In the Missouri Court of Appeals
Eastern District

DIVISION TWO

MIRAMAR FINANCIAL HOLDINGS, LLC, Appellant, v. RBCD VENTURES, LLC, ET AL., Respondents.	)	ED113698 Filed: May 19, 2026

Appeal from the Circuit Court of Saint Charles County
The Honorable Brittney R. Smith, Judge

Introduction

Miramar Financial Holdings, LLC ("Miramar"), naming additional plaintiffs American Automotive Service Solutions, Inc. ("American Automotive"), Black Diamond Administrative Company, LLC, FiStream, Inc., US Home Guard, LLC, PayPlus, LLC, Warranty Global Group, Inc., Brent Kreke, Michael Hall, and Jason Schmuck, appeals the circuit court's judgment dismissing its second amended petition against RBCD Ventures, LLC ("RBCD"), Wright Brothers Building, LLC ("WBB"), and James B. Smith (collectively, "Defendants") for *forum non conveniens*. Miramar raises seven points on appeal. In its first point, Miramar argues the circuit court erred in identifying

and applying the burden of proof when dismissing its petition for *forum non conveniens*. In its remaining points, Miramar argues the circuit court erred in applying the *forum non conveniens* factors when dismissing its petition because the law and relevant evidence did not support the circuit court's judgment.

This Court holds the circuit court appropriately identified and applied the burden of proof when examining the *forum non conveniens* factors. However, after reviewing the record and considering all of the non-exclusive factors, this Court holds the circuit court abused its discretion in dismissing the second amended petition because Defendants have not carried their burden of presenting evidence demonstrating the factors strongly favor dismissal.

The circuit court's judgment dismissing the second amended petition for *forum non conveniens* is reversed and remanded for further proceedings.

Factual and Procedural History

Miramar is a Delaware limited liability company in which Hall, Kreke, and Schmuck each hold an ownership interest, and in which Smith held a 51% controlling interest (collectively, "Miramar principals"). Miramar wholly owns American Automotive, Black Diamond Administrative Company, LLC, FiStream, Inc., US Home Guard, LLC, PayPlus, LLC, and Warranty Global Group, Inc. (collectively, "subsidiaries"). These subsidiaries conduct business throughout the United States—including Missouri, Illinois, and Texas—by providing automotive service and home warranty agreements directly to the public and through residential realtors. Smith also

owns and controls Your Renter Insurance Group ("YRIG"), which is not a Miramar subsidiary.

American Automotive, then a Missouri corporation, ran a call center from a building in Wentzville, Missouri ("Wentzville property"). The subsidiaries also leased office space in that building. In 2019, American Automotive had an opportunity to buy the Wentzville property, which Hall presented to the Miramar principals. In August 2020, Smith formed RBCD, a Texas limited liability company in which he was the sole member. In October 2020, Smith proposed RBCD purchase the Wentzville property. Smith explained after the purchase, RBCD would "transfer[] the ownership to the ultimate ownership (80% Miramar principals and 20% Management Company …)." Hall, Kreke, and Schmuck agreed. RBCD acquired the Wentzville property in December 2020, with Smith using his personal line of credit for the purchase. Afterward, Smith informed Miramar it needed to secure above-market leases on the Wentzville property from American Automotive and the other subsidiaries to meet the building's appraised value so he could secure a mortgage loan to repay his personal line of credit and help with the ownership transfer to Miramar. Smith's email stated, "As soon as I get my money back I promise to change the ownership!" Hall, Kreke, and Schmuck agreed, entered into the leases, and the Wentzville property was refinanced. After Smith's line of credit was repaid, he sent another email stating, "We now need to change the ownership of RBCD Ventures, LLC from me to (1) Miramar (80%) …." Kreke emailed Smith and asked for documentation to determine what they owed him "so Miramar can square that up as well."

In January 2022, Smith formed WBB, a Texas limited liability company in which he was the sole member. In August 2022, the Miramar principals reached a substantially similar agreement to acquire property in Addison, Texas ("Addison property"). Smith used WBB to buy the Addison property, with Smith making the down payment and becoming the mortgage guarantor. The property leases held by American Automotive and other subsidiaries for this building were also restructured at an above-market rate. Smith proposed the same transfer of ownership arrangement of 80% ownership to the Miramar principals once the financial details were settled.

On July 31, 2024, Miramar and Smith entered into a purchase agreement to acquire Smith's ownership interest in Miramar ("Buyout"). The Buyout specifically stated the purchase price excluded "what may be owed … pursuant to a separate real estate office lease agreement(s) for office space in Addison, Texas, and Wentzville, Missouri …." The Buyout stated it was governed by Delaware law "without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction)." The Buyout required Hall, Kreke, and Schmuck to sign personal guaranties for Miramar's performance under a promissory note executed for the outstanding payments under the Buyout. The promissory note had a covenant enjoining Miramar from commencing litigation "where the amount in controversy reasonably is expected to exceed $100,000" without Smith's consent. The promissory note and guaranties stated Texas law governed. The guaranties prevented Hall, Kreke, and Schmuck from filing litigation "in any forum other than the courts of the State of Texas

sitting in Dallas County and of the United States District Court of the Northern District of Texas …."[1]

In November 2024, Miramar, the subsidiaries, Hall, Kreke, and Schmuck (collectively, "Plaintiffs") sued Defendants in St. Charles County, Missouri. Their second amended petition asserted six counts: (1) breach of fiduciary duty by Smith owed to Hall, Kreke, and Schmuck individually; (2) breach of fiduciary duty by Smith owed to Miramar and the subsidiaries; (3) fraud committed by Smith against Plaintiffs; (4) declaratory judgment or quiet title action brought by Plaintiffs against Defendants seeking a declaration of ownership and the percentage of ownership in RBCD, the Wentzville property, WBB, and the Addison property; (5) promissory estoppel brought by Plaintiffs against Defendants regarding ownership and the percentage of ownership in RBCD, the Wentzville property, WBB, and the Addison property; and (6) negligent misrepresentation brought by Plaintiffs against Defendants concerning material facts related to the sale and ownership of the Wentzville property.[2] Plaintiffs attached Smith's

[1] The guaranties allowed Smith to "bring any action or proceeding relating to this Guaranty against the Guarantor or his properties in the courts of any jurisdiction." The guaranties required Hall, Kreke, and Schmuck to waive any objection to venue of any such action and stated the parties waived "the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court."

[2] Plaintiffs also alleged Smith made false representations to the Miramar principals inducing them to hire certain sales individuals, employees, and a consultant to work for the subsidiaries. Plaintiffs alleged Smith directed these individuals to work almost exclusively for YRIG while also collecting compensation from the subsidiaries. Plaintiffs further alleged Smith used Miramar and subsidiary resources to inflate YRIG's value, which resulted in Smith selling YRIG for $30 million. While the parties do not focus on this conduct in their briefs, this limited discussion will inform part of the *forum non conveniens* analysis.

emails discussing the real estate purchases and ownership transactions to the petition. Plaintiffs alleged venue was proper in St. Charles County because RBCD transacted business and owned property in that county and Smith used RBCD and WBB to commit fraud against Plaintiffs. They also alleged jurisdiction and venue were proper in St. Charles County because Smith traveled to Missouri to conduct business associated with RBCD's ownership of the Wentzville property and to participate in a board of director's meeting to conduct business for Miramar and the subsidiaries, including business related to the Wentzville and Addison properties. The second amended petition further alleged "Smith continued to perpetuate the fraudulent actions associated with the real estate in Missouri and Texas as well as other misrepresentations stated herein."

On February 3, 2025, Smith sued Miramar, Hall, Kreke, and Schmuck in Texas for non-payment under the Buyout. The next day, Plaintiffs allegedly attempted a hostile takeover of RBCD and WBB in Texas.[3] Smith sought emergency injunctive relief in Texas, which was granted. On February 6, 2025, the circuit court entered a default judgment against Smith and in Plaintiffs' favor. That decision was set aside on Defendants' motion. On February 24, 2025, Plaintiffs filed their second amended petition.

[3] The meeting notices Defendants attached to their motion to dismiss and which were submitted on appeal are Exhibits 9 and 10 filed as Legal File Documents 19 and 20 respectively, in this Court's legal file. Defendants allege these notices invoked the applicable operating agreements and identified Texas as the location for governance actions. This Court cannot verify these allegations because Legal File Documents 19 and 20 are blank.

After Plaintiffs filed their second amended petition, Defendants moved to dismiss the action for *forum non conveniens*.[4] Defendants attached 11 exhibits to their motion, including RBCD's formation documents, WBB's formation documents, the Buyout purchase agreement, promissory note, and guaranties, and Smith's affidavit. Plaintiffs filed suggestions in opposition and attached 13 exhibits to their motion. These exhibits included Miramar's and the subsidiaries' formation and incorporation documents and Kreke's affidavit. Defendants filed a reply and attached Smith's second affidavit. After a hearing in which it heard extensive oral argument, the circuit court sustained Defendants' motion to dismiss for *forum non conveniens*.

This appeal follows.[5] More facts will be adduced to avoid repetition.

Standard of Review

This Court reviews the circuit court's judgment dismissing a cause of action for *forum non conveniens* for an abuse of discretion. *Crawford v. Fam. Tree, Inc.*, 670 S.W.3d 55, 59 (Mo. App. W.D. 2023). Discretion in this context "is not synonymous with whim. The discretion is a controlled discretion." *Besse v. Mo. Pac. R.R. Co.*, 721 S.W.2d 740, 742 (Mo. banc 1986). "Judicial discretion is abused when the [circuit]

[4] This motion also argued dismissal was warranted because the circuit court did not have personal jurisdiction over WBB and the fiduciary duty claims lacked standing. The circuit court's judgment stated "other pending matters, motions, requests … not addressed specifically above are deemed denied." Because these additional grounds were not included in the judgment to justify dismissal and are not challenged on appeal, those facts and legal arguments will not be discussed further.

[5] A circuit court's judgment "dismissing a plaintiff's cause of action, on the basis of *forum non conveniens* is a final order subject to review by an appellate court." *Loew v. Heartland Trophy Props. Inc.*, 665 S.W.3d 339, 344 (Mo. App. W.D. 2023) (quoting *Taylor v. Farmers Ins. Co., Inc.*, 954 S.W.2d 496, 499 (Mo. App. S.D. 1997)).

court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration[.]" *Anglim v. Mo. Pac. R.R. Co.*, 832 S.W.2d 298, 303 (Mo. banc 1992). When determining whether the circuit court's dismissal is an abuse of discretion, this Court considers only facts which were before the circuit court when it made its ruling. *Id.* Generally, the evidence will be viewed in the light most favorable to the circuit court's judgment. *Id.* The circuit court's decision should not be disturbed on appeal unless this Court "is firmly convinced of two propositions[:]"

> First, the appellate court must be convinced that the relevant factors weigh heavily in favor of applying the doctrine of *forum non conveniens*. Second, the court must be convinced that permitting the case to be tried in Missouri would lead to an injustice because such trial would be oppressive to the defendant or impose an undue burden on Missouri courts.

Id.

***Forum Non Conveniens* Burden of Proof**

Point One: Burden of Proof

Party Positions

Miramar argues the circuit court erred in identifying and applying the burden of proof to dismiss the second amended petition for *forum non conveniens* when it did not identify the burden as Defendants' nor acknowledge and apply the weighty nature of the burden. Miramar further argues the circuit court did not refer to the burden and used language appearing to place the burden on Miramar rather than Defendants. Miramar also contends the circuit court did not address, discuss, or identify weighty considerations favoring dismissal or oppression to Defendants or the unusual burden to the court, which

are Defendants' evidentiary burden to establish and which they did not do. Defendants argue the circuit court correctly applied the *forum non conveniens* legal framework.

Preservation

Miramar's point asserts several separate legal arguments about the burden of proof, particularly whether the circuit court properly applied it, whether Defendants offered evidence to meet it, and what standard of review should apply. "As a result, this point is multifarious and, for that reason, fails to comply with Rule 84.04. Improper points preserve nothing for review, and the Court may choose not to respond to them. On the other hand, this Court has the discretion to review deficient points *ex gratia*." *Cedar Cnty. Comm'n v. Governor Michael Parson*, 661 S.W.3d 766, 772 (Mo. banc 2023). "When the point is multifarious, such *ex gratia* review can be limited to one of the improperly combined points, often the first one." *Id*. "Here, too, in the exercise of its discretion, the Court elects to review the first claim of error in [Miramar's] multifarious point, i.e.," the circuit court erred in failing to identify the burden as Defendants' nor acknowledge and apply the burden. *Id*. at 773.[6]

Analysis

"[*F*]*orum non conveniens* is invoked whe[n] one or more parties are residents of different states." *Taylor*, 954 S.W.2d at 500. "In those situations this Court has held that a

[6] Miramar's remaining legal arguments in this point form the basis of other points, in which it argues the circuit court erred in weighing the factors, the oppression to Defendants, and the undue burden on the court because the circuit court incorporated other erroneous findings which were not supported by the evidence. Miramar further argues Defendants did not establish "weighty reasons" for dismissal. This Court will address these claims as they arise and are preserved.

court may, in its discretion, refuse to adjudicate a nonresident's claim although it has jurisdiction and venue is proper." *Willman v. McMillen*, 779 S.W.2d 583, 585 (Mo. banc 1989). The rational underlying this discretion is "to prevent a plaintiff from using a liberal venue statute to vex, oppress or harass a defendant by bringing a suit in a forum unrelated to the parties or cause of action." *Anglim*, 832 S.W.2d at 302. Yet, "a plaintiff's freedom to select a forum is significant." *Crawford*, 670 S.W.3d at 65 (quoting *Barrett v. Mo. Pac. R.R. Co.*, 688 S.W.2d 397, 399 (Mo. App. E.D. 1985)). "[A] plaintiff's choice of forum is not to be disturbed except for 'weighty reasons' and the case should be dismissed only if the 'balance is strongly in favor' of the defendant." *Anglim*, 832 S.W.2d at 302 (quoting *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508 (1947)). A circuit court "has discretion to not exercise jurisdiction if the forum is seriously inconvenient for the trial of the action involved and if a more appropriate forum is available to the plaintiff." *Id.*; *see also Besse*, 721 S.W.2d at 742 ("A suit is subject to dismissal if it is filed in a forum which is manifestly inconvenient.").

"The plaintiff does not bear the burden of justifying his or her choice of forum in a *forum non conveniens* case." *Crawford*, 670 S.W.3d at 64. The Supreme Court of Missouri specifically rejected the suggestion "that whenever litigation is between out-of-state residents over causes of actions that arose out of state, a plaintiff must bear the burden of justifying the choice of forum." *Anglim*, 832 S.W.2d at 305. Instead, "the defendant has the burden of establishing all factors supporting a claim that a Missouri court is an inconvenient forum." *Id.* To aid the circuit court, the defendant must present evidence, not mere assertions, regarding the relevant factors. *See Loew*, 665 S.W.3d at

346 (reversing a circuit court's dismissal on *forum non conveniens* grounds when "the circuit court's conclusions on the factors were framed by [the defendant's] assertions only and not supported by any evidence.").

Before the circuit court analyzed whether *forum non conveniens* justified dismissing the second amended petition, the judgment stated:

> These matters were taken under advisement and the [c]ourt now finds that the statutory interpretations, cited case law, and arguments proffered by [Defendants], through their *Motion to Dismiss* and *Reply in Support of Their Motion to Dismiss*, to be persuasive and to accurately articulate the reasons why dismissal of Plaintiff's [sic] [p]etition, on the grounds of *Forum Non Conveniens*, is appropriate in this cause.

The parties disagree about the proper standard of review to apply to this point. Miramar argues whether the appropriate standard is applied is a question of law to be reviewed *de novo*. Defendants argue because the circuit court had to examine facts to make its decision, an abuse of discretion standard applies. This Court need not decide whether an abuse of discretion or the *de novo* standard applies because the circuit court appropriately placed the burden of proof on Defendants. The circuit court judgment's plain language stated it placed the burden on Defendants to persuade it the second amended petition should be dismissed for *forum non conveniens*. Whether Defendants provided evidence to support the circuit court's dismissal is a separate issue Miramar challenges in its remaining points, which will be examined for an abuse of discretion. *Anglim*, 832 S.W.2d at 303. The circuit court did not err in identifying and applying the burden of proof.

Point One is denied.

Forum Non Conveniens Factors

This Court will address Miramar's remaining points together and out of order for clarity because they challenge whether Defendants offered sufficient evidence to support how the circuit court applied the factors from *State ex rel. Chicago, Rock Island & Pacific Railroad Company v. Riederer,* 454 S.W.2d 36, 39 (Mo. banc 1970). When determining whether to dismiss a cause of action based on *forum non conveniens*, the circuit court must weigh six factors in exercising its discretion:

> (1) the place of accrual of the cause of action;
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> (2) location of witnesses;
>
> (3) the residence of the parties;
>
> (4) any nexus with the place of suit;
>
> (5) the public factor of the convenience to and burden upon the court; and
>
> (6) the availability to plaintiff of another court with jurisdiction of the cause of action which affords him a forum for his remedy.

Riederer, 454 S.W.2d at 39. This list is non-exclusive. *Campbell v. Francis*, 258 S.W.3d 94, 97 (Mo. App. W.D. 2008); *see also Crawford*, 670 S.W.3d at 60 (recognizing the particular facts of each case may require the circuit court to consider additional factors).[7] "[N]either *Riederer* nor its progeny purport to set the respective weight a [circuit] court must accord to any particular factor." *Chandler v. Multidata Sys. Int'l Corp., Inc.*, 163 S.W.3d 537, 545–46 (Mo. App. E.D. 2005).[8] "In addition to analyzing whether the

[7] To the extent Miramar argues in Point Six the circuit court was confined in what it could consider when weighing the *Riederer* factors, this Court rejects that argument.
[8] Defendants urge this Court to find *Chandler* controlling to affirm the circuit court's dismissal. This Court finds *Chandler* distinguishable because those claims were brought

six factors listed above weigh heavily in [Defendants'] favor, it is also necessary to determine whether permitting the trial to proceed in Missouri would cause an injustice due to oppression of the defendant or undue burden on the court." *State ex rel. Wyeth v. Grady*, 262 S.W.3d 216, 220 (Mo. banc 2008).

Place of Accrual of Cause of Action

In Point Two, Miramar argues the circuit court erred in applying the place of accrual factor because the law and evidence did not support weighing this factor in favor of dismissal. Miramar contends the evidence presented established the causes of action and damages accrued in Missouri. Defendants contend the circuit court did not abuse its discretion in finding this factor weighed in their favor because the alleged damages accrued in Texas, not Missouri. Defendants alternatively argue even if accrual favored Missouri, the "center of gravity" of the dispute favors Texas.

"[A] cause of action accrues when and originates where damages are sustained and capable of ascertainment." *Rabago*, 589 S.W.3d at 102 (quoting *Chandler*, 163 S.W.3d at

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largely by Panamanian plaintiffs seeking damages based on conduct in which the bulk of the operative facts took place in Panama. *Id.* at 541–42. *Chandler* recognized "a case which has predominant foreign elements is distinguishable from all other Missouri forum non conveniens cases" because the court "accords less deference to the plaintiff's choice of forum." *Id.* at 552; *see also Acapolon Corp. v. Ralston Purina Co.*, 827 S.W.2d 189, 192 (Mo. banc 1992) (distinguishing cases with predominantly foreign elements from all other Missouri *forum non conveniens* cases); *Rabago v. Kansas City S., Inc.*, 589 S.W.3d 97, 101 (Mo. App. E.D. 2019) (stating "in cases brought by foreign nationals where the bulk of the operative facts took place in a foreign nation, less deference is afforded the plaintiff's choice of forum."). Because *Chandler* analyzed the *Riederer* factors through a lens of less deference to the plaintiffs' choice of forum, it cannot control the outcome here given the operative facts and the directive that Miramar's choice of forum should not be disturbed absent "weighty reasons." *Anglim*, 832 S.W.2d at 302.

550). The bulk of the claims are based on Smith's alleged fraudulent conduct either acting individually or through RBCD and WBB. *See Klemme v. Best*, 941 S.W.2d 493, 495 (Mo. banc 1997) ("A breach of a fiduciary obligation is constructive fraud."); *Ryann Spencer Grp., Inc. v. Assurance Co. of Am.*, 275 S.W.3d 284, 290–91 (Mo. App. E.D. 2008) (explaining negligent misrepresentation differs from fraudulent misrepresentation only in mental state). A cause of action for fraud accrues "when the fraud is discovered …." *Ellison v. Fry*, 437 S.W.3d 762, 769 (Mo. banc 2014).

Plaintiffs' second amended petition alleged RBCD and Smith were subject to jurisdiction under the Missouri long-arm statute by making contacts, conducting business, owning Missouri real estate at issue, and committing tortious acts in Missouri. Plaintiffs' second amended petition also alleged venue was proper because RBCD transacted business within St. Charles County, owned real estate in the county, which was a subject of the litigation, and Smith used RBCD, WBB, and his leadership positions in Miramar and the subsidiaries to commit fraud. RBCD and Smith did not contest personal jurisdiction or venue.[9]

The parties disagree about where the causes of action accrued. This disagreement is fueled in part by the conflicting affidavits offered to explain when, how, where, and whether Smith breached his fiduciary duties and made the allegedly fraudulent misrepresentations to demonstrate where damages were sustained and capable of ascertainment. Generally, this Court examines the record in the light most favorable to

[9] WBB contested personal jurisdiction as one of the grounds to dismiss Plaintiffs' second amended petition, but this motion was overruled. This ruling was not appealed.

the judgment. *Anglim*, 832 S.W.2d at 303. But, this Court takes "the factual allegations in the affidavits and documentary evidence as true, giving credit to the plaintiff's submissions when there is a conflict and resolving ambiguities in favor of the plaintiff." *Acapolon*, 827 S.W.2d at 192; *see also Chandler*, 163 S.W.3d at 546 (explaining deference to the circuit court's credibility determinations is appropriate when it has the opportunity to examine deposition or live testimony when distinguishing *Acapolon*, where the circuit court only had competing affidavits to examine).

Plaintiffs' second amended petition and Kreke's affidavit asserted he was present with Smith "at multiple company meetings in Missouri" for Miramar and the subsidiaries from 2019 through 2024. Kreke's affidavit further averred Smith traveled to Missouri to conduct business associated with RBCD's acquisition and ownership of the Wentzville property and to participate in board of directors' meetings to conduct business for Miramar and the subsidiaries, including business related to the Wentzville and Addison properties. Kreke's affidavit stated Smith made misrepresentations "[d]uring these meetings" about acquiring and owning the Wentzville and Addison properties and transferring their ownership to Miramar. Smith's second affidavit denied ever traveling to Wentzville, Missouri and alleged all Miramar "in-person board of directors meetings" occurred in Texas. *Acapolon* compels this Court to resolve this conflict in Miramar's favor at this stage to find Smith traveled to Missouri and engaged in conduct in Missouri underlying the causes of action.

With this evidence in mind, this Court turns to the circuit court's finding on this factor. The circuit court stated it "was not persuaded that the claims accrued in Missouri

in any sort of significant way, when balanced against the claims which, if true, accrued outside of the State." Miramar argues the phrase "was not persuaded" shifts the burden to it to support this factor rather than onto Defendants to demonstrate the place of accrual did not weigh heavily in favor of dismissal. Even if this Court agreed with Miramar's argument, the next phrase—"the claims accrued in Missouri in any sort of significant way"— implies the circuit court believed at least some of the claims did accrue in Missouri, but it is unclear which ones. Alternatively, this could be another way of addressing a nexus to Missouri, which is a separate factor. Also, whether a claim accrued "in any sort of significant way" is not the test for examining accrual for *forum non conveniens*. *See Rabago*, 589 S.W.3d at 102. The circuit court then balanced these unidentified, possible claims against "claims which, if true, accrued outside of the State." There is no indication which claims the circuit court believes accrued in Texas as opposed to Missouri. For all of these reasons, this Court believes the circuit court misapplied the law when considering this factor and finding it weighed in favor of dismissal.

Defendants alternatively argue even if accrual favored Missouri, the "center of gravity" of the dispute favors Texas. This "center of gravity" argument seems to address nexus to Missouri rather than accrual. To support this argument, Defendants emphasize the Buyout and accompanying documents, which have Texas forum selection and Delaware and Texas choice of law provisions. Defendants also rely on actions Plaintiffs took after the Buyout when it allegedly engaged in a hostile takeover attempt of RBCD and WBB in Texas.

These documents and allegations provide context for the parties' complex business relationship. However, they are not pertinent to whether Smith, acting through RBCD in 2020 through 2021, and through WBB in 2022 through 2023, breached his fiduciary duties or fraudulently mispresented how ownership of the properties and companies would be transferred to Miramar while in Missouri. This alleged conduct predates the Buyout and subsequent agreements to be governed by Texas or Delaware law in Texas forums. As pled, none of the claims touch on or concern the Buyout. The record does not support weighing this factor heavily in favor of dismissal.

Location of Witnesses

In Point Three, Miramar argues the circuit court erred in applying the location of the witnesses factor because the law and evidence did not support weighing this factor in favor of dismissal. Miramar contends no evidence was presented establishing oppression to Defendants' witnesses or undue burden. Miramar further claims the circuit court did not consider Missouri's proximity to the Illinois witnesses, the means for obtaining out-of-state witness testimony, and Plaintiffs' forum choice. Defendants argue the circuit court did not abuse its discretion in finding this factor favored dismissal because no identified witness resides in Missouri, while multiple, identified, non-party witnesses reside in Texas or other jurisdictions.

"[T]he moving party has the initial burden of establishing the relative inconvenience caused by the witnesses' location and, on appeal, the aggrieved party must also show that discretion was abused." *Anglim*, 832 S.W.2d at 304. The circuit court

found none of the presently named witnesses either reside in or are located in Missouri, which favored dismissal.

The record reflects Kreke and Schmuck are located in St. Clair County, Illinois, which is near St. Charles County, their chosen forum. Hall and Smith are located in Texas. Defendants allege potential non-party witnesses named in Plaintiffs' second amended petition—the individuals Smith allegedly directed to work for YRIG while collecting compensation from the subsidiaries—are located in Texas, Illinois, Vermont, and Florida. "The mere fact that more witnesses are located in another state than are located in Missouri does not conclusively establish the question of witness location favorably to the defendant." *Id.*

Defendants further argued these potential non-party witnesses are all beyond the reach of Missouri's subpoena power. "Although it is true that the courts of this state lack authority to compel witnesses from outside its borders to attend civil proceedings, live testimony is not the only method by which a witness may be examined." *Campbell*, 258 S.W.3d at 97–98. "[H]aving witnesses testify at trial by deposition remains an approved alternative." *Melton v. Ill. Cent. Gulf R.R. Co.*, 763 S.W.2d 321, 323 (Mo. App. E.D. 1988). This factor also weighs against dismissal when a defendant fails "to explain why deposition testimony would not suffice from witnesses who refuse to attend the trial." *Campbell*, 258 S.W.3d at 98. Defendants presented no evidence it would be difficult to ensure the potential witnesses would attend the trial nor have Defendants explained why their deposition testimony would not suffice if they refused to attend.

This Court notes no discovery has been conducted, and the names of *actual* witnesses, beyond the parties, have not been disclosed. "Therefore, it follows, [Defendants] cannot establish that any witnesses would be 'inconvenienced' by appearing" in Missouri for trial at this time. *Crawford*, 670 S.W.3d at 60–61. In *Wyeth*, it was "undisputed that no potential witnesses [were] located in Missouri and that the witnesses would be outside the circuit court's subpoena power." *Wyeth*, 262 S.W.3d at 221. The Supreme Court of Missouri found "[t]he significance of this fact in assessing the inconvenience of trial in Missouri is not shown, however, because the [defendants] do not identify any actual witness, the location of any witness, or even the number of witnesses anticipated." *Id.* Because the defendants did not provide the circuit court "sufficient evidence to quantify the inconvenience," it found this factor did not weigh in favor of dismissal. *Id.*

Finally, even if this Court found the potential witnesses will testify at a trial, these witnesses are located in Texas, Illinois, Vermont, and Florida. In this situation, "[t]ravel on the part of interested persons [will be] required wherever the action [is] brought." *Melton*, 763 S.W.2d at 323 (affirming the denial of dismissal for *forum non conveniens* when the witnesses, the residence of the parties, and the accident site "were all scattered."). The record does not support weighing this factor heavily in favor of dismissal.

Residence of Parties

In Point Four, Miramar argues the circuit court erred in applying the residence of the parties factor because its finding was not supported by the law and evidence. Miramar

claims the circuit court did not acknowledge American Automotive was a Missouri corporation when the operative facts occurred, many of the subsidiaries are foreign corporations registered to do business in Missouri, and RBCD is a Missouri landowner and landlord conducting business in Missouri. Defendants argue the circuit court did not abuse its discretion in finding this factor favored dismissal because none of the parties reside in Missouri while the overwhelming majority are domiciled in Texas or Illinois. The circuit court found none of the parties—which included individuals, corporations, and limited liability companies—either resided or were located in Missouri, which favored dismissal.

Defendants emphasize none of parties reside in Missouri and asserts "Texas poses no inconvenience to [Miramar]." This assertion misstates the burden on Defendants to "establish[] all factors supporting a claim that a *Missouri* court is an *inconvenient forum*" and "Missouri would be *oppressive* to the defendants[.]" *Crawford*, 670 S.W.3d at 60 (emphasis added) (internal quotations and citations omitted). Even if this Court agreed no party resides in Missouri, *Wyeth* found this fact alone was "insufficient to quantify the inconvenience to the companies caused by [the] plaintiffs' and defendants' nonresidence" when those defendants summarily argued none of the parties were Missouri residents. *Wyeth*, 262 S.W.3d at 221. This is because "[a] corporation may be created under the laws of one state, have its headquarters in another state, and do its primary business in yet one or more other states." *Id.* (quoting *Anglim*, 832 S.W.2d at 304). Thus, when arguing a corporation does not have a Missouri residence, Defendants "must produce *substantial evidence clearly demonstrating* that the corporate business activities in Missouri are

limited or that those activities have no significant relationship to the jurisdiction in which the case is filed." *Anglim*, 832 S.W.2d at 304 (emphasis added).

The circuit court ignored RBCD's status as the landowner and landlord enforcing above-market leases for the Wentzville property, the legal effect of which is squarely at issue and hotly contested in this matter as they relate to all of Plaintiffs' causes of action.[10] It is also undisputed American Automotive was a Missouri corporation doing business in Missouri in the Wentzville property when RBCD bought the Wentzville property and the subsidiaries entered into the above-market leases.

Further, the record reflects the subsidiaries conduct business in Missouri and all but one are registered as foreign corporations to do business in Missouri. In examining the parties' residence factor and reversing dismissal for *forum non conveniens*, *Crawford* found the circuit court improperly discounted the fact a foreign corporation conducted business in Missouri and had a registered agent in Missouri as statutorily required under section 351.586 RSMo 2016. *Crawford*, 670 S.W.3d at 61. *Crawford* also rejected the notion a foreign corporation was a resident for venue and jurisdiction purposes but not a resident when analyzing *forum non conveniens*. *Id.* Similarly here, the circuit court disregarded the subsidiaries conduct business in Missouri and are registered as foreign corporations when determining none of the parties resided in Missouri. Defendants have not presented substantial evidence clearly demonstrating they, Miramar, or the

[10] The question of whether Defendants produced substantial evidence clearly demonstrating WBB's corporate business activities in Missouri are limited is a closer call. Defendants do not cite caselaw supporting the proposition that when one of multiple defendants lack residency this factor must weigh heavily in favor of dismissal.

subsidiaries have "so limited their Missouri operations that they may not be considered Missouri residents in the context of the *Riederer* factors." *Id.* at 61 (citation modified) (quoting *Anglim*, 832 S.W.3d at 304). The record does not support weighing this factor heavily in favor of dismissal.

Nexus with Missouri

This factor requires a showing only of "*any* nexus" or "*some* nexus" with the place of the lawsuit. *Adkins v. Hontz*, 280 S.W.3d 672, 677 (Mo. App. W.D. 2009) (quoting *Anglim*, 832 S.W.2d at 302; *Besse*, 721 S.W.2d at 742). The circuit court acknowledged Miramar and its subsidiaries conduct business in multiple states, including Missouri, Illinois, and Texas. The circuit court also recognized the claim involving the Wentzville property "does create a nexus to Missouri[.]" However, the circuit court found this factor was not controlling when balanced against the other factors favoring dismissal.

Defendants correctly note Miramar did not assert a point relied on to challenge the circuit court's decision on this factor. Miramar explained at oral argument it did not do so because the circuit court found this factor in Plaintiffs' favor. While the circuit court found "a nexus" was created, the circuit court discounted the weight of that nexus when balanced against the other factors. Miramar does not challenge the weight the circuit court assigned to this factor or allege the circuit court misapplied the law in reaching this conclusion on this factor. "[A]llegations of error not raised in the point relied on are waived and need not be considered." *Nowell-Silman v. Mo. Dep't of Pub. Safety Veterans' Comm'n*, 698 S.W.3d 163, 167 n.4 (Mo. App. E.D. 2024) (quoting *State v. Clayborn-Muldrow*, 640 S.W.3d 491, 497 (Mo. App. E.D. 2022) (citing Rule 84.04(e)).

Nor could Miramar prevail on this point if raised because the circuit "court was permitted to assign [this factor] little weight in the overall balance of convenience after considering all of the circumstances." *Rabago*, 589 S.W.3d at 103. Unchallenged on appeal, this factor weighs in favor of dismissal.

Public Factor of the Convenience to and Burden Upon the Courts

In Point Five, Miramar argues the circuit court erred in applying the public factor of the convenience to and burden on the court factor because the law and evidence did not support this conclusion and the circuit court "double counted" previous factors. Miramar faults the circuit court for listing factors such as likelihood of a trial, the need to apply other states' laws and burdens on other litigants, citing no evidence about the court's docket congestion, oppression to Defendants, or any unusual burden on the circuit court itself. Defendants argue the circuit court did not abuse its discretion in weighing this factor because the parties' conduct and governing transaction documents demonstrate Missouri's lack of public interest in the dispute. Defendants further argue Miramar's legal objections do not show the circuit court misapplied this factor.

Anglim listed public factors the circuit court may consider when determining whether maintaining the suit in Missouri will be a burden on the circuit court:

> Statistical data may be submitted to support a claim that the caseload of the [circuit] court is so overwhelming that the case cannot be expeditiously litigated in the jurisdiction where the case is filed. Such matters as taxpayer cost, jury time, the necessity to interpret and apply the law of a foreign jurisdiction, and similar facts may be offered and weighed by the [circuit] court. In addition, the [circuit] court may take notice of the congestion of its own docket.

Anglim, 832 S.W.2d at 304. Additional public factors include "the local interest in having localized controversies decided at home [and] the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action …." *Chandler*, 163 S.W.3d at 551.

In applying this factor, the circuit court stated the parties "met in Texas in a failed attempt to mediate this dispute." The circuit court found the failed mediation increased the likelihood the matter would proceed to trial with the parties and claims which neither accrued in nor had a nexus to Missouri. The circuit court stated this would "place a burden not only on the [c]ourt, but also, by extension, on the other litigants who are waiting for an opportunity to be heard" which favored dismissal.

Miramar contends the circuit court improperly "double counted" factors when it found the claims neither accrued in nor had a nexus to Missouri. This Court believes this finding addresses whether there was "local interest in having localized controversies decided at home," which is a proper consideration under this factor. *Chandler*, 163 S.W.3d at 551. However, this does not mean the circuit court properly applied this factor given the circuit court's finding there was a nexus in Missouri, and this Court's finding the accrual factor was not properly applied.

In arguing for dismissal, Defendants underscored the circuit court would be burdened by having to conduct numerous conflicts of law analyses and forced to apply the law of multiple jurisdictions other than Missouri to resolve the parties' disputes. "Missouri courts are capable of applying the laws of other states without creating an undue burden on the court system." *Loew*, 665 S.W.3d at 346 (quoting *Taylor*,

954 S.W.2d at 502). "The mere fact that the [circuit] court must apply a foreign jurisdiction's law to an action does not burden the court enough to support a dismissal." *Id.* (quoting *Campbell*, 258 S.W.3d at 99).

Finally, the circuit court found litigants waiting for an opportunity to be heard would be burdened by this litigation continuing in Missouri. *Crawford* rejected the circuit court's weighing of this factor when the defendant offered no statistical data regarding the circuit court's caseload and the circuit court did not take judicial notice its dockets were heavily congested. *Crawford*, 670 S.W.3d at 62. This Court likewise holds the circuit court's conclusory finding regarding Missouri litigants waiting for an opportunity to be heard lacks evidentiary support from Defendants or judicial notice of a heavily congested docket. The record does not support weighing this factor heavily in favor of dismissal.

Availability of Alternative Forum

This factor requires the circuit court to consider "whether each plaintiff would have a forum available, at this time, where he or she could proceed" if the current cause of action was dismissed. *Wyeth*, 262 S.W.3d at 222. Here, the circuit court found Texas was an alternative available forum, and noted "a related cause of action has already been filed," which favored dismissal.

Miramar does not challenge Texas as an available alternative forum in a point relied on. The Western District confronted this issue in *Crawford*. There, the plaintiffs did not raise this claim in a specific point relied on and admitted in their brief they could have filed their claim in Kansas rather than Missouri. *Crawford*, 670 S.W.3d at 63. The

circuit court there "summarily concluded that Kansas provides an available forum, that it is the most convenient forum for the [plaintiffs], that [they] have the ability to bring suit in Kansas, and that is where 'witnesses and evidence are more readily accessible.'" *Id.* *Crawford* rejected these conclusory findings as lacking evidentiary support because "[n]o discovery had been conducted to identify witnesses and evidence so it would be impossible for the [circuit] court to predict which location would be more accessible or convenient." *Id.*

Here, as in *Crawford*, no discovery has been conducted to identify witnesses or evidence. Even with related litigation pending in Texas—which notably was filed after Plaintiffs brought this action in Missouri—the circuit court could not predict which location would be more accessible or convenient for Miramar, the subsidiaries, Hall, Kreke, Schmuck, and the potential witnesses with these causes of action or if these claims could be adjudicated in the pending Texas litigation. The record does not support weighing this factor heavily in favor of dismissal.

Oppression to Defendants or Undue Burden on the Court

In Point Seven, Miramar argues the circuit court erred in weighing the factors, the oppression to Defendants, and undue burden on the court because the circuit court incorporated other erroneous findings which were not supported by the evidence. Miramar further argues Defendants did not show "weighty reasons" for dismissal. Defendants contend the circuit court did not abuse its discretion in concluding the balance of the *forum non conveniens* factors demonstrated oppression to them and an undue burden on Missouri courts.

"In addition to the *Riederer* factors, we also consider 'whether trial in Missouri would be oppressive to the defendants' or would impose an 'undue burden on Missouri courts.'" *Crawford*, 670 S.W.3d at 63 (quoting *Wyeth*, 262 S.W.3d at 220–21; *Anglim*, 832 S.W.2d at 303). After reviewing the record and considering all relevant factors, the evidence presented does not establish Missouri is a seriously inconvenient forum for Defendants. As stated previously, the evidence presented does not firmly convince this Court the relevant factors weigh heavily in favor of dismissing for *forum non conveniens*. *Anglim*, 832 S.W.2d at 303. Defendants have not shown this case imposes an oppressive inconvenience on them or an undue burden on the circuit court. Finally, Defendants have not shown Plaintiffs' "filing and maintenance of the suit in Missouri was for the purpose of vexing, oppressing, or harassing" them, "which the doctrine of *forum non conveniens* was intended to prevent." *Loew*, 665 S.W.3d at 347.

Conclusion

Having reviewed the *Riederer* factors, the oppression to Defendants, and any undue burden on the courts, this Court concludes the circuit court abused its discretion when it dismissed Plaintiffs' second amended petition for *forum non conveniens*. The circuit court's judgment is reversed and remanded for further proceedings.

Philip M. Hess, Judge

Michael S. Wright, Presiding Judge and
Virginia W. Lay, Judge concur.