SUPREME COURT OF KENTUCKY
NO. 2001-SC-00387-D

JUDY TAYLOR **MOVANT**

v.

JAMES RYAN, et al **RESPONDENTS**

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MOTION FOR DISCRETIONARY REVIEW

Comes the Movant, Judy Taylor, by Counsel, Katie M. Brophy, pursuant to CR 76.20, and seeks discretionary review from this Court from a decision of the Kentucky Court of Appeals:

a. Movant is Judy Taylor, and Respondents herein are James Ryan, Jason Ryan, Eugene Jackson, Kenny Randolph, and Ryan Horse Company. Counsel for the Respondents: John M. Bush, Suite 201, 9000 Wessex Place, Louisville, Kentucky 40222, Counsel for James and Jason Ryan; Eric G. Farris, P. O. Box 460, Shepherdsville, Kentucky 40165, Counsel for Eugene Jackson; Denise M. Helline, Suite A, 6008 Brownsboro Park Blvd., Louisville, Kentucky 40207, Counsel for Kenny Randolph; Armer H. Mahan, Jr., Suite 2200, 400 W. Market Street, Louisville, Kentucky 40202, Counsel for Ryan Horse Company.

b. Date of final disposition by the Kentucky Court of Appeals: February 23, 2001 as finalized April 27, 2001 by denial of Movant's Petition for Rehearing.

c. No supersedeas bond or bail on appeal has been executed.

d. **1. Material Facts:**

This is a suit initially brought by Movant, Judy Taylor (hereafter "Taylor") against Lisa Burgess, Jeff Burgess[1], Kenny Randolph (Respondent) and Eugene Jackson (Respondent). The suit results from an arrangement known in the 'horse business' as a 'free-lease arrangement'. Judy Taylor,

[1]Judgment against the two Burgess Defendants was entered on 5/3/99 following trial and the Court of Appeals affirmed that decision on 3/9/01 (**Exhibit A**), *Burgess v. Taylor, 1999-CA-002262, 3/9/01.*

the owner of two horses (Poco and P.J.) arranged for her horses to be cared for at the Burgess' farm in Indiana in exchange for allowing the Burgess' the opportunity to ride the horses. Eugene Jackson, (Respondent herein) an individual generally referred to as a 'killer-buyer' in the horse slaughter industry, purchased the horses from the Burgess' in September, 1994, within less than one (1) week after the Burgess' took possession of the horses.

A few days after her horses were picked up in Jefferson County by the Burgess', Taylor contacted the Burgess' to make arrangements to visit them - just as she and the Burgess' had earlier agreed. The Burgess' refused and denied having possession of the horses claiming they were with a 'friend', Kenny Randolph, also a Respondent herein.

The Burgess' gave Movant the name and telephone number of Randolph and then instructed Randolph to lie when Movant telephoned him. Burgess' told Randolph to lie and tell Movant her horses, P.J. and Poco, were with Randolph, living happily at his farm, when in fact, P.J. and Poco had been sold to slaughter-buyer, Eugene Jackson. Randolph did exactly as told. When Movant telephoned Randolph, he recited this concocted story as instructed thereby causing Movant's further delay in learning the true whereabouts of P.J. and Poco. At the time of the telephone conversation, Randolph knew Jackson had purchased the horses and that they would be sold for slaughter. Thus, Randolph prevented Movant from intercepting and preventing P.J. and Poco's deaths.

If Randolph had not acted as the Burgess' agent but had told Movant what he in fact knew to be true, i.e., that P.J. and Poco had been sold to Eugene Jackson for slaughter, Movant could have located her horses. Instead, Randolph consciously chose to recite a concocted story which he knew to be false, at the instruction and direction of the Burgess', thereby acting as an agent for the Burgess'.

Because of Jackson's reputation as a killer-buyer, he was one of the first people targeted by individuals attempting to help Taylor regain possession of her horses. Jackson repeatedly lied to

investigators and others who sought the whereabouts of the horses, denying he had purchased them. Consistent with the pattern of the killer-buyer industry, Jackson within 24 hours, sold the horses to Respondent, Ryan Horse Company[2] on September 7, 1998.

As a killer-buyer, Jackson is well acquainted with the stolen horse trade and its connection to the slaughter industry.[3] Jackson either knew, or should have known, the horses were not the Burgess' to transfer for several reasons, including the fact that Jackson saw the registration documents which listed Judy Taylor as the registered owner before he paid Burgess' for the horses.

Jackson purchased the horses and transported them from Indiana through Jefferson County, Kentucky to his residence in Bullitt County, Kentucky. The Ryan's came into possession of the horses on September 7, 1994 when they paid Jackson $1,700 for Poco and P.J. again without requesting their registration documents, the required Commonwealth of Kentucky certification documents or any other information regarding the ownership of the horses.

Thereafter, numerous contacts were made with several of the Respondents by Movant and her counsel, as well as, an Indiana police detective, a Virginia humane investigator, and a president of a local humane association. The Respondents either lied or stonewalled the efforts to locate the horses.[4]

While numerous efforts were underway to locate and return the horses to Taylor, James Ryan, President of Ryan Horse Company, was questioned about the whereabouts of the horses. The questioning of James Ryan occurred under oath in an action then pending in Jefferson Circuit Court,

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[2]Ryan Horse Company, Jason Ryan and James Ryan are collectively referred to as 'Ryan's' herein.

[3]As part of Movant's RICO claim under 18 USC §1961 et. seq., she alleges killer-buyers, such as Eugene Jackson and the Ryan's, take no action to determine if horses are stolen since they dispose of them quickly to slaughter. 'Killer-buyers' operate under a 'don't ask, don't tell' business practice. They typically make a practice of generating/maintaining as minimal of a 'paper trail' as possible to prevent detection of stolen horses.

[4]Although he lied to several people including Movant initially, Respondent Randolph ultimately confessed to the Indiana police that the horses had been sold to Respondent Jackson, a known killer-buyer, and he had agreed with the Burgess' to lie to Judy Taylor about their whereabouts, knowing they had been sold for slaughter.

Cobble v. Miller and Ryan, 92CI 00414, an action which mirrored the factual circumstances in this very case! In other words, Ryan lied to the Movant in this case under oath while defending himself against the same horse theft/slaughter allegations in a completely separate case. Ryan not only committed perjury, but he continued in the *Cobble* case, the same course of conduct or predicate act, which is the basis for this action under The Racketeering Influenced Corrupt Practices Act, (hereinafter, RICO) 18 USC §1961, et. seq. This predicate act or business practice forms an integral part of the slaughter industry, i.e., buy stolen horses, deny any knowledge of same if questioned, maintain minimal business records and ship the horses quickly to slaughter where evidence of their existence disappears entirely.

2. Questions of law involved and reasons why the Judgment should be reviewed:

I. Whether the trial Court erred in dismissing Respondent, Eugene Jackson on the basis of venue when Jackson had clearly waived his venue defense.

This action was filed against Lisa Burgess, Jeff Burgess, Kenny Randolph and Eugene Jackson on August 23, 1995. Jackson filed his Answer on October 2, 1995. Jackson's Answer stated in part, that *"[t]he venue of this action against this Defendant is improper in that he has dealt with no party in Jefferson County, Kentucky and he is a resident of Bullitt County, Kentucky where the proper venue for an action against him lies."* Thereafter, Jackson participated in extensive discovery, i.e., by taking the deposition of Movant and witness Sharon Mayes, filing Interrogatories, responding to interrogatories, questioning deponents, Lisa and Jeff Burgess, James and Jason Ryan and others, and filing various motions and attending hearings before the Trial Court, etc. On or about February 13, 1998, Jackson filed a Motion for Summary Judgment wherein he failed to allege any claim that the case against him should be dismissed due to improper venue. Jackson's Motion for Summary Judgment was denied on April 20, 1998. Following a change in counsel, Jackson filed a belated Motion to Dismiss alleging Jefferson County venue was improper. Following written Memorandums and a hearing before Special Judge Earl O'Bannon, Jackson's Motion to Dismiss was denied on October 30, 1998. Unbelievably,

Jackson re-filed the exact same Motion to Dismiss after appointment of a new Circuit Court Judge. Jackson's duplicitous Motion was then granted less than one (1) month before trial.

Movant requests discretionary review of the Opinion of the Court of Appeals sustaining the trial Court's dismissal of Respondent, Eugene Jackson (hereafter *"Jackson"*) on the basis of improper venue. (See Ct. App. Opinion, pp. 6 - 11.) The Court's Opinion was incorrect and should be reviewed for the following reasons:

a. Venue was waived by Jackson: Admittedly, Jackson's Answer stated improper venue as a defense. The Court of Appeals pursuant to CR 12.08, found that Jackson's Answer was a responsive pleading and thus, the defense was timely asserted. Movant has no quarrel with the Opinion of the Court of Appeals on these points. However, the Court then finds:

> *"*[t]*he* [trial] *court initially didn't rule on the issue and Jackson proceeded to the discovery phase of the suit."* (Ct. App. Opinion, p. 8.)

It is from this finding that Movant must take exception because the Opinion fails to consider Jackson never sought a ruling from the trial Court on his claimed venue defense prior to the time he began noticing and taking depositions, filing numerous discovery motions and seeking summary judgment on unrelated matters. The precedent established by allowing a litigant - even one who lists venue as a defense in his Answer - to participate in four (4) years of pre-trial proceedings before requesting the trial Court to rule on a venue defense, could be catastrophic to litigants and abusive to the Court system, in general. Jackson simply failed to file any motion for dismissal for improper venue before further pleadings were filed on his behalf, contrary to CR 12.02 which requires that a motion making the defense of improper venue *"...shall be made before pleading..."*.

Improper venue as a threshold issue must be plead and resolved before pleading further. Jackson failed to raise his venue claim before pleading further and in fact, filed his Motion for Summary Judgment in 1998, (three (3) years after service of the Complaint on him) without mention

of his venue defense. Prior to filing a venue motion on October 8, 1998, Jackson filed numerous pleadings before the trial Court - none save the initial Answer on which he requested no ruling, alleged a defect in venue.

In addition, CR 12.07 and 12.08 preclude Jackson from filing numerous and duplicitous motions to dismiss. When a motion for summary judgment is filed based on the complaint, answer and other pleadings, as was the case here, it is the functional equivalent of a motion for judgment on the pleadings under CR 12. (*LaVielle v. Seay, Ky., 412 S.W.2d 587 (1966).*) Jackson's initial Motion for Summary Judgment as stated above, made no mention of any venue defense. Even if the summary judgment motion was categorized as just that, a motion for summary judgment, Jackson was obligated to file a CR 12 motion to dismiss prior to filing a motion for summary judgment, i.e., before he filed other pleadings.

> *"Lack of venue is a personal defense which is waived under CR 12 unless raised in a timely fashion. This rule is designed to forestall the dilatory practice of making a series of motions, delaying the final disposition of the case. If a Rule 12 motion is made, a party is required to join all defenses and objections available thereunder except as noted in CR 12.08(2)....practitioners should raise the defense of lack of venue in the first defensive move which they make."* Kentucky Civil Practice Before Trial, Vol. I, 2nd Edition, Section 4.10.

The purposes of CR 12 are, among others, to bring venue issues to the immediate attention of the court before lengthy litigation occurs in one forum only to result in a dismissal and duplicitous litigation in another forum. To that end, CR 12.07 Consolidation of Defenses in Motion provides in relevant part, as follows:

> *"A party who makes a motion under Rule 12 may join with it the other motions herein provided for and then available to him. If a party makes a motion under Rule 12 but omits therefrom any defense or objection then available to him which Rule 12 permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted...."*

The dictates of CR 12.07 could not be any clearer in that Jackson filed a Motion to Dismiss himself from the action on or about February 13, 1998. Jackson then had available to him, a claim of improper venue pursuant to CR 12.07 and 12.08. Jackson omitted from the Motion filed in February, 1998, any

mention of a venue defense. Thus, Jackson may *"not thereafter make a motion based on the defense or objection so omitted"*, i.e., venue.

b. Injury to Movant occurred in Jefferson County thus, venue was proper against Jackson and Ryan's in Jefferson County.

KRS 452.460(1) provides in part:

> *"every other action for an injury to the person...must be brought in the county in which the defendant resides, or in which the injury is done."* (Emphasis added.)

Movant Taylor made her contract with the Burgess', in Jefferson County, Kentucky which contract was performed in Jefferson County when Burgess' took possession of Taylor's horses and transported them to their home in Indiana knowing they would sell the horses and not maintain them at their home as agreed. Taylor's injury (conversion and emotional distress, etc.) occurred to her in Jefferson County while Jackson, conspiring with Burgess' and acting as their agent, was secreting her horses in several different counties and states, so no one could locate them. The Court of Appeals sustained the trial Court's finding that the injury to Movant *"...was the taking of the horses, which occurred in Indiana, or with the sale in Bullitt County, not the emotional distress suffered by Taylor in Jefferson County. We agree. Taylor's emotional distress was a consequence of the taking in Indiana. Indiana was the place of the taking, or place of injury to her rights by Jackson."* (Ct. App. Opinion, pp. 9 - 10.)

This finding cannot, however, be rationally reconciled with the Opinion of the Court of Appeals in *Burgess v. Taylor, 1999-CA-002262, 3/9/01*. A review of the Opinion in *Burgess*, clearly reveals the injury to Movant Taylor occurred in Jefferson County when the Burgess' picked up the horses from her pursuant to their previously concocted and fraudulent scheme with no intention of honoring the agreement made at that time with Movant. Movant was not injured in Bullitt County, Kentucky where Jackson sold the horses to the Ryan's, nor in Hardin County where Ryan kept the horses before

shipment to Texas. It would be even less appropriate to suggest as the Court of Appeals' Opinion does, that Movant a Kentucky resident should proceed against Jackson, also a Kentucky resident, in Indiana merely because Burgess' sold the horses to Jackson in Indiana.

The Court of Appeals seems to carve out an exception to KRS 452.460(1) by finding the phrase *"or in which the injury is done"* is *"generally limited to physical injuries."* (Opinion, Ct. App., pp. 10, 17.) This is a significant exception by the Court of Appeals to the clear language of the statute and is surely of precedential concern to this Court. If the Court of Appeals' Opinion is left unmodified, it will be difficult for litigants to discern which types of *"injury"* KRS 452.460(1) are addressed. It will be equally difficult for trial courts to determine whether venue is proper in matters other than *"physical"* injury and what of emotional distress which frequently manifests itself with *"physical"* symptoms.[5]

II. Whether the trial Court erred in dismissing Defendant Randolph on the basis of in personam jurisdiction when his co-conspirators were clearly subject to the trial Court's jurisdiction, thus rendering Randolph also subject to the trial Court's jurisdiction.

With respect to Kenny Randolph, as noted above, suit was filed against him (8/23/95). Randolph filed an Answer claiming Kentucky could not properly exercise jurisdiction over him. On May 7, 1998, Randolph sought dismissal of the case against him alleging Kentucky lacked in personam jurisdiction over him. Randolph's Motion was denied (Order 6/24/98). Following the retirement of the trial Judge, the Honorable Ken Corey, Randolph re-filed the exact same Motion to Dismiss before the newly appointed trial Judge. Randolph's second *identical* Motion to Dismiss, which was denied earlier, was granted by the trial Court on March 5, 1999 approximately five (5) weeks before trial.

The Court of Appeals has now sustained the trial Court's dismissal of Randolph for lack of in

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[5]See Ct. App. Opinion, p. 17, *"Actions sounding in tort which seek damages for emotional distress and other non-physical injuries are not ordinarily regarded as stating a cause of action for injury to the person within the meaning of the venue statutes."*

personam jurisdiction and failure to meet the requirements of KRS 454.210 (Ct. App. Opinion, pp. 3-6). While the Court's Opinion as far as it goes, sufficiently addresses Kentucky's long arm statute, the Opinion fails to consider Randolph's agency/co-conspirator relationship with the Burgess Defendants - a relationship which provides the trial Court with a sufficient basis for exercising jurisdiction over Randolph on a constitutional basis.

Movant might concede Randolph would be beyond Kentucky's jurisdictional reach if only he had been involved in the fraudulent transaction with Movant. In other words, had Randolph alone caused injury to Movant by the telephone conversations between he and Movant when Randolph was physically located in Indiana, his contact with Kentucky would have been rather minimal. However, this 'view' of the transaction is exceedingly narrow and fails to consider the entire fraudulent scheme which required for its success, not only Randolph's telephonic contribution, but the Burgess' ongoing, planned scheme which 'rounded out' the fraud. Thus, for the scheme to work Burgess' and Randolph necessarily conspired, one with the other and each performed their respective part of the fraud.[6]

Randolph may claim his 'innocence' or lack of involvement and thus, deny his co-conspirator and agency status, but the facts upon which such a determination may be made, are issues for the jury. Thus, the trial Court was correct in initially determining his defense was a matter for a jury to decide. Reversing that Opinion and dismissing Randolph, was clear error and the Court of Appeals' lack of consideration of Randolph's agency/conspirator relationship with the Burgess' was also error.

III. Whether venue of this action was proper against the three Ryan Defendants in Jefferson County, Kentucky with respect to various state claims and the Federal Racketeering Influenced Corrupt Practices Act Claims (hereinafter, RICO), 18 USC §1961, et. seq. (Chapter 96) as a result of their ongoing corrupt business practices.

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[6]See *McGee v. Rickhof, 442 F.Supp. 1276 (D. Mont. 1978).* (The *McGee* court found that this telephone call was sufficient to establish minimum contacts) and *Brown v. Flowers Industries, Inc., 688 F.2d 328 (5th Cir. 1982)* (a single defamatory telephone call from out of state analyzed as tortious conduct outside state causing injury in the state was sufficient for due process purposes.)

The Court of Appeals agreed with the trial Court that Ryan Horse Company did not 'do business' per KRS 452.460 in Jefferson County. That finding is simply incorrect because Ryan Horse Company purchases horses for slaughter throughout the Commonwealth of Kentucky, including Jefferson County. Ryan Horse Company does not limit its operations to Bullitt and Hardin Counties (see *contra*, Ct. App. Opinion, p. 13).[7] Proof of Ryan Horse Company's activities in Jefferson County can easily be found in the case of *Cobble v. Miller and Ryan, Jefferson Circuit Court, 92CI 00414*, referenced above. And, most significantly, a portion of Movant's claim against Ryan's arose from false and perjured testimony given by James Ryan on September 21, 1995 when Ryan denied all knowledge of Poco and P.J. while at that very time, they were both located at his home in Elizabethtown, Kentucky. Therefore, the Court's decision that KRS 452.460 precluded Jefferson County as an appropriate venue because Ryan's conducted no business in Jefferson County is incorrect and the denial on venue grounds is also incorrect because a significant part of Movant's claim against Ryan's actually occurred in Jefferson County.

In addition, the trial Court was wrong in determining Movant was injured in Hardin or Bullitt County when she was never in either county. The Court's finding raises the obvious question as to how one can be injured in a county one never enters merely because one's stolen property is transported throughout said county? Transportation of property through such a county appears to be a very tangential connection and wholly unrelated to whether a plaintiff suffers injury. The horses no doubt, traveled through ten (10) or so, Kentucky counties on their way to Texas. According to the trial Court's reasoning, all of those counties would be a proper venue, but not so for Jefferson County. This result seems to be 'form or substance' and contrary to KRS 452.

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[7] *"The trial court found that if the Ryan's caused any injury, it wold have been caused in Hardin County or Bullitt County. The court found that* [sic] *the Ryan's had no connection with Jefferson County...."* (Ct. App. Opinion, p. 16.)

Further, RICO claims may be filed in State court by private plaintiffs for treble damages and attorney's fees. *18 USC 1964(c), (1982)*[8] (a private cause of action is created in favor of "[a]*ny person injured in his business or property, by reason of violation of Section 1962*"). RICO has eliminated state procedural defenses - and rightfully so or federal statutes would then be interpreted in light of each individual state's law - something the Supremacy clause and Commerce clause of the United States Constitution would not permit. *United States Constitution, Sections 8, 10 and Amendment XI.*

> *"We are satisfied that Congress did not intend to incorporate the various states' procedural and evidentiary rules into the RICO statute....(citations omitted). To adopt appellant's reading of* [a] 'chargeable' [act] *would result in precisely the same criminal act, proscribed by the laws of two states, being the basis of a RICO violation in one state but not in the other - simply because of differences in what are essentially procedural rules....Other courts' interpretations of §1961(1)(A) support our interpretation of the statute. See e.g.,* United States v. Brown, 555 F.2d 407, 418 n.22 (5th Cir., 1977), cert. denied 435 U.S. 904 (1978) *(rejecting Georgia's accomplice testimony corroboration request in a RICO prosecution)*; United States v. Licavoli, *and cases cited therein....*United States v. Paone, 782 F.2d 386, 393-94, cert. denied, 483 U.S. 1019, 107 S.Ct. 3261, 97 L.Ed.2d 761 (1987).

In *United States v. Licavoli, 725 F.2d 1040, 1047 (1984) (6th Cir.) cert. denied 467 US 1252, 104 S.Ct. 3535*, the Court of Appeals rejected the defendant's attempt to prevent a RICO prosecution based on Ohio's substantive and procedural laws. The *Licavoli* Court's reasoning is instructive, i.e., *"RICO nowhere indicates that two criminal acts otherwise qualifying as predicate acts may not both constitute predicate acts because under state law a defendant could not be convicted of or sentenced for both crimes."* Id. at 1046. Thus, on an even more compelling issue than venue, i.e., duplicitous criminal charges, a substantive issue, the 6th Circuit has determined it is Federal law and not State law which takes precedence in RICO matters.[9]

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[8]See e.g., *Vietnamese Fisherman's Ass'n v. Knights of the Ku Klux Klan, 543 F.Supp. 198 (S.D. Tex. 1982)* and *Van Schaick v. Church of Scientology of California, Inc., 535 F.Supp. 1125 (D. Mass. 1982)* as examples of private civil RICO actions.

[9]And see *Kipperman v. McCone, 422 F.Supp. 860 (D.C. Cal. 1976)* (this issue has been so well settled that it should hardly need revisiting), (venue determination in federal question case is properly matter of federal law); *Sterling Television Presentations, Inc. v. Chintron Co., Inc., 454 F. Supp. 183 (D.C. N.Y. 1978)* (while jurisdiction over a person is determined according to state law, venue is a question of federal law).

The second claim advanced in *Licavoli* was a state procedural defense which was likewise, held inapplicable by the 6th Circuit.

> *"The reference to state law in the statute* [RICO] *is simply to define the wrongful conduct, and is not meant to incorporate state procedural law.* (Citations omitted.) *Livacoli at 1047."*

While the federal RICO venue statute speaks primarily of federal court venue, its language is expansive:

> *"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs."* (Title 18 USC §1965(a).)

In the present case, the Ryan's transact business in Jefferson County and numerous other counties in Kentucky. In addition to routinely transacting business in Jefferson County, James Ryan perpetrated a direct and intentional fraud of the very type typical of Ryan's business practices when he lied under oath regarding the whereabouts of Movant's horses. Ryan's dishonest statement which is an integral part of his normal business practice occurred in Jefferson County. Ryan thus, transacted his affairs (business) in Jefferson County when he intentionally lied to Movant by denying all knowledge of the subject horses when they were then in his possession. Had Ryan been truthful when questioned (on 9/21/94) in Jefferson County, Movant's horses would have been recovered. However, he was not truthful and the crux of Movant's claim against the Ryan's is this very act occurring in Jefferson County which is part of the Ryan's normal, ongoing business practice, i.e., a predicate act of a fraudulent nature. Thus, venue under *18 USC §1965* is clearly proper in Jefferson County, Kentucky pursuant to the above provisions.

The general venue statute also confers venue of this action on the Jefferson Circuit Court pursuant to *sections (b)* and *(c)* of *§1391* which provide in relevant part, as follows:

> *"(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may...be brought only in...(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred..."*

and

"(c)...a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced [i.e., Kentucky]. *In a state which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that state within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts."* (Emphasis added.)

And, finally, *28 USC §1392* is also instructive.

"(a) any civil action, not of a local nature, against defendants residing in different districts in the same state, may be brought in any of such districts."

"(b) any civil action, of a local nature, involving property located in different districts in the same state may be brought in any of such districts."

Jefferson County is, of course, the one and only county in Kentucky in which a substantial part of the events giving rise to the claim occurred. To make a non-exhaustive list it is, for example, the County wherein Lisa Burgess first contacted Movant to inquire about possession of the horses, the County wherein the agreement was reached between the Burgess' and Taylor, the County wherein the horses were maintained and from which they were picked up and transported by Burgess' to Indiana. Jefferson County is also the County in which Jackson first illegally entered Kentucky from Indiana with the horses and the County wherein Movant was located when Burgess' and Randolph via telephone conversation with her, repeatedly lied to her regarding the whereabouts of the horses, thus preventing her from obtaining their return. Finally, Jefferson County is one of the counties wherein the Ryan's purchase and sell horses and the very County wherein James Ryan under oath lied about his possession of the horses on September 21, 1994, thus again, and for the final time, preventing Taylor from obtaining possession of Poco and P.J.

In short, Jefferson County is the location where the final act was committed by James Ryan, which forever precluded Movant from reclaiming her horses. There is no other County within this

Commonwealth or any other State, wherein any substantial part of the events leading to the filing of this action, occurred.

IV. Whether the trial Court erred in denying Movant's Motion to amend her Complaint against the three Ryan Defendants.

The Court of Appeals was also incorrect in sustaining the trial Court's denial of Movant's Motion to Amend her Complaint to add state law torts. The trial Court denied the attempt again on venue grounds, ignoring the fact that Movant's injury occurred in Jefferson County. The precedent for Movant's position above-stated is of long-standing origin. The case of *Peaslee-Gaulbert Co. v. McMath's Adm'r., Ky., 146 S.W. 770 (1912)* is illustrative. In *Peaslee*, a house painter was killed in Christian County, Kentucky by an explosion of a dryer sold by a company in Jefferson County. As the cause of action was one in tort as is the case herein, the *Peaslee* court's analysis of 'where the injury is done' is most illustrative and compelling.

> *"...The negligence and wrongdoing, if any, had its beginning in Jefferson County, but it was, if anything, a continuing act of negligence or wrongdoing, for which an action might be brought in any county in which injury resulted therefrom, and the cause of action did not arise until some person suffered injury or loss by reason of the wrongful act. As no actionable tort could have been committed until either person or property was injured, it seems quite clear that, if the words of the code are to be given their reasonable meaning, the venue of the action was in the county where the tort was in fact committed by the infliction of injury, as well as in the county where the tort-feasor resided. There may be a continuing species of wrongdoing that only becomes actionable when injury results therefrom, and in such a state of case we know of no reason why the venue of the action should not lie in the county where the overt act of wrongdoing, if we may so term it, is committed. A tort is nothing more than an injury or wrong for which a civil action may be brought by the injured party against the wrongdoer, and, to give full effect to the Code provision that the action to recover damages may be brought in the county where the tort was committed, it should be construed to mean that it may be brought in that county in which the injury or wrong complained of was committed. To give to this section the construction contended for by appellant would in many instances confine the jurisdiction to the county of the defendant's residence, when it was intended that it might also be brought in the county where the person or property was in fact injured, which is usually the county of the residence of the complaining party. If it had been intended to limit the jurisdiction to the county in which the corporation resided or had its chief office, there would have been no reason for inserting the provision that the action might also be brought in the county where the tort was committed; and, as in the present case, the tort could not have been committed in any other county than that in which the injury complained of occurred, we have no doubt that the Christian circuit court had jurisdiction."* (Peaslee-Gaulbert Co., at 771-772.)

The *Peaslee* holding was later reaffirmed in *Graham v. John R. Watts & Son, Ky., 36 S.W.2d 859, 860 (1931)* a suit for fraud and deceitful misrepresentation (*"the tort, if one was committed, occurred at the place where plaintiff's injury was inflicted and his damage sustained").* Because Movant's claim in this action involves precisely the same wrongdoing, i.e., 'fraud and deceit' the *Graham* Court's reasoning is of special relevance.

> *"...[2] Taking up first question(1), it may be stated with absolute verity that one guilty of fraud practiced upon another, whereby the latter is induced to act differently from what he otherwise would, to his injury and damage, is liable to the one so acting thereon for the damage sustained, unless he is relieved by some other principle of law, none of which is involved in this case. One of the most common species of fraud coming within the general principle stated is that of misrepresentations, or false representations directed to the defrauded person,..."* Graham at 861.

The *Graham* Court thus, had no hesitancy in finding venue to be proper in the county wherein the plaintiff was injured, i.e., the county wherein the farmer purchased and planted the defective (misrepresented) seed and not the County wherein the seed was created or marketed.

Furthermore, venue for a conversion action is proper in the county wherein the property was converted. *Hileman v. Day Poros Lumber Co., Ky., 64 S.W. 419 (1901)* (venue proper in Letcher County against Breathitt County defendants in a suit alleging plaintiff's property (logs) were taken from them in Letcher County.)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to John M. Bush, Suite 201, 9000 Wessex Place, Louisville, Ky. 40222, Counsel for James and Jason Ryan; Eric G. Farris, P. O. Box 460, Shepherdsville, Ky. 40165, Counsel for Eugene Jackson; Denise M. Helline, Suite A, 6008 Brownsboro Park Blvd., Louisville, Ky. 40207, Counsel for Kenny Randolph; Armer H. Mahan, Jr., Suite 2200, 400 W. Market Street, Louisville, Ky. 40202, Counsel for Ryan Horse Company; to Judge Judy McDonald, Eleventh Division, Jefferson Circuit Court, 700 W. Jefferson, Louisville, Ky. 40202 and the Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Ky. 40601 on this the 12 day of June, 2001.

KATIE MARIE BROPHY