

CAUSE NO. 2018-06752

FREE AND SOVEREIGN STATE OF § **IN THE 127th DISTRICT COURT**
VERACRUZ DE IGNACIO DE LA LLAVE §
§
vs. §
§ **OF**
JAIME REVERTE, JMA REVERTE §
PROPERTIES LLC, AZULGRANA §
MANAGEMENT LLC, GIMAL REVERTE §
PROPERTIES LLC, AND REVERTE §
FAMILY LIVING TRUST AND JAVIER §
DUARTE DE OCHOA § **HARRIS COUNTY, TX**

DEFENDANTS JAIME REVERTE, JMA REVERTE PROPERTIES, LLC,
AZULGRANA MANAGEMENT, LLC, GIMAL REVERTE PROPERTIES, LLC, AND
REVERTE FAMILY LIVING TRUST'S
MOTION TO SEVER AND REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTION TO TRANSFER VENUE

COME NOW, Defendants Jaime Reverte, JMA Reverte Properties, LLC, Azulgrana Management, LLC, Gimal Reverte Properties, LLC, and the Reverte Family Living Trust (collectively "Defendants") and file this Motion to Sever and Reply to Plaintiff's Response to Defendants' Motion to Transfer Venue, and in support thereof would respectfully show:

I. BACKGROUND

1. Plaintiff filed suit against Defendants in Harris County on January 31, 2018. Defendants filed a Motion to Transfer Venue and an Answer, subject to the Motion to Transfer Venue, on March 5, 2018.
2. Defendants assert in their Motion to Transfer Venue that venue in Harris County is improper because none of the properties listed in the lawsuit are located in Harris County, none of the Defendants reside in Harris County, and none of the Defendants have a Harris County principal office. Rather, all of Defendants and the properties in issue are located in Montgomery County, which is the proper venue for this lawsuit.

3. On June 4, 2018, Plaintiff filed a First Amended Petition wherein Plaintiff added multiple additional parties and properties to this lawsuit.¹ Two of the added parties, Jose Ruiz (“Ruiz”) and Monica B. Canal (“Canal”) reside in Harris County and three of the *in rem* properties, 38 Shallowford Place, 25219 Kuykendahl Road², and 8976 Chatsworth Drive³ (collectively “Harris County Properties”), are located in Harris County. Plaintiff now claims that venue is proper in Harris County on the basis of the above two parties and three properties. However, as more fully set forth below, Plaintiff’s claims against Ruiz, Canal, Terraventura Development, LLC (the purported owner of the property located at 25219 Kuykendahl Road), and the Harris County Properties should be severed from this lawsuit and venue subsequently transferred to Montgomery County.

II. MOTION TO SEVER

4. After Defendants filed their Motion to Transfer Venue, Plaintiff amended its petition to add defendants Ruiz, Canal, Terraventura Development, LLC (“Terraventura”), and the Harris County Properties to this lawsuit and on this basis now claims that venue is proper in Harris County. However, given that Ruiz, Canal, Terraventura, and the Harris County Properties are wholly unrelated to any of the other Defendants in this lawsuit and have a completely different set

¹ In Plaintiff’s First Amended Petition, Plaintiff also added defendants Julio Antimo, Denmark Properties, LLC, Lequatri Properties, LLC, JR&GA Management Company, LLC, St. Antimo, LLC, and the Antimo Family Living Trust as well as 7 *in rem* properties owned by them. The aforementioned defendants and their properties are all in Montgomery County and Defendants do not seek their severance from this Cause.

² In Plaintiff’s First Amended Petition, they separately identified 8 parcels at the Kuykendahl address because they are office condominiums; however, it is one development.

³ The property located at 8976 Chatsworth Drive, Houston, Texas 77024 was also added in Plaintiff’s First Amended Petition and is located in Harris County; however, the listed owner of the property, Juan Carlos Ruiz, was not sued and is not a party to this lawsuit and it is therefore unclear why and on what basis this property is included in Plaintiff’s First Amended Petition.

of facts and issues surrounding them, their addition to this lawsuit was clearly only for the purpose of creating venue in Harris County.

5. It is worth noting that in Cause No. 2018-06750 in the 151st District Court in Harris County, another lawsuit filed by Plaintiff based on substantially the same petition as the one in this case and also involving defendants and properties in Montgomery County, Plaintiff likewise added Ruiz, Canal, and their Harris County property as defendants in response to venue in Harris County being challenged. However, on the day of the hearing on the defendants' motion to sever Ruiz, Canal, and their property and to transfer venue to Montgomery County, Plaintiff nonsuited all of its claims in that case without prejudice.

6. Similarly in this lawsuit, in response to venue in Harris County being challenged, Plaintiff has again added Ruiz and Canal (who are completely unrelated to the other Defendants) as well as other unrelated Harris County Properties and defendants in another improper attempt to forum shop and create venue in Harris County. Accordingly, for the reasons set forth above and more fully explained below, severing the claims against Ruiz, Canal, Terraventura, and the Harris County Properties into a separate lawsuit is appropriate.

7. A claim in a lawsuit may be properly severed if (1) the controversy involves more than one cause of action, (2) the severed claim is one that would be proper if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. *See State Dep't of Highways & Pub. Transp. v. Cotner*, 845 S.W.2d 818, 819 (Tex. 1993). Rule 41 of the Texas Rules of Civil Procedure provides that, “[a]ny claim against a party may be severed and proceeded with separately.” This rule grants the trial court broad discretion in the matter of severance and consolidation of causes. *Guaranty Federal Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 (Tex. 1990). Courts permit severance principally

to avoid prejudice, do justice, and increase convenience. *In re State*, 355 S.W.3d 611, 613 (Tex. 2011). Each of the elements for severance as to Ruiz, Canal, Terraventura, and the Harris County Properties are met in this case as set forth below:

(1) The controversy involves more than one cause of action.

8. This controversy involves more than one cause of action brought by Plaintiff against Defendants. While Plaintiff pled in its First Amended Petition that its causes of action apply to all defendants, in order to prove its allegations against Ruiz, Canal, Terraventura, and the Harris County Properties, who are entirely unrelated to the other Defendants in this case, Plaintiff will have to investigate and establish a wholly different set of facts and circumstances than Plaintiff will need to do for the other Defendants. Due to the complete difference in the facts and issues as to Ruiz, Canal, Terraventura, and the Harris County Properties, the causes of action against them are distinct from those against the other Defendants and can, and should, be maintained in a separate suit.

(2) The severed claim is one that would be proper if independently asserted.

9. As previously stated, because the causes of action and claims against Ruiz, Canal, Terraventura, and their properties involve a completely different set of facts and issues than those against the other Defendants, the claims against Ruiz, Canal, Terraventura, and the Harris County Properties can stand alone and would be proper if independently asserted in a separate lawsuit. Plaintiff has, in fact, already tacitly acknowledged this through its own actions. Specifically, Plaintiff has filed at least five other lawsuits in Harris County using substantially the same petition as the one filed in this lawsuit and brought the same causes of action against various other unrelated defendants in those lawsuits.

10. Because the claims against Ruiz, Canal, Terraventura, and the Harris County Properties are fully capable of standing on their own, because Ruiz, Canal, Terraventura, and the Harris County Properties were not originally included in this suit and were only added after venue was challenged, and because Plaintiff has already been filing substantially similar lawsuits as to other defendants in Harris County, any assertion that the claims against Ruiz, Canal, Terraventura, and the Harris County Properties must be brought in this suit is without merit.

(3) The severed claim is not so interwoven with the remaining action that they involve the same facts and issues.

11. The claims against Ruiz, Canal, Terraventura, and the Harris County Properties are not so interwoven with the remaining action that they involve the same facts and issues – in fact, they are not interwoven at all. Again, the facts and issues as to Ruiz, Canal, Terraventura, and the Harris County Properties are wholly separate and distinct from the facts and issues as to the other Defendants. Ruiz, Canal, and Terraventura are not related to the other Defendants in this lawsuit, they have never interacted with each other, they have never conducted any business together, and Defendants have no connection to the properties of Ruiz, Canal, and Terraventura. As a result, the claims against them are not interwoven at all and are fully capable of being severed.

12. Further, there will be no convenience or efficiency gained from trying the claims against Ruiz, Canal, Terraventura, and the Harris County Properties in the same lawsuit as Defendants. Rather, the opposite is true – having this suit proceed with Ruiz, Canal, Terraventura, and the Harris County Properties will substantially increase the amount of discovery involved and will essentially have multiple separate factual and legal inquiries proceeding in parallel in the same lawsuit.

III. REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO TRANSFER VENUE

13. Due to the completely separate facts and issues surrounding Ruiz, Canal, Terraventura, and the Harris County Properties, the claims against them can and should be severed into a separate lawsuit and, upon severance, venue should be transferred to Montgomery County as requested in Defendants' Motion to Transfer Venue. In Plaintiff's Response to Defendants' Motion to Transfer Venue, Plaintiff makes multiple allegations that are without merit, which Defendants address below.

14. In Plaintiff's Response to Defendants' Motion to Transfer Venue, Plaintiff alleges that Defendants have failed to specifically deny Plaintiff's venue allegations – this assertion is patently false. In Paragraph 13 of Defendants' Motion to Transfer Venue, Defendants specifically cite Plaintiff's venue allegations from Paragraph III of Plaintiff's Original Petition, which state: "Venue is proper in this County as at least one Defendant maintains a principal office here and most of the properties involved are here." Defendants then proceed to specifically deny Plaintiff's venue allegations stating, "...Plaintiff Veracruz' venue allegations are false and wholly without basis in law or fact. None of the listed defendants has a Harris County principal office, and none of the listed properties are located in Harris County, Texas." *See* Defendants' Motion to Transfer Venue, Paragraph 13. Accordingly, despite Plaintiff's claim, Defendants have specifically denied Plaintiff's venue allegations as required.

15. Plaintiff also claims that Defendants' motion contains no statements regarding, "an inconvenience to 'the parties or witnesses' or any such concerns about an 'injustice to the movant.'" Defendants Motion to Transfer Venue is based upon the mandatory and permissive venue provisions of the Texas Civil Practice and Remedies Code, which sets forth the specific requirements for venue in a lawsuit. In Defendants' Motion they cited the specific provision (TEX.

CIV. PRAC. & REM. CODE § 15.011) of the Texas Civil Practice and Remedies Code upon which they rely to support mandatory venue in Montgomery County⁴. Defendants subsequently note that the permissive venue provisions also support venue in Montgomery County.

16. Upon the severance of Ruiz, Canal, Terraventura, and the Harris County Properties from this lawsuit, venue is appropriate in Montgomery County because 14 of the 16 remaining properties in the lawsuit are located in Montgomery County⁵ and, further, all of the remaining Defendants, other than Javier Duarte De Ochoa (who is in prison in Mexico), reside in or have their principal offices in Montgomery County. This is consistent with Texas Civil Practice and Remedies Code § 15.011 (real property suit shall be brought where the property is located – Montgomery County), Texas Civil Practice and Remedies Code § 15.002 (venue for trust is where situs is located – Montgomery County), Texas Civil Practice and Remedies Code § 15.002(2) (venue for suit against natural person is where the natural person resides), and Texas Civil Practice and Remedies Code § 15.002(3) (venue for suit against LLCs is where the LLC’s principal office is located – Montgomery County).

IV. PRAYER

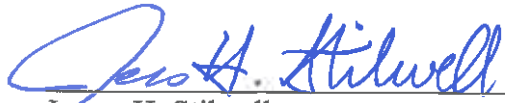
In conclusion, for the reasons outlined above, this Court should sever Plaintiff’s claims as to Ruiz, Canal, Terraventura, and the Harris County Properties from this lawsuit and, after doing so, transfer venue of this matter from Harris County to Montgomery County pursuant to the venue requirements of the Texas Civil Practice and Remedies Code.

⁴ TEX. CIV. PRAC. & REM. CODE § 15.011 states, “Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located.”

⁵ Two of the properties are located in Mission, Texas.

Respectfully submitted,

MARTIN, EARL & STILWELL, L.L.P.



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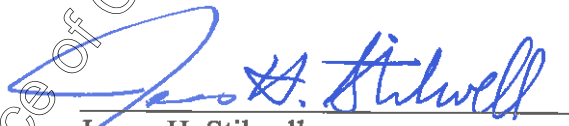
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ATTORNEY FOR THE REVERTE DEFENDANTS

CERTIFICATE OF SERVICE

On the 29th day of June, 2018 this filing was served (by eservice) on all counsel of record in accord with the Texas Rules of Civil Procedure.


James H. Stilwell

Unofficial Copy Office of Chris Daniel District Clerk