IN THE SUPREME COURT OF MISSISSIPPI

NO. 2011-IA-00273-SCT

LAUREL FORD AND KIA and
KIA MOTORS AMERICA, INC. **APPELLANTS/DEFENDANTS**

V.

LARRY BLAKENEY **APPELLEE/PLAINTIFF**

REPLY BRIEF OF THE APPELLANTS

On Appeal from the Circuit Court of Smith County, Mississippi
Civil Action No. 2010-305

(ORAL ARGUMENT NOT REQUESTED)

Rebecca B. Cowan (MSB[redacted]
Joseph W. Gill (MSB#[redacted]
Currie Johnson Griffin Gaines & Myers, P.A.
1044 River Oaks Drive (39232)
Post Office Box 750
Jackson, MS 39205-0750
(601) 969-1010 FAX: (601) 969-5120
bcowan@curriejohnson.com
jgill@curriejohnson.com
Attorneys for Laurel Ford Lincoln-Mercury, Inc.

Jeremy S. Gaddy (MSB #[redacted]
Huie, Fernambucq & Stewart, LLP
3 Protective Center, Suite 200
2801 Highway 280 South
Birmingham, AL 35223
(205) 251-1193 FAX (205)251-1256
jsg@hfsllp.com
Attorney for Kia Motors America, Inc.

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Venue is not proper in Smith County, Mississippi. As set forth more fully in Appellants', Laurel Ford Lincoln-Mercury, Inc. (hereinafter referred to as "Laurel Ford") and Kia Motors America, Inc.'s (hereinafter referred to as "Kia Motors"), original Brief, venue in this action is proper **only (1)** in the county in which Laurel Ford or Kia Motors has its "principal place of business", **(2)** "in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred" or **(3)** in the county in where Appellee/Plaintiff, Larry Blakeney (hereinafter "Blakeney") obtained the allegedly defective product. *See* MISS. CODE ANN. § 11-11-3(1)(a). Blakeney does not dispute that neither Laurel Ford's nor Kia Motor's principal place of business is located in Smith County, Mississippi. (*See* Brief of Appellee, at p. 2). Blakeney also does not dispute that he obtained the allegedly defective vehicle at issue in Jones County, not Smith County. (*See* Brief of Appellee, at p. 2). Thus, venue in Smith County would be proper only if "a substantial alleged act or omission" or "a substantial event that caused injury" occurred in Smith County.

While the trial court "g[ave] [Blakeney] the benefit of the doubt" in holding that "a substantial alleged act or omission . . . alleged in [Blakeney's] complaint" occurred in Smith County (C.P. 040; T.3; RE. 6, 15), and Blakeney now asserts that "a substantial event that caused [his] injury" occurred in Smith County (*see* Brief of Appellee, at p. 4), there is no factual or legal support for either of these conclusions. As such, the trial court abused its discretion in denying the Motions for Change of Venue.

I. No Substantial Alleged Act or Omission Occurred in Smith County

Venue is proper in Jones County because all of the substantial alleged acts or omissions in this case occurred in Jones County, not Smith County. Specifically, Blakeney's Complaint

alleges that Laurel Ford and Kia Motors (1) breached express warranties on the day he purchased his car in Laurel, Jones County; (2) did not repair his car when he took his car to Laurel, Jones County, on several occasions; and (3) at one point, refused to release his car from Laurel Ford, which is located in Jones County, unless he signed a "Release." (CP. 002-002A). Blakeney's Complaint does not allege that a single act or omission occurred in Smith County. Moreover, in the Appellee's Brief he does not argue or assert that "a substantial alleged act or omission" occurred in Smith County. Therefore, it is clear that the trial court abused its discretion in concluding that "a substantial alleged act or omission" occurred in Smith County since there is absolutely no factual or legal support for this position.

II. No Substantial Event that Caused Injury Occurred in Smith County

While Blakeney asserts that "[v]enue is proper in Smith County, Mississippi because this is the location where a substantial event occurred which caused the injury," he provides absolutely no factual or legal support (and for that matter, no argument of any kind) for this conclusory position. (*see* Brief of the Appellee, at p. 4). Presumably, Blakeney relies on his counsel's assertion during the hearing on the Motions for Change of Venue, that "[s]hortly after [Blakeney] got the vehicle home, he started having some problems with it in Smith County, Mississippi."[1] (T. 3; RE. 3). This statement is insufficient to establish venue in Smith County under either the "substantial alleged act or omission" prong or the "substantial event that caused the injury" prong of the venue statute.

For example, in *Medical Assurance Co. v. Myers*, 956 So.2d 213, 219 (Miss. 2007), this Court rejected a physician's argument that venue was proper in Holmes County where he

[1] Appellants would note that the only reference to Smith County in Blakeney's Complaint itself is that Blakeney is a resident of Smith County, which is clearly insufficient to establish venue there under § 11-11-3(1)(a).

allegedly was "damaged" because such damage only described the "results" of acts that took place in Madison County. The Court concluded there was no evidence to support venue in Holmes County under either the "substantial alleged act or omission" or the "substantial event that caused the injury" prongs of the venue statute. *Id.* Thus, the Court reversed the chancery court's holding that venue was proper in Holmes County.

Likewise, in *American Family Life Assurance of Columbus v. Ellison*, 4 So. 3d 1049, 1052 (Miss. 2009), this Court held that "simply experiencing the effects of an act or omission in a county is insufficient to establish venue" under either the "substantial act or omission" or "substantial event causing the injury" prongs of the venue statute. In reaching this conclusion, the Court noted that if it were to follow the plaintiff's "logic, a plaintiff injured in an automobile accident in Madison County could establish venue in every county in which the plaintiff traveled simply by showing that, in each county, his or her injuries worsened." 956 So. 2d at 219. This is precisely Blakeney's argument in the present case. Under Blakeney's logic, venue for his claims against Laurel Ford and Kia Motors would be proper in any county in which his vehicle allegedly malfunctioned. Mississippi law simply does not support this argument. *Id.* at 219. Instead, Like *Meyers* and *Ellison,* because Appellee alleges damages stemming from the actions which solely occurred in Jones County, Mississippi., venue can only be proper in Jones County. *Id.*; *Meyers*, 956 So.2d at 219.

III. The Trial Court's Discretion Is Not Unbridled

In the Appellee's Brief, Blakeney relies heavily on the standard of review, *i.e.*, that the trial court'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." (*See* Brief of Appellee, at p. 4) (quoting *Earwood v. Revees*, 798 So.

2d 508, 512 (Miss. 2001)). However, as described *supra* and more fully in Appellants' original Brief, it is clear that the trial court did abuse its discretion under the circumstances of the present case because "in the end there is no credible evidence supporting the factual basis for the claim of venue" in Smith County under established Mississippi law. *See Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149, 1155 (Miss. 1992). Therefore, the trial court's order denying Laurel Ford's and Kia Motors' Motions for Change of Venue should be reversed.

CONCLUSION

Neither "a substantial alleged act or omission" nor a "substantial event which caused the injury" in this case occurred in Smith County. Rather, Jones County is the only county in which venue is proper in this matter. As such, it was an abuse of discretion for the trial court to deny the Appellants' Motions for Change of Venue. This Court should reverse the decision by the trial court and require that the case be transferred to Jones County, Mississippi.

RESPECTFULLY SUBMITTED,

LAUREL FORD LINCOLN-MERCURY, INC.

BY: _____

REBECCA B. COWAN (MSB# [redacted])
JOSEPH W. GILL (MSB# [redacted])

OF COUNSEL:

CURRIE JOHNSON GRIFFIN GAINES & MYERS, P.A.
1044 River Oaks Drive
Jackson, Mississippi 39232
Post Office Box 750
Jackson, Mississippi 39205-0750
Telephone: (601) 969-1010
Facsimile: (601) 969-5120

KIA MOTORS AMERICA, INC.

BY: _____
JEREMY S. GADDY (MSB #[redacted])

OF COUNSEL:

HUIE, FERNAMBUCQ & STEWART, LLP
3 Protective Center, Suite 200
3801 Highway 280 South
Birmingham, AL 35216
Telephone: (205) 251-1193
Facsimile: (205) 251-1256

CERTIFICATE OF SERVICE

I do hereby certify that I have this day caused to be mailed and/or hand-delivered, a true and correct copy of the above and foregoing document to:

Hon. Eddie H. Bowen
Smith County Circuit Court Judge
P.O. Box 545
Raleigh, MS 39153-0545

Eugene C. Tullos, Esq.
Tullos & Tullos
Post Office Box 74
Raleigh, MS 39153-0074

Kathy Gillis
MS Supreme Court Clerk
P.O. Box 117
Jackson, MS 39205

Anthony Grayson
Smith County Circuit Court Clerk
P.O. Box 517
Raleigh, MS 39153

THIS, the 28th day of September, 2011.

_____
REBECCA B. COWAN
JOSEPH W. GILL