

**IN THE SUPREME COURT OF MISSOURI**

UNIVERSAL CREDIT  
ACCEPTANCE, INC.,

*Relator,*

V.

No. SC97872

THE HONORABLE GLORIA CLARK  
RENO, PRESIDING JUDGE,  
MISSOURI CIRCUIT COURT,  
21ST JUDICIAL CIRCUIT,  
ST. LOUIS COUNTY,

*Respondent.*

PROCEEDING IN MANDAMUS FROM THE CIRCUIT COURT  
OF ST. LOUIS COUNTY, MISSOURI, CAUSE NO. 19SL-CC01873

## BRIEF OF RELATOR UNIVERSAL CREDIT ACCEPTANCE, INC.

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### **JURISDICTIONAL STATEMENT**

This original proceeding in mandamus is one involving the question of whether the trial court failed to follow the mandatory, controlling language of Rule 51.06 of the Missouri Rules of Civil Procedure when it granted Defendant Renwick Ware's Motion for Change of Venue after he had previously requested and obtained a change of judge, and whether the Preliminary Writ of Mandamus entered by this Court on September 3, 2019 shall be made permanent. This Court has jurisdiction pursuant to Article V, Section 4.1 of the Missouri Constitution to determine and issue remedial writs.

## STATEMENT OF FACTS

Relator/Plaintiff Universal Credit Acceptance, Inc. (“UCA”) brings this action for extraordinary relief in mandamus to challenge the trial court’s April 10, 2019 Order in *Universal Credit Acceptance, Inc. v. Renwick Ware*, Case No. 1511-AC02090-03, in which the trial court granted Defendant Renwick Ware’s (“Ware”) Motion for Change of Venue and transferred the case from St. Charles County to St. Louis County. (A81).<sup>1</sup>

UCA filed the underlying lawsuit against Ware on April 7, 2015 seeking to recover a deficiency judgment against Ware arising out of Ware’s default on a retail sales installment contract. (A17-A18). On September 27, 2015, a default judgment was entered against Ware. (A2). This default judgment was later set aside by the trial court’s September 27, 2016 Order. (A1).

Then, on September 27, 2015, UCA filed a Notice of Dismissal with Prejudice, while Ware filed two separate Answers and Counterclaims asserting purported class action claims for numerous violations of the Missouri Uniform Commercial Code (“UCC”) and Merchandising Practices Act (“MPA”) arising out of UCA’s alleged wrongful repossession and disposition of the secured collateral. (A19-A55).

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<sup>1</sup> All references herein to “A\_\_\_\_” are to the pages of UCA’s Appendix.

Subsequently, on April 20, 2017, Ware filed his Application for Change of Judge. (A56-58). The trial court granted Ware's Application for Change of Judge the same day, transferring the case from the Honorable Norman Steimel, III to the Honorable Matthew Thornhill. (A59). Over a week later, on April 28, 2017, Ware filed his Motion for Change of Venue. (A60-A61).

On May 23, 2017, before a hearing on Ware's Motion for Change of Venue was held, UCA filed its Application for Change of Judge. (A62-A65). UCA's application was eventually granted on June 6, 2017, and the case was transferred to the Honorable Rebeca Navarro-McKelvey. (A72).

Also on May 23, 2017, UCA filed its Response in Opposition to Ware's Motion for Change of Venue, arguing in part, that Ware waived his right to request a change of venue under Rule 51.06(a) by not joining the request with his previously granted application for change of judge. (A66-71).

Over the following 16 months, a series of events<sup>2</sup>, including an appeal to this Court, prevented a hearing on Ware's Motion for Change of Venue. (A5-A8). On October 10, 2018, UCA filed is Motion to Enforce the

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<sup>2</sup> The specifics of these events are not necessarily relevant to this proceeding and UCA's request for the issuance of a writ of mandamus, and, as such will not be discussed in detail herein.

Settlement Agreement entered into between UCA and Ware during the pendency of the appeal. (A14).

Then, on November 26, 2018, Ware filed a motion to certify the case from the Associate Circuit Court to the Circuit Court of St. Charles County. (A13). On December 18, 2018, the trial court held a hearing on UCA's Motion to Enforce Settlement and Ware's Motion to Certify the Case to the Circuit Court, and took each under advisement. (A13). The trial court granted Ware's Motion to Certify the Case to the Circuit Court on January 18, 2019, but did not enter an Order on UCA's Motion to Enforce Settlement Agreement. (A13).

After certification to the Circuit Court, the trial court set UCA's Motion to Enforce Settlement and Ware's Motion for Change of Venue for a hearing on February 27, 2019. (A15-16). The trial court later continued the hearing to April 3, 2019, giving the parties until March 27, 2019 to file additional briefing on the venue issue. (A15).

On March 27, UCA filed its Supplemental Brief in Opposition to Ware's Motion for Change of Venue, again pointing out that Ware waived his right to request a change of venue under Rule 51.06(a) by not joining the request with his previously granted application for change of judge. (A73-A76). On this same date, Ware also filed his Memorandum in Support of his Motion for Change of Venue. (A77-80).

On April 3, 2019, the trial court held a hearing on Ware's Motion for Change of Venue and took the motion under advisement. (A15). A week later, on April 10, 2019, the trial court granted Ware's Motion to Transfer Venue, and, in a one sentence "judgment," ordered the case transferred to St. Louis County. (A81). The trial court's order did not provide a written opinion as to the reason for ordering the transfer. (A81).

UCA filed a Petition for Writ of Mandamus in the Missouri Court of Appeals, Eastern District, which that Court denied on May 2, 2019. (A82). On May 10, 2019 UCA filed its Petition for Writ of Mandamus in this Court. This Court issued a Preliminary Writ on September 3, 2019, commanding Respondent Honorable Gloria Clark Reno to transfer the case back to St. Charles County on or before October 3, 2019, or to show cause, if any, why she should not do so. On January 14, 2020, an Answer to UCA's Petition for Writ of Mandamus was filed on behalf of Respondent by counsel for Ware.

**POINT RELIED ON**

- I. Relator is entitled to a permanent writ of mandamus to compel Respondent to transfer this matter back to St. Charles County Circuit Court because, under Rule 51.06 of the Missouri Rules of Civil Procedure, a party who desires both a change of venue and a change of judge must join and present both in a single application, in that the trial court improperly granted Ware's Motion for Change of Venue after Ware had previously requested and obtained a change of judge.**

*Dorris v. State*, 360 S.W.3d 260 (Mo. banc 2012)

*State v. Reese*, 920 S.W.2d 94 (Mo. banc 1996)

MO. REV. STAT. § 517.021

Mo. R. CIV. P. 51.06

## ARGUMENT

**I. Relator is entitled to a permanent writ of mandamus to compel Respondent to transfer this matter back to St. Charles County Circuit Court because, under Rule 51.06 of the Missouri Rules of Civil Procedure, a party who desires both a change of venue and a change of judge must join and present both in a single application, in that the trial court improperly granted Ware’s Motion for Change of Venue after Ware had previously requested and obtained a change of judge.**

### **A. Standard of Review**

This Court reviews writs of mandamus, including those pertaining to motions to transfer venue, for abuse of discretion. *State ex rel. Missouri Pub. Serv. Comm’n v. Joyce*, 258 S.W.3d 58, 61 (Mo. banc 2008) (quoting *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007)). “[A]n abuse of discretion occurs where the circuit court fails to follow applicable statutes.” *Id.*

### **B. Preservation of Point for Review**

Every argument made in Point I here was made to the trial court in opposition to the transfer of venue. These arguments were rejected without being addressed or mentioned by the trial court’s Order granting Ware’s Motion for Change of Venue. (A81).

**C. The Trial Court had a Duty to Enforce the Missouri Rules of Civil Procedure.**

The Missouri Constitution grants the Missouri Supreme Court the power to “establish rules relating to practice, procedure and pleading for all courts . . . which shall have the force and effect of law....” *State v. Reese*, 920 S.W.2d 94, 95 (Mo. banc 1996) (quoting Mo. Const. art. V, § 5); see also *Dorris v. State*, 360 S.W.3d 260, 268 (Mo. banc 2012) (same). “When properly adopted, the rules of court are binding on courts, litigants, and counsel, and it is the court's duty to enforce them.” *Dorris*, 360 S.W.3d at 268 (quoting *Sitelines, LLC v. Pentstar Corp.*, 213 S.W.3d 703, 707 (Mo. App. E.D. 2007)).

In interpreting the meaning of the rules of procedure promulgated by the Missouri Supreme Court, Missouri courts “employ the same canons of construction . . . as [used] in attempting to divine the purpose and cause for legislative enactments.” *Garland v. Am. Family Mut. Ins. Co.*, 458 S.W.2d 889, 890–91 (Mo. App. 1970) (citing *State ex rel. R-1 Sch. Dist. of Putnam County v. Ewing*, 404 S.W.2d 433, 436(1) (Mo. App. 1966)). “Of all the guides available, the most basic are that [courts] determine the intention of the Supreme Court in making [the rule] and construe it in the light of the existing and anticipated evils at the time the rule was ordered so as to promote the purposes and objects thereof.” *Id.* (citing *Mashak v.*

*Poelker*, 367 S.W.2d 625, 626(1) (Mo. banc 1963)); see also *Phoenix v. Summer Inst. of Linguistics*, 568 S.W.3d 39, 42 (Mo. App. E.D. 2019) (“The primary rule of statutory construction is to determine the legislature’s intent from the statute’s language, considering the words in their plain and ordinary meaning.”).

Generally, when interpreting a rule or statute, the word “shall” connotes a mandatory duty. *Dorris*, 360 S.W.3d at 267; *State ex rel. Robison v. Lindley-Myers*, 551 S.W.3d 468, 474 (Mo. banc 2018) (“It is the general rule that in statutes the word ‘may’ is permissive only, and the word ‘shall’ is mandatory.”). Nonetheless, whether a statute using “shall” is mandatory ultimately is a “function of context and legislative intent.” *Lindley-Myers*, 551 S.W.3d at 474 (quoting *Bauer v. Transitional Sch. Dist. of City of St. Louis*, 111 S.W.3d 405, 408 (Mo. banc 2003)). However, “[w]hen a statute or rule provides what results will follow a failure to comply with its terms, it is mandatory and must be obeyed.” *Dorris*, 360 S.W.3d at 267 (citing *Kersting v. Director of Revenue*, 792 S.W.2d 651, 652–53 (Mo. App. E.D. 1990) and *State v. Tisius*, 92 S.W.3d 751, 770 (Mo. banc 2002) (applying this rule of construction to a court rule)).

Lastly, the “Supreme Court rules govern over contradictory statutes in procedural matters unless the General Assembly specifically annuls or amends the rules in a bill limited to that purpose.” *Reese*, 920 S.W.2d at

95 (quoting *Ostermueller v. Potter*, 868 S.W.2d 110, 111 (Mo. banc 1993)); see also Mo. Const. art. V, § 5 (“Any rule may be annulled or amended in whole or in part by a law limited to the purpose.”). “[T]he distinction between substantive law and procedural law is that substantive law relates to the rights and duties giving rise to the cause of action, while procedural law is the machinery used for carrying on the suit.” *Id.* (quoting *Wilkes v. Missouri Highway and Transportation Commission*, 762 S.W.2d 27, 28 (Mo. banc 1988)).

**D. The Trial Court Abused its Discretion in Granting Ware’s Motion for Change of Venue after Ware had Previously Requested and Obtained a Change of Judge, in Violation of Rule 51.06(a).**

In Missouri, cases pending in the Associate Circuit Courts are governed by MO. REV. STAT. § 517.021, which provides that “[t]he rules of civil procedure ***shall*** apply to cases or classes of cases to which this chapter is applicable, except where otherwise provided by law.” MO. REV. STAT. § 517.021. Section 517.061, which governs motions for change of judge and change of venue in Associate Circuit Courts, states:

Change of venue and change of judge shall be for the ***same reasons and in the same manner as provided in the rules of civil procedure*** except that the application shall be filed not later than five days before the return date of the summons. If the cause is not tried on the return date but continued and if all parties are given fifteen days' advance notice of a trial setting

before the particular judge, then any application for change of judge or change of venue shall be made not later than five days before the date set for trial.

MO. REV. STAT. § 517.061 (emphasis added). This section is silent as to whether a party may file separate motions for change of judge and change of venue and, as such, this issue is governed by the Missouri Rules of Civil Procedure.

Rule 51.06 of the Missouri Rules of Civil Procedure provides, in relevant part:

If a party requests and obtains either a change of venue or a change of judge, that party ***shall not*** be granted any additional change thereafter except for cause or under Rule 51.07. ***A party who desires both a change of venue and a change of judge must join and present both in a single application.***

MO. R. CIV. P. 51.06(a) (emphasis added). Because Rule 51.06 provides what result will follow from a failure to join and present both a request for change of judge and change of venue in a single application, i.e., the second filed request “shall not be granted,” it is mandatory; therefore, the rule is required to be obeyed by the courts, litigants, and counsel, and it is the court's duty to enforce the rule. *See Dorris*, 360 S.W.3d at 267.

Furthermore, because Rule 51.06 simply prescribes the method to carry on the suit, it is procedural, and thus, controls this case unless specifically annulled or amended by the legislature. However, the General

Assembly has not passed a law limited to the purpose of annulling or amending Rule 51.06, making the rule controlling.

Here, on April 20, 2017, Ware filed his Application for Change of Judge. (A56). The trial court granted Ware's Application for Change of Judge that same day. (A59). Over a week later, on April 28, 2017, Ware filed his Motion for Change of Venue. (A60). Over the following 16 months, a series of events, including an unrelated appeal to this Court, prevented a hearing on Ware's Motion for Change of Venue. (A5-14). However, on November 26, 2018, after the case was remanded by this Court after appeal, Ware filed a motion to certify the case from the Associate Circuit Court to the Circuit Court of St. Charles County. (A13). This matter was subsequently certified to the Circuit Court on January 18, 2019. (A12).

On April 3, 2019, after a series of continuances, the trial court held a hearing on Ware's Motion to Transfer Venue and took the motion under advisement. (A15). On April 10, 2019, the trial court granted Ware's Motion to Transfer Venue, and ordered the case transferred to St. Louis County. (A15).

The record clearly demonstrates that Ware filed his Motion to Transfer Venue after he had previously requested and obtained a change

of judge. Under the mandatory, controlling language of Rule 51.06(a)<sup>3</sup>, Ware's Motion to Transfer Venue was improper, untimely, and could not be granted by the trial court. It was the trial court's duty to enforce Rule 51.06(a), which it failed to do, thereby abusing its discretion in granting Ware's Motion to Transfer Venue.

Therefore, because the trial court granted Ware's Motion to Transfer Venue after Ware was previously granted a change of judge, the trial court failed to obey the mandatory language of Rule 51.06(a) and, as a result, abused its discretion.

### **CONCLUSION**

For the reasons set forth above, Relator Universal Credit Acceptance, Inc. respectfully requests this Court to make permanent the Preliminary Writ of Mandamus directing Respondent to transfer the case back to St. Charles County Circuit Court and to take no action in this case other than to return the case to St. Charles County Circuit Court.

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<sup>3</sup> Regardless of whether Ware's Motion to Transfer Venue is controlled by the rules of the Associate Circuit Court, where it was filed, or the Circuit Court, where it was eventually ruled on, Rule 51.06 is controlling.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

The undersigned certifies under Rule 84.06(c) of the Missouri Rules of Civil Procedure that:

1. Relator's Brief includes the information required by Rule 55.03;
2. Relator's Brief complies with the limitations contained in Rule 84.06(b); and
3. Relator's Brief, excluding cover page, signature blocks, certificate of compliance, and certificate of service, contains 3,063 words, as determined by the word-count tool contained in the Microsoft Word 2013 software with which Respondent's Brief was prepared.

/s/ Corey L. Kraushaar

### **CERTIFICATE OF SERVICE**

The undersigned certifies that copies of Relator's Brief and the Appendix of Relator were served via the Court's electronic filing system, to be served upon all attorneys of record and via electronic mail on February 13<sup>th</sup>, 2020 to the following:

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