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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

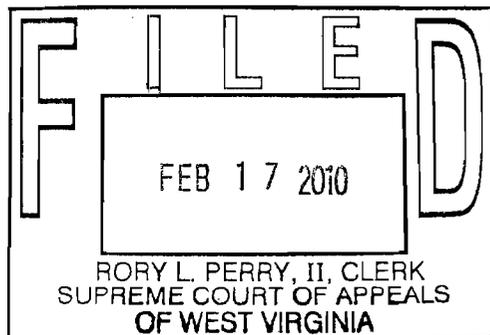
RAMEY MOTORS, INC.
a West Virginia corporation,

Petitioner/Defendant Below,

v.

THE HONORABLE WARREN R. MCGRAW,
Judge of the 27th Judicial Circuit, and
BRANDON BLEVINS,

Respondents/Plaintiff Below.



**MEMORANDUM OF LAW IN SUPPORT OF RAMEY MOTORS, INC.'S PETITION FOR
WRIT OF PROHIBITION**
FROM THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA
Civil Action No. 09-C-96

Submitted by:

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TABLE OF CONTENTS

Page

I.	ISSUES PRESENTED	4
II.	STATEMENT OF FACTS, NATURE OF PROCEEDINGS, AND RULINGS BELOW	5
III.	STANDARD OF REVIEW	7
IV.	ASSIGNMENT OF ERROR AND NATURE OF RULING	8
	W.Va. Code § 56-1-1 Does Not Provide for Venue of this Action in the Circuit Court of Wyoming County, and the Circuit Court of Wyoming County Erred in Denying the Petitioner’s Motion to Dismiss for Improper Venue	
V.	CONCLUSION	9

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<u>Appalachian Power Co. v. State Tax Dep't</u> , 466 S.E.2d 424, 438 (W.Va. 1995).....	9
<u>Banner Printing Co. v. Bykota Corp.</u> , 388 S.E.2d 844 (W.Va. 1989).....	9
<u>Crockett v. Andrews</u> , 172 S.E.2d 384 (W.Va. 1970)	9
<u>Jennings v. McDougle</u> , 98 S.E. 162 (W.Va. 1919)	7
<u>L. Sonneborn Sons v. Ansonia Copper & Iron Works</u> , 6 S.E.2d 249 (W.Va. 1939) 9	
<u>McGuire v. Fitzsimmons</u> , 475 S.E.2d 132 (W.Va. 1996)	9
<u>Pittsburgh Elevator Co. v. West Virginia Bd. of Regents</u> , 310 S.E.2d 675 (W.Va. 1983)	9
<u>State ex rel. Farber v. Mazzone</u> , 584 S.E.2d 517 (W.Va. 2003)	7
<u>State v. Epperly</u> , 65 S.E.2d 488 (W.Va. 1951).....	9
<u>United Bank, Inc. v. Blosser</u> , 624 S.E.2d 815 (W.Va. 2005)	7

STATUTES

	<u>Page</u>
W.Va. Code § 56-1-1.....	4, 6, 7, 8, 9, 10
W.Va. Code § 53-1-1.....	7

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NOW COMES the Petitioner, Ramey Motors, Inc. (hereinafter referred to as "Ramey"), by and through its counsel of record, Johnnie E. Brown, Bryan N. Price, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and respectfully submits this *Memorandum of Law in Support of Ramey Motors, Inc.'s Petition for Writ of Prohibition*. In support of its petition for writ of prohibition, Ramey Motors, Inc. states as follows:

I. ISSUES PRESENTED

Whether the Circuit Court of Wyoming County is the proper venue for the underlying civil action pursuant to W.Va. Code § 56-1-1 and standing precedent interpreting the same, and whether the Circuit Court of Wyoming County erred in denying Petitioner's Motion to Dismiss for Improper Venue?

II. STATEMENT OF FACTS, NATURE OF PROCEEDINGS, AND RULINGS BELOW

This case arises from a Complaint that was filed by the Plaintiff in the Circuit Court of Wyoming County, West Virginia, on or about June 11, 2009. In his Complaint, the Plaintiff asserts damages for fraud and breach of contract arising from Plaintiff's purchase and financing of a 2004 Chevrolet Silverado from Ramey Motors, Inc. More specifically, Plaintiff alleges that he intended to purchase "GAP" insurance on the subject vehicle, and was under the impression he did in fact purchase "GAP" insurance. When Plaintiff subsequently totaled the vehicle, he learned that he did not in fact purchase "GAP" insurance. (*See generally* "Exhibit 1").

Ramey Motors, Inc. is a West Virginia corporation, licensed to conduct business in West Virginia, with its principal place of business located on Rt. 460 East, Princeton, Mercer County, West Virginia. (*See Appendix* "Exhibit 1"). Plaintiff's purchase of the subject vehicle occurred at Ramey's principal place of business in Mercer County.

Plaintiff's claims against Ramey all arise from the negotiation and sale of the subject vehicle, and whether or not the purchase of "GAP" insurance was included within the same. Importantly, all facets of Plaintiff's purchase of the subject vehicle occurred at Ramey's principal place of business in Mercer County, West Virginia. All negotiations related to the Plaintiff's purchase and financing of the subject vehicle occurred in Mercer County at Ramey's principal place of business, and the signing of all documents consummating the sale and financing of the vehicle occurred in Mercer County at Ramey's principal place of business. Assuming *arguendo* that Plaintiff's allegations are true, the alleged misrepresentations made and/or the acts or omissions constituting a breach of contract all occurred during the negotiations for Plaintiff's purchase of the vehicle, or during the signing of documents consummating the Plaintiff's purchase of the vehicle, all of which occurred in Mercer County, West Virginia.

Specifically, Plaintiff alleges in his Complaint that he had to go to Ramey Motors, Inc. to sign the documents for the purchase of the 2004 Chevrolet Silverado. This includes, but is not limited to, the signing of a Retail Installment Contract, Buyer's Order, Promissory Note, Privacy Notice, Odometer Disclosure Statement, Spot Agreement, and requisite Department of Motor Vehicle documents. The GAP Insurance that the Plaintiff claims he thought he purchased would have been referenced in the afore-mentioned documents, all of which were signed by the Plaintiff at Ramey Motors, Inc. on Rt. 460 East, Princeton, in Mercer County, West Virginia. Moreover, Plaintiff also initialed and signed an "Acknowledgement of Availability Guaranteed Auto Protection Program" wherein it is indicated that "I [Brandon Blevins] decline Guaranteed Auto Protection Program." (See Appendix "Exhibit 2"). These very documents, all of which were executed at Ramey's principal place of business in Mercer County, West Virginia, provide the basis for this litigation.

Given the residency of Ramey Motors, Inc. in Mercer County, and the fact that the events giving rise to the Plaintiff's claims all occurred in Mercer County, this Petitioner filed a Motion to Dismiss for Improper Venue pursuant to W.Va. Code § 56-1-1 as venue was not proper in the Wyoming County Circuit Court. Petitioner requested that the Circuit Court of Wyoming County dismiss the matter pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure for improper venue. (See Appendix "Exhibit 3").

On October 23, 2009, the parties appeared before the Circuit Court of Wyoming County in front of the Honorable Judge Warren R. McGraw and presented oral arguments regarding Ramey Motors, Inc.'s motion to dismiss for improper venue. On January 14, 2010, the Circuit Court entered an Order denying Ramey's motion to dismiss and the same was filed with the

circuit clerk on January 20, 2010. (See Appendix “Exhibit 4”). The Circuit Court deemed venue proper in the Wyoming County Circuit Court.

This Petitioner contends that pursuant to W.Va. Code § 56-1-1, venue of this civil action properly lies in the Circuit Court of Mercer County, the locale where the transaction occurred, and the county where Ramey maintains its principal place of business. Pursuant to the clear and unambiguous language of W.Va. Code § 56-1-1, and the standing precedent of this Honorable Court interpreting the same, venue of this matter in the Circuit Court of Wyoming County is improper, and the matter should be dismissed as a matter of law.

III. STANDARD OF REVIEW

According to W.Va. Code § 53-1-1, a writ of prohibition “shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” “When a court is attempting to proceed in a cause without jurisdiction, prohibition will issue as a matter of right regardless of the existence of other remedies.” State ex rel. Farber v. Mazzone, 584 S.E.2d 517, 521 (W.Va. 2003)(citing Syl. Pt. 10, Jennings v. McDougle, 98 S.E. 162 (W.Va. 1919). This Court’s review of a trial court’s decision on a motion to dismiss for improper venue is for abuse of discretion. Syl. Pt. 1, United Bank, Inc. v. Blosser, 624 S.E.2d 815 (W.Va. 2005). Thus, it is apparent in this case that the Circuit Court abused its powers in denying this Petitioner’s Motion to Dismiss for Improper Venue.

IV. ASSIGNMENT OF ERROR AND NATURE OF RULING

W.Va. Code § 56-1-1 Does Not Provide for Venue of this Action in the Circuit Court of Wyoming County, and the Circuit Court of Wyoming County Erred in Denying the Petitioner's Motion to Dismiss for Improper Venue.

A plaintiff who seeks to sue a party in the State of West Virginia must abide by the provisions set forth in West Virginia's general venue statute. This statutory venue provision only permits a cause of action against a domestic corporation to be filed in the county where the cause of action arose or where the corporation is located. As such, the undisputed facts of this case afford venue in only one county: Mercer County, West Virginia.

Proper venue for the Plaintiff's cause of action is governed by W.Va. Code § 56-1-1. Said statute provides, in pertinent part, that:

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;

(2) If a corporation be a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

See W.Va. Code § 56-1-1(a) [emphasis added].

The West Virginia Supreme Court has stated that venue for a cause of action lies in the county wherein the cause of action arose or in the county where the defendant resides. *See*

Pittsburgh Elevator Co. v. West Virginia Bd. of Regents, 310 S.E.2d 675 (W.Va. 1983). Venue of action against a corporate defendant lies in county where cause of action arises, in addition to those locations specified in venue statute subsection relating to corporate defendants. See McGuire v. Fitzsimmons, 475 S.E.2d 132 (W.Va. 1996); Banner Printing Co. v. Bykota Corp., 388 S.E.2d 844 (W.Va. 1989). The general venue statute relating to corporations confers venue, and its provisions are exclusive, subject to the exception therein mentioned. See L. Sonneborn Sons v. Ansonia Copper & Iron Works, 6 S.E.2d 249 (W.Va. 1939).

More importantly, this Court has previously declared that “a statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” Syl. Pt. 2, State v. Epperly, 65 S.E.2d 488 (W.Va. 1951). “Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” Syl. Pt. 2, Crockett v. Andrews, 172 S.E.2d 384 (W.Va. 1970). In deciding the meaning of a statutory provision, it is clear that the West Virginia Supreme Court of Appeals first looks to the statute’s language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed. Appalachian Power Co. v. State Tax Dep’t, 466 S.E.2d 424, 438 (W.Va. 1995).

In the case *sub judice*, there is no dispute in this matter that W.Va. Code § 56-1-1(a) is controlling, and the clear and unambiguous language mandates that Mercer County is the proper venue for this action, not Wyoming County. Plaintiff has sought monetary damages from the Petitioner, a West Virginia corporation, licensed to conduct business in West Virginia, with its principal place of business located on Rt. 460 East, Princeton, Mercer County, West Virginia. Plaintiff’s Complaint focuses on the events arising from the transaction that occurred at Ramey’s

principal place of business in Mercer County, West Virginia on or about August 19, 2006, which included the negotiation for the purchase of an automobile, and the signing of all paperwork related to the Plaintiff's purchase and financing of a an automobile. (See Appendix "Exhibit 1"). The events giving rise to the Plaintiff's claims all occurred in Mercer County, West Virginia, and W.Va. Code § 56-1-1(a) mandates that Mercer County is the proper venue for Plaintiff's lawsuit.

For the purposes of the Plaintiff's Complaint, this civil action should have been brought in the county where the transaction occurred, in the county where any of the defendants reside, in the county where the corporate defendant has its principal place of business, or wherein its mayor, president or other chief officer resides. See W.Va. Code § 56-1-1. None of these are Wyoming County, West Virginia. Accordingly, in relying on the clear and unambiguous language of the West Virginia Legislature and the careful consideration of decisions from this Court as cited above, venue is not proper in the Wyoming County Circuit Court pursuant to W. Va. Code § 56-1-1.

V. CONCLUSION

The Circuit Court of Wyoming County erred when it issued its January 14, 2010 order denying the Petitioner's motion to dismiss for improper venue and continuing to exercise venue over this litigation. Your Petitioner has no other adequate means for relief and will be damaged and/or prejudiced by litigating this case in a Court of improper venue. The Wyoming County Circuit Court's erroneous exercise of venue over this matter would not be correctable on appeal following a trial as the parties would have already incurred costs, expenses, and time litigating in an improper forum.

WHEREFORE, for the foregoing reasons, the Petitioner, Ramey Motors, Inc., respectfully requests this Honorable Court:

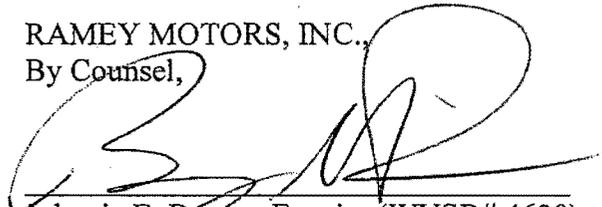
1. **STAY** any and all proceedings in the underlying action pending this Court's ruling on this Petition for Writ of Prohibition;

2. **ORDER** the Respondents named herein to appear and show cause why a Writ of Prohibition should not issue to prevent the Circuit Court and Plaintiff from proceeding in the underlying action, and

3. **GRANT** the Petition and **ISSUE** a Writ of Prohibition vacating the January 14, 2010 Order of the Circuit Court of Wyoming County and directing the Circuit Court of Wyoming County to dismiss the underlying action for improper venue.

Respectfully submitted,

RAMEY MOTORS, INC.,
By Counsel,



Johnnie E. Brown, Esquire (WVSB# 4620)
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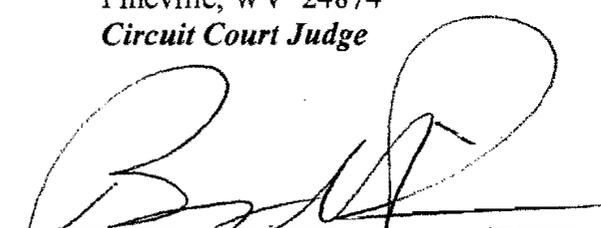
CERTIFICATE OF SERVICE

The undersigned counsel for the defendant, Ramey Motors, Inc., does hereby certify that the foregoing "*Memorandum of Law in Support or Ramey Motors, Inc.'s Petition for Writ of Prohibition*" was served upon the following counsel of record by mailing a true copy thereof via United States mail:

Timothy P. Lupardus, Esq.
Lupardus Law Office
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Pineville, WV 24874
Counsel for Plaintiff

The Honorable Warren R. McGraw
Wyoming County Courthouse
Main & Bank Streets
P.O. Box 581
Pineville, WV 24874
Circuit Court Judge

This 17th day of February, 2010.



Johnnie E. Brown, Esquire (WVSB# 4620)
Bryan N. Price, Esquire (WVSB #8846)

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