

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.

, Individually,
and

DEFENDANT

MEMORANDUM BRIEF OF IN OPPOSITION
TO DEFENDANTS MOTION TO TRANSFER CAUSE TO CHANCERY COURT

I. INTRODUCTION

THIS MATTER is before the Court on the Motion of the Defendants to transfer this cause to the Chancery Court of County, Mississippi. Plaintiff, (" ") opposes the Motion and has filed an opposition to the Motion contemporaneously with service of this brief. For the reasons stated herein and for the reasons set forth in opposition to the Motion to Transfer, the Motion should be denied, as there is no basis under Mississippi law to support a transfer of this cause to Chancery Court.

II. FACTS

initiated this action on , , seeking damages against the Defendants based on a number of theories including breach of contract, tortious interference with contract, fraud, conversion, and other causes of action sounding in law and equity. The Complaint filed by seeks compensatory damages based on the breach of contract and tortious interference, together with an award of punitive damages based on the various legal theories asserted in the Complaint.

The underlying facts of this case involve 's involvement with the Defendants in a business being operated by the Defendants. was induced to buy into the business and pay the purchase price of \$ for assets. was told that he/she would be issued stock in the corporation existing under the name of . It was also represented to by the Defendants that the Defendants would buy into established business to complete a merger of the operations. performed his/her portion of the Contract by paying the sum of \$ to purchase stock and assets of the business, which had been represented to him/her as a corporation, and which was duly registered with the Mississippi Secretary of State's office. was never issued stock, and Defendants failed and/or refused on repeated occasions to make any effort to purchase any part of business. also became aware that the Corporation had not maintained corporate formalities, and that no stock would be issued in spite of his/her capitol influx in the amount of \$.

When it became apparent to that he/she had been defrauded, and that the Defendants had no intention of paying any amount or purchase a portion of the established business, began to take actions to protect himself/herself against further damages by virtue of the fraud, misrepresentation, and breach of contract which he/she was suffering at the hands of the Defendants.

At the time that it became clear that _____ could not continue to engage in business with the Defendants based on the fraud and breach of contract, Defendants unilaterally terminated the business relationship, and have retained clients, equipment, and other assets of _____ without offering any payment or compensation to him/her based on his/her capitol contributions, influx of business, or equipment.

Following service of the Complaint, Defendants filed an Answer and Counterclaim. In the Counterclaim, Defendants raise several counts, including breach of contract, tortious interference, fraud, and other counts sounding at law, Defendants likewise counterclaim for accounting and dissolution of the partnership.

In spite of having raised numerous legal claims, and requested an award of punitive damages, Defendants now seek to have this cause removed to the Chancery Court of _____ County, Mississippi. As the basis for their Motion, Defendants allege that jurisdiction is somehow exclusively based in the Chancery Court. This is not the case, as there is no legal basis upon which to allege exclusive jurisdiction in the Chancery Court over this matter. In fact, the Motion is not well taken and contrary to existing Mississippi law, inasmuch as this Court, as the only constitutionally established Court of general jurisdiction, has original jurisdiction of all claims sounding at law, and pendant jurisdiction over those claims which may otherwise sound in equity.

III. ARGUMENT AND AUTHORITY

The Circuit Court is the only Court of general jurisdiction in this case with authority to hear and dispose of all claims and Counterclaims raised by the pleadings. See *Barlow v. Weathersby*, 597 So. 2d 1288, 1293 (Miss. 1992); see also *Dye v. State Ex Rel Hale*, 507 So. 2d 332, 337 (Miss. 1987). Moreover, it is firmly established that "the Circuit Courts of this State have original jurisdiction of suits filed therein for damages based upon actions excontractual and delicto." *City of Starkville v. Thompson*, 243 So. 2d 54, 55 (Miss. 1971).

The majority of the claims set forth in the Complaint and Counterclaims are claims for damages based in contract or in tort. These claims are subject to the exclusive jurisdiction of the Circuit Court. To the extent that other claims arising out of the relationship between the parties sound and equity, these claims are clearly subject to the pendant jurisdiction of the Circuit Court.

In *Hall v. Corbin*, the Mississippi Supreme Court stated that: Where a Circuit Court has jurisdiction of an action at law, it may hear and adjudicate in that action, all claims, including those with an equitable smell, arising out of the same transaction and occurrence and the principal claim.

[O]ur Circuit Courts are courts of general jurisdiction Miss. Const. Art. 6, Sec. 156 (1890), while our Chancery Courts are regarded as courts of special or limited jurisdiction. *Barnes v. McCloud*, 165 Miss. 437, 140 So. 740, 741 (1932). *Hall v. Corbin*, 478 So. 2d 253, 255 (Miss. 1985).

It is beyond serious debate that all of the claims alleged in the Plaintiff's Complaint and the Defendants' Counterclaim arise out of the same transaction, occurrence, sequence of events, and relationship between the parties. As such, this Court is within its authority to exercise jurisdiction over all of the claims set forth in the Complaint and Counterclaim. Conversely, the Chancery Court, in its limited subject matter jurisdiction, would not be a proper forum for adjudication of the claims based strictly on breach of contract, tortious interference, fraud, conversion, and any of the claims for which compensatory and punitive damages are sought. Moreover, the Plaintiff has chosen Circuit Court to litigate these claims before a jury. This obviously would not be available in Chancery Court.

IV. CONCLUSION

Numerous claims are presented to the Court both in Complaint, and in the Counterclaim filed by the Defendants. In a traditional classification, certain of these claims would be claims for relief at law, and others would be claims sounding in traditional equity. The Mississippi Supreme Court has recognized that the only Court of general jurisdiction in this State is the Circuit Court, and that Chancery Court jurisdiction is limited by the Constitution, and by traditional Chancery practice. Under the circumstances, the Plaintiff would be disserved by a transfer to Chancery Court, which is ill equipped to adjudicate the legal claims which predominate this litigation. Moreover, would be denied his/her right to trial by jury on his/her legal claims for damages if this case is transferred to Chancery Court.

There is no legitimate basis upon which to transfer this case to Chancery Court, and arguments set forth by the Defendants are in contradiction of clear Mississippi law. As there is no legal basis or authority supporting the Defendants' position on the transfer of this cause to Chancery Court, and because prejudice would result to the Plaintiff if the case is transferred to Chancery Court, this Court should deny the Motion and retain jurisdiction over all claims in the case.

Finally, this Court recently considered a nearly identical Motion in the case of David B. Oreer v. Hartman. Harper. Stokes. Knight. P.A.. et al., in the Circuit Court of County, Cause No.94-141, and found the Motion to be not well taken and overruled. A copy of the Court Order overruling that Motion to Transfer is attached to Opposition as Exhibit "A". A consistent ruling is mandated on this case based on the factual similarities existing between the two cases, and sound principals of Mississippi law.

DATED this the day of , 20 .

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for

CERTIFICATE OF SERVICE

I, _____ hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing pleading to counsel for the Defendant,

This the _____ day of _____, 20____.