

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

OCEAN YACHTS, INC. and **STATEN ISLAND YACHT SALES, INC.**,
Appellants,

v.

ANTHONY TANTILLO and **NISSAN 112 SALES CORPORATION**,
Appellees.

No. 4D08-269

[August 20, 2008]

KLEIN, J.

Plaintiff Nissan 112 Sales Corporation purchased in New York a boat manufactured by Ocean Yachts in New Jersey. Nissan sued Ocean Yachts in Palm Beach County, where the boat was being operated, and Ocean Yachts moved to dismiss for improper venue. We affirm the denial of the motion, because Ocean Yachts authorized a boat yard in Palm Beach County, as its representative, to perform warranty repair work on the defective boat.

The complaint alleged that Ocean Yachts had made some warranty repairs to the defective boat at its New Jersey facility, but the repairs were not satisfactory, and other defects appeared after the boat was brought to Florida. Ocean Yachts then directed that further warranty work be done at a Florida boat yard.

Section 47.051, Florida Statutes (2007), which addresses venue provides in part:

Actions against foreign corporations doing business in this state shall be brought in a country where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located.

The trial court concluded that venue was proper in Palm Beach County, because the complaint alleged that warranty work was performed in Palm Beach County by agents or representatives of Ocean Yachts, and this allegation was not controverted by Ocean Yachts.

Ocean Yachts relies on its warranty, which provides that its “designated service representatives are not the agents of Ocean Yachts.” Our statute, however, says venue against a foreign corporation will lie in a county where the corporation has “an agent or other representative,” and in *Piper Aircraft Corp. v. Schwendemann*, 564 So. 2d 546 (Fla. 3d DCA 1990), the court held that a service center which was authorized by the defendant to perform warranty work was a representative, for purposes of venue, even though it may not have been an agent of the manufacturer. See also *Breed Techs. v. Allied Signal, Inc.*, 861 So. 2d 1227 (Fla. 2d DCA 2003) (agreeing with *Piper* and noting that labels in agreements are not conclusive as to actual legal relationships).

We agree with *Piper* and *Breed* and therefore affirm.

SHAHOOD, C.J and DAMOORGIAN, J., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Robin L. Rosenberg, Judge; L.T. Case No. 50-2007CA008261XXXXMB.

Samuel Cozzo and Michel O. Weisz of Berger Singerman, Miami, for appellant Ocean Yachts, Inc.

Cindy L. Ebenfeld and Mark Hicks of Hicks & Kneale, P.A., Hollywood, for appellant – Staten Island Yacht Sales, Inc..

Andrew W. Anderson and David E. Irwin of Houck Anderson P.A., Ft. Lauderdale, for appellees.

Not final until disposition of timely filed motion for rehearing