

No. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

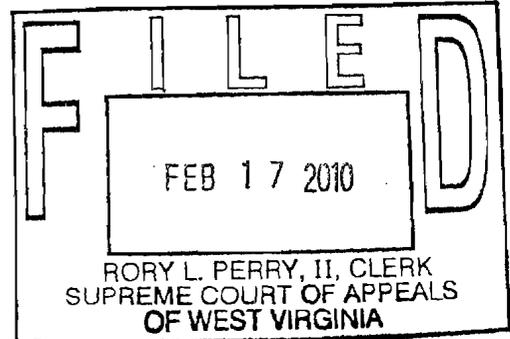
RAMEY MOTORS, INC.
a West Virginia corporation,

Petitioner/Defendant Below,

v.

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

Respondents/Plaintiff Below.



PETITION FOR WRIT OF PROHIBITION
FROM THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA
Civil Action No. 09-C-96

Submitted by:

Johnnie E. Brown (WVSB # 4620)
Bryan N. Price (WVSB # 8846)
PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
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(304) 344-0100
Counsel for Ramey Motors, Inc.

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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, pursuant to the provisions of West Virginia Code § 56-1-1, *et seq.*, Rule 12(b)(3) of the West Virginia Rules of Civil Procedure and Rule 14 of the Rules of Appellate Procedure for the Supreme Court of Appeals of West Virginia, and respectfully requests that this Honorable Court issue an order directing Respondents to show cause why a writ of prohibition should not issue barring the Honorable Warren R. McGraw, Judge of the Circuit Court of Wyoming County and the Plaintiff below, Brandon Blevins, from proceeding, conducting, or permitting any further proceedings in *Brandon Blevins v. Ramey Motors, Inc., a West Virginia corporation*, Civil Action No. 09-C-96, which is currently pending before the Circuit Court of Wyoming County. Ramey hereby petitions this Honorable Court to

1

issue a writ of prohibition (1) staying the proceedings in the Circuit Court; (2) vacating the Circuit Court's Order entered January 14, 2010; and (3) directing the Circuit Court to dismiss this civil action in the Circuit Court of Wyoming County, West Virginia for improper venue. In support hereof, the Petitioner states and avers as follows:

1. The Complaint in the underlying civil action was filed by the Plaintiff in the Circuit Court of Wyoming County, West Virginia, on or about June 11, 2009.

2. Defendant Ramey Motors, Inc. was served through the West Virginia Secretary of State on or about June 23, 2009. Ramey Motors, Inc. is a West Virginia corporation, licensed to conduct business in West Virginia. Its principal place of business is located on Rt. 460 East, Princeton, Mercer County, West Virginia.

3. The Complaint asserts damages for fraud and breach of contract arising from Plaintiff's purchase and financing of a 2004 Chevrolet Silverado at Ramey Motors, Inc. located in Mercer County, West Virginia.

4. Venue for a cause of action lies in the county wherein the cause of action arose or in the county where the defendant resides. Pittsburgh Elevator Co. v. West Virginia Bd. of Regents, 310 S.E.2d 675 (W.Va. 1983). Venue of an action exists by virtue of law, and residence of a plaintiff, without more, is not valid ground of venue in absence of statute or other principle of law authorizing it. *See* W.Va. Code 56-1-1, Crawford v. Carson, 78 S.E.2d 268 (W.Va. 1953).

5. Proper venue for a cause of action is governed by W.Va. Code § 56-1-1. W.Va. Code § 56-1-1 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].

6. Thus, for purposes of the Plaintiff's Complaint, the underlying civil action should have been brought in the county where the transaction occurred, in the county where any of the defendants reside, or in the county where a corporate defendant has its principal place of business, or wherein its mayor, president or other chief officer resides.

7. The Plaintiff's alleged cause of action arose in Mercer County, West Virginia. Specifically, all facets of the alleged fraudulent transaction occurred at Ramey's principal place of business in Mercer County, West Virginia, including all negotiations and the signing of all paperwork related to the Plaintiff's purchase and financing of the subject vehicle.

8. Given Ramey's principal office is located 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 dismiss the matter pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure.

9. On October 23, 2009, the parties appeared before the Circuit Court and presented oral arguments regarding Ramey Motors, Inc.'s motion to dismiss.

10. On January 14, 2010, the Circuit Court entered an Order denying Ramey's motion to dismiss and the same was filed in the circuit clerk on January 20, 2010. The Circuit Court erred in entering its January 14, 2010 order because the clear and unambiguous language of W.Va. Code § 56-1-1 deprived the Circuit Court of jurisdiction over this matter.

11. West Virginia Code § 53-1-1 provides that 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 not jurisdiction of the subject matter in controversy, or, having such venue, exceeds its legitimate powers."

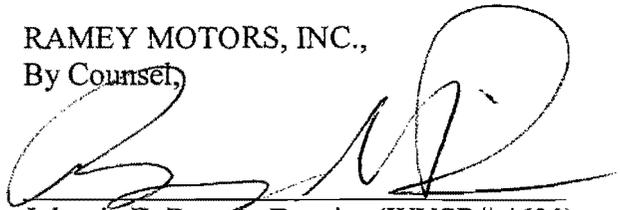
12. A writ of prohibition should issue against the Circuit Court of Wyoming County staying any further proceedings in the Circuit Court, vacating the Circuit Court's January 14, 2010 order, and directing the Circuit Court to dismiss the civil action forthwith. Venue of this action properly lies with the Circuit Court of Mercer County.

13. On February 17, 2010, Ramey filed a motion to stay any and all proceedings regarding the underlying case in the Circuit Court of Wyoming County to allow for the presentation and resolution of this petition for writ of prohibition.

WHEREFORE, based upon the foregoing arguments, legal support, and matters set forth in the *Memorandum of Law in Support of Petition for Writ of Prohibition*, the Petitioner respectfully requests this Honorable Court issue a rule directing the Respondents named herein to stay any further proceedings below, and to appear and show cause why a writ of prohibition should not issue to prevent the Circuit Court and the Plaintiff from conducting any further proceedings in the Circuit Court of Wyoming County.

Respectfully submitted,

RAMEY MOTORS, INC.,
By Counsel,

A large, stylized handwritten signature in black ink, appearing to be "Johnnie E. Brown".

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

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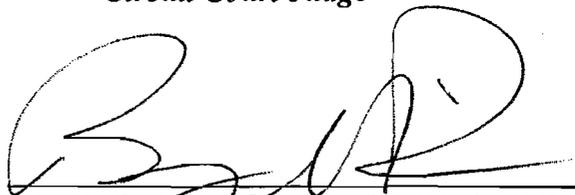
CERTIFICATE OF SERVICE

The undersigned counsel for the defendant, Ramey Motors, Inc., does hereby certify that the foregoing "*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
PO Box 1680
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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