

IN THE CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

TERESA MOON-VILENO, an
individual, and DEBORAH LYNN
FELTY, an individual,

Plaintiffs,

vs.

Case No. 2019-CA-11001-O

CLASS ACTION
REPRESENTATION

FLORIDA ASSOCIATION OF
COURT CLERKS, INC., a Florida
Not for Profit Corporation, FACC
SERVICES GROUP, LLC d/b/a
CIVITEK, a Florida Limited Liability
Company, and CIVITEK
NATIONAL, INC., a Florida Profit
Corporation,

Defendants.

**MOTION TO DISMISS FOR IMPROPER VENUE
AND FAILURE TO STATE A CAUSE OF ACTION**

Improper Venue

The allegations of the Complaint, coupled with the attached affidavit, establish that venue for this matter lies only in Leon County, Florida.¹ Section 47.051, Florida Statutes, provides, in pertinent part:

¹ It is appropriate for a court to consider affidavits in adjudicating motions to dismiss for improper venue. *See Loiaconi v. Gulf Stream Sea Food, Inc.*, 830 So. 2d 908, 909-910 (2nd DCA 2002); *Magee v. Liberty Mutual Ins. Co.*, 366 So. 2d 827 (Fla 4th DCA 1979).

Actions against corporations.— Actions against domestic corporations shall be brought only in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located.

The Complaint attempts to state a cause of action against three corporations, alleging in paragraphs 4, 5, and 6 that all Defendants maintain their principal places of business in Leon County, Florida. The attached affidavit establishes that each of the three Defendant corporations maintains its *sole* office in Leon County.

Plaintiffs assert that venue is nevertheless proper in Orange County for two reasons. First, the Complaint alleges Defendants transact business in Orange County. The venue statute sets forth only three bases for venue and doing business in a county is not one of them. Accordingly, Florida courts have rejected doing business in a county as a basis for venue. *Florida Gamco, Inc. v. Fontaine*, 68 So. 3d 923 (Fla. 4th DCA 2011); *Levy County School Bd. v. Bowdoin*, 607 So. 2d 479 (Fla. 1st DCA 1992); *U-Haul Co. v. Fuller*, 417 So. 2d 1102, 1003 (Fla. 4th DCA 1982) (“Doing business in a county or having an agent in a county, without more, is not a sufficient basis for venue in a suit against a domestic, as opposed to a foreign, corporation.”).

The second asserted basis for venue is that the cause of action accrued in Orange County. The allegations of the Complaint, coupled with the affidavit, also establish that no cause of action occurred in Orange County. The gravamen of the Complaint is that members of the alleged class are being overcharged for online

credit card payments to clerks of courts (“convenience fees.”) The attached affidavit establishes that no activities by Defendants relating to the convenience fees occurs anywhere but Leon County. The affidavit states that the contracts between Defendants and court clerks for services relating to the convenience fees were drafted and executed in Leon County; the administration of the services provided for in the contracts occurs in Leon County; and the funds generated by the convenience fees are received and deposited into bank accounts in Leon County.

The only acts the Complaint alleges occurred in Orange County (other than the insufficient assertion that Defendants transact business in the county) is that one of the named Plaintiffs resides in Orange County and charged a convenience fee in the Ninth Circuit. Even if this alone were otherwise sufficient to establish venue, it is not sufficient to sustain a lawsuit against Defendants in Orange County because the affidavit establishes that Defendants have no interaction with the named or unnamed class of Plaintiffs in connection with the convenience fee charges.

Failure to State a Cause of Action

The Complaint alleges that Defendants violated section 542.18, Florida Statutes, the state antitrust law, by entering an “agreement, understanding, combination and/or conspiracy” to restrain trade and injure the Plaintiff class by overcharging for convenience fees to make online payments to court clerks. The Complaint fails to state a cause of action for several reasons.

First, the Complaint fails to allege facts showing that Defendants violated section 215.322, Florida Statutes, the statute alleged to limit the amount of convenience fee charges. The statute authorizes a “state agency as defined in s. 216.011,” to accept payments by credit card and to charge a convenience fee for doing so, but provides that such fee “may not exceed the total cost to the state agency.” § 215.322(2)(b), Fla. Stat. The referenced section 216.011 defines “state agency” as “any official, officer, commission, board, authority, counsel, committee, or department of the executive branch of state government.” Defendants, all private corporations, do not meet the definition of state agency and, consequently, are not subject to the strictures of section 215.322.

In addition to the foregoing, neither the named Plaintiffs nor the members of the alleged class have standing to enforce section 215.322. In the absence of a clear statement by the Legislature that criminal or regulatory statutes are intended to authorize private actions, no such authority is implied. *Villazon v. Prudential Healthcare Plan*, 843 So. 2d 842 (Fla. 2003); *Ramos v. CACH LLC*, 183 So. 3d 1149 (Fla. 5th DCA 2015). Nothing in section 215.322 suggests a legislative intent to create a private right of action.

Apparently realizing that they have a standing problem, Plaintiffs allege that Defendants combined or conspired to restrain trade in violation of section 542.18, Florida Statutes. However, the Complaint lacks the necessary allegations to state a

cause of action under that statute. Antitrust laws, including section 542.18 in particular, are not intended to provide remedies for individual injury. Rather, they are intended to protect the market from conduct that impairs competition, and the facts establishing the impact on competition must be stated with particularity, not conclusory allegations. *MYD Marine Distrib. v. Int'l Paint Ltd.*, 76 So. 3d 42 (Florida 4th DCA 2011); *Okeelanta Power Ltd. Pshp. v. The Florida Power & Light Co.*, 766 So. 2d 264 (Fla. 4th DCA 2000); *Greenberg v. Mount Sinai Medical Ctr.*, 629 So. 2d 251 (Fla 3d DCA 1993).

The Complaint fails to allege any facts to illustrate that Defendants have engaged in conduct that has restrained competitors from entering the market or driven them from the market, or that Defendants have engaged in concerted efforts to fix prices in the market. The Complaint is composed entirely of conclusory statements designed to check the boxes for elements of antitrust violation. Such complaints have consistently been dismissed for failure to state a cause of action. *Lombard's Inc. v. Prince Mfg., Inc.*, 753 F. 2d 974 (11th Cir. 185); *Kls Martin, Inc. v. Medical Modeling, Inc.*, 2018 WL 8139133 (N.D. Fla. 2018); *Hill Pharmaceuticals, Inc. v. Anthem, Inc.*, 228 F. Supp. 3d 1292 (M.D. Fla. 2017); *Okeelanta Power Ltd. Pshp. v. Florida Power & Light Co.*, 766 So. 2d 264 (Fla. 4th DCA 2000).

For the foregoing reasons, the Complaint should be dismissed or, alternatively, transferred to Leon County, Florida.

S/BARRY RICHARD

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Counsel for Defendants, Florida

Association of Court Clerks, Inc.,

FACC Services Group, LLC d/b/a

Civitek, and Civitek National, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed electronically with the Clerk of the Court and served via email to the following this 2nd day of October, 2019:

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Co-Counsel for Plaintiffs

s/ Barry Richard

Exhibit A

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IN AND FOR ORANGE COUNTY, FLORIDA

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individual,

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FLORIDA ASSOCIATION OF COURT CLERKS, INC., a Florida Not for Profit
Corporation, FACC SERVICES GROUP, LLC d/b/a CIVITEK, a Florida Limited
Liability Company, and CIVITEK NATIONAL, INC., a Florida Profit
Corporation,

Defendants.

Case No. 2019-CA-11001-O

CLASS ACTION REPRESENTATION

AFFIDAVIT OF CHRIS HART, IV

Before me, a notary public authorized to take oaths in the State of Florida, personally appeared Chris Hart, IV, who, having been first duly sworn, did state:

1. I am the Chief Executive Officer of each of the Defendant corporations herein and have personal knowledge of the facts stated below.

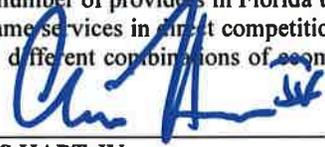
2. Each of the Defendants maintains its principal place of business and sole office in Leon County, Florida.

3. The services relating to convenience fees for online credit card charges mentioned in the Complaint are provided by FACC Services Group, L.L.C. (FACC Services), pursuant to contracts with individual clerks of court. All the contracts were drafted and executed in Leon County, Florida.

4. Funds generated by the convenience fees are received and deposited in a bank account in Leon County, Florida.

5. All services performed by Defendants are performed in Leon County, Florida.

6. Defendants do not have a monopoly on services for managing ecommerce credit card charges. There are a number of providers in Florida that are unaffiliated with Defendants that offer the same services in direct competition with Defendants. Florida's 67 clerks of court use different combinations of ecommerce service providers.



CHRIS HART, IV

The foregoing instrument was acknowledged before me this 1st day of October, 2019, by CHRIS HART, IV, who is personally known to me (or who has produced _____ as identification) and did (did not) take an oath.

NOTARY PUBLIC

Signature *Janice Thompson*

My Commission Expires: *July 19, 2023*

(SEAL)

