

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2007

BURGER KING CORPORATION,

Appellant,

v.

Case No. 5D07-45

WILLIE QUASH,

Appellee.

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Opinion filed November 30, 2007

Non-Final Appeal from the Circuit Court
for Brevard County,
Vincent G. Torpy, Jr., Acting Circuit Judge.

John P. Wiederhold, of Wiederhold &
Moses, P.A., West Palm Beach, for Appellant.

Marshall E. Rosenbach, of Law Offices of
Marshall E. Rosenbach, Beverly Hills,
CA, for Appellee.

GRIFFIN, J.

Burger King Corporation ["Burger King"] appeals the trial court's non-final order denying its motion to dismiss for forum non conveniens.

For reasons best known to Burger King, the motion to dismiss for forum non conveniens was not accompanied by any affidavits. Burger King says the merit of its motion is "evident" from the face of the complaint; thus, no affidavit is required. See *Ground Improvement Techniques, Inc. v. Merchants Bonding Co.*, 707 So. 2d 1138 (Fla. 5th DCA 1998). Presumably, this refers to the fact that the complaint alleges that the incident on which the suit is based happened in Virginia. Burger King asserts that

its witnesses are there but no evidence is offered of who the witnesses are or where they are. Appellee did file an affidavit setting forth the identity of his Florida witness and the prejudice to him if his choice of venue were disturbed. On this record, there is no basis for this court to reverse the trial court's denial of Burger King's motion.

AFFIRMED.

THOMPSON and EVANDER, JJ., concur.