

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

RICKY B. PERRITT, Individually; §
THE CUPCAKERY, LLC, a Texas Limited §
Liability Company; BUSTER BAKING, §
LLC, a Texas Limited Liability Company; §
THE WOODLANDS BAKING, LLC, §
a Texas Limited Liability Company; §
CUSTOM VERSION CORPORATION, §
a Texas Corporation §

Plaintiffs, §

Civil Action No. 4:11-CV-23

v. §

PAMELA F. JENKINS, Individually; and §
THE CUPCAKERY LLC, a Nevada §
Limited Liability Company §

Defendants. §

**EMERGENCY MOTION FOR EXTENSION OF DEADLINE TO RESPOND TO
DEFENDANTS’ MOTION TO TRANSFER VENUE**

COME NOW, Plaintiffs RICKY B. PERRITT, Individually, THE CUPCAKERY, LLC, a Texas Limited Liability Company, BUSTER BAKING, LLC, a Texas Limited Liability Company, THE WOODLANDS BAKING, LLC, a Texas Limited Liability Company, and CUSTOM VERSION CORPORATION, a Texas Corporation (collectively “Plaintiffs”) and move this Court for an extension of the deadline to respond to Defendants’ PAMELA F. JENKINS Individually and THE CUPCAKERY LLC, a Nevada Limited Liability Company (collectively “Defendants”) Motion to Transfer venue to the District of Nevada, Las Vegas Division (Docket No. 24). Plaintiffs file the instant motion as an emergency motion in an effort to receive the Court’s ruling on this matter before the current deadline to respond to Defendants’ Motion to Transfer, which is March 14, 2011, expires.

Plaintiffs filed their Original Complaint and Application for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages (“Original Complaint”) in this matter on or about January 14, 2011. Plaintiffs filed their First Amended Application for Temporary Restraining Order on or about January 25, 2011. The Court held a hearing on Plaintiffs’ Application for a Temporary Restraining Order on or about January 31, 2011. Defendant Pamela Jenkins (“Jenkins”) testified at that hearing. Defendants filed an Answer to the Original Complaint and a Motion to Dismiss certain claims contained in the Original Complaint on or about February 9, 2011. Defendants filed a Motion to Transfer Venue to the District of Nevada, Las Vegas Division on or about February 24, 2011. Thereafter, on or about March 2, 2011 Defendants filed their First Amended Answer and Counterclaims, which asserts affirmative claims in this matter. On or about March 2, 2011 Plaintiffs filed their First Amended Complaint and Verified Application for Injunctive Relief which asserts claims in addition to the claims asserted in the Original Complaint including claims regarding Promissory Notes payable in the Eastern District of Texas and governed by Texas law.

It is Plaintiffs’ position that venue is proper in the Eastern District of Texas and Plaintiffs oppose Defendants’ Motion to Transfer Venue to Nevada. Plaintiffs intend on filing a written opposition to Defendants’ Motion to Transfer; however, Plaintiffs need to take Ms. Jenkins’ deposition regarding venue issues prior to doing so. Specifically, Plaintiffs wish to challenge the affidavit Ms. Jenkins filed in support of Defendants’ Motion to Transfer Venue. Additionally, there are important venue facts, including without limitation, acts and/or omissions that took place in Texas that form the basis of Plaintiffs’ causes of action, which will be demonstrated and/or elaborated on in Ms. Jenkins’ deposition.

Plaintiffs' counsel attempted to elicit Ms. Jenkins' testimony regarding venue issues while she testified at the hearing held on Plaintiffs' Application for a Temporary Restraining Order; however, Defendants' counsel objected to such testimony as not relevant and then promptly filed the Motion to Transfer Venue a few weeks later, which clearly makes such issues very relevant. (*See* Transcript of Testimony of Pamela F. Jenkins from January 31, 2011 Hearing before Judge Mazzant, p. 31-37).

Plaintiffs' counsel has conferred with Defendants' counsel regarding these issues. Defendants' counsel has refused to produce Ms. Jenkins for her deposition and has indicated that Defendants will not agree to extend the time to respond to the Motion to Transfer Venue based upon a request for a venue deposition. Defendants' counsel has indicated that she will discuss Ms. Jenkins' availability for deposition at the Rule 26(f) conference which is currently scheduled for March 8, 2011; however, Defendants, through their counsel, have indicated that they will not agree to separate "venue" and "merit" depositions. The current deadline for Plaintiffs to respond to Defendants' Motion to Transfer Venue is Monday, March 14, 2011. In order to obtain all of the facts necessary to properly oppose Defendants' Motion to Transfer Venue and in order to challenge Ms. Jenkins' affidavit filed in support of such Motion, Plaintiffs need to take Ms. Jenkins' deposition. Accordingly, Plaintiffs move the Court for an extension of the deadline to respond to Defendants' Motion to Transfer Venue through and until fourteen (14) days after Plaintiffs receive the transcript of Ms. Jenkins' deposition.

Plaintiffs file this motion as an emergency motion in an effort to receive the Court's ruling on this matter before the current deadline to respond, which is March 14, 2011, expires. Accordingly, Plaintiffs request that the Court set an expedited briefing schedule for the instant motion requiring Defendants to file a response to the instant motion on or before March 7, 2011

and Plaintiffs to file a reply on or before March 8, 2011 and prohibiting any additional briefing regarding the instant motion.

WHEREFORE, based on the reasons stated herein, Plaintiffs request the Court enter an order extending the deadline to respond to Defendants' Motion to Transfer Venue (Docket No. 24) through and until fourteen (14) days after Plaintiffs receive the transcript of Ms. Jenkins' deposition.

Respectfully submitted,

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Clyde M. Siebman

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of March, 2011, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Clyde M. Siebman

CERTIFICATE OF CONFERENCE

Counsel have complied with the meet and confer requirement in Local Rule CV-7(h). I certify that on March 2, 2011, counsel for Plaintiffs, Stephanie Barnes, met and conferred with counsel for Defendants, Jodie Slater, by telephone, and the parties have concluded, in good faith, that they are at an impasse regarding Plaintiffs' Emergency Motion for an Extension of the Deadline to Respond to Defendants' Motion to Transfer. Counsel for Defendants has stated that Defendants are opposed to the relief requested herein. Discussions between the parties have conclusively ended in an impasse, thereby leaving the issue for the Court to resolve.

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Clyde M. Siebman