

**HENRY LEON SARPY**

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**NO. 2009-C-0945**

**VERSUS**

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**COURT OF APPEAL**

**EXXON MOBIL  
CORPORATION**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**TOBIAS, J., CONCURS AND ASSIGNS REASONS.**

I respectfully concur in the decision of the majority. I write separately because once again, in my view, a court of this state incorrectly interprets and explains article 76.1 of the Louisiana Code of Civil Procedure.

As explained in *Lewis v. Marshall Bros. Lincoln-Mercury, Inc.*, 04-0507 (La. App. 4 Cir. 5/19/04), 876 So.2d 142, La. C.C.P. art. 76.1 does not apply to the contract at issue in the case at bar. As stated in *Lewis*,

Article III, § 15(A) of the Louisiana Constitution provides that a bill "shall be confined to one object ... [and] shall contain a brief title indicative of its object."

La. C.C.P. art. 76.1 was enacted by Act 217 of 1991, which act reads in its entirety as follows:

To enact R.S. 9:2779 and Code of Civil Procedure Art. 76.1, relative to contracts; to declare public policy regarding clauses in construction contracts, subcontracts, and purchase orders on public and private works relating to the choice of laws governing their interpretation or to venue for resolving disputes arising thereunder; to provide for the invalidity of certain contract provisions as contrary to public policy; to provide exceptions; to provide venue in actions on contracts; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2779 is hereby enacted to read as follows:

§ 2779. Construction contracts, subcontracts, and purchase orders; certain provisions invalid

A. The legislature finds that, with respect to construction contracts, subcontracts, and purchase orders for public and private work projects, when one of the parties is domiciled in Louisiana, and the work to be done and the equipment and materials to be supplied involve construction projects in this state, provisions in such agreements requiring disputes arising thereunder to be resolved in a forum outside of this state or requiring their interpretation to be governed by the laws of another jurisdiction are inequitable and against the public policy of this state.

B. The legislature hereby declares null and void and unenforceable as against public policy any provision in a contract, subcontract, or purchase order, as described in Subsection A, which either:

(1) Requires a suit or arbitration proceeding to be brought in a forum or jurisdiction outside of this state; rather, such actions or proceedings may be pursued in accordance with the Louisiana Code of Civil Procedure or other laws of this state governing similar actions.

(2) Requires interpretation of the agreement according to the laws of another jurisdiction.

C. The provisions of this Section apply to contracts, subcontracts, and purchase orders, as described in Subsection A, entered into on or after the effective date of this Act.

D. Notwithstanding any other provisions of law to the contrary, the provisions of this Section shall not apply to negotiated labor contracts.

Section 2. Code of Civil Procedure  
Art. 76.1 is hereby enacted to read as  
follows:

Art. 76.1. Action on contract

An action on a contract may be brought in the parish where the contract was executed or the parish where any work or service was performed or was to be performed under the terms of the contract.

It is apparent, in view of the title to Act 217, that article 76.1 was intended to apply to construction contracts and not all contracts of every nature. In light of Lewis' specific claims against Ford and Marshall Bros., we find that article 76.1, being applicable only to construction contracts, is inapplicable to the case at bar and does not support Ford's contention that venue is proper in Jefferson Parish. A careful review of Lewis' petition discloses that Lewis alleges that he was provided with marketing materials and sales information promoting the Lincoln Navigator as a "premium luxury vehicle, with an extremely smooth ride." He does not allege where he received this information. He further alleges that immediately after purchase, he noticed "roughness and shuddering in the vehicle", which Marshall Bros. "attempted to repair on numerous occasions" before Ford determined that the asserted problem "is a normal operating characteristic of the vehicle." Lewis does not assert that any of these things happened in Orleans Parish.

We note that Louisiana law on redhibition, La. C.C. art. 2520 et seq. is found in Chapter 9 of Book III, Title VII of the Louisiana Civil Code; Title VII of Book III relates to "Sale," which sounds in contract, not tort. By contrast, Louisiana law on tort is primarily set forth in Chapter 3 of Book III, Title V of the Louisiana Civil Code, relative to "Offenses and Quasi Offenses." Offenses and quasi-offense sound in tort and Title V relates to "Obligations Arising without Agreement." In the case at bar, Lewis alleges an agreement, i.e., contract, when he asserts that the vehicle that he purchased was promised to have a quality that it did not in fact have. All other allegation of Lewis' petition relate to a breach of contract, which are governed by Chapter 1, et seq. of Book III, Title IV of the Louisiana Civil Code. Although a claim of redhibition may sound in both contract and tort, such as in *Reeves v. Dixie Brick, Inc.*, supra, a plaintiff must allege sufficient facts in the petition to establish that damages occurred in a particular location so that venue might be proper in that parish in which the

damage occurred. See, e.g., *Metcalf v. Pool & Home Care*, 467 So.2d 610 (La. App. 3d Cir.1985); *Rachal v. Ford Motor Co.*, 96-160, p. 2 (La. App. 3 Cir. 6/5/96), 676 So.2d 671, 673. We find no such allegations or evidence presented at the trial of the exception. If such had been the situation in the case at bar, Orleans Parish might be a proper venue.

We conclude from the facts as alleged by Lewis in his petition that his claim arises from things that occurred solely in Jefferson Parish. Therefore, venue was proper solely under La. C.C.P. art. 42 and Jefferson Parish was the sole venue in which Lewis could commence his suit on the facts alleged.

*Lewis*, 04-0507, pp. 2-7, 876 So. 2d at 144-45.

This is not to say that I do not realize that this court has overruled *Lewis* in *French Jordan, Inc. v. Travelers Ins. Co.*, 07-0007 (La. App. 4/25/07), 958 So.2d 699 and that the Louisiana Supreme Court has applied article 76.1 in a non construction contract case in *Jordan v. Central La. Elec. Co., Inc.*, 95-1270 (La.6/23/95), 656 So.2d 988. Rather, I again point out that by virtue of the Louisiana Constitution and the title to the act creating article 76.1, article 76.1 applies to construction contracts only. It does not apply to the contract at issue in the case at bar and any discussion about the applicability or inapplicability of article 76.1 is misplaced.