

# ORIGINAL

IN THE SUPREME COURT OF MISSISSIPPI

NO: 2017-M-1546-SCT

LEO LEWIS

PETITIONER

V.

**FILED**

REBEL RAGS, LLC

NOV 07 2017

RESPONDENT

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

RE: REBEL RAGS, LLC V. LINDSEY MILLER, ET AL.,  
CIRCUIT COURT OF LAFAYETTE COUNTY, CAUSE NO. L17-244

**PETITION OF LEO LEWIS FOR PERMISSION TO APPEAL  
FROM INTERLOCUTORY ORDER**

Petitioner, Leo Lewis ("Lewis"), one of the defendants in the cause styled "Rebel Rags, LLC v. Lindsey Miller, Leo Lewis, Kobe Jones, and John Does 1-15," no. L17-244 in the Circuit Court of Lafayette County, petitions this Court for permission to appeal from an interlocutory order of the circuit court denying his objection to venue and motion to transfer the claim against him to the proper venue. Lewis also requests this Court to order a stay of all proceedings in the circuit court while the interlocutory appeal is pending. The order denying Lewis' motion to sever/transfer was entered by the circuit court on October 19, 2017.<sup>1</sup> A copy of the order is attached hereto as Exhibit 1. The seminal issue to be determined by this Court on appeal is whether venue in Lafayette County is proper as to the claim against Lewis, who is not a resident of Lafayette County, who committed no alleged tortious act in Lafayette County, and who is not properly joined with the venue defendant (with whom Lewis has had no direct connection or agreement) because the alleged actions of Lewis and the venue defendant are separate and distinct and do not constitute a single litigable event.

<sup>1</sup> A copy of the order is attached hereto as Exhibit 1.

**MOTION#**

2017

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The complaint herein alleges the existence of a conspiracy involving (at various times but not at all times) each of the named defendants, in which the defendants were allegedly induced by unnamed persons to make alleged defamatory statements adverse to Rebel Rags.<sup>2</sup> The circuit court held that such allegations were sufficient to support joinder of all three defendants in the same action even though each defendant's alleged defamatory statements were admittedly separate and discrete acts taking place at different times and places. Although the circuit court did not explicate its reasoning for that conclusion, the theory and argument advanced by the plaintiff in opposing the motion to transfer, upon which the circuit court apparently relied, is erroneous for the reasons set out below, and, under the allegations of the complaint, the principles of "civil conspiracy" negate rather than support the propriety of the joinder of Lewis in the action against the venue defendant.

#### I. FACTS AND PROCEDURAL HISTORY

The facts and procedural history necessary to an understanding of the question of law addressed by the trial court's order are as follows:

1. On June 9, 2017, the plaintiff, Rebel Rags, LLC ("Rebel Rags"), filed suit against Lewis and co-defendants, Lindsey Miller ("Miller") and Kobe Jones ("Jones"), alleging that each of the defendants had, at different times and locations, made false and defamatory statements about Rebel Rags to members of the enforcement staff of the National Collegiate Athletic Association ("NCAA"), with regard to an investigation of alleged athletic recruiting violations by the University of Mississippi ("UM") football program. Rebel Rags is a retail merchant in Lafayette County specializing in the sale of clothing and other merchandise bearing UM logos. Miller was a family member of a student-athlete who was recruited by and attended UM. Lewis and Jones are student-athletes at Mississippi State University ("MSU") who were the subjects of

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<sup>2</sup> A copy of the complaint is attached hereto as Exhibit 2.

recruitment efforts by UM while they were in high school. Among the charges brought against UM by the NCAA enforcement staff are allegations that UM coaches arranged for prospective student-athletes to receive free merchandise from Rebel Rags. While enrolled at MSU in 2016, Lewis was compelled, per NCAA bylaws, to participate in confidential investigative interviews with NCAA investigators concerning an ongoing investigation of the UM football program. Rebel Rags alleges that during these compulsory, confidential interviews, Lewis made false statements about receiving free merchandise from Rebel Rags. Rebel Rags alleges that Miller and Jones made similar statements to NCAA investigators, albeit in different locations and at different times.

2. Lewis filed a motion to sever and transfer the claim against him to the Circuit Court of Oktibbeha County on the ground that the venue statute confers upon him the valuable right not to be sued in Lafayette County since the complaint does not allege that Lewis is a resident of Lafayette County or that Lewis committed any wrongful act in Lafayette County, the only two statutory bases for proper venue for the claim against him in Lafayette County. The circuit court denied that motion.

3. The asserted basis for venue in Lafayette County is that the complaint alleges that Miller made defamatory statements during interview(s) with NCAA investigators in Lafayette County. For purposes of the objection to venue and motion to transfer, Lewis did not contest that venue for the Miller claim is proper in Lafayette County.

4. The sole asserted basis for laying venue in Lafayette County for the Lewis claim is the joinder of said claim with the Miller claim under the principle that where venue is proper as to one defendant it is proper as to all other properly joined defendants. The complaint alleges that

Lewis is a student at MSU in Oktibbeha County and that his alleged defamatory statements were made in Oktibbeha County.

5. Lewis asserted a motion to sever/transfer the claim against him from the misjoined Miller claim in Lafayette County in that such joinder was not allowed under Rule 20 of the Mississippi Rules of Civil Procedure and that, as a consequence, the “good for one, good for all” venue rule does not apply, since Rules 20 and 21 require that the claim against Lewis be severed from the action against Miller. Therefore, the action against Lewis must be considered by itself for venue purposes. In short, the dispositive issue regarding Lewis’ objection to venue is whether Lewis is properly joined in the suit with Miller.

6. Importantly, Rebel Rags concedes that the defendants are properly joined under Rule 20 only if the claims against them arise out of a single litigable event, and that the separate alleged statements of Miller and Lewis do not, in and of themselves, constitute a single litigable event. The sole basis advanced by Rebel Rags that the joinder of Lewis with Miller in the same action is nevertheless proper is that the complaint alleges that Miller and Lewis were, at various times, part of an “overarching conspiracy” in which certain “John Doe” defendants induced each of the three named defendants at various times to make the alleged defamatory statements as part of an effort to harm the UM football program by causing the NCAA to find UM guilty of recruiting violations.

7. In turn, the contention of Rebel Rags that its allegation of an “overarching conspiracy” is sufficient to support joinder of the defendants in one suit is based on its assertion that persons who conspired with “John Does” at any time are potentially vicariously liable for any defamatory statements the “John Does” induced, even if they were not part of the alleged conspiracy at the time a particular false statement was planned and made. Thus, Rebel Rags contends that Lewis

may be held liable for Miller's alleged defamatory statements even though Rebel Rags concedes that Lewis was not a member of the alleged conspiracy when Miller's statements were made. Consequently, the dispositive issue regarding whether joinder, and thus venue, is proper as to Lewis is whether a person can be held liable for a tort under conspiracy principles even though he had no involvement promoting or inducing that specific tort and was not part of the alleged conspiracy to commit that tort at the time it was committed.

## II. QUESTION OF LAW PRESENTED

The question of law warranting review by interlocutory appeal is whether venue as to Lewis can be predicated on joinder of the claim against him with that against Miller, where the asserted basis for joinder is the purported linkage of their alleged statements as a single litigable event based on the allegation that Lewis and Miller conspired with certain unnamed persons at different times to make statements about Rebel Rags, and where Lewis admittedly did not join any alleged conspiracy until long after Miller made his alleged statements.

## III. CURRENT STATUS OF THE CASE

Concurrent with his motion to sever and transfer because of improper venue, Lewis filed a separate Rule 12(b)(6) motion to dismiss for failure to state a claim to be entertained by the appropriate court once the issue of venue is resolved. Jones also filed a motion to sever and transfer because of improper venue (which the circuit court denied) along with a motion to dismiss. The circuit court has not ruled on the motions to dismiss filed by Lewis and Jones. The circuit court also denied a motion to dismiss filed by Miller, following which Miller filed an answer to the complaint. There has been no discovery conducted.

#### IV. TIMELINESS OF PETITION

This petition for interlocutory appeal is timely in that it has been filed within 21 days of the circuit court's entry of the order in question on October 19, 2017.

#### V. RELATED CASES

Lewis is unaware of any other case pending before this Court related to the matter for which he seeks interlocutory appeal. Jones has also filed a petition for interlocutory appeal in the same matter involving the same issue, case no. 2017-M-01529-SCT.

#### VI. GROUNDS FOR INTERLOCUTORY REVIEW

Rule 5 of the Mississippi Rules of Appellate Procedure provides for discretionary review of an interlocutory order where "a substantial basis exists for a difference of opinion on a question of law" and where appellate resolution may "[m]aterially advance the termination of the litigation and avoid exceptional expense to the parties," to "[p]rotect a party from substantial and irreparable injury," or to resolve an important legal issue. Miss. R. App. P. 5(a). The Court should grant permission to appeal pursuant to Rule 5 in this case because, as shown below, there is a substantial basis for a difference of opinion with the circuit court as to whether Rebel Rags' allegations and theory of conspiracy are sufficient to justify joinder of Lewis with Miller in the same action, and thus, to support venue in Lafayette County. Also, since the appeal involves the issue of proper venue, interlocutory appeal may materially advance the termination of the litigation and avoid exceptional expense to the parties. The Court would also be resolving important issues of law regarding venue, joinder of parties, and principles of "civil conspiracy," since it appears that this Court has not directly considered some of the specific legal issues or arguments raised by Lewis' motion to sever/transfer.

A.

The venue statute establishes the right of a person not to be sued for a tort in any county except his home county unless such other county has a close nexus to the alleged tort. This Court has recognized that such right is valuable. *Park on Lakeland Drive, Inc. v. Spence*, 941 So. 2d 203, 207 (Miss. 2006). Limitations on venue derive primarily from considerations of the defendant's convenience. *See Industrial Addition Association v. Commissioner*, 323 U.S. 310, 313 (1945); *Pepperell Mfg. Co. v. Alabama Nat'l Bank*, 75 So. 2d 665, 667 (Ala. 1954). Moreover, the venue statute provides for transferring venue for reasons of convenience even where venue is otherwise proper. Miss. Code Ann. § 11-11-3(4)(a). It is clear that, in light of the importance of rights regarding venue and the inconvenience caused to a defendant in being forced to litigate in an impermissible venue, this Court has determined that questions of venue generally satisfy the Rule 5 criteria for interlocutory appeal, as shown by the Court's recurrent granting of permission to appeal from orders denying an objection to venue. *See, e.g., Purdue Pharma L.P. v. State of Mississippi*, No. 2017-M-00300-SCT (Miss. May 10, 2017); *Baptist Medical Center-Leake, Inc. v. Harkins*, No. 2016-M-00399-SCT (Miss. May 11, 2016); *U.S. Bancorp v. McMullan*, 183 So. 3d 833 (Miss. 2016); *Ramsey v. Auburn University*, 191 So. 3d 102, 112 (Miss. 2012); *Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney*, 950 So. 2d 170, 173 (Miss. 2007); *Estate of Jones v. Quinn*, 716 So. 2d 624, 626 (Miss. 1998); *Forrest County General Hospital v. Conway*, 700 So. 2d 324, 326 (Miss. 1997); *McMillan v. Puckett*, 641 So. 2d 757, 759 (Miss. 1994).

Because a defendant's venue rights are based on avoidance of litigation itself in a particular forum, they are similar to the rights of a defendant having legal immunity, in that such immunity protects a person not only from being required to pay damages, but also from being

subjected to the burden and inconvenience of having to stand trial. *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009); *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985). Because of the broad purpose of a grant of immunity from suit, courts have recognized that the assertion of an immunity defense should be resolved sooner rather than later and that, consequently, an order rejecting the assertion of an immunity defense as a basis for dismissal may be appealed even though such orders are only interlocutory and not final. *Ashcroft*, 556 U.S. at 672.

Similarly, the threshold issue of the proper venue for the claim against Lewis should be conclusively resolved before Lewis is required to undergo the burden and inconvenience of litigation in Lafayette County. Just as wrongfully being subjected to trial and other burdens of litigation by an erroneous denial of an immunity defense cannot be adequately remedied by a post-trial reversal, subjecting a defendant to the burdens and inconvenience of litigation in an impermissible forum by an erroneous denial of an objection to venue likewise cannot be remedied by a post-trial reversal because the burden and inconvenience sought to be prevented by the venue statute will have been sustained and cannot be undone. This potential for irreparable harm to Lewis warrants the immediate review by this Court of the circuit court's order rejecting Lewis' challenge to venue in Lafayette County. Accordingly, the Court should grant Lewis' petition for permission to appeal the order of the circuit court denying his motion to sever and transfer to the court of proper venue.

B.

For the reasons discussed below, there is a substantial basis to differ with the circuit court's opinion of law that the assertion of a conspiracy theory justifies joinder of Lewis in the action with Miller (the venue defendant), and thus, supports venue in Lafayette County. Indeed, it appears that there is no plausible basis whatever in the law of civil conspiracy for linking



Lewis to Miller's alleged tortious conduct since it is conceded that, when Miller made his alleged false statements about Rebel Rags in 2015, Lewis was not at that time a member of the alleged conspiracy involving Miller and the "John Does" who allegedly put Miller up to making the false statements, and there is no allegation that Miller and Lewis ever agreed together for either to make any particular statement.

Venue for a tort action is governed by section 11-11-3 of the Mississippi Code, which provides in pertinent part:

Civil actions . . . shall be commenced in the county where the defendant resides . . . or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

Miss. Code Ann. § 11-11-3(1)(a)(i). As noted, the complaint herein does not allege that Lewis resides in Lafayette County or that he made any alleged defamatory statement in Lafayette County. Rather, for its contention that venue is proper as to Lewis, Rebel Rags relies on the principle that where venue is proper as to one defendant it is proper as to all other defendants. However, a plaintiff cannot establish venue on this basis where the defendant objecting to venue is not properly joined as a defendant with the defendant to which venue is tied. Miss. R. Civ. P. 82(c); *cf. Park on Lakeland Drive, Inc. v. Spence*, 941 So. 2d 203, 208 (Miss. 2006) (plaintiff could not establish venue through defendant who was fraudulently joined). Thus, there is no basis under the statute for Lewis to be sued in Lafayette County unless he can properly be joined as a defendant in an action against Miller.

Rule 20 permits a plaintiff to join multiple defendants in the same action only if:

there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action.

Miss. R. Civ. P. 20(a). For claims to be deemed to arise from the same occurrence or series of occurrences, the claims must derive from one “distinct litigable event.” *Mississippi Crime Lab. v. Douglas*, 70 So. 3d 196, 200 (Miss. 2011); *Illinois Central R.R. v. Gregory*, 912 So. 2d 829, 834 (Miss. 2005). There is no distinct litigable event giving rise to proper joinder of parties (and common venue) where, as here, there are alleged “several wrongful acts by several different actors.” *See Douglas*, 70 So. 3d at 201 (quoting *Hegwood v. Williamson*, 949 So. 2d 728, 730 (Miss. 2007)).

There appears to be no genuine dispute that the alleged statements by each named defendant herein are separate events that, without more, do not together constitute a “distinct litigable event” that would permit joinder of the defendants in one action. Rather, Rebel Rags contends that the separate events are linked by an alleged “overarching conspiracy” in which “John Does” purportedly induced and encouraged each of the defendants to assert that he received free merchandise from Rebel Rags. According to Rebel Rags, the named defendants are linked through their connection to the “John Does” who undertook to procure similar false statements about Rebel Rags; the complaint does not allege that Lewis and Miller ever conspired with each other or that they were members of the “overarching conspiracy” at all times during its alleged existence.<sup>3</sup> In other words, Rebel Rags contends, and the circuit court apparently agreed, that if the “John Does” conspired with Miller to make false statements, and then later and separately conspired with Lewis and Jones to make similar false statements, then the common involvement of the “John Does” converts the separate statements into a single litigable event for purposes of joinder, even though Miller, Lewis, and Jones never spoke to each other or agreed

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<sup>3</sup> Lewis submitted an affidavit to the circuit court attesting that he has never met or communicated with Miller, a copy of which is attached hereto as Exhibit 3.

with or encouraged each other to do anything. This conclusion is patently incorrect and is based on an erroneous application of *criminal law* principles of conspiracy to this civil action.

The standards for “civil conspiracy” differ significantly from those for criminal conspiracy, most pertinently in that the criminal law punishes the conspiracy itself regardless of whether an overt criminal act results, while in the civil context, a conspiracy is not an independent tort but only serves to make a conspirator vicariously liable for a tort actively and directly committed by someone else. *See Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983) (“civil” conspiracy to commit a tort is not independently actionable but is a means for establishing vicarious liability for the underlying tort); *Fikes v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 815, 822 (N.D. Miss. 2011) (applying Mississippi law) (civil conspiracy claim cannot stand alone, but must be based on an underlying tort); *Bradley v. Kelley Brothers Contractors, Inc.*, 117 So. 3d 331, 339 ¶ 33 (Miss. Ct. App. 2013) (conspiracy standing alone is not actionable); *Satin v. Satin*, 69 A.D.2d 761, 762, 414 N.Y.S.2d 570 (1979) (no tort of “civil conspiracy” in and of itself). Thus, the concept of a “civil conspiracy” is used “to extend liability . . . beyond the active wrongdoer to those who have planned, assisted or encouraged the active wrongdoer,” so that “conspirators who have not acted but who have promoted the act will be held liable.” Prosser and Keeton, *The Law of Torts* § 46, p. 324 (5<sup>th</sup> ed. 1984); *see also Beck v. Prupis*, 529 U.S. 494, 501 (2000) (quoting Prosser and Keeton); *Wells v. Shelter Gen. Ins. Co.*, 217 F. Supp. 2d 744, 755 (S.D. Miss. 2002) (citing authority that conspiracy is never separate tort but only connects the conspirator with tort committed by another).

Thus, the circuit court erred in holding that “the allegation of conspiracy by the defendants to defame the Plaintiff” was “the same litigable event” that permits joinder of the defendants (Order/Opinion at 2.) As the foregoing authorities make clear, the alleged conspiracy

is not a litigable event because it is not an independent tort. The only litigable events are the alleged defamatory statements of the three defendants, and those are clearly separate events. The allegations that others conspired to induce those statements relate only to the issue of whether persons other than the speaker may be held liable for a particular defamatory statement, since not only the speaker, but also those who “promoted” the defamatory statement, could be held liable for the statement. In other words, each defamatory statement must be considered separately, and only those persons who conspired to induce that statement may be held liable for it. Thus, the only way to link Lewis to Miller’s statements in Lafayette County is if Lewis was involved in promoting Miller’s statements. The issue regarding the joinder of Lewis with Miller, then, is whether there is a well-pleaded (*i.e.*, non-conclusory) allegation of facts under which Lewis could be held liable for Miller’s statements in Lafayette County—that is, an allegation that Lewis conspired with Miller to have Miller make defamatory statements in Lafayette County.

The allegations and admissions of Rebel Rags herein clearly establish that Lewis was not a member of any conspiracy to make false statements about Rebel Rags at the time Miller’s 2015 statements were allegedly made in Lafayette County and did not begin his alleged involvement with “John Doe” conspirators until several months later in 2016. Rebel Rags effectively concedes that Lewis did not promote or encourage Miller’s alleged wrongful act. Thus, under the principles of “civil conspiracy” noted above, Lewis can have no liability for Miller’s statements, and his statements cannot be linked with those of Miller on that basis.

The contention of Rebel Rags that Lewis nevertheless can have conspiratorial liability for Miller’s statement is solely based on its assertion that a person who joins a conspiracy can be held liable for wrongful acts committed by others before he joined the conspiracy. For that proposition, however, Rebel Rags relied on a single case involving a charge of *criminal*

conspiracy. Such *nunc pro tunc* liability may be the case under the criminal law of conspiracy, but such is not the case with respect to “civil conspiracy.” In contrast with the criminal law, as noted above, civil liability based on a conspiracy attaches only for the conscious procurement of, promotion of, or assistance with the underlying tortious act. Thus, for civil liability to arise based on conspiracy, “the alleged confederates must be aware of the . . . wrongful conduct at the beginning of the agreement.” *Bradley v. Kelley Brothers Contractors, Inc.*, 117 So. 3d 331, 339 ¶ 33 (Miss. Ct. App. 2013) (citing 16 Am. Jur. 2d *Conspiracy* § 51). That is because “one cannot agree . . . to commit a wrong about which he has no knowledge.” 16 Am. Jur. 2d *Conspiracy* § 51. It follows that a person cannot be liable for a tort based on conspiracy if he was not a participant in the conspiracy when the tort was committed, thus, foreclosing any retroactive conspiratorial liability such as Rebel Rags asserts. Therefore, Lewis manifestly cannot have conspired with respect to Miller’s statements, since the allegations establish that Lewis was not part of the conspiracy when the statements were made.

Also, to establish tort liability based on conspiracy, a plaintiff must establish that there was an agreement between the conspirators. *Gallagher Bassett Servs. v. Jeffcoat*, 887 So. 2d 777, 786 (Miss. 2004); *Chapman v. Coca-Cola Bottling Co.*, 180 So. 3d 676, 683 (Miss. Ct. App. 2015); *Bradley*, 117 So. 3d at 339. As noted above, the complaint does not specifically allege (and Lewis’ uncontradicted affidavit disproves) that Lewis and Miller conspired with each other or that either had any agreement or involvement with respect to the statements of the other. In *Cook v. Wallot*, 172 So. 3d 788, 801 ¶ 49 (Miss. Ct. App. 2013), the court held that general or conclusory allegations of conspiracy were not sufficient to satisfy the pleading requirements of Rule 8 and that the plaintiff’s allegations were deficient because “[t]he complaint does not state that an agreement, unlawful or otherwise, was made by the defendants.” Similarly, in *Norris v.*

*Krystaltech International, Inc.*, 133 F. Supp. 2d 465 (S.D. Miss. 2000), the federal district court held that conclusory allegations of conspiracy in the complaint failed to state a claim for civil conspiracy under Mississippi law because “a general allegation of conspiracy without a statement of facts constituting that conspiracy is only an allegation of a legal conclusion and is insufficient to state a cause of action.” *Id.* at 469 (*quoting Guidry v. United States Tobacco Co.*, 188 F.3d 619, 631-32 (5<sup>th</sup> Cir. 1999)). Likewise, in this case, Rebel Rags’ allegations that one or more of the defendants conspired with “John Does” are insufficient to properly state a claim of a conspiracy between Miller and Lewis, which would be necessary to ground venue in Lafayette County. For these reasons, the complaint fails to effectively link the separate statements of Miller and Lewis together as a litigable event through alleged conspiratorial activity by them.

The failure of the allegations of the complaint to link Lewis’ alleged statements to those of Miller by asserting any affirmative involvement of one with the acts of the other prevents the separate statements from being considered as a single litigable event. Consequently, there is no legal basis under the allegations of the complaint for Lewis and Miller to be joined in the same action. The absence of proper joinder makes venue improper in Lafayette County for the claim against Lewis. Therefore, the circuit court erred in denying Lewis’ motion to sever the claims and to transfer the action against him to Oktibbeha County. Accordingly, this Court should grant the petition for interlocutory appeal and should reverse the order of the circuit court and direct the circuit court to transfer the claims against Lewis to the Circuit Court of Oktibbeha County.

#### VII. REQUEST FOR STAY

Lewis further asks this Court, pursuant to Rule 5(f), to order that proceedings in the trial court be stayed pending the Court’s ruling on this petition and the resolution of the appeal, if

permitted.<sup>4</sup> This Court has routinely ordered a stay of proceedings below when entertaining an interlocutory appeal, particularly on a venue issue. *See, e.g., Purdue Pharma L.P. v. State of Mississippi*, No 2017-M-00300-SCT (Miss. May 10, 2017); *Baptist Medical Center-Leake, Inc. v. Harkins*, No. 2016-M-00399-SCT (Miss. May 11, 2016); *McMullan*, 183 So. 3d 833 (Miss. 2016), No. 2014-IA-01593 (order of December 10, 2014 on Motion # 2014-4613); *Blakeney*, 950 So. 2d at 173; *McMillan*, 641 So. 2d at 759; *Estate of Jones*, 716 So. 2d at 626. Accordingly, if the Court grants permission for interlocutory appeal, the Court should order a stay of proceedings below if the circuit court has not already done so.

**WHEREFORE, PREMISES CONSIDERED**, Lewis respectfully requests this Court to grant permission to appeal the circuit court's interlocutory order denying his motion to transfer because of improper venue and to order that proceedings in the circuit court be stayed pending such appeal.

RESPECTFULLY SUBMITTED, this, the 7<sup>th</sup> day of November, 2017.

LEO LEWIS, Petitioner

By: 

JOHN G. WHEELER  
Mississippi Bar No. 8622  
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<sup>4</sup> Lewis has filed a motion in the circuit court requesting a stay of all proceedings pending resolution of the petition for interlocutory appeal. The circuit court has not yet ruled on that motion.

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Leo Lewis, Petitioner;
2. John G. Wheeler and Mitchell, McNutt & Sams, P.A., Counsel for Petitioner Leo Lewis;
3. Rebel Rags, LLC, Respondent / Plaintiff;
4. Charles M. Merkel, Jr., Charles M. Merkel, III, and the office of Merkel & Cocke, P.A., Counsel for Respondent / Plaintiff;
5. Kobe Jones, Defendant;
6. Christopher A. Shapley, Counsel for Defendant Kobe Jones;
7. Lindsey Miller, Defendant;
8. Matthew D. Wilson and The Law Office of Matthew Wilson, Counsel for Defendant Lindsey Miller; and
9. Honorable J. Kelly Luther, Lafayette County Circuit Judge.

Dated: November 7, 2017

  
\_\_\_\_\_  
JOHN G. WHEELER  
Mississippi Bar No. 8622



CERTIFICATE OF SERVICE

I, John G. Wheeler, attorney for the petitioner, Leo Lewis, certify that I have this date served a true and correct copy of the above and foregoing PETITION OF LEO LEWIS FOR PERMISSION TO APPEAL FROM INTERLOCUTORY ORDER on counsel for the plaintiff and co-defendants below and on the circuit court judge by placing said copy in the United States Mail, postage prepaid, addressed to them at their usual mailing addresses as follows:

Charles Merkel, Esq.  
Merkel & Cocke, P.A.  
Post Office Box 1388  
Clarksdale, Mississippi 38614

Matthew D. Wilson, Esq.  
Law Office of Matthew Wilson  
Post Office Box 1748  
Spring Hill, Tennessee 37174

Christopher A. Shapley  
111 Woodmont Way  
Ridgeland, MS 39157

The Honorable J. Kelly Luther  
Circuit Court Judge  
102 N. Main Street, Suite F  
Ripley, Mississippi 38663

This the 7<sup>th</sup> day of November, 2017.

  
\_\_\_\_\_  
JOHN G. WHEELER

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

REBEL RAGS, LLC.

VS.

LINDSEY MILLER, LEO LEWIS,  
KOBE JONES, AND JOHN DOES 1 - 15

LAFAYETTE COUNTY  
FILED

OCT 19 2017

Baretta Mosley  
CIRCUIT CLERK  
BY: [Signature] D.C.

PLAINTIFF

CAUSE NO. L17-244

DEFENDANTS

**OPINION/ORDER DENYING DEFENDANT KOBE JONES'S  
MOTION TO SEVER AND TRANSFER VENUE AND DENYING  
DEFENDANT LEO LEWIS'S MOTION TO SEVER AND TRANSFER VENUE**

Before the Court are separate motions of Defendant Kobe Jones and Defendant Leo Lewis to sever and transfer venue under Mississippi Rule of Civil Procedure 12(b)(3). Although presented in separate motions, both defendants argue they have been improperly joined with the other defendants in this action and move that the claims against them be severed and transferred to the Circuit Court of Oktibbeha County, Mississippi. In ruling on these 12(b)(3) motions, the Court has considered the motions, supporting memoranda, pleadings, and arguments of counsel and finds as follows:

Plaintiff filed its complaint against the named defendants and unnamed John Doe defendants for damages resulting from claims of defamation, commercial disparagement, and civil conspiracy. The factual allegations in the complaint assert that each of the named defendants made similar, false statements to enforcement staff members of the National Collegiate Athletic Association ("NCAA") and those statements caused damage to the Plaintiff. The complaint asserts the statements were made at the request or urging of one or more John Doe



FILE THIS THE 19<sup>th</sup> DAY OF  
Oct, 2017  
MINUTE BOOK UMB 2017 PAGE 152  
BARETTA MOSLEY, CIRCUIT CLERK  
BY: [Signature] D.C.

defendants with the intent to advance the agenda of the John Doe defendants. The Plaintiff alleges that two or more of the named defendants, together with the original instigating John Doe defendants, conspired and acted with other John Doe defendants to see that the false and defamatory statements caused harm to the Plaintiff.

The parties do not dispute that venue is proper in Lafayette County as to Defendant Miller. Rule 82(c) states where several claims or parties have been *properly joined*, the suit may be brought in any county in which any one of the claims could properly have been brought. *See Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So.2d 427, 433 (Miss. 2007)(emphasis added).

This Court finds defendants Jones and Lewis have been properly joined under Rule 20(a) as the relief asserted against these defendants arises from the same transaction, occurrence, or the same series of transactions or occurrences, and common questions of law or fact to all parties will arise in the action. *See Miss. R. Civ. P. 20(a)*.

The Court finds the alleged overarching conspiracy amongst the defendants to make similar, defamatory statements to the NCAA for the unlawful purpose of causing the Plaintiff to suffer damages, constitutes the alleged same transaction, occurrence or series of transactions and occurrences. Further, the Court finds the Plaintiff has alleged in its complaint, and in Plaintiff's consolidated responses in opposition to Defendant Jones and Defendant Lewis's motions, facts and legal claims that are common to all defendants and are not so varied to be confusing to a jury. *See Miss. Farm Bureau Fed'n v. Roberts*, 927 So. 2d 739, 741 (Miss. 2006). Thus, the same litigable event – the allegation of conspiracy by the defendants to defame the Plaintiff – can be tried together in one action.

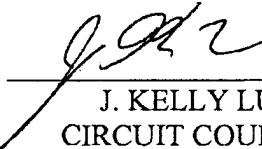
Therefore, this Court finds Defendants Jones and Lewis have been properly joined under

Mississippi Rule of Civil Procedure 20(a). Accordingly, this Court finds venue is proper in Lafayette County as to Defendants Jones and Lewis under Rule 82(c). The Court hereby DENIES Defendants Jones and Lewis's motions to sever and transfer venue.

IT IS THEREFORE ORDERED, Defendants' motions to sever and transfer venue are hereby DENIED.

The clerk is directed to provide a copy of this Order to all counsel.

This the 19<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
J. KELLY LUTHER  
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

LAFAYETTE COUNTY  
FILED

REBEL RAGS, LLC.

PLAINTIFF

VERSUS

JUN 09 2017

CIVIL ACTION NO:

17-244

DEMAND

Baretta Mosley  
CIRCUIT CLERK  
BY: [Signature] D.C.

JURY

LINDSEY MILLER, LEO LEWIS,  
KOBE JONES, AND JOHN DOES 1 - 15

DEFENDANTS

**COMPLAINT**

COMES NOW the Plaintiff, Rebel Rags, LLC, by and through its attorneys, Merkel & Cocke, P.A., and files this Complaint against Defendants and would show as follows:

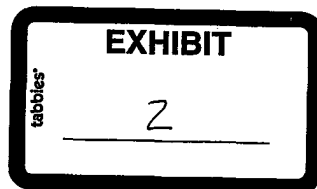
**PARTIES**

1. Plaintiff Rebel Rags, LLC is a Mississippi Limited Liability Company with members residing only in the State of Mississippi and no other states. Its principal place of business is located at 2302 West Jackson Avenue, Oxford, MS 38655.

2. Defendant Lindsey Miller is a resident citizen of the State of Georgia and may be served with process at this residential address of 149 Annaberg Place, McDonough, Georgia 30253, or wherever he may be found.

3. Defendant Leo Lewis is a resident citizen of the State of Mississippi and a current student enrolled at Mississippi State University. Service may be perfected by process being served upon Leo Lewis and one of his parents, wherever they may be found.

4. Defendant Kobe Jones is a resident citizen of the State of Mississippi and a current student enrolled at Mississippi State University. Service may be perfected by process being served upon Kobe Jones and one of his parents, wherever they may be found.



5. Defendants John Does 1 - 15 are fictitiously named in the Complaint inasmuch as the true names, whether individual, entity, institution or organization and/or the circumstances giving rise to a cause of action are presently unknown by Plaintiff and must be discovered. Plaintiff believes and contends that John Does 1 - 15 negligently, maliciously and/or recklessly disregarded Plaintiff's legal rights, as set forth herein.

#### **JURISDICTION AND VENUE**

6. Jurisdiction and venue are appropriate in this Court inasmuch as Plaintiff and at least one of the named Defendants are residents of Mississippi and the unlawful actions and conduct of one or more Defendants occurred or accrued, as more particularly explained herein, in Lafayette County, MS.

#### **COUNT I - DEFAMATION**

7. Each of the Defendants intentionally, maliciously and/or with reckless disregard for the consequences of their actions, made several false statements to enforcement staff members of the National Collegiate Athletic Association ("NCAA") proximately causing economic and reputational damage to Plaintiff.

8. Upon information and belief, on more than one occasion, beginning in July 2015, Defendant Lindsey Miller met with NCAA enforcement staff member(s) in Lafayette County, MS following an altercation between Defendant Lindsey Miller and Laremy Tunsil, a football player for the University of Mississippi.

9. Defendant Miller, with a personal vendetta and a score he hoped to settle with Tunsil and others intentionally, maliciously and/or with reckless disregard for the impact upon Plaintiff, provided a "confidential statement" to NCAA enforcement staff member(s), which was known by Defendant Miller to be false. Defendant Miller untruthfully alleged that he (Miller) had

previously received free merchandise from Plaintiff through a scheme to circumvent NCAA regulations prohibiting such actions involving prospective student athletes.

10. Upon information and belief, Defendant Leo Lewis arranged multiple meetings and met with NCAA officials at the request and urging of one or more John Doe defendants, and intentionally, maliciously and/or with reckless disregard for the impact upon Plaintiff provided one or more "confidential statements" to NCAA enforcement staff member(s) which were known by Defendant Lewis, and by other Defendants, including John Doe defendants, to be false. Defendant Lewis untruthfully alleged that he had previously obtained free merchandise through a scheme to circumvent NCAA regulations prohibiting such action involving prospective student athletes.

11. Upon information and belief, Defendant Kobe Jones also met with NCAA officials at the request and urging of one or more John Doe defendants, and intentionally, maliciously and/or with reckless disregard for the impact upon Plaintiff provided one or more "confidential statements" to NCAA enforcement staff member(s) which were known by Defendant Jones, and by other Defendants, including John Doe defendants, to be false. Defendant Jones untruthfully alleged that he had previously obtained free merchandise through a scheme to circumvent NCAA regulations prohibiting such action involving prospective student athletes.

#### **COUNT II - COMMERCIAL DISPARAGEMENT**

12. At the urging of the John Doe defendants, Defendants Miller, Lewis and Jones made deliberately false and malicious statements to NCAA enforcement staff member(s) with the intent to advance the agenda of the John Doe defendants and with knowledge that the statement(s) would cause financial loss to Plaintiff. As a result of Defendants' false statements

Plaintiff did in fact suffer a financial loss and will continue to suffer financial losses until such time as Defendants' false statements are retracted. Multiple customers have informed Plaintiff's agents that they will no longer do business with Plaintiff because of the perceived untoward actions of Plaintiff in bringing harm to the athletic programs of the University of Mississippi, as falsely alleged by Defendants.

### COUNT III - CIVIL CONSPIRACY

13. Two or more of the Defendants acted in a concerted effort to bring harm and damage to the reputation of others and in so doing acted with malice and/or reckless disregard for the damage to the reputation and business interests of Plaintiff. Defendants unlawfully agreed and conspired to concoct a false narrative of Plaintiff providing free merchandise to prospective student athletes which was told and repeated by Defendants to NCAA officials. The defamatory lies constitute overt acts in furtherance of the conspiracy, which resulted in damages to Plaintiff as alleged herein.

14. Two or more of the named Defendants, together with the original instigating John Doe Defendants, conspired and acted with other John Doe Defendants to see that the deliberately false and defamatory statements were disseminated and published by the NCAA and other media voices in such a way as to have maximum detrimental effects on the targets of the conspiracy including Rebel Rags. This conspiratorial group of both specifically named and fictitiously named John Doe Defendants was successful in having these lies published by the NCAA on February 22, 2017, and ultimately disseminated to the public at large during the week of June 5, 2017. These specifically named Defendants knew that the narrative being espoused by them was false, and they and the John Doe Defendants who enlisted, aided, and abetted them in forming



the lies and delivering them so as to cause maximum damage to the targets of the conspiracy, including Rebel Rags. Defendants knew the narrative to be false and defamatory but deliberately proceeded to issue and publish lies with malice and specific intent to inflict as much damage and harm as possible.

### DAMAGES

15. Plaintiff's business model depends entirely on the sale of licensed "University of Mississippi" and "Ole Miss" merchandise, and Defendant's actions have and will continue to cause Plaintiff financial damage. Additionally, Plaintiff has incurred damage to its reputation on a local, regional, and national level. All damages were proximately caused by Defendants' false statements which were made intentionally, with actual malice, or with reckless disregard for the truth of the matters asserted. Defendants are jointly and severally liable for actual and punitive damages in an amount to be determined by a jury at trial.

Respectfully submitted, this the 9<sup>th</sup> day of June, 2017.

MERKEL & COCKE  
A Professional Association  
30 Delta Avenue  
P.O. Box 1388  
Clarksdale, Mississippi 38614  
Telephone: 662-627-9641  
Fax: 662-627-3592  
[cmerkel@merkel-cocke.com](mailto:cmerkel@merkel-cocke.com)

By:   
CHARLES M. MERKEL, JR. (MSB#2884)  
CHARLES M. MERKEL, III (MSB#99207)

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

REBEL RAGS, LLC

PLAINTIFF

v.

CIVIL ACTION NO. L17-244

LINDSEY MILLER, LEO LEWIS,  
KOBE JONES, AND JOHN DOES 1 - 15

DEFENDANTS

AFFIDAVIT OF LEO LEWIS

STATE OF MISSISSIPPI  
COUNTY OF OKTIBBEHA

Before me, the undersigned Notary Public, personally appeared Leo Lewis, known to me to be the person whose name is subscribed herein, who upon oath deposed and stated as follows:

1. My name is Leo Lewis. I am a defendant in this action.
2. I do not know defendant Lindsey Miller.
3. I have never met Lindsey Miller.
4. I have never communicated with Lindsey Miller.

Further, Affiant sayeth not.

*Leo Lewis III*

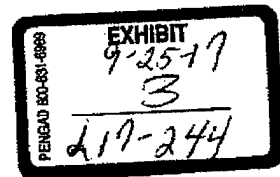
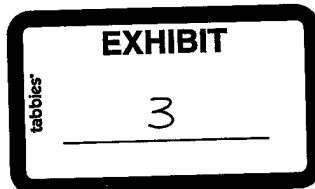
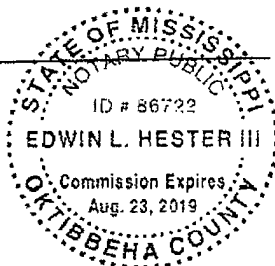
Leo Lewis

SUBSCRIBED AND SWORN BEFORE ME this the 21<sup>st</sup> day of September, 2017.

*Edwin L. Hester III*

NOTARY PUBLIC

My Commission Expires:



LAW OFFICES  
**MITCHELL, MCNUTT & SAMS**

**ORIGINAL**

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200 SOUTH MONTGOMERY STREET  
SUITE 203  
STARKVILLE, MS 39759  
(662) 270-6283  
FACSIMILE (662) 842-8450

November 7, 2017

**HAND-DELIVERED**

**FILED**

**NOV 07 2017**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

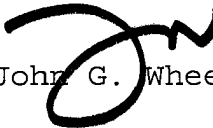
Ms. Muriel Ellis, Clerk  
Mississippi Supreme Court  
Carroll Gartin Justice Building  
450 High Street  
Jackson, Mississippi 39201

Re: *Leo Lewis v. Rebel Rags, LLC*  
Petition for Interlocutory Appeal

Dear Muriel:

Enclosed for docketing and filing in the above matter, please find the original and four (4) copies of the Petition of Leo Lewis for Permission to Appeal from Interlocutory Order. Also enclosed is our firm check in the amount of \$50.00 for the required filing fee. By copy of this correspondence to the trial court and counsel of record, I have provided each with copies of the enclosed petition. As always, I appreciate your attention to this correspondence.

Very truly yours,

  
John G. Wheeler

JGW/trt  
Enclosures

cc: Honorable J. Kelly Luther  
Charles M. Merkel, Jr., Esq.  
Charles M. Merkel, III, Esq.  
Matthew D. Wilson, Esq.  
Christopher A. Shapley, Esq.