

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CREATIVE MANAGEMENT
TECHNOLOGY, INC.,

Appellant,

Case No. 4D24-2443

*Consolidated with Case
Nos. 4D24-2459, 4D24-2465
L.T. Case No. CACE-23-
020229*

vs.

WADSON SAINT HILAIRE
et al.,

Appellees.

_____ /

**INITIAL BRIEF OF APPELLANT
CREATIVE MANAGEMENT TECHNOLOGY, INC.**

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INTRODUCTION AND OVERVIEW

Defendant-Appellant Creative Management Technology, Inc. (“CMTI”) appeals the Order on Defendants’ Motions to Transfer Venue (“Order on Appeal”),¹ *see* Order on Appeal [CMTI App. 3–6],² which denied three defendants’ motions to transfer the underlying action from Broward County to Brevard County under the doctrine of forum non conveniens. The Order on Appeal is a nonfinal, appealable order. This Court has alternative bases for jurisdiction. Fla. R. App. P. 9.130(b)(3)(A) (providing for jurisdiction over nonfinal orders concerning venue); Fla. R. App. P. 9.130(b)(3)(C)(ix) (providing for jurisdiction over nonfinal orders determining the issue of forum non conveniens).

¹ This is a consolidated appeal of two other cases appealing the same order on appeal. *See also* Case Nos. 4D24-2459 and 4D24-2465.

² Although both Appellants Bob’s Barricades and Elipsis Engineering and Consulting, LLC both have filed appendices that, collectively, appear to contain all the germane filings from the circuit court, CMTI also provides its own appendix, filed concurrently with this initial brief. All citations to an appendix in this brief refer to CMTI’s appendix and should be read accordingly: “Name of Document ____ [CMTI App. ____].”

STATEMENT OF THE CASE AND FACTS

I. Overview of Accident in Palm Bay, Florida

a. Plaintiff's Car Accident on US 1 in Brevard County

Plaintiff Wadson Saint Hilaire left work in Palm Bay in the early morning hours of October 1, 2022, and proceeded to drive home northbound on US 1. *See* Fla. Traffic Crash Report attached as Ex. 2 to Def.'s Mot. for Change of Venue 4 [CMTI App. 70]. The outside lane of US 1 was barricaded by cones and a barrier for then-ongoing construction. *Id.* Sometime around 6:00 a.m., “think[ing] he fell asleep” while driving, he drove into the barrier, rolling over several times, and landing in in the center median near Meyers Drive NE. *Id.*; Compl. ¶ 34 [CMTI App. 16]. The first responders on the scene found Plaintiff “pinned” to the back seat of the vehicle. *See* Fla. Traffic Crash Report attached as Ex. 2 to Def.'s Mot. for Change of Venue 4 [CMTI App. 70]. As a result, he was rendered quadriplegic. *See* Pl.'s Resp. in Opposing the Transfer of Venue 1 [CMTI App. 113.]

Plaintiff is a Palm Bay resident. *See* Compl. ¶ 2 [CMTI App. 7]; Fla. Traffic Crash Report attached as Ex. 2 to Def.'s Mot. for Change of Venue 3 [CMTI App. 69]. The subject car—a 2014 Ford Mustang—was owned by a Brevard County resident. *Id.* at 2 [CMTI App. 68].

The first responders on scene were the Palm Bay Police Department and the Brevard County Fire Rescue. *Id.* at 1–5 [CMTI App. 67–71]. Plaintiff was transported to Holmes Regional Medical Center in Melbourne. *Id.* at 4 [CMTI App. 70]. Palm Bay and Melbourne are in Brevard County.³

b. The Construction Project on US 1 and Meyers Drive NE

The construction project (“Construction Project”) at the center of this accident is the combination of two projects under Florida Department of Transportation (“FDOT”) Financial Project Numbers 449486-2-72-01 (contract number E5X12) and 427956-1-72-32 (contract number E5V42). *See* Compl. ¶ 11 [CMTI App. 9]. FDOT contracted with CMTI to inspect, manage, and maintain the roads under the Construction Project, *id.* ¶ 12 [CMTI App. 10], and with Defendant-Appellant Bob’s Barricades to provide, among other things, temporary traffic control (“TTC”), *id.* ¶ 13 [CMTI App. 10].

³ *See* § 90.202(11), Fla. Stat. (2024) (providing that a court may take judicial notice of “[f]acts that are not subject to dispute because they are generally known”); *see also id.* § 90.202(12) (providing that a court may take judicial notice of “[f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned”).

CMTI, in turn, subcontracted with Defendant Gregori Construction, Inc. for the skilled labor. *Id.* ¶¶ 19–20 [CMTI App. 12]. Bob’s Barricades contracted with Defendant Valtir Rentals, LLC to manufacture and deliver the physical barricades that would constitute the TTC. *Id.* ¶¶ 24–29 [CMTI App. 13–15].

In mid-2022, FDOT formally started the Construction Project by issuing a “Notice of Beginning and Completion of Maintenance Projects” and a “Maintenance Work Document.” *Id.* ¶¶ 15–16 [CMTI 10–11]. The project required the “install[ation] and maintain[ence] [of] a low profile, Longitudinal Concrete Barrier” in Palm Bay at the intersection of northbound-US 1 and Meyers Drive NE. *Id.* ¶¶ 15, 22 [CMTI App. 10, 12].

II. This Lawsuit

a. Plaintiff’s Filing in Broward County

According to Plaintiff, Defendants “improperly installed and maintained” the physical barrier by using the incorrect parts. *Id.* ¶¶ 32–38 [CMTI App. 15–17]. Plaintiff filed this thirteen-count action against the five named Defendants: CMTI, Bob’s Barricades, Elipsis, Gregori, and Valtir. Each of the thirteen counts is for either negligence or some variation thereof (including vicarious liability and

strict liability). *See generally* Compl. [CMTI App. 7–33,]. According to the allegations in the Complaint, the five parties are identified as follows:

3. At all times material hereto, Defendant CREATIVE MANAGEMENT TECHNOLOGY, INC., a Florida Profit Corporation (hereinafter Defendant CMTI) is, and was, a Florida corporation authorized to do business in the state of Florida, with a principal place of business in Brevard County, Florida.

4. At all times material hereto, Defendant BOB’S BARRICADES, a Florida Profit Corporation (hereinafter Defendant BOB’S) is, and was, a Florida corporation authorized to do business in the state of Florida, with a principal place of business in Broward County, Florida.

5. At all times material hereto, Defendant ELIPSIS ENGINEERING AND CONSULTING, LLC, a Florida Limited Liability Company (hereinafter Defendant ELIPSIS) is, and was, a Florida corporation authorized to do business in the state of Florida, with a principal place of business in Orange County, Florida.

6. At all times material hereto, Defendant GREGORI CONSTRUCTION, INC., is, and was, a Foreign Profit Corporation (hereinafter Defendant GREGORI), with its principal place of business in the state of Pennsylvania, but was authorized to do business in the state of Florida, was registered and licensed to conduct business throughout the state of Florida, and was engaged in the design and construction of public roadways in the state of Florida.

7. At all times material hereto, Defendant VALTIR RENTALS, LLC, f/k/a TRINITY HIGHWAY PRODUCTS LLC, d/b/a TRINITY HIGHWAY RENTALS, is, and was, a Foreign Limited Liability Company (hereinafter Defendant

VALTIR), with its principal place of business in the state of Texas, however, at all times material here, was working from its Delray Beach, Florida headquarters when it was engaged in the manufacture, design and distribution of traffic control devices within the state of Florida, delivering those devices in the state of Florida, for their use in the state of Florida, as more fully described herein.

Id. ¶¶ 3–7 [CMTI App. 7–8].

Despite the accident occurring in Brevard County, Plaintiff and the vehicle owner both residing in Brevard County, the first responders dispatching in Brevard County, the hospital being in Brevard County, and at least one of the defendants (CMTI) being located in Brevard County, Plaintiff filed this action in circuit court in Broward County—five counties and two-and-a-half hours south of Brevard, separated by 157 miles.⁴ The Complaint does not allege why

⁴ This distance in miles is calculated from the location of the accident (the intersection of Meyers Drive NE and US 1) in Pam Bay to the Broward County Courthouse in Fort Lauderdale.

See Google Maps, <https://maps.app.goo.gl/n7HB6bv9TKXHVM78> (distance calculated on Oct. 9, 2024); see also § 90.2035(1)(a), Fla. Stat. (2024) (“Upon request of a party, a court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created.”).

Broward County is preferable to Brevard County for venue in this action. *See id.* ¶¶ 3–7 [CMTI App. 7–8].

b. Motions to Transfer Venue to Brevard County Under Forum Non Conveniens

Elipsis, an Orlando-based company, was first to move for a change of venue under the doctrine of forum non conveniens. *See* Elipsis Mot. for a Change of Venue [CMTI App. 34–73]. Elipsis argued:

Since the highway construction at issue occurred solely in Brevard County, the accident site is in Brevard County, the cause of action accrued in Brevard County, all known witnesses are located in Brevard County, Plaintiff’s principal medical care was provided in Brevard County, and Plaintiff resides in Brevard County, Brevard County is a substantially more convenient forum than Broward County.

Id. ¶ 8 [CMTI App. 35]. Supported by an affidavit from Sarah M. Blake, President of Elipsis, it further argued that Broward County was the improper venue because it had not conducted any business in Broward related to the Subject Project. *See* Aff. of Sarah M. Blake ¶ 7 [CMTI App. 72]. As Elipsis noted: “All Elipsis employees who are potential witnesses in this case are in Central Florida, making their testimony at trial substantially more convenient to Brevard County” than Broward County. *Id.* ¶ 8 [CMTI App. 72].

Bob's Barricades followed with its own motion for a change of venue under forum non conveniens. See Bob's Mot. to Transfer Venue [CMTI App. 74–107]. Unlike Elipsis, Bob's Barricades is a Broward company. Compl. ¶ 4 [CMTI App. 8]. However, Bob's Barricades also argued that "Brevard County is the proper venue for this case" because Plaintiff's causes of action accrued in Brevard County, Plaintiff lives in Brevard County, and all potential witnesses—including first responders and medical treaters—are in Brevard County." *Id.* ¶ 5 [CMTI App. 76]. Bob's Barricades asserted that "the convenience of the witnesses is 'the single most important consideration'" when determining the merits of a motion to change venue under forum non conveniens. *Id.* at 4 [CMTI App. 77] (quoting *Water's Edge Dermatology, LLC v. Christopherson*, 367 So. 3d 508, 510 (Fla. 4th DCA 2023)).

CMTI filed a notice of joinder with Elipsis and Bob's Barricades, adopting the arguments raised in both motions, see CMTI's Not. of Joinder [CMTI App. 108–09], and included a declaration from Jonathan Morgans, Vice President of Operations for CMTI, see Ex. "A" to CMTI's Not. of Joinder [CMTI App. 110–12]. To buttress its

position that CMTI has no connection to Broward County, Morgans stated:

- The corporate officers and “over one hundred employees” of CMTI reside in Brevard County;
- “All employees and officers” involved in Plaintiff’s incident or with knowledge of the incident are in Brevard County;
- CMTI has no offices in Broward County;
- CMTI does not conduct business in Broward County;
- CMTI does not maintain any office space in Broward County; and
- CMTI does not own property in Broward County.

Id.

In opposing the transfer of venue, Plaintiff argued first that Bob’s Barricades had not filed “an affidavit or any record evidence to show that litigating this case in Broward County would work a substantial inconvenience to it and to its witnesses.” See Pl.’s Resp. in Opposing the Transfer of Venue 2 [CMT App. 114]. Second, as to Elipsis and CMTI, who *did* file affidavits in support of their motions, Plaintiff argued their positions were “fatally insufficient” because they failed to name specifically the witnesses who would be

inconvenienced by litigating in Broward. *Id.* at 2–8 [CMTI App. 114–20].

Plaintiff also focused on the height of the burden the moving party must show in seeking to change venues, such as showing that witnesses or the parties “will suffer **substantial inconvenience.**” *Id.* at 5 [CMTI App. 117] (emphasis in original). He argued that because none of Elipsis, Bob’s Barricades, or CMTI have named specific witnesses, they could not show “substantial inconvenience.” *Id.*

Plaintiff relied in large part on *R.C. Storage One, Inc. v Strand Realty, Inc.*, 714 So. 2d 634 (Fla. 4th DCA 1998). He argued that, under *R.C. Storage One*, the party moving to transfer venue was required to show specifically the names of witnesses and disclose exactly what their testimony at trial would be in order to establish another venue as “more convenient” for the witnesses. *See* Pl.’s Resp. in Opposing the Transfer of Venue 4 [CMTI App. 116.]

c. Hearing on the Motions to Transfer Venue to Brevard County Under Forum Non Conveniens

The circuit court heard the motions on May 6, 2024. *See* Hrg. Tr. [CMTI App. 143–76]. At the hearing, counsel for Elipsis argued:

Plaintiff lives [in Brevard]. The owner of the car lives there. The police officer lives there. The

first responders live there. The medical treatment was provided there. And I think what [Plaintiff is] saying is that—well, we didn't list them all by name and so, how would we know that that's going to be a burden? Well, I submit that if those Witnesses have to drive two-and-a-half hours to get to this Courthouse to hear this case, that is a burden.

Id. at 9:19–10:1 [CMTI App. 151–52]. Counsel for Bob's Barricades conceded that Broward County is not "improper" because Bob's Barricades "does have a place of business" in Broward. *Id.* at 12:11–25 [CMTI App. 154]. The trial court focused on the sufficiency of the affidavits supporting the motions to change venue. *Id.* at 8:20–9:14 [CMTI App. 150–51]. Bob's Barricades argued that an affidavit "is only required if we're moving to change venue under 47.101. . . . [But] [w]e're moving to change venue for forum non conveniens. Under 47.122, you don't need an affidavit. . . . [Y]ou don't need an affidavit if the record facts establish the venue." *Id.* at 12:11–25 [CMTI App. 154].

d. Order Denying Motions to Change Venue Under Forum Non Conveniens

The court denied the motions to change venue. Order on Appeal [CMTI 3–5]. First, the court noted that Bob's Barricades did not provide an affidavit or "any evidence to show that litigating this case

in Broward County would result in a substantial inconvenience.” *Id.* The court ruled that Bob’s Barricades’s “failed to provide the Court with any evidence to support the arguments made in the motion.” *Id.* Bob’s Barricades has addressed this in its own brief to this Court. As to Elipsis and CMTI, the court rejected the affidavits attached to the motions, finding them “insufficient” and inconclusive to establish “substantial” inconvenience.” *Id.*

Elipsis, Bob’s Barricades, and CMTI have appealed from the Order on Appeal. This Court consolidated the appeals. This is CMTI’s initial brief.

STANDARD OF REVIEW

This Court reviews an order concerning venue for an abuse of discretion. *Eagle Transp. Corp. of N.C. v. Roch-Hernandez*, 324 So. 3d 521, 522–23 (Fla. 4th DCA 2021).

SUMMARY OF ARGUMENT

The circuit court abused its discretion in denying the motions to transfer venue to Brevard County. Despite Plaintiff’s preference to litigate in Broward County, “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.” *Pep Boys v. Montilla*, 62 So. 3d 1162, 1166 (Fla. 4th DCA 2011).

Brevard is the overwhelmingly better venue for this action. Under the three-pronged analysis for forum non conveniens, Brevard County is substantially more convenient for the witnesses and the parties, and the interest of justice is served by litigating this action in the county where the accident occurred, Plaintiff and the car owner lives, the first responders work, and the hospital and medical professionals are located. This Court should reverse the Order on Appeal and remand with instructions to transfer this action to Brevard County.

ARGUMENT

Under Florida law, a plaintiff may file a lawsuit in one of three counties: “where the defendant resides, where the cause of action accrued, or where the property in litigation is located.” § 47.011, Fla. Stat. (2023). When an action includes “two or more defendants residing in different counties,” the plaintiff may file “in any county in which any defendant resides.” *Id.* § 47.021. And “a tort accrues in the county where the plaintiff first suffers injury.” *Harb v. Commerce Realty Grp., Inc.*, 881 So. 2d 35, 36 (Fla. 4th DCA 2004).

Judicial deference is afforded to the plaintiff's choice of venue. *Weinberg v. Weinberg*, 936 So. 2d 707, 708 (Fla. 4th DCA 2006) ("It is the prerogative of the plaintiff to select the venue of his or her suit, and when that choice is one of the three statutory alternatives, it will be honored."). But this deference is not unfettered. *Brown & Williamson Tobacco Corp. v. Young*, 690 So. 2d 1377, 1379 (Fla. 1st DCA 1997). This Court has explained that "[a] trial court abuses its discretion" when it maintains an action with "only an attenuated connection to a venue that bears no relation to the lawsuit's critical events." *Water's Edge Dermatology, LLC v. Christopherson*, 367 So. 3d 508, 510–11 (Fla. 4th DCA 2023).

One manner in which a defendant can challenge a plaintiff's choice in venue is through the doctrine of forum non conveniens. In Florida, the forum non conveniens statute provides, in relevant part: "For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought." § 47.122, Fla. Stat. (2023). In other words, "[s]ection 47.122, as well as the case law interpreting the statute, identifies three distinct factors to consider when determining whether to transfer venue: (1) the

convenience of the parties; (2) the convenience of the witnesses; and (3) in the interest of justice.” *Theobald v. Piper Aircraft, Inc.*, 208 So. 3d 287, 289 (Fla. 3d DCA 2016) (emphasis added). “Forum non conveniens also serves as a brake on the tendency of some plaintiffs to shop for the ‘best’ jurisdiction in which to bring suit” *Kinney Sys., Inc. v. Continental Ins. Co.*, 674 So. 2d 86, 87 (Fla. 1996).

No party disputes that Plaintiff’s choice in Broward County as a venue is technically “proper” under Florida law. Bob’s Barricades’s principal place of business is in Broward County and, therefore, this action satisfies section 47.021, Florida Statutes (2023). However, the remaining analysis—and, indeed, every other factor in evaluating the most appropriate venue—weighs against Broward County. Brevard County is substantially more convenient for the witnesses and the parties, and it serves the interest of justice to litigate the action there as well. Each factor of the forum non conveniens analysis is discussed in turn.

a. Convenience of the Witnesses

First, what is “probably the single most important consideration of the three statutory factors,” *Water’s Edge Dermatology, LLC*, 367 So. 3d at 510–11, the more convenient venue for witnesses is Brevard

County. And when this factor is established, “[t]he plaintiff’s forum selection is no longer the factor of over-riding importance.” *Id.*

“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.” *Pep Boys*, 62 So. 3d at 1166; *see also Morrill v. Lytle*, 893 So. 2d 671, 673–74 (Fla. 1st DCA 2005). In *Morrill*, the First District noted that, not only did the accident occur in a county different than the plaintiff’s choice, but “the witnesses are located outside the forum county *and* many or most of the witnesses are in *the county in which the accident occurred.*” *Morrill*, 893 So. 2d at 673 (emphasis added).

Here, the accident occurred in Brevard County and all currently known witnesses are employed outside Broward County. Such witnesses include the first responders from the Palm Beach Police Department, Brevard County Fire Department, and the medical professionals at Holmes Regional Medical Center. Thus, Brevard County is substantially more convenient for the witnesses. There is *absolutely no* connection between Broward County and any *material* fact in this action. Rather, the *only* “connection” to Broward County is the residency of *one* of multiple named defendants. While Broward

County is “a” proper venue, Plaintiff’s choice and apparent desire to litigate two-and-a-half hours south should yield to the substantially better venue of Brevard County.

This action is nearly identical to *Braun v. Stafford*, 529 So. 2d 735 (Fla. 4th DCA 1988). In *Braun*, the plaintiff sued in Broward County even though the accident, the first responders, injured parties, and passengers in the vehicle all were from Pinellas County. *Id.* at 736. “The only connection which Broward County has with the case is that the corporate defendant has an office there.” *Id.* This Court, writing that “[i]t is clear that Pinellas County is the most convenient forum for the witnesses,” held the circuit court abused its discretion in denying the defendants’ forum non conveniens motion. *Id.*

Braun is consistent with other district court decisions that have moved actions to more convenient venues notwithstanding the plaintiff’s choice in forum. *See Graham v. Virgil*, 324 So. 3d 12 (Fla. 4th DCA 2021) (reversing order denying motion to transfer venue when “all the parties and nearly all the witnesses were located in Palm Beach County, and all of the factors enumerated in section 47.122, Florida Statutes, weighed strongly in favor of transfer.”);

SMA Behavioral Health Services, Inc. v. Loewinger, 355 So. 3d 988 (Fla 3d DCA 2023); *Levy Cty. v. Diamond*, 7 So. 3d 564 (Fla. 1st DCA 2009) (reversing a trial court’s denial to transfer a case under forum non conveniens when the plaintiff’s choice of forum had “little or no connection” to that venue); *P.V. Holding Corp. v. Tenore*, 721 So. 2d 430, 431 (Fla. 3d DCA 1998) (reversing a trial court’s denial to transfer a case under forum non conveniens when the witnesses overwhelmingly were located within the jurisdiction of the other venue).

In *Pep Boys*, this Court reversed a denial of a motion to change venue under forum non conveniens because, among other factors, “the material witnesses to the accident and the resulting injuries were the FHP, EMT, and paramedics, *all of whom reside in*” the county to which the defendants sought to transfer the action. 62 So. 3d at 1166 (emphasis added).

On the other hand, Plaintiff placed far too much weight on *R.C. Storage One* in its response opposing the motions. In *R.C. Storage One*, the plaintiff sued in Palm Beach County over a commission from the sale of a property in Sumter County. 714 So. 2d at 635. The plaintiff was in Alachua County but moved to Palm Beach County

before the sale and before filing the lawsuit; the defendant was in Orange County. *Id.* This Court, holding that the cause of action accrued in Palm Beach County, affirmed the circuit court's denial of the defendant's attempt to transfer the action to Sumter or Alachua. *Id.*

Plaintiff's reliance on *R.C. Storage One* is misplaced. First, it is distinguishable because the cause of action accrued in the plaintiff's choice of forum. *See id.* This Court expressly determined in that case that the alleged breach of sales commission occurred in Palm Beach County, the county where the plaintiff filed its suit. *Id.* Conversely, here, the cause of action accrued in the county where Defendants seek to transfer the action.

Second, *R.C. Storage One* does not require defendants to specifically identify and state with particularity the witnesses and their proposed testimony when arguing forum non conveniens. This Court observed that the affidavits submitted by the moving defendant in *R.C. Storage One* "were little more than a laundry list of witnesses, their places of residence, and the conclusory statement that it would be inconvenient for them to travel to Palm Beach County." *R.C. Storage One, Inc.*, 714 So. 2d at 635. This decision does not create a

sweeping point of law that affidavits must include the specific testimony from the witnesses that will be introduced at trial, especially when the anticipated testimony from such witnesses, including first responders and hospital personnel, is apparent based upon their role in this case.

Moreover, the affidavits in *R.C. Storage One* are distinguishable from those here because they “failed to disclose any information as to the necessity, relevance, or significance of the evidence to be presented by these witnesses [in the new county].” *Id.* Conversely, the affidavits submitted by Elipsis and CMTI establish the lack of any connection to Broward County *and* the substantially more convenient nature of Brevard County.⁵

b. Convenience of the Parties

The second factor for a court to consider on a forum non conveniens motion is the convenience to the parties. § 47.122, Fla.

⁵ Notably, Judge Warner would have reversed the denial of the motion to transfer venues because, despite the accrual of the cause of action there, “the *only* witness located in Palm Beach County” was the plaintiff. *Id.* at 636 (Warner, J., dissenting) (emphasis added). The *only* known witness in this action located in Broward County is *one* of several named defendants and, unlike *R.C. Storage One*, the cause of action did not even accrue in Broward.

Stat. This Court has stated that even when the plaintiff chooses “a” proper venue, the purpose of venue statutes “is to require that litigation be instituted in that forum which will cause the least amount of inconvenience and expense to those parties required to answer and defend the action.” *Gaboury v. Flagler Hosp., Inc.*, 316 So. 2d 642, 645 (Fla. 4th DCA 1975) (emphasis added). This, too, weighs in favor of transferring to Brevard County.

Of the multiple defendants in this action, all hail from different counties. CMTI is based in Brevard County. Bob’s Barricades is based in Broward County. Elipsis is based in Orange County. Gregori is based in Pennsylvania. But even the party who is at home in Broward County has moved to transfer venue to Brevard County. In *Pep Boys*, this Court noted that “[a]ll the defendants have requested the case be transferred” in its reasoning for reversing the circuit court’s denial. 62 So. 3d at 1166. Here, all Defendants agree that venue should be changed to Brevard County.

c. Interest of Justice

The third factor in the Florida non conveniens statute is “the interest of justice.” § 47.122, Fla. Stat. While considered “a catch-all consideration,” this Court has opined that “this factor may be

determinative.” *Botta v. Ciklin, Lubitz & O’Connell*, 222 So. 3d 60 (Fla. 4th DCA 2017); *Johnson*, 288 So. 3d at 748 (“[T]he inimitable ‘interest of justice’ motivated the trial court’s decision here.”).

One of the several factors considered by a court is “the imposition of a jury duty on an uninvolved community.” *Pep Boys*, 62 So. 3d at 1165. As in *Pep Boys*, Broward County “has virtually no connection to this case.” *Id.*; see also *E.I. DuPont De Nemours & Co. v. Fuzzell*, 681 So. 2d 1195, 1197–98 (Fla. 2d DCA 1996) (“There is nothing in this case to connect this cause of action to Polk County other than the fact that the appellees’ lawyer has an office in Polk County.”); *State Farm Fire & Cas. Co. v. Sosnowski*, 836 So. 2d 1099, 1100-01 (Fla. 5th DCA 2003) (the plaintiff’s “initial venue selection was based on the fact that State Farm has an office in Seminole County, but all other record evidence indicates that State Farm’s Seminole County office has no connection to [the plaintiff’s] lawsuit or the underlying claim.”).

The distance between Palm Bay and Fort Lauderdale weighs in favor of transferring this action to Brevard, as well. Plaintiff chose a venue five counties south of the location of the car accident, hospital, first responders, his residence, the car owner’s residence, and

potential witnesses who saw the accident. *See Morrill*, 893 So. 2d at 673 (“Florida courts have consistently held that it is error to deny 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 in the county in which the accident occurred.”). The circuit court abused its discretion by denying the motion to transfer venue.

CONCLUSION

This Court should reverse the Order on appeal and direct the trial court to transfer this case to Brevard County.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief, to which this Certificate is attached, complies with the applicable font and word count requirements of Florida Rule of Appellate Procedure 9.045 and 9.210(a)(2)(B). It is formatted in Bookman Old Style 14-point and contains [4,697] words.

/s/ Jack R. Reiter