

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**LAUREL FORD AND KIA and  
KIA MOTORS AMERICA, INC.**

**APPELLANTS/DEFENDANTS**

**VS.**

**NO. 2011-IA-00273-SCT**

**LARRY BLAKENEY**

**APPELLEE/PLAINTIFF**

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**BRIEF OF THE APPELLEE**

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**ORAL ARGUMENT IS NOT REQUESTED**

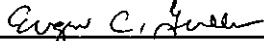
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### **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Laurel Ford and Kia, Appellant
2. Kia Motors America, Inc., Appellant
3. Larry Blakeney, Appellee
4. Honorable Eddie Bowen, Circuit Judge
5. Rebecca B. Cowan, Esq.
6. Joseph W. Gill, Esq.
7. Currie Johnson Griffin Gaines & Myers, P.A.
8. Jeremy S. Gaddy, Esq.
9. Huie, Fernambucq & Stewart, LLP'
- 10 Eugene C. Tullos, Attorney for the Appellee,

Respectfully submitted,

  
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Eugene C. Tullos  
Attorney for the Appellee

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**VS.**

**NO. 2011-IA-00273-SCT**

**LARRY BLAKENEY**

**APPELLEE/PLAINTIFF**

**BRIEF OF THE APPELLEE**

ISSUE: Whether the Circuit Court of Smith County, Mississippi, abused its discretion in denying the Appellants/Defendants' Motion to Change venue from Smith County, Mississippi, to Jones County, Mississippi.

**STATEMENT OF THE CASE**

On or about September 22, 2010, Larry Blakeney (hereinafter referred to as Blakeney) filed his Complaint seeking damages from Laurel Ford and Kia (hereinafter referred to as Laurel Ford) and Kia Motors of America, Inc. (Hereinafter referred to as Kia). Mr. Blakeney's Complaint asserts that he purchased a 2008 Kia Optima from Laurel Ford which was defective in materials and/or workmanship and that Laurel Ford and/or Kia failed to repair the vehicle, and that on at least one occasion, the Defendants refused to allow him to remove the vehicle from Laurel Ford's place of business unless he signed a release. Mr. Blakeney is a resident of Smith County, Mississippi. Laurel Ford's principal place of business is in Jones County, Mississippi. Kia is an out-of-state entity doing business in Mississippi.

Laurel Ford and Kia each filed motions for change of venue which were heard at the same time on or about January 28, 2011. The trial court denied both motions and stated from the bench that he was going to give the Plaintiff the benefit of the doubt as to where the damages occurred [T. P.3] Thereafter the Appellants instituted this interlocutory appeal.

### **STATEMENT OF FACTS**

Mr. Blakeney purchased a 2008 Kia Optima from Laurel Ford. That vehicle was defective in materials and workmanship, however said defects did not manifest themselves until Mr. Blakeney was in Smith County, Mississippi. Mr. Blakeney attempted to have Laurel Ford and/or Kia to repair the vehicle on several occasions but to no avail. On one occasion, Laurel Ford refused to allow Mr. Blakeney to retake possession of the vehicle unless he signed a release. The vehicle was purchased in Jones County, Mississippi, but the defects became apparent to the Plaintiff in Smith County, Mississippi, and it was in Smith County, Mississippi that Mr. Blakeney incurred his damages.

### **SUMMARY OF THE ARGUMENT**

Venue is proper in Smith County, Mississippi because the Plaintiff resides in Smith County, and that was the location where the defects in the vehicle were manifested and realized. Kia is a nonresident corporation of Mississippi. Laurel Ford has a place of business in Jones County, Mississippi. The Defendants both claim to be entitled to a change of venue to Jones County, Mississippi. The damages to the Plaintiff were in Smith County where a substantial event that caused the damages occurred. Therefore, the Circuit Court of Smith County did not abuse its discretion in denying the Motions for Change of Venue.

### **STANDARD OF REVIEW**

This Court has repeatedly stated that it applies an abuse of discretion standard of review to decisions made by a trial court concerning a motion for a change of venue. "The trial judge's ruling will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances of the case." Austin v. Wells, 919 So.2d 961, 963 (Miss. 2006) (Citations Omitted). This Court has held that, "[a]n application for change of venue is addressed to the discretion of the trial judge, and his ruling

thereon will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances of the case.” Earwood v. Revees, 798 So.2d 508, 512 (Miss. 2001). “The trial court must give the plaintiff the benefit of reasonable doubt with respect to the venue selection....” Id.

### ARGUMENT

In Flight Line, Inc., v. Tanksley, 608 So.2d 1149, 1155 (Miss.1992), the Mississippi Supreme Court held,

Of right, the plaintiff selects among the permissible venues, and his choice must be sustained unless in the end there is no credible evidence supporting the factual basis for the claim of venue. Put otherwise, the court at trial must give the plaintiff the benefit of the reasonable doubt, and we do so on appeal as well.

The Defendants argue that §11-11-3 of the Mississippi Code Annotated of 1972, as amended establishes venue in Jones County rather than in Smith County, Mississippi. Mississippi Code Ann. §11-11-3(1)(a)(I) provides in pertinent part:

Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, **OR**, if a corporation, in the county of its principal place of business, **OR** in the county where a substantial alleged act or omission occurred **OR** where a substantial event that cause the injury occurred.

This Court has stated with regard to and the unambiguous wording in setting out the four choices available to the Plaintiff when filing an action in circuit court, in the case of Hedgepeth v. Johnson, 975 So.2d 235,239 (Miss.2008). The Court in Hedgepeth stated,

Clearly 11-11-3(1)(a)(I) lays out four venue options from which plaintiffs can choose when filing a lawsuit. The first two are based on the status of the defendant; that is, if the defendant is a resident defendant, the suit may be filed in his county of residence; or, if the defendant is a corporation, the suit may be filed in the county of its principal place of business. The latter two venue options focus on the alleged acts or omissions of the defendants; that is, the suit may be filed where a substantial alleged act or omission occurred; or, finally, suit may be filed where a substantial event that caused the injury occurred. According to the clear language of the statute,

“[c]ivil actions of which the circuit court has original jurisdiction shall be commenced in” one of these four places.

Venue is proper in Smith County, Mississippi because this is the location where a substantial event occurred which caused the injury. Therefore, the trial court did not abuse its discretion.

### CONCLUSION

This Court has held that, “[a]n application for change of venue is addressed to the discretion of the trial judge, and his ruling thereon will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances of the case.” Earwood v. Revees, 798 So.2d 508, 512 (Miss. 2001). “The trial court must give the plaintiff the benefit of reasonable doubt with respect to the venue selection....” Id. Therefore, the Plaintiff respectfully requests that the Court find that the trial court properly denied the Defendants’ Motions for Change of Venue.

Respectfully submitted,

  
EUGENE C. TULLOS  
ATTORNEY FOR THE APPELLEE

### CERTIFICATE OF SERVICE

I do hereby certify that I have this day delivered, via U.S. Postal Service, postage prepaid, and/or hand-delivered, a true and correct copy of the Appellee’s Brief to:

Honorable Eddie H. Bowen  
Smith County Circuit Court Judge  
P.O. Box 545  
Raleigh, MS 39153

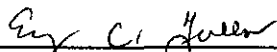
Honorable Kathy Gillis  
Mississippi Supreme Court Clerk  
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Jackson, MS 39205  
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This the 14<sup>th</sup> day of September, 2011.

  
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