


improper in an answer and arguing for transfer of venue based on convenience factors under § 1404(a) failed to preserve an objection that venue was proper under § 1400(b)); *Cobalt Boats, LLC v. Sea Ray Boats, Inc.*, No. 2:15cv21, 2017 U.S. Dist. LEXIS 90728, 2017 WL 2556679, at *4 (E.D. Va. June 7, 2017) (finding that one defendant had failed to sufficiently object to venue by raising a venue defense in its answer and by failing to cite *Fourco* to challenge venue), *mandamus denied*, No. 17-124, 2017 U.S. App. LEXIS 10921 (Fed. Cir. June 9, 2017).

Accordingly, the DCO did not function to extend the time during which Fluidmaster was able to amend its answer as a matter of right such that it could avoid waiver. Fluidmaster's Third Answer in which it raised, for the first time, an affirmative defense of improper venue, and the subsequently filed instant Motion, were untimely in raising such issue. As noted above, by its own standalone § 1404 motion Fluidmaster has recognized and accepted that venue in this District is proper.

III. CONCLUSION

Having considered the governing statutes and applicable precedents, the Court finds that Defendant has waived the affirmative defense of improper venue. Accordingly, the Motion (Dkt. No. 67) is hereby **DENIED**.

So ORDERED and SIGNED this 25th day of October, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE