

IN THE SUPREME COURT OF MISSOURI

UNIVERSAL CREDIT)	
ACCEPTANCE, INC.,)	
)	
<i>Relator,</i>)	
)	
v.)	No. SC97872
)	
THE HONORABLE GLORIA CLARK)	
RENO, PRESIDING JUDGE,)	
MISSOURI CIRCUIT COURT,)	
21ST JUDICIAL CIRCUIT,)	
ST. LOUIS COUNTY,)	
)	
<i>Respondent.</i>)	

PROCEEDING IN MANDAMUS FROM THE CIRCUIT COURT
OF ST. LOUIS COUNTY, MISSOURI, CAUSE NO. 19SL-CC01873

REPLY BRIEF OF RELATOR UNIVERSAL CREDIT ACCEPTANCE, INC.

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REPLY ARGUMENT

I. Missouri Revised Statute § 508.010.10 is Inapplicable to the Present Matter when read in Harmony with Rule 56.01 of the Missouri Rules of Civil Procedure.

In Defendant/Counterclaim Plaintiff Renwick Ware’s (“Ware”) Respondent’s Brief, he first argues that the trial court lacked authority to do anything, except to grant his Motion to Transfer Venue and to transfer the matter from St. Charles County to St. Louis County, as a result of MO. REV. STAT. § 508.010.10, which provides that

[a]ll motions to dismiss or to transfer based upon a claim of improper venue shall be deemed granted if not denied within ninety days of filing of the motion unless such time period is waived in writing by all parties.

MO. REV. STAT. § 508.010.10.

In its initial Brief, Relator Universal Credit Acceptance, Inc. (“UCA”) did not discuss MO. REV. STAT. § 508.010.10, not because it dooms UCA’s position as Ware suggests, but because this section is inapplicable in the present situation in light of the mandatory language of Rule 51.06 of the Missouri Rules of Civil Procedure, which states, in part:

If a party requests and obtains either a change of venue or a change of judge, that party ***shall not*** be granted any additional change thereafter except for cause or under Rule 51.07. ***A party who desires both a change of venue and a change of judge must join and present both in a single application.***

Mo. R. Civ. P. 51.06 (emphasis added). Ware continues that UCA is inviting the Court to create a conflict between Rule 51.06 and § 508.010.10 where none exists. However, UCA does not invite the Court to do so and, in fact, agrees that no conflict exists between the two, as they can be easily harmonized so as to give them both effect.

In making his arguments in this regard, Ware ignores one of the key components of statutory interpretation, which is that “[w]here two statutory provisions covering the same subject matter are unambiguous standing separately but are in conflict when examined together, a reviewing court must attempt to **harmonize them and give them both effect.**” *S. Metro. Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009) (citing *City of Clinton v. Terra Found., Inc.*, 139 S.W.3d 186, 189 (Mo. App. W.D. 2004)) (emphasis added).

“If harmonization is impossible, a chronologically later statute, which functions in a particular way will prevail over an earlier statute of a more general nature, and the latter statute will be regarded as an exception to or qualification of the earlier general statute.” *Id.* (quoting *Smith v. Mo. Local Govt. Employees Retirement System*, 235 S.W.3d 578, 582 (Mo. App. W.D. 2007) (internal quotations omitted).

However, the “[r]ules of statutory construction cannot be rigidly applied. Most often, for every rule suggesting one resolution, another rule

exists that suggests the contrary.” *Id.* (external citations omitted). As a result, “the main purpose of these rules of statutory construction is to determine legislative intent and give meaning to the statutory language.” *Id.*

Thus, while Ware attempts to claim that UCA is inviting the Court to create a conflict between Rule 51.06 and § 508.010.10 where none exists, UCA actually agrees that no conflict exists between the two and that they can be read in harmony with each other in order to effectuate the purpose of each.

Rule 51.06 provides that a party cannot obtain a change of venue, after they have previously requested and obtained a change of judge. MO. R. CIV. P. 51.06(a). This Rule essentially renders any motion to transfer venue which is filed after a party has obtained a change of judge, void or moot. Thus, the 90-day deadline set forth in § 508.010.10 would not be necessary, or applicable, to such a void, or moot motion that the trial court has no discretion but to deny. Further, in enacting § 508.010.10, the legislature clearly would not intend to allow for improper, untimely motions to be automatically granted.

This interpretation harmonizes and effectuates the purpose and intent of the Missouri Supreme Court and the Legislature in enacting these two provisions, which is not only to avoid delay, but also to prevent parties

from forum shopping and judge shopping—which Ware is clearly attempting to do in this matter.

Ware contends this harmonious interpretation would render the 90-day limit of §508.010.10 meaningless. However, the 90-day limit would still be applicable to those motions to transfer venue that were filed in accordance with the mandates of Rule 51.06(a), as well as any other applicable rules and statutes.

Here, as discussed in depth in UCA’s initial Brief, Ware filed his Motion to Transfer Venue after obtaining a change of judge, in clear violation of Rule 51.06(a). Section 508.010.10 is not only inapplicable to Ware’s motion, but unnecessary, as Ware’s Motion to Transfer Venue was essentially void, or moot. Ware should not be rewarded and be allowed to go judge shopping by filing an improper, untimely motion.

Therefore, because the trial court abused its discretion by granting Ware’s Motion for Change of Venue in violation of 51.06(a), the Court should make permanent its Preliminary Writ of Mandamus.

II. The Trial Court Abused its Discretion, because Ware’s Motion to Transfer Venue was not Timely under Missouri law.

Ware next argues that his Motion to Transfer Venue was “timely” simply because it was filed “not later than five days before the date set for trial.” See MO. REV. STAT. § 517.061. In so arguing, Ware either confuses, or is purposely attempting to distort, UCA’s position as to Ware’s motion being “untimely.”

UCA has not made the argument that Ware’s motion was untimely because it was not filed within five days before the date set for trial. Rather, UCA’s position is that Ware’s motion was untimely because it was filed after Ware had already requested and obtained a change of judge. See MO. R. CIV. P. 51.06(a). Ware did not present his request for change of judge and change of venue in a single application, as is required; thus, his Motion to Transfer Venue was untimely. See *id.*

Ware also argues that Rule 51.06 conflicts with Rule 51.045(a), which provides that “[i]f a timely motion to transfer venue is filed, the venue issue is not waived by any other action in the case.” MO. R. CIV. P. 51.045(a). Ware claims, based on this rule, that a movant in Associate Circuit Court cannot waive its right to transfer venue, regardless of whether it previously requested and obtained a change of judge. Ware,

again, ignores the simple fact that his motion was not timely at the moment it was filed.

Regardless, the plain language of Rule 51.045(a) shows that its obvious purpose is to allow a party to timely file a motion to transfer venue and to then to continue to participate in the litigation after the motion is timely filed, such as by filing a responsive pleading or by participating in discovery, without running the risk of waiving the right they have already asserted. The Rule is not meant as a means for a party to undue its prior actions that have already waived its right to challenge venue, as Ware attempts to claim here.

It is also unclear from Ware's Brief as to why he believes Rule 51.045 is applicable to associate circuit court cases, but not Rule 51.06. It would appear that Ware is simply picking certain sections that he believes aid his position, while ignoring all others, despite the fact that they should all be read together. In reading Rule 51.06, Rule 51.045, and MO. REV. STAT. § 517.061 together, in harmony, it is clear that Ware's Motion to Transfer Venue was not timely filed.

Therefore, because Ware's Motion to Transfer Venue was untimely, the trial court abused its discretion by granting Ware's Motion to Transfer Venue, and the Court should make permanent its Preliminary Writ of Mandamus.

III. Rule 51.06 of the Missouri Rules of Civil Procedure Applies to Chapter 517 Proceedings.

Ware also argues in his Brief that Rule 51.06 of the Missouri Rules of Civil Procedure does not apply to cases pending in Associate Circuit Court, because it goes against the simplified nature of Chapter 517 proceedings. In support, Ware relies on *Becker Glove Int'l, Inc. v. Jack Dubinsky & Sons*, 41 S.W.3d 885 (Mo. banc 2001).

In *Becker*, this Court held that the compulsory counterclaim rule of Rule 55.32(a) is inapplicable to Chapter 517 proceedings. *Id.* at 888-89. In so holding, the Court looked to MO. REV. STAT. § 517.031 and stated:

[T]here is no question that section 517.031 is a law whose provisions displace the otherwise required adherence to the rules of civil procedure. A counterclaim, if asserted in a chapter 517 proceeding, must be in writing. However, there is no provision stating that a counterclaim that would otherwise be considered compulsory under Rule 55.32(a) would be required to be asserted. It is inconsistent with the simplified nature of chapter 517 proceedings to apply the use-it-or-lose-it technicality of the compulsory counterclaim rule.

Id. at 888.

Here, unlike § 517.031 in *Becker*, § 517.061 regarding changes of venue and judge in Chapter 517 proceedings, expressly adopts the rules of civil procedure as to the reasons and manner for obtaining changes of venue and judge, except as to timing. Specifically, § 517.061 states:

Change of venue and change of judge ***shall*** be for the ***same reasons and in the same manner*** as provided in the rules of civil procedure ***except*** that the application shall be filed not later than five days before the return date of the summons. ...

MO. REV. STAT. § 517.061 (emphasis added). Thus, by the statutes plain language, changes of venue and changes of judge in Chapter 517 proceedings are identical to those in full Circuit Court cases, ***except*** in one regard, timing. In full Circuit Court cases a motion to transfer venue must be filed within 60 days of service on the party seeking transfer, while an application for change of judge “must be filed within 60 days from service of process or 30 days from the designation of the trial judge, whichever time is longer.” MO. R. CIV. P. 51.045(a); MO. R. CIV. P. 51.05(b). Section 517.061 simplifies the timing to reflect the simplified nature and faster pace of Chapter 517 proceeding, but in all other respects explicitly adopts the Missouri Rules of Civil Procedure, which includes Rule 51.06.

The simplified nature of proceedings in Chapter 517 proceedings is not deterred, nor negatively affected, by requiring a party who desires both a change of venue and a change of judge to join and present both in a single application. If anything, it promotes the simplified nature of such proceedings. Rule 51.06 is in place, at least in part, to prevent parties from judge and forum shopping, a behavior that should be prevented in Chapter 517 proceedings, as much as in full Circuit Court cases.

Therefore, because Rule 51.06(a) applies to Chapter 517 proceedings, the trial court abused its discretion by granting Ware's Motion for Change of Venue in violation of 51.06(a), and the Court should make permanent its Preliminary Writ of Mandamus.

IV. The Court has the Jurisdiction and Authority to Issue a Permanent Writ of Mandamus in this Matter.

Lastly, Ware argues that this Court does not have authority to issue a Permanent Writ of Mandamus, because the case is now pending in a proper venue, whereas it was previously in an improper venue. In so arguing, Ware again tries to confuse the issues pending before this Court. The issue of whether venue was originally proper in St. Charles County or St. Louis County is irrelevant at this time. The issue is whether the trial court improperly transferred venue based on Ware's improper and untimely Motion to Transfer Venue.

If Ware believed that venue was improper when UCA filed its case, then Ware would have been justified in filing his Motion to Transfer Venue prior to filing his Application for Change of Judge, or in conjunction therewith. Ware did not do either of these. Thus, venue was cemented in St. Charles County.

Ware also claims that the Court cannot grant the relief sought by UCA, because UCA has not been prejudiced. Ware cites to none, and UCA has found no cases which require a writ to be granted only upon a showing

of prejudice to the movant. Indeed, the standard is simply that this Court reviews writs of mandamus, including those pertaining to motions to transfer venue, for abuse of discretion. *State ex rel. Missouri Pub. Serv. Comm'n v. Joyce*, 258 S.W.3d 58, 61 (Mo. banc 2008). “[A]n abuse of discretion occurs where the circuit court fails to follow applicable statutes.” *Id.*

The trial court failed to follow applicable statutes and rules, thus abusing its discretion and giving this Court a basis to grant UCA’s requested relief. To the extent UCA is required to establish prejudice, it is clearly prejudiced by Ware’s attempts at judge and forum shopping. The Missouri statutes and Rules of Civil Procedure discussed in depth herein are designed to prevent exactly this type behavior.

CONCLUSION

For the reasons set forth above, and in Relator’s initial Brief, Relator Universal Credit Acceptance, Inc. respectfully requests this Court to make permanent the Preliminary Writ of Mandamus directing Respondent to transfer the case back to St. Charles County Circuit Court and to take no action in this case other than to return the case to St. Charles County Circuit Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies under Rule 84.06(c) of the Missouri Rules of Civil Procedure that:

1. Relator's Brief includes the information required by Rule 55.03;
2. Relator's Brief complies with the limitations contained in Rule 84.06(b); and
3. Relator's Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 2,485 words, as determined by the word-count tool contained in the Microsoft Word 2013 software with which Respondent's Brief was prepared.

/s/ Corey L. Kraushaar

CERTIFICATE OF SERVICE

The undersigned certifies that copies of Relator’s Reply Brief were served via the Court’s electronic filing system, to be served upon all attorneys of record and via electronic mail on March 10th, 2020 to the following:

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