

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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Clerk of Court

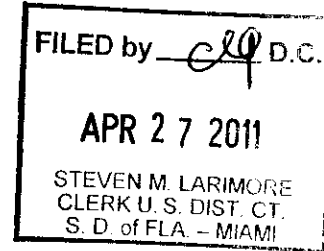
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April 21, 2011

Marianna Chaparova  
10490 S.W. 12th Terrace, Apt. 202  
MIAMI, FL 33174

Albert Segal  
10490 S.W. 12th Terrace, Apt. 202  
MIAMI, FL 33174

Appeal Number: 11-10998-D  
Case Style: In re: Albert Segal, et al  
District Court Docket No: 1:10-cv-20718-MGC



The enclosed order has been entered. No further action will be taken in this matter.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Mildred K. Norwood, D/caw  
Phone #: (404) 335-6185

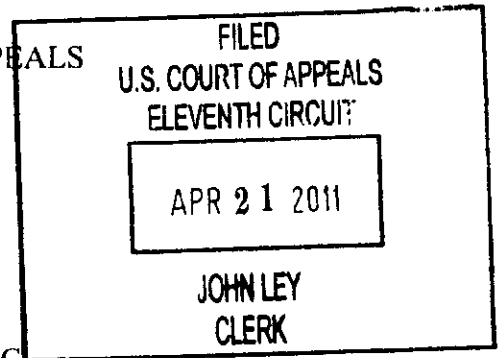
Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 11-10998-D  
\_\_\_\_\_

Dist. Ct. Docket No. 1:10-cv-20718-MGC



IN RE:

ALBERT SEGAL,  
MARIANNA CHAPAROVA,

Petitioners.

\_\_\_\_\_  
On Petition for Writ of Mandamus to the  
United States District Court for the  
Southern District of Florida  
\_\_\_\_\_

**BEFORE:** TJOFLAT and WILSON, Circuit Judges

**BY THE COURT:**

Albert Segal and Marianna Chaparova move this Court for leave to proceed *in forma pauperis* on their *pro se* petition for writ of mandamus, in which they ask us to direct the district court to vacate its order transferring the case to the Western District of Washington pursuant to 28 U.S.C. § 1404(a). Because Segal and Chaparova have established indigence and their petition is not frivolous, the motion to proceed *in forma pauperis* is **GRANTED**.

Mandamus relief is available “only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion.” *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation omitted). Writs of mandamus cannot be used as a substitute for an appeal. *Id.* Finally, the petitioner has the burden of showing

that the claimed right to issuance of the writ is clear and indisputable. *In re Lopez-Lukis*, 113 F.3d 1187, 1188 (11th Cir. 1997).

Transfer orders pursuant to § 1404(a), although not reviewable on interlocutory appeal, may be reviewable “via alternative routes such as by writ of mandamus.” *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1094 & n.8 (11th Cir. 1996). Thus, we have indicated that, while the use of mandamus to remedy an abuse of discretion in a district court’s decision on a motion to transfer is rare and generally disfavored, “the writ might issue to correct an abuse of discretion in some circumstances.” *Roofing & Sheet Metal Serv., Inc. v. La Quinta Motor Inns*, 689 F.2d 982, 987 (11th Cir. 1982). Generally, “[a] district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous.” *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1309 (11th Cir. 2001).

Pursuant to § 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). A choice of forum clause—including a non-negotiated one—is “a *significant* factor that figures *centrally* in the district court’s calculus.” *P&S Bus. Machs, Inc. v. Canon USA, Inc.*, 331 F.3d 804, 807 (11th Cir. 2003) (emphasis in original) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 2244, 101 L.Ed.2d 22 (1988)). “[W]hile other factors might conceivably militate against a transfer . . . the venue mandated by a choice of forum clause rarely will be outweighed by other 1404(a) factors.” *Id.* (quotation omitted). A forum-selection clause can only be invalidated on a showing of a “bad faith motive” where the forum was chosen “as a means of discouraging [parties] from pursuing legitimate claims.” *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595, 111 S.Ct. 1522, 1528, 113 L.Ed.2d 622 (1991). When a

court enforces a contractual forum, it is not limiting “the plaintiff’s usual right to choose its forum, but is enforcing the forum that the plaintiff has already chosen.” *P & S Bus. Machs.*, 331 F.3d at 807. Finally, “[t]he financial difficulty that a party might have in litigating in the selected forum is not a sufficient ground by itself for refusal to enforce a valid forum selection clause.” *Id.*

Here, Segal and Chaparova have failed to show that the district court’s transfer order amounted to an abuse of discretion warranting the exercise of mandamus relief. First, to the extent that the district court, in naming the causes of action, relied on the original complaint instead of the operative amended complaint, any error in this respect was harmless because the number and exact nature of the causes of action was not relevant to the court’s § 1404(a) analysis. *See* 28 U.S.C. § 1404(a).

Second, the court applied the correct legal standard, followed proper procedures, and rendered no clearly erroneous factually findings. *See Chicago Tribune Co.*, 263 F.3d at 1309. Specifically, the forum-selection clause in the parties’ participation agreement, which provided that courts in King County, Washington (where Amazon has its principal place of business), would have exclusive jurisdiction and venue in any dispute, appropriately figured centrally in the district court’s calculus. *See P&S Bus. Machs.*, 331 F.3d at 807. The court also took into account other § 1404(a) factors—such as inconvenience and Segal and Chaparova’s contention that prosecuting their suit in Washington was financially unfeasible—and its finding that any financial difficulty or inconvenience did not outweigh the venue mandated by the forum-selection clause of the parties’ participation agreement was not clearly erroneous. *See id.* at 807. Moreover, the court’s finding that Segal and Chaparova failed to demonstrate that Amazon had a bad faith motive in specifying the forum where it had its principal place of business was not clearly erroneous. *See Carnival Cruise Lines*, 499 U.S.

at 595, 111 S.Ct. at 1528. Therefore, Segal and Chaparova have not shown a clear and indisputable right to mandamus relief, and their mandamus petition is **DENIED**.