

07-1870

Nº 2007-

In the Supreme Court of Ohio

CHEAP ESCAPE COMPANY, INC. d.b.a. JB DOLLAR STRETCHER,

Plaintiff-Appellant

v.

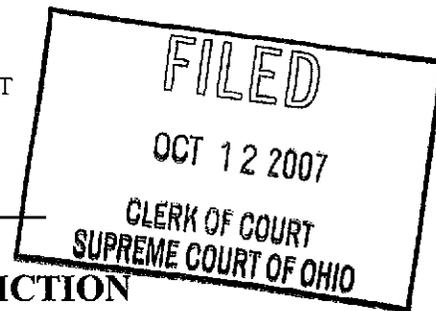
HADDOX, LLC,

And

JEFFREY L. TESSMAN

Defendant-Appellee.

ON DISCRETIONARY APPEAL FROM THE
COURT OF APPEALS, TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO
CASE Nº 2006-AP-1107



MEMORANDUM IN SUPPORT OF JURISDICTION

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**EXPLANATION OF WHY THE ISSUES RAISED IN THIS CASE
ARE OF PUBLIC OR GREAT GENERAL INTEREST**

“Jurisdiction,” as the Tenth Appellate District’s opinion in *Cheap Escape Co. Inc. v. Haddox LLC*, 10th Dist No. 06 AP1107, 2007-Ohio-4410, demonstrates, “‘is a word of many, too many, meanings.’” *Steel Co. v. Citizens for Better Environment* (1998), 523 U.S. 83, 90 (internal quotation marks omitted). This variety of meaning has insidiously tempted courts, as even the Supreme Court of the United States itself has had to recognize on occasion, to engage in “less than meticulous,” *Kontrick v. Ryan* (2004), 540 U.S. 443, 454, sometimes even “profligate *** use of the term,” *Arbaugh v. Y & H Corp.* (2006), 546 U.S. 500, 510. That being so, there is, as this Court has stated, an important distinction that must be made between a court’s subject-matter jurisdiction over a particular type of case, a court’s improper exercise of that subject-matter jurisdiction once conferred upon it, and *in personam* jurisdiction. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, at ¶10. It is this distinction, that has been blurred and confused by the Tenth Appellate District. It is the restoration of this important distinction as it relates to the “subject-matter jurisdiction” of Ohio’s municipal courts that makes this case one of public and great general interest.

Because the existence or absence of “subject-matter jurisdiction” dictates whether a court has the power to adjudicate the rights and liabilities of parties in any litigated matter before it, the predictable, consistent and uniform application of this jurisdictional concept lies at the very heart of the judicial branch’s constitutional authority and legitimacy to hear and decide the disputes brought by Ohio’s citizens. The case being brought to this Court should be accepted for further review because it concerns the proper scope, limits and parameter of the “subject-matter jurisdiction” governing all R.C. Chapter 1901 municipal courts across the State of Ohio.

In its 2-1 decision, the Tenth Appellate District held that “[a]lthough a forum selection

clause may circumvent the minimum contacts the court needs to establish personal jurisdiction, it does not circumvent the lack of contacts needed for subject matter jurisdiction. Without subject matter jurisdiction, the court's underlying judgment is void." Id. at ¶34. Thus, the Tenth Appellate District held that an Ohio municipal court's subject matter jurisdiction is limited to those actions occurring within its territory. See, Id. For the reasons set forth herein, the *Cheap Escape* decision should not be the law in the Tenth Appellate District or any other appellate district in Ohio.

The scope of Ohio's municipal court's subject matter jurisdiction under the current version of R.C. 1901.18 is an issue which this Court has not yet addressed. In light of the Tenth Appellate District's unwarranted restriction of a municipal court's subject matter jurisdiction, the time has come for this Court to address this specific issue and provide much needed guidance to lower courts, the bar and contracting businesses regarding the legal scope of R.C. 1901.18.

Courts of appeal that have directly addressed this issue have reached different conclusions. Although no other Ohio appellate court has analyzed the current version of R.C. 1901.18 in the same manner as the Tenth Appellate District, its decision does agree with the dissent in an Eleventh Appellate District case, *McDonald v. CIC* (Jul. 20, 2001), 11 Dist. No. 2000-L-124. However, the *McDonald* dissent cites to out dated case law in support of its position. The outdated case law relies upon former R.C. 1901.19(A)(4) which is not applicable here. Former R.C. 1901.19(A)(4), stated that "a municipal court ha[s] jurisdiction within its territory * * * [i]n any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or when the defendant or any of the defendants resides or is served with summons within the territory[.]" In July 1997, the Ohio General Assembly eliminated subparagraph (A)(4) from R.C. 1901.19.

In contrast to the Tenth Appellate District's decision and the *McDonald* dissent, the Eighth Appellate District's decision in *Williams v. Jarvis* (Aug. 26, 1999), 8 Dist No. 74580, the Ninth Appellate District's decisions in *First Merit v. Beers*, 9 Dist. No. 21010, 2002-Ohio-4247 and *First Merit v. Boesel*, 9 Dist. No. 21667, 2004-Ohio-1874 and the Twelfth Appellate District's decision in *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.* (1985), 23 Ohio App.3d 85, comport with this Court's decision in *Morrison v. Steiner* (1972), 32 Ohio St.2d 86. *Morrison* held that "[s]ubject matter jurisdiction of a court connotes the power to hear and decide a case upon its merits ***." *Id.* at paragraph one of syllabus. This Court explained that "subject-matter jurisdiction of Ohio municipal courts is created and defined by R.C. 1901.18." *Id.* at 87. Every municipal court in Ohio has subject matter jurisdiction over contract actions when the amount claimed does not exceed the monetary amount set forth in R.C. 1901.17. See, *Id.* at 88. This Court so held even though R.C. 1901.19(A)(4) was in effect at the time of its analysis.

Although this Court addressed municipal court subject matter jurisdiction in *Morrison*, it declined to mention the territorial component of former R.C. 1901.19(A)(4). Courts such as *Brooks* and *Williams*, interpreted this silence as intentional, on the other hand, the Tenth Appellate District and the dissent in *McDonald* found that *Morrison* had no reason to discuss the territorial component of a municipal court's subject matter jurisdiction because the transaction at issue in *Morrison* took place within the court's territory. This Court has never clarified this confusion among the appellate courts.

In accordance with *Morrison*, the Ninth Appellate District interpreted the current version of R.C. 1901.17 and 1901.18 to find that "R.C. 1901.17 and R.C. 1901.18(A)(3) provide that a municipal court has subject matter jurisdiction over any action at law based on contract in which

the prayer does not exceed \$15,000.” *Beers* at ¶12; see also, *Boesel* at ¶5. Accord, *Williams*.

The fact that the Tenth Appellate District’s decision conflicts with other appellate court decisions establishes that the law in Ohio is unsettled with respect to how a municipal court’s subject matter jurisdiction is defined under the current version of R.C. 1901.18. As expressed by the Eighth Appellate District in *Gulla v. Brightman*, 8th Dist. No. 73559, 1999 Ohio App. Lexis 2606, “the current statute governing the subject matter jurisdiction of municipal courts does not seem to provide a clear answer to the question of when a municipal court has jurisdiction over a contract either entered into or performed within its territory.” *Id.* at *5, fn. 1.

This case provides this Court with its first opportunity to analyze the most recent version of R.C. 1901.18 and to provide necessary guidance to lower courts in this area of the law. In accepting jurisdiction over this case, the Court will be able to harmonize the inconsistent lower court decisions on this issue by determining, as set forth in the first proposition of law, that an Ohio municipal court’s subject-matter jurisdiction, as defined exclusively by R.C. 1901.18, extends to any contract dispute where the monetary relief sought does not exceed \$15,000.00, regardless of whether the negotiations leading to the contract formation, the events giving rise to its performance or alleged breach, or any of the contracting parties are within the municipal court’s geographic territory as set forth in R.C. 1901.02.

The Tenth Appellate District’s decision is flawed and should not stand as the law in that appellate district, or anywhere else in Ohio. This is an issue that is of vital interest to all businesses throughout the State of Ohio. The Tenth Appellate District’s holding invalidated an agreed to forum selection clause in a contract entered in between two commercial entities. The Tenth Appellate District’s decision runs afoul of this Court’s decision in *Preferred Capital Inc. v. Power Engineering*, 112 Ohio St.3d 429, 2007-Ohio-257, which held that “absent evidence of

fraud or overreaching, a forum selection clause contained in a commercial contract between business entities is valid and enforceable, unless it can be clearly shown that enforcement of the clause would be unreasonable and unjust.” Id. at paragraph one of syllabus. This case will have a sweeping effect on commercial entities’ ability to rely upon contract provisions. This will have an impact on businesses throughout the state, not just in the Tenth Appellate District, if the *Cheap Escape* decision is adopted elsewhere. Based on this strong public policy issue, this matter is ripe for this Court’s review.

The Tenth Appellate District erred in not deeming the municipal court’s judgment voidable, not void, because the challenge to the court’s judgment was premised on the particular tribunal and the particular facts of the case. Public policy dictates that commercial entities should be free to enter into forum selection clauses. When disputes pertaining to the forum selected arise, these disputes are not subject matter challenges. Thus, the law should be as set forth in Proposition of Law II: A default judgment entered by a municipal court in a breach of contract action cannot be collaterally challenged by the defaulting party on the grounds that the contract, the events giving rise to its alleged breach, and none of the contracting parties are within the municipal court’s geographic territory where the defaulting party agreed to a valid forum selection clause selecting that municipal court as a forum for any lawsuit involving a dispute between the parties.

STATEMENT OF THE CASE AND FACTS

In September 2004, a representative from The Cheap Escape Company, Inc. d.b.a. JB Dollar Stretcher (“JB Dollar”) made a sales call to Haddox, L.L.C.’s office in Summit County, Ohio, where Jeffrey L. Tessman (“Tessman”), on behalf of Haddox, L.L.C. executed advertising agreements with JB Dollar. The advertisements were to run in Canton and Akron. Tessman

signed as guarantor of Haddox's obligation. The agreement contained a forum selection clause stating, "Purchaser and Publisher both agree that in the event either party is in non-compliance with any provision of Agreement, the proper venue for litigation purposes will be in the Franklin County Municipal Court or Franklin County Common Pleas."

Haddox, L.L.C. defaulted under the terms of the agreement. On July 19, 2005, JB Dollar commenced an action in Franklin County Municipal Court against Haddox, L.L.C. and Tessman based on a breach of contract action seeking \$1,984.00, plus interest. On September 7, 2005, JB Dollar obtained default judgments against Haddox, L.L.C. and Tessman in Franklin County Municipal Court for the outstanding balance due. On July 28, 2006, Tessman filed a motion to vacate the default judgment, arguing that the judgment was void ab initio because the trial court lacked subject matter jurisdiction over the case. On September 26, 2006, Tessman's motion to vacate the judgment was overruled by the trial court. Tessman appealed from the trial court's decision on October 27, 2006.

On August 28, 2007, the Tenth Appellate District reversed and remanded the trial court's decision granting default judgment against Tessman and in favor of JB Dollar. The appellate court found that a municipal court's subject matter jurisdiction is expressly limited to those actions occurring within its territory. Based on this premise, the Tenth Appellate District determined that Tessman's challenge to the Franklin County Municipal Court's subject matter jurisdiction was valid because not one event giving rise to JB Dollar's breach of contract claim occurred within the geographic territory of the Franklin County Municipal Court. It determined that although a forum selection clause may circumvent the minimum contacts the court needs to establish personal jurisdiction, it does not circumvent the lack of contacts needed for subject matter jurisdiction in the municipal court. Relying on the rule that subject matter jurisdiction can

not be waived, it determined that the judgment rendered by the Franklin County Municipal Court in favor of JB Dollar is void.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: An Ohio municipal court's subject-matter jurisdiction, as defined exclusively by R.C. 1901.18, extends to any contract dispute where the monetary relief sought does not exceed \$15,000.00, regardless of whether the negotiations leading to the contract formation, the events giving rise to its performance or alleged breach, or any of the contracting parties are within the municipal court's geographic territory as set forth in R.C. 1901.02.

It is undisputed that Ohio municipal courts can exercise only such powers as statutes confer upon them. R.C. 1901.01; *State v. Bellefontaine Municipal Court* (1967), 12 Ohio St.2d 26. This Court has expressly stated that "subject-matter jurisdiction of Ohio municipal courts is created and defined by R.C. 1901.18." *Morrison v. Steiner*, 32 Ohio St.2d at 87.

As pertinent here, R.C. 1901.18 provides that "subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in * * * any action at law based on contract * * *." R.C. 1901.18(A)(3).

Although R.C. 1901.18 makes no reference to R.C. 1901.01, 1901.02 or 1901.03, the Tenth Appellate District relies upon these additional statutes to incorporate a territorial component to the subject-matter jurisdiction analysis. R.C. 1901.18 expressly incorporates and cites to R.C. 1901.181 and R.C. 1901.17. When other sections of the revised code apply, R.C. 1901.18 makes specific reference to these other sections. See for example, R.C. 1901.18(A)(9), (11), and (12). The mention of one thing implies the exclusion of another (*maxim expressiounius est exclusio alterius*). See, *Harris v. Atlas Single Ply Sys.* (1992), 64 Ohio St. 3d 171, citing, *State ex rel. Cunningham v. Indus. Comm.* (1987), 30 Ohio St.3d 73. A plain reading of R.C. 1901.18 leads to the conclusion that the legislature did not intend R.C. 1901.01, 1901.02 or

1901.03 to be incorporated in the definition of subject-matter jurisdiction.

The confusion over whether a territorial component exists in an analysis of a municipal court's subject matter jurisdiction is caused by the former version of R.C. 1901.19. Relying on case law analyzing this former statute, Tessman argued that a municipal court only has subject matter jurisdiction when the following *three* factors apply: the claim for damages is within the court's monetary jurisdiction under R.C. 1901.17; the cause of action is included within one of the categories specified in R.C. 1901.18; and, pursuant to former R.C. 1901.19(A)(4), the events giving rise to the claim occurred within the territorial jurisdiction of the municipal court.

However, this Court's decision in *Morrison*, and the appellate court decisions in *Williams v. Jarvis* (Aug. 26, 1999), 8 Dist No. 74580, *First Merit v. Beers*, 9 Dist. No. 21010, 2002-Ohio-4247, *First Merit v. Boesel*, 9 Dist. No. 21667, 2004-Ohio-1874 and *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.* (1985), 23 Ohio App.3d 85, have all held that the only two factors required when analyzing subject matter jurisdiction are whether the claim for damages is within the court's monetary jurisdiction under R.C. 1901.17 and whether the cause of action is included within one of the categories specified in R.C. 1901.18.

The Tenth Appellate District acknowledges that the appellate cases referenced by Tessman are no longer valid because the courts drew their conclusions about a territorial requirement from the unequivocal language set forth in former R.C. 1901.19(A)(4). However, in July 1997, the Ohio General Assembly eliminated subparagraph (A)(4) from R.C. 1901.19.

The only Ohio cases determining that the action must arise within the geographic territory of the municipal court to establish subject matter jurisdiction, rely upon former R.C. 1901.19(A)(4). See, *Cheap Escape*, at ¶15. In contrast, the only cases analyzing the current version of the statute are the Ninth District's decisions in *Beers* and *Boesel*, both of which held

that R.C. 1901.17 and R.C. 1901.18(A)(3) provide that a municipal court has subject matter jurisdiction over any action at law based on contract in which the prayer does not exceed \$ 15,000.00. *Beers* at ¶12; *Boesel* at ¶5. No territorial component is required.

In reaching its conclusion, the Tenth Appellate District ignored the broad premise set forth in the Supreme Court's decision in *Morrison* that subject-matter jurisdiction is defined by R.C. 1901.18, and instead factually distinguished this matter from *Morrison*. It suggested that although *Morrison* broadly defined a municipal court's subject matter jurisdiction, the Supreme Court did not purposely fail to mention either the "within its territory" language of R.C. 1901.18 or the provisions of R.C. 1901.02. Instead the Tenth Appellate District reasons that *Morrison* did not have to address this issue because the defendant in *Morrison* never specifically challenged the municipal court's subject matter jurisdiction and the contract dispute at issue in *Morrison* took place within the territorial boundaries of the municipal court in which the suit was brought.

The Tenth Appellate District's reliance on R.C. 1901.02 to require a territorial component to a subject matter jurisdiction analysis is misplaced. R.C. 1901.02 simply names the court and defines where the court sits: "the municipal court established in Columbus shall be styled and known as the 'Franklin County Municipal Court.'" R.C. 1901.02 (A)(5). "The Franklin County municipal court has jurisdiction within Franklin county." R.C. 1901.02 (B).

The factual differences between this case and *Morrison* are without consequence to the rule of law set forth in *Morrison*. *Morrison* stated that R.C. 1901.18 defines subject matter jurisdiction. *Morrison* did not cite to any other revised code section to determine a municipal court's subject matter jurisdiction. The Court makes no reference to the definitions set forth in R.C. 1901.02 upon which the Tenth Appellate District relies to incorporate a territorial component to the subject-matter jurisdiction analysis. *Brooks* and *Williams* correctly

determined that this omission was purposeful.

In contrast to *Morrison*, the Tenth Appellate District not only applied the language of R.C. 1901.18 in deciding the subject matter jurisdiction of a municipal court, but it also took into consideration R.C. 1901.01, R.C. 1901.02, and R.C. 1901.03, “to decipher whether a municipal court's territorial jurisdiction is a necessary component of the court's subject matter jurisdiction.” However, per *Morrison*, there was no need to consider any provision other than R.C. 1901.18 to make this determination.

The Tenth Appellate District reasons that its interpretation of R.C. 1901.18 is consistent with the line of out dated cases on which Tessman relied. The Tenth Appellate District stated that “while we recognize the legislature eliminated former R.C. 1901.19(A)(4), a review of the other changes to that piece of legislation suggests the legislation was not designed to overrule those cases.” However, no language from the current statute supports this statement.

The Tenth Appellate District refers to the legislature’s elimination of former R.C. 1901.19(A)(4) as a matter of “housekeeping.” The elimination of R.C. 1901.19 (A)(4) was less likely to be a housekeeping measure than evidence of the legislature’s intent to broaden the subject matter jurisdiction of Ohio’s municipal courts.

The Tenth Appellate District also reasoned that because the *criminal* statute expressly places a geographical limitation on a municipal court's *criminal* subject matter jurisdiction, this supports the conclusion that a municipal court’s subject matter jurisdiction in *civil* cases is limited to claims premised or actions taking place within their respective territories. However, it is basic statutory interpretation that if the legislature was specific in the criminal statute, it was capable of being just as specific in the civil statute. By failing to expressly limit the municipal court’s subject matter jurisdiction in civil matters to transactions taking place within its territorial

limits, it chose to allow municipal court's to hear the types of contract disputes at issue in this case.

A court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged; significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act, and in the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used. *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St. 3d 390, 2004 Ohio 6549 at ¶13, citing, *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, at paragraph five of the syllabus. The language of R.C. 1901.18 is unambiguous. It is unnecessary and erroneous to look to the criminal statute in order to define subject-matter jurisdiction in civil actions. The Tenth Appellate District erred in altering the language of this unambiguous statute. See, *Id.* This error will perpetuate the confusion among the appellate districts when faced with a dispute concerning R.C. 1901.18.

The Tenth Appellate District states "by defining the court's subject matter jurisdiction with an express limitation to the court's territory, the General Assembly provided that the court's geographical boundary limits the scope of the court's subject matter jurisdiction." This premise is based upon the "within its territory" language set forth in R.C. 1901.18. However, the General Assembly did not intend this language to limit the scope of a court's subject matter jurisdiction by geographical boundaries, instead, as stated in Judge Tyack's dissent: "The placement of the phrase "within its territory" within R.C. 1901.181(A) is important. The language chosen by the legislature places "within its territory" next to "jurisdiction," not next to the enumerated types of claims. The phrase "within its territory" therefore modifies "jurisdiction," not the enumerated

types of claims. In other words, the municipal court has jurisdiction within the territory to hear all the types of claims listed.” *Cheap Escape* at ¶39 (Judge Tyack, dissenting.)

This Court has held that the subject matter jurisdiction of Ohio’s municipal courts is created and defined by R.C. 1901.18. Subsequent to the *Morrison* decision in which this statement was pronounced, the statutes applicable to Ohio’s municipal courts have been amended. Due to conflicting interpretations of the current R.C. 1901.01, *et seq.* in Ohio’s courts of appeals, appellant respectfully requests that this Court accept this case for review and pronounce that an Ohio municipal court’s subject-matter jurisdiction, as defined exclusively by R.C. 1901.18, extends to any contract dispute where the monetary relief sought does not exceed \$15,000.00, regardless of whether the negotiations leading to the contract formation, the events giving rise to its performance or alleged breach, or any of the contracting parties are within the municipal court’s geographic territory as set forth in R.C. 1901.02.

Proposition of Law No. II: A default judgment entered by a municipal court in a breach of contract action cannot be collaterally challenged by the defaulting party on the grounds that the contract, the events giving rise to its alleged breach, and none of the contracting parties are within the municipal court’s geographic territory where the defaulting party agreed to a valid forum selection clause selecting that municipal court as a forum for any lawsuit involving a dispute between the parties.

It is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction over the particular case merely renders the judgment voidable. *In re: JJ*, 111 Ohio St.3d 205, 2006-Ohio 5484, at ¶10, citing, *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, at ¶12. See also, *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, at ¶22 (Cook, J., dissenting), quoting *State v. Swiger* (1998), 125 Ohio App.3d 456, 462.

The various “jurisdictions” of Ohio’s municipal courts are spelled out in R.C. 1901.02 (territorial), R.C. 1901.17 (monetary), and R.C. 1901.18 (subject-matter). See, *Kalk v. Davet*, 8th Dist. No. 85934, 2005-Ohio-5854. As noted in *Swiger*, the term jurisdiction embraces several

concepts such as, subject matter jurisdiction, territorial jurisdiction, and notice jurisdiction. See, *Id.* at 462-463, citing, *Morrison v. Bestler* (1990), 239 Va. 166, 387 S.E.2d 753. While these elements are necessary to enable a court to proceed to a valid judgment, there is a significant difference between subject matter jurisdiction which can not be waived and the other "jurisdictional" elements which can be waived. See, *Id.*

Subject matter jurisdiction focuses on the court as a forum and on the case as one of a class of cases, *not on the particular facts of a case or the particular tribunal that hears the case.* (Emphasis added.) *State v. Swiger*, 125 Ohio App.3d at 462. Here, Tessman's argument that a particular tribunal, the Franklin County Municipal Court, does not have subject matter jurisdiction is premised on the particular facts of this case. Thus, Tessman did not raise a challenge to the court's subject matter jurisdiction, rather he argued that the municipal court did not have jurisdiction over this particular case. The Tenth Appellate District erred in finding that the Franklin County Municipal Court's judgment in favor of JB Dollar was void because subject matter jurisdiction over this matter did exist.

Subject-matter jurisdiction is a court's power over a type of case. It is determined as a matter of law and, once conferred, it remains. *Pratts*, at ¶34. In *Pratts* this Court analyzed two distinct forms of jurisdiction: subject-matter jurisdiction and jurisdiction over the particular case. Here, the Franklin Municipal Court undoubtedly had subject matter jurisdiction. The issue raised by Tessman was whether it had jurisdiction over the particular case.

Jurisdiction "over the particular case," as the term implies, involves ""the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction."" *In re: JJ*, at at ¶12; *Pratts*, at ¶12, quoting *Swiger*, 125 Ohio App.3d at 462.

In *Pratts* the defendant pleaded guilty to aggravated murder with death-penalty and

firearm specifications. *Id.* at ¶2. At the sentencing hearing, he waived his right to a jury trial and agreed to submit his plea to a single judge, despite the requirement of R.C. 2945.06 that capital offenses "be tried by a court to be composed of three judges." *Id.* Pratts contended that the trial court's failure to comply with R.C. 2945.06 divested it of subject-matter jurisdiction and rendered its judgment void. However, this Court held that "[t]he failure of the court to convene a three-judge panel, as required by R.C. 2945.06, does not constitute a lack of subject-matter jurisdiction that renders the trial court's judgment void ab initio * * *." *Id.* at ¶36. The trial court's error, however, did make the judgment voidable. *Id.* However, Pratts waived the procedural irregularities and the judgment was upheld as valid.

In re: JJ, concerned whether a magistrate's transfer of the case to a visiting judge divested the juvenile court of subject-matter jurisdiction and rendered the subsequent proceedings void. Distinguishing subject matter jurisdiction from jurisdiction over the particular case, this Court determined that the subject matter jurisdiction of the juvenile court was statutorily established in R.C. 2151.23(A)(1), over a type of case, i.e., "matters involving a neglected or dependent child." Thus, the action involving the permanent custody of a child following a complaint alleging neglect was within the juvenile court's subject-matter jurisdiction. Although procedural irregularities existed in the transfer of the case to the visiting judge, that affected the court's jurisdiction over the particular case, not subject-matter jurisdiction. Thus, the judgment at issue was voidable, not void. *Id.* at ¶15.

Here, the General Assembly has defined the types of cases over which Ohio's municipal courts have subject matter jurisdiction, i.e., contractual disputes concerning a monetary amount of less than \$15,000.00. See, R.C. 1901.18 (A)(3). There is no territorial component to the court's subject matter jurisdiction, thus, a judgment relating to a contract which is attacked solely

because the contract, the events giving rise to its alleged breach, and the contracting parties are not within the municipal court's geographic territory may be voidable, but is not void.

While subject matter jurisdiction can not be waived, parties can agree to select a particular tribunal to hear contractual disputes. Thus, the rule of law in Ohio should be that a default judgment entered by a municipal court in a breach of contract action cannot be collaterally challenged by the defaulting party on the grounds that the contract, the events giving rise to its alleged breach, and none of the contracting parties are within the municipal court's geographic territory where the defaulting party agreed to a valid forum selection clause selecting that municipal court as a forum for any lawsuit involving a dispute between the parties. Due to the sweeping impact the Tenth Appellate District's decision will have on businesses' ability to rely on valid forum selection clauses in commercial contracts, appellant respectfully requests that this Court accept this matter for review.

CONCLUSION

WHEREFORE, Appellant, Cheap Escape Company, Inc., respectfully requests and moves the Supreme Court of Ohio to accept jurisdiction over this appeal because the issues present in this case are of public or great general interest.

Respectfully submitted,



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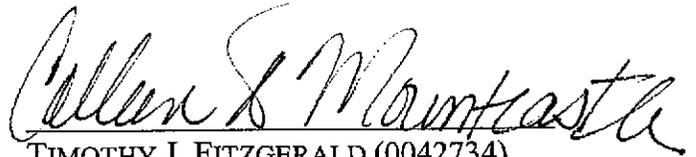
Cheap Escape Company, Inc. dba JB Dollar

CERTIFICATE OF SERVICE

A copy of the foregoing *Memorandum in Support of Jurisdiction* was sent by regular U.S. Mail postage pre-paid this 11th day of October, 2007 to the following:

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APPENDIX

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Cheap Escape Company, Inc., :
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Plaintiff-Appellee, :
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v. :
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Haddox, LLC, :
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Defendant-Appellee, :
 :
Jeffrey L. Tessman, :
 :
Defendant-Appellant. :

No. 06AP-1107
(M.C. No. 2005-CVF-30093)

(REGULAR CALENDAR)

O P I N I O N

Rendered on August 28, 2007

Wellman, Weinberg & Reis Co., L.P.A., and Amanda R. Yurechko, for appellee Cheap Escape Company, Inc.

James R. Douglass Co., LPA, and James R. Douglass, for appellant.

APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶1} Defendant-appellant, Jeffrey L. Tessman, appeals from a judgment of the Franklin County Municipal Court denying his motion to vacate a default judgment entered in favor of plaintiff-appellee, Cheap Escape Company, Inc. dba JB Dollar Stretcher Magazine ("JB Dollar"). Because the trial court lacked subject matter jurisdiction over the action, we reverse.

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{¶2} In September 2004, a representative from JB Dollar made a sales call to Haddox, LLC's office in Summit County, Ohio, where defendant, on behalf of Haddox, executed advertising agreements with JB Dollar. Under the agreements, Haddox agreed to pay JB Dollar for a one-half-page advertisement in its monthly magazine for circulation in the Canton and Akron markets; defendant also signed as guarantor of Haddox's obligation. The agreement contained a forum selection clause stating, "Purchaser and Publisher both agree that in the event either party is in non-compliance with any provision of Agreement, the proper venue for litigation purposes will be in the Franklin County Municipal Court or Franklin County Common Pleas."

{¶3} Haddox's alleged default under the terms of the agreements prompted JB Dollar to file suit against defendant and Haddox in the Franklin County Municipal Court for the outstanding balance due. After finding defendant and Haddox failed to plead or otherwise defend, the court granted JB Dollar's motion for default judgment on September 7, 2005.

{¶4} On July 28, 2006, defendant filed a motion to vacate the default judgment, arguing the judgment was void ab initio because the trial court lacked subject matter jurisdiction over the case. JB Dollar countered that the advertising agreement's forum selection clause endowed the Franklin County Municipal Court with jurisdiction over defendant pursuant to R.C. 1901.18. Interpreting R.C. 1901.17 and 1901.18(A)(3), the trial court concluded subject matter jurisdiction vests in a municipal court for a contract action where the prayer for relief does not exceed \$15,000, whether or not the parties are residents in the court's territorial jurisdiction. Combining its statutory interpretation with the

forum selection clause, the trial court concluded the Franklin County Municipal Court had subject matter jurisdiction over the case, and it denied defendant's motion to vacate.

{¶5} Defendant appeals assigning three errors:

ASSIGNMENT OF ERROR I

THE COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION TO VACATE DEFAULT JUDGMENT.

ASSIGNMENT OF ERROR II

THE COURT ERRED IN RENDERING A DEFAULT JUDGMENT WHEN IT LACKED TERRITORIAL JURISDICTION.

ASSIGNMENT OF ERROR III

THE COURT ERRED IN DETERMINING THAT THE PARTIES CONFERRED SUBJECT MATTER JURISDICTION UPON THE FRANKLIN COUNTY MUNICIPAL COURT BY AGREEMENT.

{¶6} Because defendant's three assignments of error are interrelated, we address them together. In them, defendant contends the trial court erred in denying his motion to vacate, as the court lacked territorial jurisdiction over the case, a requirement defendant claims is necessary to vest a municipal court with subject matter jurisdiction over an action.

{¶7} More specifically, defendant contends a municipal court has subject matter jurisdiction over an action only when the following conditions are met: (1) the claim for damages is within the court's monetary jurisdiction under R.C. 1901.17; (2) the cause of action is included within one of the categories specified in R.C. 1901.18; and (3) the events giving rise to the claim occurred within the territorial jurisdiction of the municipal court. He maintains that an action is within the municipal court's territorial jurisdiction if it

has sufficient contacts with the municipal court's territory, a result achieved only if: (1) the subject matter of the action is located within the court's territorial limits; (2) at least one defendant resides within the court's territorial limits; or (3) at least one of the defendants was served within the court's territorial limits.

{¶8} Within those parameters, defendant notes: (1) he resides and was served in Portage County, Ohio; (2) JB Dollar circulated Haddox's advertisements in Summit and Stark Counties; (3) he executed the advertising agreements in Summit County; and (4) JB Dollar's principal place of business is in Summit County. As a result, defendant contends JB Dollar's action meets none of the criteria for territorial jurisdiction within Franklin County, leaving the Franklin County Municipal Court without subject matter jurisdiction over the action and rendering the default judgment in favor of JB Dollar void ab initio.

{¶9} Conversely, JB Dollar contends the Franklin County Municipal Court had subject matter jurisdiction over the case because (1) the action falls within one of the categories listed in R.C. 1901.18, and (2) the action was for an amount within the court's monetary jurisdiction under R.C. 1901.17. JB Dollar equates a municipal court's territorial jurisdiction with venue or personal jurisdiction that, unlike subject matter jurisdiction, can be waived by stipulation or agreement. JB Dollar thus contends defendant waived his territorial jurisdiction challenge when he agreed to the forum selection clause contained within the advertising agreement. Citing the Supreme Court of Ohio's holding in *Kennecorp Mortgage Brokers v. Country Club Convalescent Hosp.* (1993), 66 Ohio St.3d 173 ("*Kennecorp*"), JB Dollar maintains the forum selection clause circumvents the

sufficient contacts requirement needed to confer territorial jurisdiction upon the Franklin County Municipal Court.

{¶10} Subject matter jurisdiction refers to a court's power to adjudicate the merits of a case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. Because it is a condition precedent to the court's ability to hear the case, it can never be waived by stipulation or agreement and may be challenged at any time. *Id.*; *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236. If a court acts without subject matter jurisdiction, then any proclamation by that court is void. *Id.*

{¶11} Venue, on the other hand, connotes the locality where an action should be heard. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87. Improper venue does not deprive a court of its jurisdiction to hear an action. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, ¶23. Rather, the question of venue is one of convenience and asks in which court, among all of those with jurisdiction, to best bring a claim. *State v. Kremer*, Van Wert App. No. 15-05-05, 2006-Ohio-736, ¶6. When venue is specified in a mandatory forum selection clause, the clause generally will be enforced. *EI UK Holding Inc. v. Cinergy UK, Inc.*, Summit App. No. 22326, 2005-Ohio-1271, ¶21; *Kennecorp*, *supra*, at syllabus. A defendant waives the right to challenge venue when the issue is raised for the first time on appeal. See *Citibank (South Dakota) N.A. v. Fischer*, Sandusky App. No. S-06-038, 2007-Ohio-1322; Civ.R. 12.

{¶12} Here, defendant agreed to the forum selection clause in the advertising agreement and otherwise waived his right to challenge venue when he failed to raise the issue in the trial court. Contrary to JB Dollar's assertions, however, defendant's agreement to the forum selection clause did not waive his right to challenge the Franklin

County Municipal Court's subject matter jurisdiction. Because the facts unquestionably demonstrate that no part of the action occurred, and none of the parties reside, in Franklin County, our determining whether the municipal court properly denied defendant's motion to vacate depends exclusively on whether, on these facts, a municipal court's subject matter jurisdiction is limited to events that occur within its territorial boundary.

{¶13} As a statutorily created court, Ohio municipal courts can exercise only such powers as statutes confer upon them. R.C. 1901.01; *State v. Bellefontaine Municipal Court* (1967), 12 Ohio St.2d 26. The subject matter jurisdiction of the municipal court is set forth in R.C. 1901.18. As pertinent here, it provides that "subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original *jurisdiction within its territory* in * * * any action at law based on contract * * *." R.C. 1901.18(A)(3). (Emphasis added.) "Territory" means the geographical areas within which municipal courts have jurisdiction, and R.C. 1901.02 grants the Franklin County Municipal Court territorial jurisdiction within Franklin County. See R.C. 1901.01 and 1901.03.

{¶14} Defendant interprets the phrase "jurisdiction within its territory" to mean a municipal court's subject matter jurisdiction is limited to events that occur, or people that live, within its territorial boundary. In support of his interpretation, defendant notes that several appellate courts have determined territorial jurisdiction is an element of a municipal court's subject matter jurisdiction. Those courts thus have concluded a municipal court can hear an action only if: (1) the claim for damages is within the court's monetary jurisdiction; (2) the cause of action is included within one of the categories specified in R.C. 1901.18; and (3) the events giving rise to the claim occurred within the

territorial jurisdiction of the municipal court. See, e.g., *Stem v. Cleveland Browns Football Club, Inc.* (Dec. 20, 1996), Lake App. No. 95-L-196; *Rose v. Mays* (Nov. 1, 1995), Montgomery App. No. CA 15084; *Hickey v. Hancock Wood Elec. Coop.* (June 30, 1993), Wood App. No. 92WD082; *Goody v. Scott* (Oct. 18, 1995), Richland App. No. 95CA31.

{¶15} The courts drew their conclusions from the unequivocal language set forth in former R.C. 1901.19(A)(4), stating in pertinent part that "a municipal court ha[s] jurisdiction within its territory * * * [I]n any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or when the defendant or any of the defendants resides or is served with summons within the territory[.]" In 1997, however, the Ohio General Assembly eliminated subparagraph (A)(4) from R.C. 1901.19. The parties have not directed us to, nor are we aware of, any case where a court determined territorial jurisdiction was a necessary component of a municipal court's subject matter jurisdiction without the assistance of R.C. 1901.19(A)(4), a comparable predecessor provision, or a proposition of law derived from it. To the extent the noted decisions depend on R.C. 1901.19(A)(4), this court is unable to rely on the them to support defendant's contentions.

{¶16} In another line of cases, a few appellate district courts reached a conclusion opposite to defendant's contentions, finding territorial jurisdiction more akin to venue and thus irrelevant to a municipal court's subject matter jurisdiction. Relying on the Supreme Court's decision in *Morrison*, the cases determined that every municipal court has subject matter jurisdiction to hear a particular case so long as the claim does not exceed the monetary jurisdiction of municipal courts and is included within the ambits of R.C.

1901.18. See *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.* (1985), 23 Ohio App.3d 85; *Williams v. Jarvis* (Aug. 26, 1999), Cuyahoga App. No. 74580.

{¶17} In *Morrison*, the plaintiffs, residents of Oregon, Lucas County, Ohio, sued the defendant, a resident of Hancock County, in the Oregon Municipal Court for breach of contract. The Supreme Court certified the record after the appellate court affirmed the trial court's decision denying the defendant's motion to quash service. The defendant contested the municipal court's authority to issue service of process beyond its statutorily prescribed territorial boundaries.

{¶18} Addressing the defendant's contention, the court explained that "a municipal court[s] subject matter jurisdiction (as opposed to territorial boundaries)" is distinguishable from "how the Rules of Civil Procedure operate within the limits imposed upon that jurisdiction by the General Assembly." *Brooks*, at 87. The court quoted R.C. 1901.18(C) and 1901.17 and found the action met both requirements because it was "the type of action which R.C. 1901.18(C) and R.C. 1901.17 encompass." *Id.* at 88. It then explained: "for the purposes of those sections, every municipal court in the state would have subject-matter jurisdiction of such an action." *Id.*

{¶19} The court pointed out, however, that a plaintiff does not have complete freedom of choice in selecting his forum. "Venue, which relates to the geographical division where a cause can be tried, must be proper." The court noted venue is a procedural matter, and although it was once within the private domain of the General Assembly, it is now within the rule-making power of the Supreme Court. Because the Oregon Municipal Court was a proper forum under either Civ.R. 3(B)(3) or 3(B)(6), and the court was vested with subject matter jurisdiction under R.C. 1901.18(C), the court

concluded the personal judgment rendered against the defendant was valid if the service of summons was proper.

{¶20} The appellate district courts relying on *Morrison* found significant the court's failure to mention R.C. 1901.02, defining territorial jurisdiction, when it discussed subject matter jurisdiction. See *Brooks*, supra, at 88; *Jarvis*, supra. In their view, the omission refuted the rulings of other courts that territorial jurisdiction is a necessary component of a municipal court's subject matter jurisdiction under the statutory language of R.C. 1901.02 and 1901.19. Without referring to R.C. 1901.02, the *Brooks* and *Jarvis* courts maintained that the Supreme Court made "it clear that the court considered that section to be a venue (procedural) section despite the language therein about 'territorial' jurisdiction." Id.

{¶21} Although *Morrison* broadly defined a municipal court's subject matter jurisdiction, we cannot conclude on the facts of *Morrison* that the Supreme Court purposely failed to mention either the "within its territory" language from R.C. 1901.18 or the provisions of R.C. 1901.02. Initially, the defendant in *Morrison* never specifically challenged the municipal court's subject matter jurisdiction; he contested the municipal court's power to issue service of process to an individual person living outside the court's territorial boundaries. *Morrison* thus never had a reason to discuss, much less define, a municipal court's subject matter jurisdiction except for the limited purpose of distinguishing it from venue.

{¶22} Moreover, because the *Morrison* breach of contract claim unquestionably occurred within the Oregon Municipal Court's territorial limits, the Supreme Court did not need to determine whether the Oregon Municipal Court's territorial jurisdiction was included in the court's subject matter jurisdiction. Lastly, and most importantly, the

conclusion in *Brooks* and *Jarvis* construing R.C. 1901.02 as a venue provision runs afoul of the principal constitutional proposition set forth in *Morrison*: venue is a procedural matter within the rulemaking power of the Ohio Supreme Court, not the General Assembly.

{¶23} Because the case law supporting the parties' opposing theories raises issues in our attempting to apply them here, we apply the language of R.C. 1901.18 and cognate provisions to decipher whether a municipal court's territorial jurisdiction is a necessary component of the court's subject matter jurisdiction.

{¶24} R.C. 1901.18 is entitled "Jurisdiction of subject matter," and, as noted, states that "a municipal court has original jurisdiction within its territory * * * [i]n any action at law based on contract." R.C. 1901.18(A)(3). While we are aware that chapter headings are not part of the law of a statute pursuant to R.C. 1.01, the heading or title the General Assembly gives to a statute "must be accorded consideration, as long as it is not employed to alter the meaning of language that is unambiguous." *Dade v. Bay Village Bd. of Zoning Appeals*, Cuyahoga App. No. 87728, 2006-Ohio-6416, at ¶28.

{¶25} When we consider the title to R.C. 1901.18, the legislative intent is more apparent. If "jurisdiction" as used in the body of R.C. 1901.18 incorporates the statute's heading and is more fully read as "jurisdiction of subject matter," the statute then states that "a municipal court has original jurisdiction of subject matter within its territory" over "any action at law based on contract." The statutory language thus limits the court's subject matter jurisdiction to those enumerated events occurring within the court's geographical boundary defined under R.C. 1901.02.

{¶26} Further supporting such an interpretation of R.C. 1901.18, R.C. 1901.02, 1901.03(A), 1901.18 and 1901.19 each explicitly use the word "jurisdiction" and not "venue." To ignore the common usage of the word "jurisdiction" and replace it with an alternative word and meaning would offend a basic principal of statutory interpretation under R.C. 1.42. Interpreting a municipal court's statutorily defined territorial jurisdiction to mean venue also would offend the Supreme Court of Ohio's procedural rulemaking authority under Section 5(B), Article IV of the Constitution of Ohio pursuant to which the Supreme Court enacted a venue provision under Civ.R. 3(B).

{¶27} Lastly, in interpreting a given statute with two possible interpretations, we must afford full force and effect to all words and phrases, not striking or reading anything out of a statute. *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, 237. To accept plaintiff's argument would ignore, or not give effect to, the phrase "within its territory" that the legislature made part of the statute. By defining the court's subject matter jurisdiction with an express limitation to the court's territory, the General Assembly provided that the court's geographical boundary limits the scope of the court's subject matter jurisdiction.

{¶28} Such an interpretation is consistent with the line of cases on which defendant relied. While we recognize the legislature eliminated former R.C. 1901.19(A)(4), a review of the other changes to that piece of legislation suggests the legislation was not designed to overrule those cases.

{¶29} The provision amending former R.C. 1901.19 was part of a much larger bill that brought about significant change to some sections of R.C. Chapter 1901. Other parts of the legislation, however, were more in the nature of "housekeeping." The legislature's change to former R.C. 1901.19(A)(4) reasonably may be viewed to be "housekeeping" for

two reasons. Initially, R.C. 1901.18 lists the types of actions to be heard in the municipal court, while R.C. 1901.19 speaks more to the powers of the municipal court, such as the ability to compel attendance of witnesses or to issue executions. As such, the language addressing contract actions more readily fit within R.C. 1901.18. Secondly, at the time of the amendment, R.C. 1901.18 already provided the municipal courts had jurisdiction over contract actions, thus permitting the legislature to conclude R.C. 1901.19(A)(4) not only was misplaced, but redundant.

{¶30} Plaintiff would suggest "jurisdiction within its territory" is a reference to the court's situs. The legislature, however, addressed that aspect of municipal courts in a different section, R.C. 1901.021(A). In it, the legislature explicitly provides where a judge may sit, stating that "[t]he judge or judges of any municipal court established under division (A) of section 1901.01 of the Revised Code having territorial jurisdiction outside the corporate limits of the municipal corporation in which it is located may sit outside the corporate limits of the municipal corporation within the area of its territorial jurisdiction."

{¶31} Where general terms or expressions in one statute are inconsistent with more specific or particular provisions in another statute, the particular provisions must govern unless the statutes, as a whole, clearly show a contrary intention. *State ex rel. Elliott Co. v. Connor* (1931), 123 Ohio St. 310. Because R.C. 1901.021 more specifically describes the court's situs, we cannot interpret the language within R.C. 1901.18 as a reference to the location where a municipal court may exercise its subject matter jurisdiction.

{¶32} The geographical limitation placed on a municipal court's criminal subject matter jurisdiction, while stated more clearly than the civil subject matter jurisdiction,

jurisdiction in the municipal court. Without subject matter jurisdiction, the court's underlying judgment is void. Defendant's three assignments of error are sustained.

{¶35} Having sustained defendant's assigned errors, we reverse the judgment of the trial court and remand with instructions to dismiss the case for lack of subject matter jurisdiction.

Judgment reversed and case remanded with instructions.

BROWN, J., concurs.
TYACK, J., dissents.

TYACK, J., dissenting.

{¶36} I respectfully dissent.

{¶37} R.C. 1901.18(A) reads:

Except as otherwise provided in this division or section 1901.181 [1901.18.1] of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings and to perform all of the following functions:

- (1) In any civil action, of whatever nature or remedy, of which judges of county courts have jurisdiction;
- (2) In any action or proceeding at law for the recovery of money or personal property of which the court of common pleas has jurisdiction;
- (3) In any action at law based on contract, to determine, preserve, and enforce all legal and equitable rights involved in the contract, to decree an accounting, reformation, or cancellation of the contract, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties to the contract.

(4) In any action or proceeding for the sale of personal property under chattel mortgage, lien, encumbrance, or other charge, for the foreclosure and marshalling of liens on personal property of that nature, and for the rendering of personal judgment in the action or proceeding;

(5) In any action or proceeding to enforce the collection of its own judgments or the judgments rendered by any court within the territory to which the municipal court has succeeded, and to subject the interest of a judgment debtor in personal property to satisfy judgments enforceable by the municipal court;

(6) In any action or proceeding in the nature of interpleader;

(7) In any action of replevin;

(8) In any action of forcible entry and detainer;

(9) In any action concerning the issuance and enforcement of temporary protection orders pursuant to section 2919.26 of the Revised Code or protection orders pursuant to section 2903.213 [2903.21.3] of the Revised Code or the enforcement of protection orders issued by courts of another state, as defined in section 2919.27 of the Revised Code.

(10) If the municipal court has a housing or environmental division, in any action over which the division is given jurisdiction by section 1901.181 [1901.18.1] of the Revised Code, provided that, except as specified in division (B) of that section, no judge of the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction;

(11) In any action brought pursuant to division (l) of section 3733.11 of the Revised Code, if the residential premises that are the subject of the action are located within the territorial jurisdiction of the court;

(12) In any civil action as described in division (B)(1) of section 3767.41 of the Revised Code that relates to a public nuisance, and, to the extent any provision of this chapter conflicts or is inconsistent with a provision of that section, the provision of that section shall control in the civil action.

{¶38} R.C. 1901.18(A) does not give a detailed list of claims for relief over which a municipal court *does not* have jurisdiction. Instead, the statute provides a detailed list of the kinds of claims for which the court *does* have jurisdiction.

{¶39} The placement of the phrase "within its territory" within R.C. 1901.181(A) is important. The language chosen by the legislature places "within its territory" next to "jurisdiction," not next to the enumerated types of claims. The phrase "within its territory" therefore modifies "jurisdiction," not the enumerated types of claims. In other words, the municipal court has jurisdiction within the territory to hear all the types of claims listed.

{¶40} The majority's interpretation seems to me to move "within its territory" into the enumerated claims and make the statute a limitation on civil action. For instance, actions in replevin are actions for occurrences only within its territory. Contracts are only for contracts which were entered within its territory or which were entered between parties who reside within its territory. Again, R.C. 1901.18(A) is a statute of inclusion, not exclusion.

{¶41} I believe that the legislature did not intend to bar parties from contracting to choose a forum for litigation, but wanted to prevent municipal courts from sitting in the territory of other municipal courts. For instance, the Franklin County Municipal Court should not sit in Delaware County or Licking County.

{¶42} My interpretation corresponds with R.C. 1907.31, where the legislature made it clear that county courts should not sit in a district where a municipal court is present.

{¶43} When the legislature chose the language, I believe that the legislature intended for municipal courts to have full jurisdiction of contract actions up to the limitation

of monetary jurisdiction set forth in R.C. 1901.17. I do not believe the legislature intended to bar parties from choosing a forum or to encourage parties to file in common pleas court, which unquestionably has general jurisdiction. The majority's opinion unnecessarily chops Ohio up into 88 smaller jurisdictions corresponding to counties.

{¶44} I believe the Franklin County Municipal Court had jurisdiction over this contract action and properly exercised that jurisdiction. I would overrule the assignments of error and affirm the judgment of the trial court. Since the majority does not, I respectfully dissent.

2007.11.13

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Cheap Escape Company, Inc., :
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 Plaintiff-Appellee, :
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 v. :
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 Haddox, LLC, :
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 Defendant-Appellee, :
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 Jeffrey L. Tessman, :
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 Defendant-Appellant. :

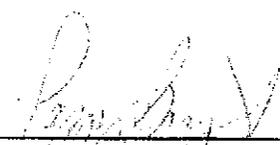
No. 06AP-1107
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(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on August 28, 2007, and having sustained defendant's assigned errors, it is the judgment and order of this court that the judgment of the Franklin County Municipal Court is reversed, and this cause is remanded to that court with instructions to dismiss the case for lack of subject matter jurisdiction. Costs to plaintiff.

BRYANT and BROWN, JJ.

Bu 

Judge Peggy Bryant

CLERK OF COURT
JANUARY 20 2008
777 N. GOVERNOR ST.
COLUMBUS, OHIO 43260-1500