52

SUPREME COURT OF FLORIDA

RAUL GARCIA GRANADOS QUINONES,
JORGE RAUL GARCIA GRANADOS,
CARMEN RODRIGUEZ CERNA,
ESTUDIOS, PROYECTOS E INVERSIONES
DE CENTRO AMEICA, S..A., (EPICA),
etc., et al.,

Appellants/Defendants,

v.

SWISS BANK CORPORATION (OVERSEAS),
S.A., a Panamanian Banking Institution
and BANQUE NATIONALE DE PARIS, a
French Banking Institution,

Appellees/Plaintiffs.
_____/

CASE NO. 69,412
69,413
69,478
69,479

ANSWER BRIEF OF APPELLEES

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TABLE OF CONTENTS

TABLE OF CITATIONS

References to the Record on Appeal will be designated (R. ___). References to the Supplementary Record on Appeal will be designated (Supp.R. ____), with citation to the appropriate volume. References to the Appendix filed with this Court with Appellants' Jurisdictional Brief will be designated (App. ___). References to the Appendix filed with this Court with Appellees' Response to Appellants' Jurisdictional Brief will be designated (App. I, ___). References to the Appendix filed with this Answer Brief will be designated (App. II, ___). All references will be accompanied by citation to the appropriate page number(s). Appellants may be referred to as Defendants and Appellees may be referred to as Plaintiffs in various portions of this brief.

Appellees suggest the Court exercise some caution in relying on Appellants' citations to legal authority or to the record. Appellants miscite page numbers, volumes and even the reporters of cases upon which they rely. All of us experience the misfortune of typographical errors in these matters. However, Appellants' citation carelessness was greater than normal.

Another problem is that some of the cases do not stand for the principles Appellants claim. Comments are made regarding this problem in Appellees' brief.

I. STATEMENT OF FACTS AND THE CASE

A. FACTUAL BACKGROUND

Swiss Bank Corporation (Overseas), S.A. and Banque Nationale de Paris do not accept Appellants' statement of the facts. Appellants have left out the essence of this case. If their statement of the case were the full story, it would be incomprehensible that this suit was not brought in Guatemala. The brevity of Appellants' statement of the facts and the inaccuracies contained therein force Appellees to present a complete statement of the facts to this Court.

In their brief to this Court, Appellants portray this matter as a simple collection effort by foreign banks against foreign nationals. It appears from Appellants' brief that none of the parties has anything to do with Florida and that the litigation somehow magically appeared on our shores. Appellants fail to paint the entire picture or to accurately portray Appellees' various responses to Appellants' motions before the trial court. When the full picture is presented, it is evident that the arguments presented to this Court are without merit and taken for the purpose of delay.

In Appellants' statement of the facts, it would seem that the Defendants are residents and citizens of Guatemala

quietly and peacefully residing in Guatemala. It appears that the poor Defendants have been dragged up to Florida to answer in the courts of Florida for business disputes existing solely within the country of Guatemala. Nothing could be further from the facts reflected in the record.

The acts described in this brief are set forth in detail by date and source in the affidavits of Investigator William Riley (Supp.R. Vol. 1, 84-393); (App. I, 16-48) and Madame Christiane Branliere of Paris, France (App. II, 1-10), and in the official records of the court files referred to in the Complaint and in this brief. Those affidavits, documents, and court files show that, in an attempt to avoid creditors, Defendants have been involved in a course of conduct to secret and divert their assets. Pre-judgment writs of attachment and garnishment have previously been entered against the group by United States District Judges in New Orleans and Miami. (Supp.R. Vol. I, 101) This is reflected in the affidavit of William H. Riley at pages 17 to 19. (Supp.R. Vol. I, 101-103) Citizens and Southern International Bank was the Plaintiff in those actions. (Supp.R. Vol. I, 101, 102)

The case before this Court arises from bank debt of more than Fifty Million American dollars ($50,000,000.00) owed by the Defendants, a Guatemalan business group. (App. 3.) The efforts

of that business group to avoid repaying the monies they received have apparently led the group to commit bribery, fraud or intimidation. These actions have resulted in an investigation of a judge in Guatemala. (Supp.R. Vol. I, 57); (App. II, 8)

The business group has been fraudulently transferring assets from themselves to corporations and persons under their control for several years in order to avoid the eventual payment of their debt. Either the money loaned was never invested in Guatemala as required, or it has been moved out of Guatemala in an attempt to prevent execution against the group's assets. (Supp.R. Vol. I, 21-24, 101)

The story begins in 1974. In that year the Panama branch of Banque Nationale de Paris entered into a $4,000,000.00 loan agreement with the Organization Garcia Granados to facilitate the purchase of a cotton plantation in Guatemala. From this beginning grew a commercial relationship between Banque Nationale de Paris and Organization Garcia Granados that was both complex and immense. The initial loan amount has grown during the years to something in excess of $50,000,000.00 in principal and interest. (Supp. R. Vol. I, 69).

A digression is in order at this point to describe the principal actors. The Banque Nationale de Paris is a French

banking corporation with worldwide banking activities and interests. It has an important banking presence in the United States directly or through its subsidiaries in this country. The bank does business in the Eleventh Judicial Circuit at 100 Chopin Plaza, Miami, Florida. (Supp.R. Vol. I, 69).

Banque Nationale de Paris is at present the fifth largest bank in the world outside the United States. Prior to the recent change of parity between the United States dollar and French franc, Banque Nationale de Paris was the world's largest bank. It is universally viewed as a well-managed and well-operated bank. (Supp.R. Vol.I, 70); (App. II, 2)

Tne bank undertook substantial operations in Latin America during the 1970's, as did most other banks in the world, including leading American banks. Through its branch in Panama, the bank became involved in investments in Guatemala, particularly with the Organization Garcia Granados. The bank's loans and operations with Organization Garcia Granados were operations it undertook as the leader of a pool of banks making loans to Organization Garcia Granados. Included in that pool of banks were the Swiss Bank Corporation (Overseas), S.A. of Panama, the Banque Arabe et Internationale d'Investissements of Paris, the United Overseas Bank of Geneva, and the Banque Sudameris of Paris. (Supp.R. Vol. I, 70); (App. II, 2)

Thirty-two percent of the interest in the loans was assigned to Swiss Bank Corporation (Overseas), S.A. by Banque Nationale de Paris pursuant to the terms of the loan agreement. Swiss Bank Corporation (Overseas), S.A. is the holder and owner of the Promissory Note and Guaranties. (R. 021); (Supp.R. Vol. I, 70); (App. II, 3)

Swiss Bank Corporation (Overseas), S.A., of Panama (App. 11) is a wholly-owned subsidiary of Swiss Bank Corporation. (Supp.R. Vol. I, 70)

Swiss Bank Corporation is one of the world's largest banks, with deposits of more than $43 Billion U.S. as of January, 1984. It has more than fourteen thousand employees, with offices around the world. In December of 1983, in a ranking of the world's largest banks by The American Banker, Swiss Bank Corporation was ranked number 36. It has been conducting banking business under its present name since before the turn of the century. (Supp.R. Vol. I, 70, 71)

The Organization Garcia Granados was a group of more than thirty Guatamalan corporations which were owned, operated and controlled by the Garcia Granados family, formerly of Guatemala. (Supp.R. Vol. I, 71); (App. II, 3)

The patriarch and absolute decision maker in the family is Raul Garcia Granados Quinones. (Hereafter referred to as "Don Raul".) The company was operated by various of Don Raul's children and their spouses. A few lawyers and professional managers rounded out the organization. (Supp.R. Vol. I, 71); (App. II, 6/4)

The Garcia Granados family has been a leading group in the oligarchy controlling Guatemala for many years. In the nineteenth century a family member was president of Guatemala, and family members have been active in the professional, political and diplomatic life of Guatemala throughout its recent history. General Romeo Lucas Garcia Granados became President of Guatemala in 1978 and held power until the coup de etat of March, 1982. (Supp.R., Vol. I, 71); (App. II, 6/4)

The economic strength of the family, however, is a more recent phenomenon. The family began to acquire land holdings in Guatemala in the 1950's. In the late 1960's, the Molina brothers and Raul Garcia Granados were in partnership and were the largest farming operation in Guatemala. The partnership was dissolved in 1971. Raul Garcia Grenados then began borrowing money and, in 1974, began land expansion. Raul Garcia Granados became deeply involved in political affairs in 1978. (Supp.R. Vol. I, 71); (App. II, 6/4)

The family's acquisitions accelerated dramatically in the 1970's with its acquisition of large credit sources from foreign and domestic banking institutions, thanks to the family's position in the political arena in Central America. The family's operations were primarily within the agricultural areas of cotton and sugar cane cultivation, processing and exportation. (Supp.R. Vol. I, 72); (App. II, 4)

The family's position in Latin America has been a controversial one for many years. It has long been understood that the patriarch of the family, Raul Garcia Granados de Quinones, is a major intermediary between the business world and Central American political authorities for the purpose of facilitating operations and special projects in Central America. (Supp.R. Vol. I, 72); (App. II, 5)

Until April of 1980, the banking pool's dealings with the Organization Garcia Granados were rather good. In October of 1979, Don Raul's son was kidnapped by guerillas in Guatemala and held for ransom. Banque Nationale de Paris and Swiss Bank Overseas, S.A., financed the release of Jorge Raul Garcia Granados. Financing was by five promissory notes secured by personal guaranties. (Supp.R. Vol. I, 72); (App. II, 5)

In December of 1980, the entire Organization Garcia Granados debt was restructured. All previous obligations and

guarantees were recorded in a notarized, certified document registered in Guatemala on December 4, 1980. (Hereafter referred to as "Legal Deed 130" or "Document 130.") That document provided for payment in United States dollars and a method of payment which included the annual sale of the organization's crops, which were pledged to the banks. Proceeds after expenses were to go to pay the bank loans. The amount owed at that time was approximately $38 million in principal plus interest. (Supp.R. Vol. I, 72, 73); (App. II, 5)

This arrangement worked initially. By the time the agreement was established, the proceeds of the crop sale of 1980 had been delivered to the banks. This reduced the total debt to approximately $32 million dollars principal. (Supp.R. Vol. I, 73); (App. II, 5)

Within six months after the signing of the December, 1980, agreement, Raul Garcia Granados began demanding that the loan agreement be altered with a new payment structure, new payment timing and other changes. The banks declined to enter into an alteration of the basic loan agreement. Having failed to get the approval of the banks to restructure the agreement, Don Raul determined to unilaterally change the agreement. (Supp.R. Vol. I, 73); (App. II, 6)

At this time, Don Raul was at the height of his power. He was very influential in the Guatemalan government and was capable of making many things move and flow in Central American political circles. In furtherance of his plan to unilaterally change the loan agreement, his son, Jorge Raul, filed in Guatemalan courts a lawsuit to cause the crop of that year, upon which the banks had a lien, to be sold independently of the involvement of the banking pool and against the pool's interests. It was arranged through orders of a Guatemalan judge that the crop would be sold to a Panamanian company, ESTORIL, and that the true value of the crops would not go to the banks. The matter was submitted at summary proceedings without previous notice to the banks. Estoril is a Garcia Granados Company. (Supp.R. Vol. I, 73); (App. II, 6, 7)

The judicially ordered sale price to ESTORIL was $1,470,000. From this was deducted $1,320,000 owed to the suppliers of insecticides, fertilizers and other products necessary to produce the crop. The banks received no money from this sale of the crops. The effective date of the sale by court order was October 21, 1981. (Supp.R. Vol. I, 74); (App. II, 6)

The banks' attorneys in Guatemala filed suit in November, 1981, to suspend execution of this order and to prevent the proceeds of the sale from disappearing. The true value of

the crop was estimated by United States experts, the Edward T. Robertson & Sons Company, of having a value of $14,593,000. The Panamanian company, ESTORIL, which is a Garcia Granados Company, thus acquired $14.5 Million in crops for $1.5 Million. (Supp.R. Vol. I, 74); (App. II, 6, 7)

The assault on the agreement and the extraordinary manipulations by Don Raul surprised the banks, though preliminary indications of potential trouble with Organization Garcia Granados had arisen in early 1981. At that time, the Peat, Marwick & Mitchell accounting firm, pursuant to the agreements between the banking pool and Organization Garcia Granados, had undertaken to audit the operations of Organization Garcia Granados to ensure the security of the bank loans. Don Raul consistently refused to meet with the auditors and acted to frustrate their assignment. Finally, in March of 1981, the auditing firm sent a letter to the banks indicating that it was impossible for them to perform the assigned tasks and thus impossible to determine the status of the assets and operations of Organization Garcia Granados. (Supp.R. Vol. I, 74); (App. II, 7)

In 1982, another attempt was made to arrange an audit of the operations of Organization Garcia Granados. Auditors were summoned and preparations were made to enter the building of Organization Garcia Granados in Guatemala City, Guatemala, to

review the records. The day before the audit was to commence, there was a large fire in the building, and the building and its records were destroyed. The proposed audit was thus frustrated a second time. (Supp.R. Vol. I, 74, 75); (App. II, 7)

During the same time period in 1981 when the auditors were being refused access to the operations of Organization Garcia Granados, the principals of the Garcia Granados family were initiating the transfer of assets held in their personal names to other persons or entities. Within the State of Florida, for instance, the family owned an apartment on Brickell Avenue, two homes in Bonaventure, and a horse farm in Ocala. These properties were transferred from individual members of the Garcia Granados family into the names of others. The Garcia Granados family still utilizes these properties and controls the corporations in whose names legal title now resides. (Supp.R. Vol. I, 75)

The horse farm in Ocala was transferred from the name of Don Raul to the name of EPICA on July 15, 1981. (Supp.R. Vol. I, 75, 86) EPICA is a Panamanian corporation one of whose directors is Francisco Reyes Perez, a Vice President of Organization Garcia Granados. (Supp.R. Vol. I, 86-88) Outside of official property records, Don Raul continues to claim ownership of the Ocala farm. In The Florida Horseman, 1985 edition, the property is listed and the owner/operator of the farm is stated to be Raul Garcia Granados. (Supp.R. Vol. I, 75, 90, 91).

In March of 1982, an event occurred which destroyed all of Don Raul's plans, including his plans to deny the repayment of the bank loans through political action. A military coup d'etat occurred in Guatemala. General Romeo Lucas Garcia Granados was overthrown by other military officials. Raul Garcia Granados and most of his family fled the country. This greatly reduced his political power and influence inside Guatemala and ended his ability to corruptly prevent the bank from attempting to collect the debt owed. Don Raul now found himself commuting from Miami to Panama to Venezuela to Mexico to take care of his business affairs in the United States, Panama, Venezuela and Mexico. His limited operations in Guatemala are presently represented by his son-in-law, Alberto Arzu. (Supp.R. Vol. I, 75, 76); (App. II, 8)

Now, the banks were finally able to pursue a legitimate judicial remedy in Guatemala. Pursuant to the litigation initiated in November, 1981, the Supreme Court of Guatemala in a decision entered July 1, 1983, rescinded the Guatemalan judge's prior order, created the possibility of a lawsuit against the Guatemalan state and the judge on behalf of the banks for their damages, and instituted a criminal investigation into the activities of the Guatemalan judge. (Supp.R. Vol. I, 76); (App. II, 8)

Raul Garcia Granados operates in Miami from the home of his closest personal associate, Carmen Rodriguez Cerna. Don Raul

and Ms. Rodriguez have been associated for more than twenty years in a close, personal relationship. That relationship existed in Guatemala prior to their exile from that community, and it exists today. (Supp.R. Vol. I, 76); (App. II, 8)

Don Raul was personally served with the Complaint and Summons in this case in Miami, Florida, outside of the house of the co-appellant, Carmen Rodriguez Cerna. Don Raul had been staying in the home for several days. It was his normal residence during the time that he stayed in Miami. (App. I, 8)

Ms. Rodriguez holds title to the condominium at 10115 Northwest Fourth Lane, Unit 3, Miami, Florida. (Supp.R. Vol. I, 76, 99, 100) Investigators found on the premises above described 1984 Mercury motor vehicles registered to that address in the name of El Conquistador Farm of Ocala, Florida. (Supp.R. Vol. I, 99) Also on the premises was a 1984 Mercury automobile registered to Ms. Rodriguez. (Supp.R. Vol. I, 89, 90). Investigation has revealed that the Mercury vehicles were purchased at the exact same time from Miami Lincoln Mercury, Inc. in Miami, Florida. (Supp.R. Vol. I, 77, 90) Don Raul and Ms. Rodriguez both receive mail at that address and conduct operations from that address. The house was purchased in 1979. It was paid for in full and there was never any mortgage on the property. The property was placed in Ms. Rodriguez' name, and Don Raul utilizes it as he sees fit. (Supp.R. Vol. I, 77, 100); (App. II, 8, 9)

Raul Garcia Granados has two lives. He has had an official public life and an unofficial life. Carmen Rodriguez is part of his unofficial life. She has had signature rights on accounts of his and has given instructions for the operation of his business and received money on his behalf. She is knowledgable about all of his affairs. She has acted as his alter-ego, and she holds in her name various of his assets. She is very loyal to him. (Supp.R. Vol. I, 77)

Don Raul has placed El Conquistador Farm in Ocala, Florida in the name of Estudios, Proyectos E Inversiones de Centro America, S.A. (EPICA). This has occurred as a formality only. At the time of Don Raul was known to the workers on the farm as the person who owned the farm, made all the decisions, and to whom they were responsible. Leading horsemen in the community dealt directly with Don Raul when Don Raul negotiated the purchase of horses for the farm. (Supp.R. Vol. I, 77, 86, 87, 90-94)

The banks have made demand upon the Garcia Granados family for payment of the money they are owed. The demands by the banks have occurred at various dates since Garcia Granados' failure to live up to the terms of the December, 1980, agreement. Demands from the banks have been both to the organization and to the individuals. The banks have not received payment nor satis-

faction in response to their demands. (Supp.R. Vol. I, 77; 78); (App. II, 9)

Don Raul's son, Jorge Raul Garcia Granados, has been living in Fort Lauderdale, Florida, (R., 6) since the family's expulsion from Guatemala in 1982. He owns and operates businesses in Fort Lauderdale, Florida. (Supp.R. Vol. 98, 99) These businesses include Florida and foreign corporations. Jorge Raul Garcia Granados has expressed his intention to permanently reside in the United States, and is a resident of Florida. (Supp.R. Vol. 66) Jorge Raul Garcia Granados and his wife are co-defendants in this litigation and guarantors on the notes along with Don Raul. (App. I, 7)

Don Raul has spent virtually no time in Guatemala since March of 1982. His entry into Guatemala since that date has been surreptitious and often by illegal means. (App. I, 8)

The extensive properties owned in Florida and the extensive activities engaged in in Florida by Don Raul and his affiliated Defendants are shown in the affidavits of private investigator William H. Riley. These affidavits have been filed with the court below at various proceedings. (Supp.R. Vols. I & II, 84-393)

The testimony and affidavits of investigator William Riley show that Defendant Raul Garcia Granados has undertaken a complex scheme to fraudulently transfer his assets into Florida in order to defeat any attempt by the banks to collect on the personal guarantees which were given by Don Raul and his family in Guatemala. Of particular interest is the supplemental affidavit of William Riley of September 19, 1985. (Supp.R. Vol. II, 361-393) In that affidavit, Mr. Riley reviews documents which have been seized by order of the court below. (App. I, 8)

In those documents were found a particular document subsequently referred to by the parties as the "TAIPSA" document. In the TAIPSA document, which appeared to be a will or some sort of listing of assets, was a description of Don Raul's plan, through the use of shell corporations, to protect the family's properties in Florida and Venezuela from the banks. (Supp.R. Vol. I, 396-373) The "TAIPSA" document provides in part:

> The final objective is to make TAIPSA the owner of all the real-estate, in order to prevent legal action against anyone of us as guarantors of the debts of the companies.

(Supp.R. Vol. I, 369); (App. I, 9) Mr. Riley's supplementary affidavit deserves reading in its entirety. It is only eight pages long. Don Raul has admitted authorship of the "TAIPSA" document. He claims it was written in 1982. (App. II, 15-17)

It is easy to see from the entire record that this is not in fact a simple collection matter on a business event which occurred in another jurisdiction. The Appellees in this case have been required to track the Appellants across several countries. Appellants have moved their persons and assets in an attempt to outrun their lawful creditors. It is inappropriate for Appellants to claim that they must be sued in Guatemala to recover assets which they have dispersed around the world, when they are no longer in Guatemala and the assets that are left there are insufficient to cover the debt. It is analogous to suggesting that the creditors of Mr. Duvalier, late of Haiti, should sue Mr. Duvalier in Haiti to collect the debts he owes his creditors, when in fact Mr. Duvalier and his monies are both presently located in France.

B. PROCEDURAL HISTORY - TRIAL COURT

In this section of their brief, Appellants indicate that in February, 1986, Swiss Bank filed a Complaint in the Circuit Court of the Eleventh Judicial Circuit. They are mistaken. The Complaint was filed in September of 1985. (R., 41) The Second Amended Complaint was filed in January of 1986. (Supp.R. Vol. I, 0-42) Motions for Summary Judgment on the note counts have been filed. The Appellees are awaiting the outcome of this appeal to have the motions heard.

Appellants note in this section of their brief, on page 7, that the non-note counts are entirely dependant upon Swiss Bank's prevailing in trial on the "note" counts. Throughout their papers before this Court Appellants utilize the word "allege" each time they refer to the existence of the debt or the fact that the debts are in default. They have not previously utilized this terminology in discussing these issues in the lower courts, perhaps because the existence of the debt and the condition of default have been admitted by Raul Garcia Granados in his depositions below.

The issues raised below regarding the debts have been issues surrounding the personal guarantees of the individual Defendants in the case. In the trial court the Defendants filed the affidavits of three Guatemalan attorneys, as mentioned in their brief. (App. 214-246) Plaintiffs below also filed with the court the affidavits of three Guatemalan attorneys. The affidavits of each side were prepared with an eye toward litigation. Plaintiffs have confidence in the correctness of their affidavits, but they suggested to the trial court that perhaps the best indication of the existence of the Defendants' personal guarantees is provided by Don Raul himself. On that point, Plaintiffs referred the court to the "TAIPSA" document discovered by the Dade County Sheriff's Department. In that document Don Raul stated "the final objective is to make TAIPSA the owner of all

the real estate, in order to prevent legal action against any one of us as guarantors of the debts of the companies." (App. I, 17)

The detailed arguments below of Appellants and Appellees regarding the issue of the existence of and obligations under the guarantees are provided in the record. The affidavits supplied below by Defendants were are based upon the primary affidavit of Carlos Diaz Duran. Attorney Diaz Duran was Don Raul's private attorney in Guatemala. He was is the attorney who masterminded the litigation in 1981 in Guatemala which resulted in the fraudulent sale of the crops of that year. The trial court below was urged by Plaintiffs to use caution in relying on the affidavit of Mr. Diaz Duran and on those affidavits which rely on his representations. (Supp.R. Vol. I, 57-58)

C. PROCEDURAL HISTORY - DISTRICT COURT OF APPEAL

In their description of the proceedings before the District Court of Appeal, Appellants state that they promptly filed a Notice of Supplemental Authority with the Third District Court of Appeal directing that court's attention to the Florida Supreme Court's decision in Manrique v. Fabbri, 493 So.2d 437 (Fla. 1986). Appellants continue by stating,

> Inexplicably, however, the Third District ignored RGG's Notice of Supplemental Authority, denied RGG's Motion for Rehearing, and let stand its decision

> which relied on its own earlier decision in Manrique as controlling authority for rejecting RGG's point on appeal that the parties' choice of forum clause in the relevant agreements should be enforced in this case.

What is inexplicable is that Appellants fail to inform this Court that the Third District had also received a Notice of Supplemental Authority from Appellees. The Third District was fully aware of the entire record in this case, had received briefs, and had heard oral argument on this case. Appellees' Notice of Supplemental Authority provided the Third District with a reasonable basis to deny Don Raul's request for rehearing. Appellants should have pointed out to this Court the existence of an independent basis for the Third District's opinion. Appellants failed to so inform this Court in their jurisdictional brief, and they compound the error by repeating it in their brief on the merits.

II. SUMMARY OF ARGUMENT

The trial court and the district court were correct in denying Defendants' suggestion to dismiss this case based on a contract clause providing that litigation under the contract "may" be brought in either Guatemala or Panama. (App. I, 78) The forum selection clause in the contract before this Court is

permissive. The contract does not exclusively grant venue to Guatemala or Panama. The contract, when taken as a whole, shows the parties using mandatory language at times that they meant for clauses to be mandatory. The contract clause at issue was drafted by Appellants and their attorneys. As drafters of the clause, ambiguity in the clause should be read against Appellants. The Appellants were engaging in the fraudulent transfer of their assets at the very time they were negotiating this clause in the contract, and they were at that time contemplating a fraud upon Appellees. In a case involving outrageous factual circumstances such as are evident in the present litigation, public policy suggests that this Court should not enforce the terms of even a mandatory venue clause.

The trial court did not abuse its discretion, and the district court did not err, in denying Defendants' motion to dismiss based on the doctrine of forum non conveniens. Plaintiffs' choice of forum under the factual pattern established in the record is reasonable and should be honored. The actions on the notes in this matter are subject to summary judgment based upon admissions by the Appellants and the affidavits of experts. The tortious activities of the Appellants within Florida have created causes of action which require the testimony of witnesses in Florida, the presentation of Florida evidentiary documents, and the interpretation of Florida law. Appellants have not made

any showing of abuse of discretion by the trial judge, much less the very strong showing of an abuse of discretion necessary to overturn the trial court's ruling.

III. ARGUMENT

A. THE CONTRACT CLAUSE.

The contract clause does not say what the Appellants would like it to say. The contract clause in question provides that the parties may choose to bring the action in the courts of Guatemala or in the courts of Panama. The contract clause then goes on to provide that, if the action is brought in Guatemala, certain rules and regulations shall pertain. The clause further provides that, if the action is brought in Panama, other rules and regulations shall pertain. (App. 206); (R., 78) Nowhere does the clause state that the action may not be brought in any other location. Under this Court's decision in Manrique v. Fabbri, 493 So.2d 437 (Fla. 1986), which allows the parties to determine the location of litigation, such a contract clause would not necessarily grant jurisdiction to Guatemala or to Panama.

Datamatic Services Corporation v. Bescos, 484 So.2d 1351 (Fla. 2d DCA 1986), cited by this Court in Manrique, supra at

439, n.3, involved a permissive choice of forum clause. The Second District found that by agreeing to a forum selection clause providing for submission to Florida's jurisdiction, the contestant waived objections that he lacked sufficient minimum contacts with Florida. While finding the forum selection clause enforceable, the court did not consider it to be exclusive. The clause did not foreclose the possibility of suit in another state where personal jurisdiction over the parties existed.

In its decision, the Second District Court of Appeal engages in a detailed analysis of the distinction between mandatory and permissive venue clauses. The court characterizes the conflict between the Third and Fourth District Courts of Appeal as involving only mandatory venue clauses. Datamatic at 1353.

Both the Federal courts and the State courts make a distinction between exclusive and permissive forum selection clauses. Some of the many cases in which the specific language of the clause did not confer exclusive venue are listed and analyzed in Appellee's Appendix I at page 89.

The clause in the case at bar uses the word "may." The word "may" has been held by Florida courts to denote a permissive term when given its ordinary meaning. E.g., Leghorn v. Wieland, 289 So.2d 745 (Fla. 2d DCA 1974), reh'g denied (1974). The words

of a contract should be given their usual and ordinary meaning. E.g., Sheldon v. Tiernan, 147 So.2d 167 (Fla. 2d DCA 1962). The circuit court analyzed the forum selection clause properly. The circuit judge specifically addressed the "may" or "shall" issue and found the clause to be permissive. (App. I, 78)

In McDonnell Douglas Corp. v. Islamic Republic of Iran, 758 F.2d 341 (8th Cir. 1985) cert. denied 106 S.Ct. 347 (1985) the question as to whether or not a forum selection clause was mandatory or permissive hinged upon the meaning of the word "should". After examining the isolated definitions of that word, the court looked to the meaning of the term within the context of the actual contract and stated,

> That the parties intended "should" to be differentiated from "shall" is also suggested by the use of the word "shall" to describe the rights and duties of the parties in eighteen other clauses of the BOA.

McDonnell Douglas at 347.

It is a standard rule of construction that the meaning of a contract and the intent of the parties should be determined by looking at the contract as a whole. Throughout Document 130, the word "shall" is freely used. Clause 17 uses the words "may choose," and reads in pertinent part:

CLAUSE SEVENTEEN: LEGAL ACTION

> In any of the cases wherein the contract may be terminated or at the end of the term, the Creditor may choose to take legal proceedings to the competent Courts of the City of Guatemala, Department of Guatemala, Republic of Guatemala or to the competent Courts of Panama City, Republic of Panama. If legal proceedings are entered in the City of Guatemala, the legal action shall be carried out as established by the Codigo Procesal Civil y Mercantil of Guatemala.

(R. 78); (App. 206, 207)

Had the parties intended to provide for litigation solely in Guatemala or Panama, it would have been a simple matter to use words that clearly provide for just that.

In the 25 clauses in Document 130, clearly exclusive terms such as "shall" and "are governed solely by" are used no less than 44 times in 17 clauses. These provisions appear in the following form

Clause Three: Special Loan

"... shall continue to be governed ... ."

Clause Four: Definitions

"... shall mean ... ."

Clause Six: Reimbursement of the Medium-Term Loan and Special Credit

(a) "... shall be ... ."
(b) "... shall be ... ."
(c) "... shall be ... ."
(d) "... shall reimburse ... ."
"... shall extinguish ... ."
"... shall entitle ... ."

Clause Seven:

"... are governed solely ... ."

Clause Eight: Operating Credit

"... shall notify ... ."
"... shall notify ... ."
(b) "... shall establish ... ."
(c) "... shall result ... ."
(d) "... shall inform ... ."
"... shall consider ... ."

Clause Eight: Review Of The Loan With a View To Its Renewal

"... shall give ... ."
(3) "... shall be ... ."
(b) "... shall obtain ... ."

Clause Ten: Terms of Payment

(b) "... may only ... ."
(d) "... shall be ... ."

Clause Eleven: Guarantees

"... shall not ... ."

Clause Eleven (BIS)

"... shall release ... ."

Clause Twelve: Interest

"... shall be computed ... ."
"... shall be fixed ... ."
"... shall be paid ... ."

"... shall be made ... ."
"... shall be paid ... ."
"... shall pay ... ."

Clause Thirteen: Trustee

(a) "... shall therefore ... ."
(3) "... shall not ... ."
"... shall be ... ."
(4) "... shall right away ... ."
" ... HE MAY ... ."
(d) "... shall be ... ."

Clause Fourteen: Creditor's Previous Authorization

"... shall immediately ... ."

Clause Fifteen: Acknowledgment of Debtor and the Guarantors

"... shall pay ... ."
"... shall be ... ."

Clause Seventeen: Legal Action

"... MAY CHOOSE ... ."
"... shall be ... ."

Clause Ninteen: Insurance

"... shall be endorsed ... ."
"... shall be ... ."

Clause Twenty: Ratification of Guarantees

"... shall be ... ."
"... shall pay ... ."

Clause Twenty-Two:

(b) "... shall be ... ."
(c) "... shall consider ... ."
(h) "... shall be ... ."
(i) "... MAY CHOOSE ... ."

(R. 55-82); (App. 170-214).

Another fundamental principal of contract interpretation is that ambiguous language should be interpreted against the party who drafted the contract or the ambiguous provision of the contract. Consolidated Development & Engineering Corp. v. Ortega Co., 117 Fla. 438, 158 So. 94 (Fla. 1934); Rose v. Lurton Co., 111 Fla. 424, 149 So. 557 (Fla. 1933). "A party is bound by the language it adopts in an agreement, no matter how disadvantageous that language." Security First Federal Savings & Loan v. Jarchin, 479 So.2d 767, 770 (Fla. 5th DCA 1985).

In Citro Florida, Inc. v. Citrovale, S.A., 760 F.2d 1231 (11th Cir. 1985), the 11th United States Circuit Court of Appeals construed the contract clause in that case to be ambiguous, thereby requiring it to be construed against the drafter, a construction which thereby made the clause permissive. The court discussed the holding of M/S Bremen v. Zapata Off-Shore Company, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed. 2d 513 (1972), which stated the general rule that a forum selection clause should be enforced unless it is clearly shown that enforcement would be unreasonable or unjust, or that the clause is invalid for such reasons as fraud or over-reaching. But, as the court pointed out, the M/S Bremen case dealt with a mandatory, exclusive clause providing that any dispute "must be treated before the London Court of

Justice." Id. 407 U.S. at 3, 92 S.Ct. at 1909. (Emphasis added). The clause in Citrovale read "place of jurisdiction is Sao Paulo/Brazil." Citrovale at 1232.

This Court in its ruling in Manrique adopted the view enunciated in M/S Bremen v. Zapata Off-Shore Co., supra, and Maritime Limited Partnership v. Greenman Advertising Associates, Inc., 455 So.2d 1121 (Fla. 4th DCA 1984). The Third District's final ruling in this case is not inconsistent with either of those cases. In both M/S Bremen and Maritime the language of the forum-selection clauses clearly provided for a mandatory and exclusive place for future litigation.

The drafting of Document 130 was a hotly contested issue and the contract went back and forth between the parties over a period of time before the final document was executed. Don Raul's position in the ruling family of Guatemala, coupled with his already large debt to the banks, certainly gave him equal bargaining power with the banks. The deposition of Raul Garcia Granados makes it clear that Clause 17 was inserted into Document 130 in the form drafted by him and his attorneys. (App. II, 22-24)

Appellants have never contested Appellees' translation of Clause 17. Given the fact that Appellant had the opportunity to draft the clause in a form that would read, "all litigation

shall be brought solely and exclusively in either the courts of Guatemala or the courts of Panama," their argument that the term "may choose" is exclusive and mandatory wording must fail.

Ambiguous language should particularly be construed against the party selecting such language where another construction would defeat the purpose of the contract or result in injustice. Fraudulent intent in the inducement is another basis for refusing to enforce choice of venue clauses. Appellees suggest that the facts in this case indicate that when Don Raul was contemplating the drafting of Document 130, that he was also contemplating to defraud the banks. It is suggested that Clause 17 was drafted for the purpose of attempting to restrict clearly intended future litigation to Guatemala, where he was in control, or to Panama, where he had substantial influence. Key events suggesting such a conclusion are as follows:

1. In 1979, Don Raul bought the condominium in Miami, which he placed in the name of Carmen Rodriguez Cerna. The evidence indicates the condominium is really his. The Third District has found in a related case that a sufficient showing had been made in the trial court of this fact. Cerna v. Swiss Bank Corporation (Overseas), S.A., 12 FLW 485 (Fla. 3d DCA Feb. 20, 1987)(rehearing requested by Swiss Bank on February 24, 1987).

2. In December of 1980, Document No. 130 was signed after extensive negotiation.

3. During 1981, the Garcia Granados family members, were initiating the transfer of assets held in their personal names to other persons or entities. Within Florida, the apartment on Brickell Avenue, the two homes in Bonaventure, and the horse farm in Ocala were transferred into the names of others.

4. In early 1981, Peat, Marwick & Mitchell had undertaken to audit the operations of the Appellants. In March of 1981, the auditing firm notified the bank that it was impossible for them to perform the requested audit because of Appellants' refusal to cooperate.

5. In early 1981, Don Raul and his son, Jorge Raul, initiated the litigation in Guatemala which resulted in the sale of the crop of that year to their company, ESTORIL. The banks thus received no income from that year's crop.

6. The "TAIPSA" document found by the Dade County Sheriff's office, which memorializes Don Raul's plan to avoid his family's personal guarantees to the banks, was drafted in 1982.

All of the above factors indicate the existence at a very early date of an intent on the part of Raul Garcia Granados

to defraud the banks. It is suggested that Clause 17 of the contract was negotiated by Raul Garcia Granados with that intent very much in his mind.

Under Florida Conflict of Laws jurisprudence, procedural issues such as venue are controlled by the law of the forum. As a general rule, the nature, validity and interpretation of substantive terms of contracts are to be governed by the law of the country where the contracts are made. Matters of procedure and remedy, however, are governed by the law of the forum. Appellees rely for this proposition on the authorities cited on pages 8-9 of their reply to the jurisdictional brief of Appellants, previously filed with this Court.

Appellants dispute this point and argue that "the better analysis" is that courts look to the law of the forum chosen in the contract to determine whether the language used is effective to invoke the venue selection clause. Appellants then cite, "See, Pfaudler Co. v. Sylvachem Corp., 400 So.2d 503 (Fla. 3d DCA 1981); Jemco, Inc. v. United Parcel Service, Inc., 400 So.2d 499 (Fla. 3d DCA 1981). Accord, C.A. May Marine Supply Company v. Brunswick, Corp., 557 F.2d 1163 (5th Cir. 1973)." [The C.A. May case is actually 1977.]

It is amazing Appellants cite this authority in support of their proposition. The authority in fact supports Appellees'

position. In Pfaudler and in Jemco the clauses being interpreted were indemnity clauses. The opin-ions specifically noted that indemnity is a substantive obligation of the contract. It is not procedural or remedial. That is exactly the point made in Appellees' memorandum in opposition.

C.A. May Marine Supply Company is a case involving a contract with a choice of law clause. The contract at issue in the present case does not have a choice of law clause unless the legal proceedings are entered in the City of Guatemala. Clause 17 provides that if the legal proceedings are entered in the City of Guatemala, the Codigo Procesal Civil y Mercantil of Guatemala should apply. Otherwise, the law of whatever forum the action was brought in should determine the choice of law according to the conflicts law of that jurisdiction.

Appellants have cited no case for their proposition that the procedural contract clause regarding venue is to be interpreted by any law other than the law of the forum where Plaintiff brings the case. Appellees refer the Court to McDonnell Douglas Corp., supra, and Citro Florida, Inc., supra, wherein courts in the United States applied their own contract interpretation rules to interpret choice of venue clauses.

B. FORUM NON CONVENIENS.

The Appellants argue that this matter should be dismissed on the basis of forum non conveniens. The points they make were considered during argument before the trial judge. (App. I, 63-68, 73, 77-79) Based upon the trial court's extensive knowledge of the record below, the trial court's awareness of its ability to handle the case, and the circumstances surrounding this case, the trial judge denied Defendants' motion for dismissal on forum non conveniens grounds.

This determination by the trial judge is not to be disturbed absent a clear abuse of discretion. In Piper Aircraft Company v. Reyno, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed. 419 (1981), rehearing denied, 455 U.S. 928, 102 S.Ct. 1296, 71 L.Ed. 474 (1982), the Supreme Court of the United States stated that,

> [t]he forum non conveniens determination is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference. Here, the court of appeals expressly acknowledged that the standard of review was one of abuse of discretion. In examining the District Court's analysis of the public and private interest, however, the Court of Appeals seems to have lost sight of this rule, and substituted its

> own judgment for that of the District Court.

Id. at 454 U.S. 257, 102 S.Ct. 266, 70 L.Ed. 436 (citations omitted).

The potential use of forum non conveniens for delay, as in the instant case (See, e.g., Supp. R. Vol. I, 43-53), was noted by the First Circuit.

> The decision on choice of venue is ordinarily a matter within the district court's discretion, not to be overturned except on a very strong showing. Where the lower court's discretion is arrived at by balancing numerous factors such as the convenience of parties and witnesses, availability of documents, possibilities of consolidation or coordination, and so forth, there will often be no single right answer. Appellate review, therefore, is properly limited in the ordinary case because it serves little purpose, other than delay, to engage in a de novo consideration of such an inherently indeterminate decision.

Condex Corp. v. Milgo Electronic Corp., 553 F.2d 735, 737 (1st Cir. 1977), cert. denied, 434 U.S. 860, 98 S.Ct. 185, 54 L.Ed. 2d 133 (1977).

Florida law on the standard of review on appeal is in accord. See the analysis in Hu v. Crockett, 426 So.2d 1275, 1281

(Fla. 1st DCA 1983). Hu was cited by the Third District in its Order in this case. (App. 1, 2)

In their analysis of the relevant issues in forum non conveniens determinations, the Appellants failed to analyze the causes of action or factual bases of the cases upon which they rely. Based on Armadora Naval Dominicana, S.A. v. Garcia, 478 So.2d 873 (Fla. 3d DCA 1985), Appellants take nine abstract principles and apply them to the present case without looking at the underlying factual basis of the present action, and without comparing or contrasting the present facts with the facts in the cases they cite. Appellants present a chart stating certain conclusory criteria and comparing those criteria to the Armadora criteria. They then make conclusory statements about the criteria. Analysis of the facts in this case results in a very different determination than that urged by Appellants.

In the Armadora case, there was none of the extensive activity in Florida by the defendant which is so prevalent in this case. Armadora did not concern a defendant actively involved in Florida in fraudulent activities in an attempt to defeat the cause of action in the underlying litigation. Armadora was an accident case aboard a ship. Defendant's reliance on the Armadora case might be well founded if Armadora had not been a plaintiff's personal injury case, but rather a

case where the ship Armadora had been attached in Miami harbor because it was the personal property of a guarantor on a loan, and the guarantor on the loan had been personally served with process in Miami, Florida. If the ship had been purposefully sent to Miami because of the defendant's activities in Florida, activities designed for the purpose of secreting the asset from creditors, the analogy would have been complete. Unfortunately for Defendant, those were not the facts of Armadora.

The facts in this case establish that Florida is the preferred forum. The present case involves intentional actions by the Defendants to move assets into Florida and to hide them from the Plaintiffs. It involves an on-going, large-scale fraudulent activity over a period of years. The contacts with Florida on the part of the Defendants are substantial. As detailed in the affidavits of Mr. Riley, these activities include owning and living in residences in Florida, the operation of businesses in Florida, the use of Florida banks and communications systems in furtherance of their activities, and their appearance in Florida courts and the Federal courts in Florida.

It should be noted that there was a single cause of action in the Armadora case. A simple tort. In this case there is not only the lawsuit on the underlying debt, there are the counts for fraudulent transfer of assets and for attachment and

garnishment. Those counts are Florida counts and will have to be determined by Florida law.

The Second Amended Complaint, which was filed Friday, January 3, 1986, adds allegations of civil conspiracy and violation of Florida's RICO Act. (Supp.R. Vol. I, 37-41); (App. 5-41). All of these counts involve activities and assets in Florida. The witnesses are in Florida. The law governing these counts is Florida law.

The Defendants in this case have willfully availed themselves of resources in this jurisdiction for the purpose of committing the wrongful acts alleged in the Amended Complaint. They have placed themselves in this jurisdiction by their wrongful acts in furtherance of the scheme complained of in the Second Amended Complaint. Their position is totally unlike that of the Defendants in Armadora.

This case is also substantially distinguishable from Armadora in the condition of the plaintiff. Plaintiff in Armadora was a resident and had substantial operations in the Dominican Republic. Swiss Bank Corporation (Overseas), S.A. does not have any offices or agents in Guatemala.

This case is also distinguishable in that most of the parties and most of the witnesses are not in Guatemala as Defend-

ant alleges. Defendant himself has fled the country and now divides his time between Venezuela and Florida. Defendant's wife resides in Florida and Mexico. Defendant Jorge Raul Garcia Granados resides with his wife in Florida. (Supp.R. Vol. I, 2) Defendant's daughter and her husband, Mr. and Mrs. Vestrini, reside in Caracas, Venezuela. (Supp.R. Vol. I, 2)

The witnesses necessary for this lawsuit are primarily witnesses to the tort actions alleged by Plaintiff. The counts of the Complaint which refer to the notes are primarily counts subject to the pending summary judgment motions, once this Court has settled the jurisdictional issue. The records are here in the United States. The records are in the custody of banks and individuals in this country. The testimony will be in English as regards the tort actions. Spanish testimony is little problem for Courts in Miami, where Spanish is a daily event in our courtrooms. (R. 155); (App. I, 61) Miami is less troubled by Spanish language testimony and translation than probably any court in the country.

Appellants argue the remedies in this case are easier to enforce in Guatemala. Appellees strongly disagree. This judgment will be enforced not only in Guatemala, but also in Venezuela, France, Switzerland and within the United States. Plaintiffs prefer to attempt to domesticate their judgment in the

various countries when that judgment is from a court of the United States.

Appellants allege there is more local interest in Guatemala than in the United States. Appellees disagree. Florida has a substantial interest in preventing the type of outrageous tortious activity engaged in by Defendants within its borders. Florida has an interest in preventing itself from becoming a gathering spot for international outlaws. Florida's very substantial interest in developing an international banking community to improve and foster its economy is an interest which is served by this litigation. The banks should know that they can look to the courts of Florida to provide justice and to prevent fraud.

Defendants completely ignore a separate basis for litigating in Florida predicated on the attachments and garnishments in this case. Count I of the Complaint, and the Amended Complaints, seeks attachment and garnishment on behalf of one of the Plaintiffs, Swiss Bank Corporation (Overseas), S.A.. Orders for attachment and garnishment were issued and executed. Property was seized in Dade, Broward and Marion Counties belonging to several of the Defendants. That property is presently in the custody of the circuit court.

Attachment is considered a "quasi in rem" remedy. A non-resident creditor may attach a non-resident debtor's property located in Florida and have the creditor's cause of action adjudicated by the Florida courts, even though the cause of action accrued outside of Florida. See, e.g. Robinson v. Loyola Foundation, Inc., 326 So.2d 154 (Fla. 1st DCA 1970).

Garnishment is also a "quasi in rem" action. It may be pursued even though a creditor's cause of action arose outside the State of Florida. Payton v. Swanson, 175 So.2d 48 (Fla. 3d DCA 1965). See, also, Harris & Company Advertising, Inc. v. Republic of Cuba, 127 So.2d 687 (Fla. 3d DCA 1961); Boeykens v. Slocum, 356 So.2d 1341 (Fla. 3d DCA 1978).

A statement of the factual background in a few of the major cases where forum non conveniens principles have resulted in the dismissal of a cause of action places those cases in sharp contrast to the factual background in the present case. Piper Aircraft Company v. Reyno, supra, was a wrongful death action brought in a California court. The petitioners in the Supreme Court were the company which had manufactured the plane in Pennsylvania, and the company that manufactured the plane's propellers in Ohio. The airplane crash had occurred in Scotland. The plane was registered in Great Britain. It was owned and operated by the United Kingdom Companies. All of the victims of

the crash were Scottish subjects and citizens. British authorities investigated the accident. The action was for negligence or strict liability. Apparently strict liability is not recognized in Scottish law. There was a substantial issue of pilot error in the case. Clearly the heart of the case was the complex factual pattern which could only be developed by witnesses from Scotland.

Gulf Oil Corporation v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), was an action brought in New York by a citizen of Virginia against a Pennsylvania corporation doing business in both Virginia and New York. Plaintiff had alleged that the defendant had caused an explosion and fire at the public warehouses plaintiff operated in Lynchburg, Virginia. The cause of the explosion and fire was allegedly the careless handling of a delivery of gasoline to the warehouse tanks and pumps. The public warehouse allegedly served more than 350 persons living in Virginia, and it contained their goods. An independent contractor in Virginia was a potential party to the suit. Many witnesses testifying about complex factual circumstances would be necessary to prove the case. All of the witnesses, with the possible exception of experts, were in Virginia.

Alcoa S. S. Co., Inc. v. M/V Nordic Regent, 654 F.2d 147 (2d Cir. 1980), was an admiralty action for damage to a pier in Trinidad. The accident had occurred in Trinidad. The repair work

was scheduled to occur in Trinidad. Trinidad tides and currents were at issue, and the witnesses as to the underlying facts of the accident which caused the damage to the pier were in Trinidad.

Armadora Naval Dominicana, S.A. v. Garcia, supra, was an action for injuries from accidents which occurred in Houston, Texas and in Mexico. Medical treatment was received by the Plaintiff in Mexico and in Santo Domingo, the Dominican Republic. The witnesses to the accidents were the crews aboard the ship at the time of the accidents. They were residents and citizens of the Dominican Republic. The plaintiff was a citizen and resident of the Dominican Republic. The vessel was registered in the Dominican Republic. It sailed under the Dominican flag. Its home port was in the Dominican Republic. The defendant corporation was a Dominican Republic corporation and its base of operations and headquarters was in the Dominican Republic. All of its officers and managers resided in the Dominican Republic. Most importantly, the issues to be tried were factual issues regarding how the accident occurred and the degree of injury to the plaintiff.

An analysis of the underlying facts in the above-described cases shows that each of the cases involved a complex factual problem requiring the testimony of witnesses as to the events involving the four accidents and as to the damages suf-

fered as a result of the accidents. This is in substantial contrast to the present case where the issue to be resolved in the collection on notes is an issue of law. The issue in collection of the debt is an issue which will be determined in summary judgment proceedings. After the summary judgment proceedings on the notes, the issues left for trial are issues which relate to Florida witnesses, Florida documents and Florida law. Defendants find themselves in litigation in the Florida Courts not because of any whim on the part of Plaintiffs, but because Defendants have placed themselves within this jurisdiction by their willful acts in furtherance of their scheme to defraud the Plaintiffs.

In addition to the above-stated reasons why the facts of this case and the policies underlying forum non conveniens support the maintenance of this litigation in Florida, the doctrine of forum non conveniens is totally inapplicable as a matter of Florida law because several of the Defendants to this litigation are residents of Florida. (Supp.R. Vol. I, 66, 67) In addition, the Plaintiff, Banque Nationale de Paris, does business in Miami, Florida. (Supp.R. Vol. I, 1) Houston v. Caldwell, 359 So.2d 858 (Fla. 1978); Sempe v. Coordinated Caribbean Transport, Inc., 363 So.2d 194 (Fla. 3d DCA 1978).

Defendant, in an attempt to claim that co-defendant Jorge Raul Garcia Granados is not a resident of Florida, relies

on the affidavit filed by Jorge Raul Garcia Granados in response to the affidavit of investigator William Riley. Jorge Raul Garcia Granados' affidavit is a fascinating study of the principle of admission by silence. He does not contradict Mr. Riley's affidavit. He does not deny any of the matters shown through Mr. Riley's earlier affidavits regarding his businesses and other activities. He simply states that he has been placed into a certain category by the United States Immigration Service based upon his self serving representations to them. (R. 193)

Whatever fraud may or may not have been committed against the United States Immigration Service (See App. II, 25-28), the facts Mr. Riley has produced from his investigation, and the statements made to Mr. Riley by young Mr. Garcia Granados, clearly make Mr. Garcia Granados a resident of Florida for purposes of determining jurisdiction to sue under Florida law. Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364 (Fla. 1955).

For all the aforementioned reasons, Appellants' forum non conveniens argument should be rejected.

CONCLUSION

The trial court's determination that jurisdiction exists and is proper in this forum should be respected. The court below

has been actively involved in reviewing the paperwork and the testimony presented in this case since September 5, 1985. That record now encompasses more than ten volumes. The Defendants' appeal is frivolous and should be denied. Plaintiffs should be awarded costs and attorneys' fees for the expense of appeal.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Answer Brief has this day been mailed to:

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