratio that is the subject of the parties’ dispute, contains a forum selection clause entitled, “EXCLUSIVE FORUM FOR CERTAIN LAWSUITS; CONSENT TO JURISDICTION.” The provision states, in part:

Section 12.1, Forum. . . . [U]nless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by the applicable law, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, [and] (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders[.]

A. 157.

B. Trump Media amends the Complaint in Florida; the ARC II Defendants move to dismiss or stay the case.

Trump Media served ARC II with the Sarasota County complaint on February 28, 2024. A. 42. The trial court entered its first order in

the case on March 6, 2024. A. 49-52. Trump Media voluntarily dismissed the declaratory relief claim on the conversion ratio under DWAC's Charter on March 8, 2024. A. 67-69.

Trump Media filed an amended complaint in the Florida action on March 17, 2024. A. 70-97. As with the original complaint, Orlando's alleged wrongful conduct under the amended complaint related entirely to DWAC. A. 70-97. The amended complaint still identified no alleged conduct in Sarasota County. The amended complaint repeated the allegation "[v]enue is proper in Sarasota County, Florida, pursuant to Fla. Stat. § 47.051, because causes of action brought herein accrued in Sarasota County, Florida," where Old TMTG allegedly maintained its principal place of business. A. 73 ¶ 14. The amended complaint alleged Old TMTG supposedly suffered injury as a consequence of Orlando's alleged wrongful conduct against DWAC. A. 77-78, ¶ 33 (harm due to "delay"); A. 78 ¶ 34 ("consequential" injury); A. 87-88 ¶ 64 (alleging "harm as a result of the uncertainty and increased complexity").

The sole alleged count by Old TMTG was an alleged violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), against ARC II and Orlando (count V). A. 93-95. The remaining

counts alleged were brought solely by DWAC: alleged breaches of fiduciary duties of loyalty and care and conversion against Orlando (counts I, II, III); and aiding and abetting breaches of fiduciary duty by DWAC against ARC II (count IV). A. 88-97.

The DWAC-Old TMTG business combination contemplated by the Merger Agreement closed on March 22, 2024. A. 83. The surviving entity was TMTG, a publicly traded Delaware corporation with a principal place of business in Sarasota County, Florida. A. 72.

The ARC II Defendants moved to dismiss the amended complaint asserting, among other arguments, that venue was improper in Sarasota County, Florida; the trial court should stay the case under the principle of priority; and *forum non conveniens* required litigation to take place in Delaware. A. 101-36.

On July 10, 2024, the trial court held a hearing and ruled from the bench. A. 1408-09. The trial court concluded that venue was proper in Sarasota County based on Trump Media's FDUTPA allegations. A. 1358, Tr. 71:8-14. The trial court denied the motion to dismiss for *forum non conveniens*, reasoning that the public interests factor was supposedly not "close to equipoise" with the private interests. A. 1358, Tr. 71:4-5. The trial court entered an order

denying Appellants' motion to dismiss "for the reasons stated at the hearing" on July 29, 2024. A. 1408-09.

ARC II and Orlando timely appealed under Florida Rule of Appellate Procedure 9.130(a)(3)(A) and (C)(viii).

Summary of Argument

First, the trial court abused discretion by ignoring the principle of priority. Not only did the Delaware court first exercise jurisdiction over the case, but Trump Media lost any right to claim superior venue in Sarasota County when it lured ARC II into postponing its Delaware suit on false promises of settlement discussions. At a minimum, the trial court should have stayed the action pending resolution of ARC II's identical Delaware action.

Second, venue is improper in Sarasota County even absent Trump Media's deception. The Sarasota County action was fundamentally a dispute over Orlando's management of DWAC and over the proper conversion ratio for shares upon DWAC's merger with TMTG's predecessor. Orlando and ARC II have no contacts with Sarasota County, and the relevant events are far removed from the lawsuit's centers of gravity, Delaware and Miami-Dade County. Trump Media's pleadings affirmatively showed venue was improper

in Sarasota County.

Third, the trial court abused discretion in not considering all the *forum non conveniens* factors under *Kinney Systems, Inc. v. Continental Insurance Co.*, 674 So. 2d 86 (Fla. 1996). Had the trial court considered them, the *Kinney* factors strongly favored dismissal. Delaware or Miami-Dade County were the far more appropriate and available alternative fora. Trump Media's fundamental bad faith in filing the case in Sarasota County and naked forum shopping lessen the deference owed to their choice of forum. And no relevant witnesses or evidence are in Sarasota County.

Standard of Review

A trial court's application of the principle of priority is reviewed for abuse of discretion. *See Spacebox Dover, LLC v. LSREF2 Baron LLC*, 112 So. 3d 751, 753 (Fla. 2d DCA 2013).

An order determining venue is reviewed *de novo*. *See Residential Sav. Mortg., Inc. v. Keesling*, 73 So. 3d 280, 282 (Fla. 2d DCA 2011).

An order based on the *forum non conveniens* doctrine is normally reviewed for abuse of discretion. *See* FLA. R. CIV. P. 1.061(a). However, this Court applies "*de novo* appellate review where the trial court did not address (and therefore did not exercise any discretion)

regarding one or more of the [relevant] factors.” *Tome v. Herrera-Zenil*, 273 So. 3d 140 (Fla. 3d DCA 2019).

Argument

I. The trial court abused its discretion in failing to enforce the principle of priority.

It is “well-established law [in] Florida that where two courts have concurrent jurisdiction,” including courts in different states, “the first court to exercise jurisdiction has the exclusive right to hear all issues or questions arising in the case.” *E.g., Hirsch v. Digaetano*, 732 So. 2d 1177, 1177-78 (Fla. 5th DCA 1999) (collecting cases); *Siegel v. Siegel*, 575 So. 2d 1267, 1272 (Fla. 1991) (applying the rule to courts of different states and holding, “where courts within one sovereignty have concurrent jurisdiction, the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed with that case”); *InPhyNet Contracting Servs. v. Matthews*, 196 So. 3d 449, 465 (Fla. 4th DCA 2016) (stating, “the principle of priority is generally applied to cases pending concurrently in a federal court and a state court or currently in courts of two different states, the principle is also applicable when two cases are pending in different circuits within this state”).

The principle of priority is enforced as a “matter of comity” allowing “a court in its discretion may stay a pending matter because a substantially similar case is pending in another state’s court, which first acquired jurisdiction.” *See Spacebox*, 112 So. 3d at 752 (citation omitted). The purpose “is to prevent unnecessary and duplicitous lawsuits that would be oppressive to both parties.” *Id.* (citations, internal quotation marks omitted).

“A trial court abuses its discretion in refusing to grant a stay based on the principle of priority,” absent special circumstances not present in this case. *Id.* at 753; *see InPhyNet*, 196 So. 3d at 463 (same); *Hirsch*, 732 So. 2d at 1177-78 (same).

This Court should reverse, or quash, the order denying the ARC II Defendants’ motion to stay in this case.

A. This Court has jurisdiction to review the trial court’s refusal to enforce the principle of priority.

At least two courts in Florida have reviewed principle of priority decisions as venue rulings reviewable directly under the Court’s nonfinal order jurisdiction under Rule 9.130(a)(3)(A). *See Finch v. Auto Club Ins. Co. of Fla.*, 49 Fla. L. Weekly D 998 (Fla. 6th DCA May 10, 2024) (considering a principle of priority motion as an improper

venue defense reviewable under Rule 9.130(a)(3)(A)); *Thomas v. Thomas*, 724 So. 2d 1246, 1248 (Fla. 4th DCA 1999) (adopting the view that refusal to grant deference to another state’s jurisdiction in a child custody dispute “concerns venue” under Rule 9.130(a)(3)(A)).

Courts that have not reviewed principle of priority rulings as decisions under the nonfinal appeal jurisdiction treat the appeals as petitions for certiorari. *E.g.*, *InPhyNet*, 196 So. 3d at 454 (finding “[t]he other aspect of the order which denied stay is reviewable by certiorari,” and quashing “the order denying stay of the entire action”). This Court therefore may treat Appellants’ Notice of Appeal as a petition for certiorari under Rule 9.100(c). *See Alfonso v. Dep’t of Env’t Regulation*, 616 So. 2d 44, 47 (Fla. 1993) (holding “an appellate court’s jurisdiction is invoked by a timely filing of a notice of appeal or a petition for certiorari in either the lower court that issued the order to be reviewed or the appellate court which would have jurisdiction to review the order”); *Johnson v. Citizens St. Bank*, 537 So. 2d 96, 98 (Fla. 1989) (stating that when a litigant erroneously believes he has a right to an appeal, filing a notice in the lower tribunal is sufficient to vest certiorari jurisdiction in the appellate court).

A petition for certiorari should be granted where there is “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal.” *Brundage v. Evans*, 295 So. 3d 300, 303 (Fla. 2d DCA 2020) (quoting *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So. 2d 646, 648 (Fla. 2d DCA 1995)). The second and third elements are “jurisdictional” requirements. *Rodriguez v. Miami-Dade Cnty.*, 117 So. 2d 400, 406 (Fla. 2013).

Florida courts recognize that the improper denial of a stay under the principle of priority causes irreparable harm that cannot be corrected by a postjudgment appeal. *See, e.g., Spacebox*, 112 So. 3d at 752 (citing *Schwartz v. DeLoach*, 453 So. 2d 454, 455 (Fla. 2d DCA 1984) (“More than once, Florida courts have granted certiorari to quash orders declining to stay cases in favor of prior actions pending in other jurisdictions.”)).

This Court therefore has jurisdiction to review the order denying the stay in this case.

B. The trial court had no basis to deny the stay.

The “pivotal question” under the principle of priority is whether the second action “is sufficiently similar in parties and issues as to

be unnecessarily duplicative of the prior-filed proceeding.” *InPhyNet*, 196 So. 3d at 464 (citations omitted). “Florida law is clear that ‘the causes of action do not have to be identical’ to require a stay of the second-filed action,” *id.*, nor do the parties have to be identical. *Spacebox*, 112 So. 3d at 752 (stating that “[c]omplete identity—of parties or causes of action—is not required for a stay”). Rather, “substantial similarity is sufficient.” *Id.* It is enough that “the two actions involve a single set of facts and that resolution of the one case will resolve many of the issues involved in the subsequently filed case.” *E.g., Opko Health, Inc. v. Lipsius*, 279 So. 3d 787, 791 (Fla. 3d DCA 2019).

In this case, there is no dispute that the central parties and issues in Delaware and Florida are substantially the same. In Delaware, ARC II sued DWAC and its principals over the correct conversion ratio upon DWAC’s merger with TMTG. A. 1132-51, 1074-85. In Florida, DWAC, joined by Old TMTG, sued ARC II and its principal, Orlando, for supposedly breaching fiduciary duties by insisting on the conversion ratio, making other allegedly extortionate demands that purportedly delayed the merger, and violating securities laws. DWAC explicitly relies on its contentions of alleged

illegal conduct (i.e., the alleged securities law violations) against ARC II and Orlando in both actions. A. 7-32. And even though DWAC dropped its original declaratory judgment count in Florida and omitted mention of the conversion ratio from the allegations in the amended complaint, those theories still support the fiduciary duty and FDUTPA claims because they remain part of DWAC's theory that Orlando made self-interested demands to frustrate and delay the merger. The cases, therefore, involve the necessary "single set of facts" applicable to both actions sufficient to invoke the principle of priority.

Moreover, ARC II's Delaware action has priority over Florida case. The rule is "the court which first *exercises* its jurisdiction acquires exclusive jurisdiction to proceed with that case." *Siegel*, 575 So. 2d at 1272 (emphasis added). That would be the Delaware Chancery Court, where full briefing on ARC II's motion for expedition concluded on March 4, 2024, and the Delaware court first convened a hearing with all parties before the Delaware court on March 5, 2024. A. 1217-35, 1259-60; *see also* A. 1354, Tr. 67:5-6. The Delaware court ruled on expedition on March 18, 2024. A. 435-39. The only activity in the Sarasota case was entry of a standard Case

Management Order on March 6, the day after the hearing in Delaware. A. 49-52. The Delaware Chancery Court indisputably *exercised* jurisdiction first.

Florida law further precludes Trump Media from claiming priority in Sarasota County after its inexcusable bad faith in luring ARC II to postpone filing its Delaware action on false claims of wanting to have “settlement” talks. The Fourth District’s decision in *Triad Discount Buying Services, Inc. v. Special Data Processing Corp.*, 761 So. 2d 1181 (Fla. 4th DCA 2000), is on point. At issue in *Triad* was the *Mabie* rule that “venue lies in the circuit where service of process is first perfected.” *Id.* at 1182 (citing *Mabie v. Garden St. Mgmt. Corp.*, 397 So. 2d 920, 921 (Fla. 1981)). That would have been Pinellas County, where the defendant intended to file the lawsuit first. On the eve of filing, however, the plaintiff convinced the defendant there was no need for any lawsuit because the plaintiff “intended to expeditiously settle the controversy.” *Id.* The plaintiff then rushed to file and serve a complaint in Palm Beach County. *Id.* The Fourth District affirmed the trial court’s order granting the defendant’s motion to dismiss or stay the claim on venue grounds. *Triad* reasoned that the defendant “would not have been subjected to

venue in Palm Beach County had it not been lured into believing that there was no need to file a lawsuit because [the plaintiff] intended to expeditiously settle the controversy.” *Id.* The Fourth District held that “[b]ut for [the plaintiff’s] deceit, [the defendant] would have been able to take advantage of the *Mabie* rule.” *Id.*

ARC II and Orlando are in the same position as the defendant in *Triad*. But for Trump Media’s deception in insisting on supposed “good faith” settlement talks, ARC II and Orlando would have filed the Delaware action on February 26, 2024, and then immediately served the case and moved for expedition. A. 458-66, 1099-1102. The only reason Trump Media has any argument at all that Sarasota County takes priority is that it lured ARC II into a disadvantageous legal position on false representations. Even if Delaware had not exercised jurisdiction first (it did), Trump Media is estopped from claiming priority in Sarasota County. *See Triad*, 761 So. 2d at 1182.

Accordingly, the trial court abused discretion by refusing to enforce the principle of priority, and this Court should reverse, or quash the order denying the stay.

II. There was never venue in Sarasota County.

Venue attaches at the commencement of the case. *Smith v. Randall*, 667 So. 2d 992, 993 (Fla. 3d DCA 1996). Venue is therefore “determined by the facts *at the time a lawsuit is filed.*” *Air S., Inc. v. Spaziano*, 547 So. 2d 314, 315 (Fla. 4th DCA 1989) (emphasis added). Subsequent events, including amended pleadings, new claims, or the adding and dropping of parties, are irrelevant to the analysis. *See Smith*, 667 So. 2d at 993; *MML Dev. Corp. v. Eagle Nat’l Bank*, 603 So. 2d 646, 647 (Fla. 5th DCA 1992) (observing, “the Florida Statutes . . . do not prescribe ‘a subsequent, post-commencement determination of the venue issue and a consequent transfer or dismissal when there is a change in the parties defendant’” (citation omitted)). Trump Media bore the burden “of alleging facts in the complaint sufficient to demonstrate that the action was filed in the proper venue.” *Woodson Elec. Sols., Inc. v. Port Royal Prop., LLC*, 271 So. 3d 111, 113 (Fla. 3d DCA 2019). Where the complaint “*affirmatively show[s] that venue is lacking,*” dismissal or transfer is required. *MML Dev. Corp.*, 603 So. 2d at 647 (emphasis added).

In this case, it does not matter which version of the complaint the Court considers. Both the original and amended complaints in

Sarasota County affirmatively showed venue was improper in that forum.

The complaints alleged venue under § 47.051, Florida Statutes, which provides for venue in “[a]ctions against domestic corporations . . . only in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located.” *Id.*; A. 10; A. 73. It is undisputed that ARC II’s office is in Miami-Dade County, and no property is at issue in this litigation, much less property in Sarasota County. Venue could only be proper if one of Trump Media’s “cause[s] of action accrued” in Sarasota County. A. 10; A. 73. The complaints make clear that none did.

Tort claims are “deemed to have accrued where the last event necessary to make the defendant liable for the tort took place.” *Williams v. Goldsmith*, 619 So. 2d 330, 332 (Fla. 3d DCA 1993). A claim for tortious interference with a contract “accrues in the county where overt acts constituting the interference occurred.” *Langan Eng’g & Env’t Servs., Inc. v. Harris Constructors, Inc.*, 743 So. 2d 1177, 1178 (Fla. 2d DCA 1999). There are no allegations that any overt acts by ARC II or Orlando occurred in Sarasota

County. Nor could there be. The alleged interference was directed at DWAC, which is a Delaware entity with a Miami-Dade County principal place of business. A. 08-09. All the alleged tort claims in the complaint, including TMTG's supposed tortious interference claims, involved theories of misconduct directed exclusively at DWAC. The complaint alleged Orlando engaged in predetermined merger targeting as CEO of DWAC, A. 13-14, prompted a SEC investigation of DWAC, A. 13, failed to exercise care as a DWAC officer, A. 8, 14, 17-18, utilized his position as a DWAC board member to enrich himself, A. 8, 14, obstructed DWAC's business operations, A. 17, and converted DWAC's business funds for personal use, A. 18-19. These acts could only have occurred in Miami-Dade County, where the complaint admits Orlando, ARC II, and DWAC all reside.

The case law underscores this conclusion. In *Goldsmith*, the Third DCA held "the last event necessary to make appellant liable was luring the firm's clients away in Brevard County. Hence, the injury was the loss of the clients." *Goldsmith*, 619 So. 2d at 332. In *Langan*, "the last event necessary to make [the defendant] liable was its interference with [the plaintiff's] business relationship with

Clark in Dade County. The injury was the loss of the subcontract.” *Langan*, 743 So. 2d at 1178. In this case, the last event necessary to make Orlando and ARC II allegedly liable was Orlando’s supposed extortionate demands on DWAC for additional compensation and shares and a favorable conversion ratio for ARC II. TMTG’s alleged injury was the loss of the benefits of a Merger Agreement. Those alleged acts occurred in Miami-Dade County, Florida, where the complaint admits Orlando resides and acts as a managing member of ARC II and where DWAC had its principal place of business.

The complaint’s other counts, for declaratory relief over the conversion ratio and breach of fiduciary duty, clearly could not have accrued in Sarasota County. TMTG was not even named in the counts. Those counts accrued in Miami-Dade County, where Orlando resides and works, and Delaware, the place of DWAC’s Charter. *See* A. 9; *Mercury Ins. Co. v. Jackson*, 46 So. 3d 1129, 1130-31 (Fla. 1st DCA 2010) (finding that “[a] suit for declaratory relief does not itself constitute a cause of action for venue purposes[;] [i]nstead, it is the underlying relief sought that determines venue” (citation omitted)).

Moreover, the complaint refers to and incorporates by reference the Merger Agreement, the very agreement TMTG alleged Orlando and ARC II tortiously interfered with and conspired to destroy. The Merger Agreement is part of the pleadings and, undeniably, part of the record. *See Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249-50 (Fla. 2d DCA 2011) (holding “since the complaint impliedly incorporates the terms of the agreement by reference,” the court was “entitled to review the terms of that agreement to determine the nature of the claim being alleged”); A. 12, 14-15. The Merger Agreement provides that New York or Delaware law apply and includes a mandatory and “exclusive” forum selection clause in New York, New York for “all Actions arising out of or relating to this Agreement.” A. 920, 981. That includes supposed claims for tortious interference with the Merger Agreement brought against ARC II, a *named party* and signatory to the agreement. This precludes venue for TMTG’s two claims in Sarasota County.

Accordingly, at inception, the original complaint affirmatively demonstrated that the venue was improper in Sarasota County.

The analysis does not change under the amended complaint. TMTG is a plaintiff only in one count, under FDUTPA. A. 93-95. The

claim accrues where ARC II and Orlando committed an alleged deceptive act or unfair practice causing TMTG “actual damages,” the last event necessary to make ARC II and Orlando liable under the statute. See *Sundance Apartments I, Inc. v. Gen. Elec. Cap. Corp.*, 581 F. Supp. 2d 1215, 1223 (S.D. Fla. 2008). The inquiry is whether ARC II or Orlando engaged in deceptive and unfair conduct in Sarasota County that caused TMTG “actual damages.” Florida courts have “consistently defined the statute’s provision of ‘actual damages’ to mean ‘the difference in the market value of the product or service in the condition in which it was delivered and its market value in the condition in which it should have been delivered according to the contract of the parties.’” *Vintage Motors of Sarasota, Inc. v. MAC Enters. of N.C., LLC*, 336 So. 3d 374, 378 (Fla. 2d DCA 2022) (citation omitted).

The amended complaint did not allege actual damages under FDUTPA, let alone due to misconduct in Sarasota County. Nor could it. Much like the original complaint, the amended complaint focuses entirely on alleged acts of self-dealing and misconduct by Orlando against DWAC in Miami-Dade County. There are no allegations—none—that TMTG suffered actual damages in Sarasota County or

that any of the acts supposedly comprising the unfair acts or practices occurred in Sarasota County, far from where ARC II and Orlando conduct business. The only agreement TMTG and ARC II were parties to was the Merger Agreement, and the only alleged losses TMTG claims it suffered were purely consequential. See A. 94 (alleging “a delay of the merger and the SEC investigation” and “lost opportunity costs”); A. 95 (“[L]oss of revenue, lost profits, [and] lost business value.”). The amended complaint therefore is based entirely on alleged misconduct that occurred in Miami-Dade or Delaware, causing damages that are not cognizable under FDUTPA. See *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006) (holding “[f]or purposes of recovery under FDUTPA, ‘actual damages’ do not include consequential damages”); *Orkin Exterminating Co. v. Petsch*, 872 So. 2d 259, 263 (Fla. 2d DCA 2004) (noting that FDUTPA “permits a consumer to recover only the diminished value of the services received,” and not “special, consequential, and incidental damages”). The FDUTPA claim could not have accrued in Sarasota County under these allegations.

The sole allegation related to Sarasota County is that TMTG’s principal place of business is in the forum. A. 72. This is insufficient

as a matter of law. See *Host Marriott Tollroads, Inc. v. Petrol Enters., Inc.*, 810 So. 2d 1086, 1088 (Fla. 4th DCA 2002) (“The only fact alleged with regards to venue is that [plaintiff] maintains its principal place of business in Broward County. This factual allegation is irrelevant to a venue determination pursuant to section 47.051.”).

Accordingly, both versions of the complaints show that no cause of action accrued in Sarasota County under § 47.051, Florida Statutes. This Court should reverse the order denying the motion to dismiss or alternatively transfer for improper venue.

III. The trial court failed to apply the required *forum non conveniens* analysis.

Two of the four *forum non conveniens* factors under *Kinney*, the adequacy of a Delaware or Miami-Dade County forum and the ability to reinstate there, were not in dispute. See *Kinney*, 647 So. 2d at 90. The analysis came down to the other two factors, the private and public interest factors. The trial court failed to analyze the factors, however, which is an abuse of discretion and, therefore, reversible error. *E.g., Poultry & Indus. Suppliers v. Incubacol, S.A.S.*, 313 So. 3d 719, 723 (Fla. 3d DCA 2020) (reversing where “neither the transcript nor the order evidences a sufficient or meaningful analysis of the

Kinney factors”); *Sybac Solar AG, Co. v. Falz*, 174 So. 3d 383, 386 (Fla. 2d DCA 2015) (reversing denial of *forum non conveniens* motion because “a trial court abuses its discretion in denying a motion if the record does not indicate that the *forum non conveniens* factors were considered”); *Wood v. Bluestone*, 9 So. 3d 671, 673 (Fla. 4th DCA 2009) (trial court erred when it reached its conclusion in reliance “on only one factor”).

The trial court did not consider the private interest factor at all. Rather, the trial court summarily concluded, “I haven’t gotten past the public factor issue, because I don’t see how the defense has actually gotten close to that factor being in equipoise,” and “so I don’t think I even need to get to the other factors....” A. 1357-58, Tr. 70:13-71:11. That by itself is reversible error. *Kinney*, 647 So. 2d at 90 (instructing the court “must” consider the private interest factors); *Abeid-Saba v. Carnival Corp.*, 184 So. 3d 593, 599 (Fla. 3d DCA 2016) (noting “controlling weight cannot be given to *any one factor* in the balancing process or the doctrine would lose much of the flexibility that is its essence”) (emphasis added).

The private interests strongly favored dismissal, moreover. The core of this dispute concerns competing interpretations of a Delaware

charter between two Delaware corporations under Delaware law. A. 7; *see also* A. 19-26. The Charter contains a forum selection clause for Delaware, while the Merger Agreement contains a mandatory forum selection clause in New York. The forum selection agreements flip the normal deference accorded to TMTG's choice of forum against Florida. *See Atl. Marine Constr. Co. v. U.S. Dist. Ct. W.D. Tex.*, 571 U.S. 49, 60 (2014) (holding that "the appropriate way to enforce a forum-selection clause pointing to a state or foreign forum is through the doctrine of *forum non conveniens*"). The same is true of Trump Media's attempt to forum shop out of Delaware. *See Certain Underwriting Members of Lloyd's, v. Prime Holdings Ins. Servs.*, 306 So. 3d 1086, 1093 (Fla. 3d DCA 2020) (holding that "the more it appears that the plaintiff's choice of a . . . forum was motivated by forum-shopping reasons . . . the less deference the plaintiff's choice commands and, consequently, the easier it becomes for the defendant to succeed on a *forum non conveniens* motion" (citation omitted)); *see also Johnson v. Johnson*, 288 So. 3d 745, 750 (Fla. 2d DCA 2019) (holding that transfer to proper venue was necessary to prevent forum shopping). The pleadings further demonstrate that the relevant evidence and material witnesses are

all outside Sarasota, where no alleged events occurred. *See* A. 8-9. The private interests factor favored dismissal.

Nor did the trial court meaningfully analyze the public interest factor. It is now settled law that the “public interest factors, including Florida’s interest in the dispute, should always be considered as part of the *forum non conveniens* analysis.” *Abeid-Saba*, 184 So. 3d at 603. That factor also weighed in favor of dismissal. This case is not at home in Sarasota, and there is no local interest that a Florida court should adjudicate. This is a Delaware dispute involving Delaware corporations that operate in Miami-Dade County and the application of Delaware law. Another action raising many of the same disputes is pending in Delaware.

Under the circumstances, the public interests favor a single forum, rather than competing forums and a race to judgment. *See Certain Underwriting Members*, 306 So. 3d at 1093 (ruling “[w]here a second action requiring much of the same evidence is pending in another court and is not dismissible, the preference for a single forum should weigh heavily”); *Scotts Co. v. Hacienda Loma Linda*, 942 So. 2d 900, 901, 903 (Fla. 3d DCA 2006) (concluding Florida had “no interest in adjudicating the dispute of a Panama

corporation whose property was injured in Panama by events taking place there” even though the president resided in Florida, promoted the business in Florida, and the company sold 91% of its product in Florida). That is especially the case when Trump Media filed the case here in an act of blatant forum shopping. Florida has no public interest in rewarding Trump Media’s misconduct.

Under any circumstances, the trial court’s failure to conduct a full *forum non conveniens* analysis of all the *Kinney* factors was reversible error. On this basis, too, this Court should reverse.

Conclusion

This Court should 1) reverse or quash the denial of the stay under the principle of priority; 2) reverse the order denying the motion to dismiss or transfer for improper venue; and 3) reverse the order denying the motion to dismiss or transfer for *forum non conveniens*.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 15, 2024, I filed the foregoing using the State of Florida's ePortal Filing System. I further certify that a copy of the foregoing has been served via email through the State of Florida's ePortal Filing System on all counsel of record listed on the Service List below.

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CERTIFICATE OF COMPLIANCE

I, Antonio M. Hernandez, Jr., certify that this brief is computer-generated and prepared in Bookman Old Style, 14-point font, pursuant to and in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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