

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

GLASS ONION, INC.

PLAINTIFF

v.

Civil No. 08-3061

GARY LEON TETER, JR.;
SHAWNEE HERBST AND WYATT
HERBST, JOINTLY D/B/A SUMMER
FIELD FINE ART

DEFENDANTS

O R D E R

Now on this 11th day of February, 2009, comes on for consideration Defendants' Motion To Dismiss, Stay Or Transfer Proceeding (document #4). On December 5, 2008, the Court took this motion under advisement, noting that a related case is pending in the Western District of Missouri, and that this case is an appropriate one for application of the "first-filed" rule, as to which the Eighth Circuit has said "[t]he well established rule is that in cases of concurrent jurisdiction, the first court in which jurisdiction attaches has priority to consider the case." U.S. Fire Insurance Co. v. Goodyear Tire & Rubber Co., 920 F.2d 487, 488-89 (8th Cir. 1990).

Because the Missouri case was filed first, it has priority to consider the issues, and the Court would have promptly transferred this case to Missouri, where it could be consolidated with the Missouri case, had it not been for the contention of Glass Onion, Inc., that the Missouri court does not have personal jurisdiction over it. Glass Onion, Inc., had filed a motion to dismiss for

lack of personal jurisdiction in the Missouri case, and the Court took the pending motion under advisement until the District Court in Missouri ruled on that jurisdictional issue.

The Court has now been advised by plaintiff's counsel that the Missouri Court has ruled that it does have jurisdiction over Glass Onion, Inc. A copy of that ruling is attached to this Order. Based on that ruling, the Court finds that **Defendants' Motion To Dismiss, Stay Or Transfer Proceeding** (document #4) should be, and same hereby is, **granted**, and the Clerk of Court is directed to **transfer** this matter to the District Court for the Western District of Missouri.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE

**U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED**

FEB 11 2009

CHRIS R. JOHNSON, CLERK

BY  **DEPUTY CLERK**