

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

KIM BUTLER KIRSH AND COREY
KIRSH

NO. 2018 CW 1646
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VERSUS

FCCI INSURANCE COMPANY,
MIKE'S HARDWARE AND BUILDING
SUPPLY, INC. AND SHAE
FITZGERALD

MAY 22 2019

In Re: FCCI Insurance Company, Mike's Hardware and Building Supply, Inc. and Shae Fitzgerald, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 667702.

BEFORE: McDONALD, McCLENDON, WELCH, CRAIN, AND HOLDRIDGE, JJ.

WRIT GRANTED WITH ORDER. The portion of the trial court's October 22, 2018 signed judgment that denied defendants, FCCI Insurance Company, Mike's Hardware and Building Supply, Inc. & Shae Fitzgerald, exception of improper venue as to the avowal action is reversed and the exception is granted, as East Baton Rouge Parish was not a proper venue under La. Code Civ. P. art. 74.1 for the avowal action. Therefore, the avowal action filed by plaintiffs, Kim Butler Kirsh and Corey Kirsh, is dismissed. Further, the portion of the trial court's October 22, 2018 signed judgment that denied the motion to transfer venue for *forum non conveniens* filed by defendants as to the tort action is reversed. Pursuant to Louisiana Code of Civil Procedure article 123, for the convenience of the parties and the witnesses and in the interest of justice, a court may, upon contradictory motion, transfer a civil case to another district court where it might have been brought. In this case, the trial court abused its discretion in denying defendants' motion to transfer venue for *forum non conveniens*. The convenience of the parties and witnesses and the interest of justice would be better served by transferring this case to St. Tammany Parish. See **Holland v. Lincoln General Hosp.**, 2010-0038 (La. 10/19/10), 48 So.3d 1050, 1055-57. Thus, the motion to transfer venue for *forum non conveniens* filed by defendants as to the tort action is granted. The case is remanded to the trial court, which is instructed to transfer the tort action to the 22nd Judicial District Court for St. Tammany Parish.

JMM
WJC

Welch and Holdridge, JJ., concur in part and dissent in part. We concur to the extent that venue for the avowal action is improper and that action is dismissed. However, as to the majority's transfer of the tort action, the Louisiana Supreme Court has held that "[a]bsent extraordinary circumstances, a motion to transfer based on *forum non conveniens* will generally not be granted if the distance between the two possible fora is

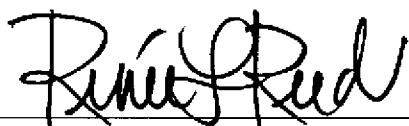
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relatively small.” **Holland v. Lincoln General Hosp.**, 2010-0038 (La. 10/19/10), 48 So.3d 1050, 1055. We find the distance between St. Tammany Parish and East Baton Rouge Parish to fit that criteria. Therefore, we find no abuse of discretion by the trial court and dissent as to the grant of the motion to transfer the tort action based on *forum non conveniens* and would deny that motion.

McClendon, J., concurs in part and dissents in part. I would reverse the portion of the trial court’s October 22, 2018 signed judgment that denied the motion to transfer based on *forum non conveniens* and transfer the entirety of this case to St. Tammany Parish. See **Holland v. Lincoln General Hosp.**, 2010-0038 (La. 10/19/10), 48 So.3d 1050, 1055-57.

COURT OF APPEAL, FIRST CIRCUIT



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FOR THE COURT