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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company, Plaintiff, v. CITY OF SAN DIEGO, a municipal corporation, Defendant.	Case No. BC 306758 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CITY OF SAN DIEGO'S MOTION FOR TRANSFER OF VENUE TO SAN DIEGO COUNTY AND REQUEST FOR ATTORNEYS' FEES** Date: January 16, 2004 (Reserved) Time: 9:00 a.m. Dept: 51 Judge: Hon. Irving S. Feffer Complaint Filed: November 25, 2003 Trial Date: None Set

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I.

INTRODUCTION

In this action, the *San Diego* Chargers football team is suing the City of *San Diego* over a contract that was entered into in *San Diego* and to be wholly performed in *San Diego*. Pursuant to California's long-established statutory venue rules, San Diego County is the only proper venue for this action. Because this action was improperly filed in this court, this action must be transferred to the Superior Court for the County of San Diego.

II.

BACKGROUND

As the Complaint makes clear, this case arises out of a contract between the City of San Diego and the Chargers Football Company, LLC ("the Chargers"), owner of the San Diego Chargers football team. The City and the Chargers[1] are parties to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, as supplemented ("the Use Agreement").[2] The Use Agreement provides that the Chargers must play their home games at San Diego's Qualcomm Stadium (formerly Jack Murphy Stadium "the Stadium") until the year 2020 and pay roughly 10% of their gross stadium income to the City. In return for this long-term commitment by the Chargers, the City spent more than $78 million on stadium improvements and a new Chargers practice facility.

The Use Agreement includes a "Renegotiation Rights" provision, Section 31, which provides a right of renegotiation under certain limited circumstances known as a "Triggering Event." On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City, claiming that a Triggering Event had occurred pursuant to Section 31. If the Chargers' claim of a Triggering Event is correct, then the City and the Chargers are obligated to negotiate in good faith, pursuant to Section 31, to "offset the impact on the Chargers" of the purported Triggering Event. If good-faith negotiations fail to achieve an amendment that offsets the impact, then the Chargers may take steps to terminate the Use Agreement and relocate to a new stadium in another city.

[1] The Chargers are successors to Chargers Football Company, a California limited partnership.

[2] A copy of the Use Agreement is attached to and filed with the Chargers' Complaint as Exhibit 1.

However, if the Chargers' claim of a Triggering Event is wrong, then it is *not* necessary to renegotiate the Use Agreement and the Chargers may *not* take any steps to terminate the Use Agreement or relocate.

On November 25, 2003, the Chargers filed this action in Los Angeles County, seeking a declaration that a Triggering Event has occurred and that the Chargers are entitled to exercise rights under Section 31. The City will address the validity of the Renegotiation Notice at the proper time and in the proper venue. However, this is not the time to address the merits of Chargers' contentions, and this Court is not a proper venue under any legal theory. Because Los Angeles County is the wrong venue for this action, this Court must transfer this action to San Diego County and should order the Chargers' lawyers to reimburse the City for the expense of this motion.

III.

SUMMARY OF ARGUMENT

A. The Venue Statutes Do Not Authorize Venue in Los Angeles County

California's general venue rule is set forth in Code of Civil Procedure section 395,[3] which creates a preference for trial in the county of a defendant's residence. Obviously, the City of San Diego is not a resident of Los Angeles County, and San Diego County is the only proper venue under the general rule.

Venue is only proper in a county other than the defendant's residence if there is express statutory authority allowing venue elsewhere. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 483.) In this case, the only statutory authority capable of providing venue in some county other than San Diego is the provision concerning actions upon contracts to be performed in particular locations. (C.C.P. § 395(a).) That provision, contained within Section 395(a), provides that venue in such an action may be proper in:

(1) the county in which the obligation is to be performed;

(2) the county in which the contract was entered into; or

[3] Unless otherwise noted, all statutory references herein shall be to the Code of Civil Procedure ("C.C.P.").

(3) the county where the defendant or any defendant resides at the commencement of the action. (C.C.P. § 395(a).)

Application of these tests to the undisputed facts relevant to this motion reveal that San Diego County remains the only proper venue: the City "resides" in San Diego County; the Use Agreement was made in San Diego County; and the Use Agreement was to be performed wholly in San Diego. As such, the contract provision of Section 395(a) will not support venue in Los Angeles County.[4]

B. <u>The Chargers' Reliance on Section 32(a) of the Use Agreement is in Error</u>

The Chargers' only stated basis for filing this action in Los Angeles County is Section 32(a) of the Use Agreement. (Complaint, ¶ 7.) That provision states, in relevant part, as follows:

> The City and the Chargers covenant and agree to submit to the **personal jurisdiction** of any state or federal court in the State of California for any dispute, claim, or matter arising out of or related to this Agreement. (Use Agreement, § 32(a), emphasis added.)

The Chargers' reliance on Section 32(a) is improper for two reasons. First, that provision has nothing to do with venue; its unambiguous language relates only to personal jurisdiction which is a completely separate issue. Second, California law does not allow parties to contract around the statutory venue rules. (See *General Acceptance Corp. of California v. Robinson* (1929) 207 Cal. 285, 289.)

C. <u>Transfer of this Action is Mandatory and Sanctions are Warranted</u>

Where an action is commenced in an improper venue, transfer of the action to the proper venue is mandatory upon motion of the defendant. (C.C.P. § 396b(a).) Because San Diego County is the only proper venue for this action, and because venue in Los Angeles County is not proper under any theory, the Court *must* order this action transferred to San Diego County. Upon

[4] Tellingly, the Chargers' Complaint lacks citation to any authority for its choice of venue, suggesting the Chargers' recognition of their inappropriate venue selection.

granting this motion, the Court is authorized to award the City its expenses and attorneys' fees, which must be paid by the Chargers' attorneys. (C.C.P. § 396b(b).)

IV.

DISCUSSION

A. Los Angeles County is Not Proper Venue Under Any Applicable Venue Statute

1. Under the General Rule, Venue is Proper Only in San Diego County

California's general venue rule is set forth in Code of Civil Procedure section 395 ("Section 395"), which creates a right to trial in the county of a defendant's residence. The general rule is stated as follows:

> Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, **the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action.** (C.C.P. § 395(a), emphasis added.)

Within the meaning of Section 395, a municipal corporation "must be held to have its legal residence in the county wherein it has its principal place of business." (*Skidmore v. County of Solano* (1954) 128 Cal.App.2d 391, 393, fn. 2, quoting *Gallup v. Sacramento & San Joaquin Drainage Dist.* (1915) 171 Cal. 71, 75.)

The Chargers admit in their Complaint that the City is a "a municipal corporation with its principal place of business in San Diego County." (Complaint, ¶ 6.) Accordingly, the City "resides" in San Diego County which, under the general rule of Section 395, is the *only* proper venue for this action.

2. Venue Outside the Defendant's Home County Requires Express Statutory Authorization

It is well established under California law that "a defendant is entitled to have an action tried in the county of his or her residence unless the action falls within some exception to the general venue rule." (*Brown, supra*, 37 Cal.3d at 483.) It is similarly well established that venue

rules are exclusively creations of statute. (*Ibid.*; *Buck v. City of Eureka* (1863) 97 Cal. 135, 139 ["The statute alone must be looked to for a definition of the right of a defendant as to the place of trial of this action...."]; *Nguyen v. Superior Court* (1996) 49 Cal.App.4th 1781, 1786 ["The Legislature determines where venue lies...."].) As stated by the Supreme Court:

> The right of a defendant to have an action brought against him tried in the county of his residence is an ancient and valuable right, safeguarded by statute and supported by a long line of decisions. **The right of a plaintiff to have an action tried in a county other than that of the defendant's residence is exceptional.** If the plaintiff would claim such right, he must bring himself within the exception. (*Kaluzok v. Brisson* (1946) 27 Cal.2d 760, 763, emphasis added.)

Thus, a plaintiff's right, if any, to trial in some county other than that of a defendant's residence is an exception to the general rule and requires "express statutory justification." (*Forster v. Superior Court* (1992) 11 Cal.App.4th 782, 789, citing *Brown*, *supra*, 37 Cal.3d at 483; *Mosby v. Superior Court* (1974) 43 Cal.App.3d 219, 224.) The courts may not permit venue except in accordance with the express venue statutes. (*Ibid.* ["We cannot – and should not – create a judicial exception to the venue statutes."].)

In this case, the only statutory authority capable of providing venue in some county other than San Diego is the provision concerning actions upon contracts to be performed in particular locations. (C.C.P. § 395(a).)[5] As shown below, however, that provision does not authorize venue in Los Angeles County under the facts of this case.

[5] Section 395.5 dictates the proper venue for actions against corporations, however, that statute is limited to private corporations and does not apply to municipal corporations such as the City. (See *Buck v. City of Eureka* (1893) 97 Cal. 135, 138-139; *Gallup v. Sacramento & San Joaquin Drainage Dist.* (1915) 171 Cal. 71, 75.) Even if Section 395.5 did apply here, application of its venue rules (providing that in a contract dispute, a corporation may only be sued in (1) its place of residence, (2) where the contract is made or to be performed, (3)where the obligation or liability arose, or (4) where the breach occurs – all of which are only in San Diego County) demonstrates that the only proper venue for this action is San Diego County.

3. Under the Venue Rule for Obligations to be Performed in a Particular County, Venue is Only Proper in San Diego County

Venue for an action seeking only declaratory relief with respect to the obligations of a contract is treated like any other contract action. (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 930; *Black Diamond Asphalt, Inc. v. Superior Court* (2003) 109 Cal.App.4th 166, 170.) The Chargers' Complaint alleges a controversy between the Chargers and the City relating to "their respective rights and duties under the Use Agreement." (Complaint, ¶ 23.) By the explicit terms of the Use Agreement, it is a contract to be performed in San Diego County, as it governs the parties' relationship with regard to the Stadium, which is located within the City of San Diego in San Diego County. (Use Agreement at 1.) Therefore, venue may also be determined pursuant to the rule for actions upon contracts to be performed in a particular county. (C.C.P. § 395(a).)

Under Section 395(a), when a defendant has contracted to perform an obligation in a particular county, trial of an action founded on the obligation is proper in:

(1) the county in which the obligation is to be performed;

(2) the county in which the contract was entered into; or

(3) the county where the defendant or any defendant resides at the commencement of the action. (C.C.P. § 395(a).)

Unless there is a special written contract to the contrary, the county in which an obligation is incurred is deemed to be the county in which it is to be performed. (C.C.P. § 395(a).) Application of these statutory tests to the undisputed facts relevant to this motion demonstrates that San Diego is, again, the only proper venue for this action.

First, San Diego County is the only "county in which the obligation is to be performed."[6] By the express terms of the Use Agreement, all of the parties' obligations are to be performed in

[6] Because "the county in which an obligation is incurred is deemed to be the county in which it is to be performed," (C.C.P. § 395(a).), this aspect of the analysis is effectively subsumed in the question of where the Use Agreement was entered into. Nonetheless, this analysis is provided to demonstrate that, no matter what the test, the only permissible venue for this action is San Diego County.

San Diego County. (See Use Agreement §§ 3, 9, 11, 21, and generally.) Under the Use Agreement, the parties' obligations to perform in San Diego County include the following:

- The City was required to spend $60 million – later increased to $78 million – on improvements *to the Stadium* and construction of a new Chargers practice facility *in San Diego*. (Use Agreement, § 3.)
- The Chargers are obligated to play all of their home games *at the Stadium in San Diego*. (Use Agreement, § 7.)
- An "Attendance Guaranty" requires the City ensure minimum attendance levels for Chargers games played *at the Stadium in San Diego*. (Use Agreement, § 9.)
- The City is obligated to satisfy certain maintenance obligations *as to the Stadium in San Diego*. (Use Agreement, § 11.)
- The Chargers are obligated to maintain certain books and records related to ticket revenues, which "shall be kept or made available *in the City of San Diego*." (Use Agreement, § 21.)
- With regard to "[a]ny notice, demand, request, consent, approval and any other communications" related to the Use Agreement, each party is required to direct such notices, etc., to the other party *in San Diego*. (Use Agreement, § 30.)

As shown by these examples, all of the obligations to be performed under the Agreement are to be performed in San Diego County. Importantly, the Use Agreement does not call for either party to perform any obligations in Los Angeles County or anywhere other than San Diego County.

Second, San Diego County is the "county in which the contract was entered into." By its express terms, the Use Agreement was "entered into as of May 30, 1995, at San Diego, California...." (Use Agreement, p. 1.) Each of the four supplements to the Use Agreement contains similar language on its first page, confirming that each was "made and entered into . . . at San Diego, California." (Exhibits 2, 3, 5 and 6 to the Complaint.) Thus, there it is established that the Use Agreement was entered into in San Diego County.

Third, as noted above, the "the county where the defendant or any defendant resides at the commencement of the action" is also San Diego County. As discussed above, and as the Chargers admit in their Complaint, the City is a "a municipal corporation with its principal place of business in San Diego County." (Complaint, ¶ 6.) As such, the City resides in San Diego County. (*Skidmore v. County of Solano*, *supra*, 128 Cal.App.2d at 393, fn. 2; *Gallup v. Sacramento etc.*, *supra*, 171 Cal. at 75.)

Thus, the only proper venue under *any* of the criteria set forth in Section 395(a) is San Diego County, and that provision does not support venue in Los Angeles County.

B. <u>The Chargers' Reliance on Section 32(a) for Venue is Improper</u>

In a desperate attempt to escape the unambiguous statutory framework which limits proper venue to San Diego County, the Chargers allege that Section 32(a) of the Use Agreement somehow provides a basis for venue in Los Angeles County. The Chargers' position in that regard is wholly without merit. Section 32(a) does not relate to, or even mention, venue. Moreover, California law does not allow parties to contract around the statutory venue rules.

1. <u>Section 32(a) is Completely Unrelated to Venue</u>

The Charger's Complaint alleges that "[v]enue is proper in this Court pursuant to Section 32(a) of the Use Agreement." (Complaint, ¶ 7.) The falsity of that statement becomes obvious upon reviewing the plain language of Section 32(a), which states, in its entirety, as follows:

> <u>California Law</u>. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of California. The City and the Chargers covenant and agree to submit to the ***personal jurisdiction*** of any state or federal court in the State of California for any dispute, claim, or matter arising out of or related to this Agreement. (Use Agreement, § 32(a), emphasis added.)

Section 32(a) has nothing to do with venue. It does not even *mention* venue. Rather, it states that it provides for ***personal jurisdiction*** in the State of California. Jurisdiction and venue

are, of course, very different concepts. Indeed, the complaint itself explicitly recognizes the difference between the two concepts. (Complaint, ¶¶ 6, 7.)

"Jurisdiction relates to the *power* of the court to act, and a court with that power may render a valid judgment though it is not the court of the proper county for trial." (Witkin, 3 *California Procedure* (4th ed., 2003 Supp.) Actions, § 701 at 892-893 [italics in original].)

Venue rules, on the other hand, serve to narrow geographically the place for trial. "Venue" designates the particular county or city in which a court with jurisdiction may hear and decide the case. (Black's Law Dictionary (6th ed. 1990) at 1079, col. 2, *see also* Witkin, 3 *California Procedure* (4th ed., 2003 Supp.) Actions, § 701 at 892-893.) Venue rules are designed to give the defendant some control in the choice of forum. (*Smith v. Smith* (1891) 88 Cal. 572, 576.) Venue does not refer to jurisdiction at all. (*Arganbright v. Good* (1941) 46 Cal.App.2d Supp. 877, 878-879.)

As noted above, "the right of a defendant to have an action brought against him tried in the county of his residence is an ancient and valuable right, safeguarded by statute and supported by a long line of decisions." (*Kaluzok v. Brisson*, *supra*, 27 Cal.2d at 763; see *Brown*, *supra*, 37 Cal.3d 477.) The Chargers' Complaint does not even attempt to explain how an unambiguous *jurisdiction* clause could possibly create proper *venue* in Los Angeles County or otherwise abridge such an "ancient and valuable right," but whatever they may argue, they cannot and will not say that Section 32(a) contains any express reference to venue or to Los Angeles County.

Simply stated, Section 32(a) has nothing to do with venue and does not provide a basis for venue in Los Angeles County, or anywhere other than San Diego County.

2. California Law Does Not Allow Parties to Contract Around Applicable Venue Rules

The impropriety of the Chargers' effort to use Section 32(a) as a basis for filing this action in Los Angeles County is further demonstrated by the absence of California authority allowing parties to circumvent the statutory venue rules by way of contract.

As noted above, the applicable venue statutes dictate that the only proper venue for this action is San Diego County. To establish proper venue elsewhere, the Chargers must be able to

demonstrate some "express statutory justification." (*Forster*, *supra*, 11 Cal.App.4th at 789; *Mosby*, *supra*, 43 Cal.App.3d at 223-224.) "If the plaintiff would claim such right, he must bring himself within the exception." (*Kaluzok v. Brisson*, *supra*, 27 Cal.2d at 763.) Thus, for the Chargers to invoke Section 32(a) as a basis to create venue in Los Angeles County, there would have to be some express statutory authority allowing private parties to contract around applicable venue laws. (See *ibid.*) There is none.

California's venue statutes *do not* authorize parties to contract around the state's venue rules. (*See* C.C.P. §§ 392-403.) Further, there are *no* reported California cases holding that a private contractual provision can expand venue beyond the statutory framework set forth in the Code of Civil Procedure. To the contrary, the California Supreme Court has *rejected* a contractual provision that attempted to confer venue in a county that was not authorized by statute. (*General Acceptance Corp. supra* 207 at 289.)

In this respect, it is important to distinguish cases interpreting "forum selection" provisions, as the Supreme Court did in *Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 495-496 where it approved of a "forum selection" provision. Indeed, in the leading case on modern interpretation of "forum selection" provisions, *M/S Bremen v. Zapata Off-Shore Co.* (1972) 407 U.S. 1, the United States Supreme Court expressly held that "[a] contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision." (*Id.* at 15.) Accordingly, although declining to follow *General Acceptance*, the *Smith, Valentino* court expressly distinguished the venue selection clause in *General Acceptance* from the forum selection clause at issue before it:

> In the *General Acceptance* case . . . the parties had attempted to specify the county in which contract disputes would be tried. We held the contractual provision void since it would contravene general statutory provisions which designate the proper counties in which actions may be tried. **Forum selection clauses, in contrast, violate**

no such carefully conceived statutory patterns." (*Smith, Valentino*, *supra*, 17 Cal.3d at 495, emphasis added.)[7]

Therefore, the Chargers' attempt to use Section 32(a) to lay venue in Los Angeles County is ineffective for the additional reason that doing so would clearly contravene the applicable venue statutes and violate the public policy favoring the right of trial at the defendant's residence.

C. Transfer of Venue to San Diego County is Mandatory

If, as here, an action is commenced in an improper court, the defendant may move for transfer to the appropriate court. Section 396b(a) provides that transfer is *mandatory* upon a finding that venue is improper:

> Upon the hearing of the motion [for an order transferring the action or proceeding to the proper court] the court **shall**, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court. (Emphasis added.)

As discussed herein, San Diego County is the only proper venue for this action, and Los Angeles County is *improper under any theory*. Therefore, the Court must order a transfer of the action to San Diego County. (C.C.P. § 396b.)[8]

D. The Court Should Award the City its Reasonable Expenses and Attorneys' Fees

Pursuant to Section 396b(b), this Court is authorized to order payment of reasonable expenses and attorneys' fees incurred in making a motion to transfer. In determining whether such fees and costs are to be awarded:

> . . . the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith

[7] See also *Perkins v. CCH Computax* (N.C. 1992) 423 S.E.2d 780, 782 [distinguishing *intra*state *venue* clauses, which contravene state venue statutes, from *inter*state *forum selection* clauses which are not governed by any state statute].

[8] Once the defendant has filed its motion for a change of venue, the trial court's power to act in other regards in the case is suspended until the motion is heard and decided. (*Mission Imports*, *supra*, 31 Cal.3d 921.)

given the facts and law the party making the motion or selecting the venue knew or should have known. (C.C.P. § 396b(b).)

In this case, consideration of both of these criteria favor such an award to the City.

1. The City Made a Reasonable Offer to Stipulate to Change Venue

In a December 2, 2003 letter from Steven M. Strauss, Esq., counsel for the City, sent a letter to the Chargers' counsel of record, Harriet S. Posner, Esq., requesting that the Chargers stipulate to transfer venue to San Diego County. (Strauss Decl., ¶ 2, Exhibit 1.) Mr. Strauss' letter further informed the Chargers' counsel that if the Chargers failed to stipulate to transfer venue to San Diego, the City would bring a motion to transfer venue to San Diego and for reasonable expenses and attorneys' fees pursuant to Section 396b. (Strauss Decl., ¶ 2, Exhibit 1.) The Chargers' counsel refused to stipulate. (Strauss Decl., ¶ 3, Exhibit 2.)

2. The Chargers' Venue Selection was not in Good Faith

The Chargers' venue selection was nothing more than a blatant attempt at venue shopping. The Chargers' lack of good faith under Section 396b(b) may be inferred from the absence of legal or factual support for their decision to file this action in Los Angeles County. The Chargers' Complaint fails to specify any statutory basis for their venue selection. (See Complaint, ¶ 7.) Similarly, in rejecting the City's request for a stipulation to change venue, the Chargers' counsel offered no reason and provided no additional facts or authorities to support the Chargers' choice of venue, simply stating "with respect to your letter of yesterday, needless to say we disagree with your claims about the propriety of Los Angeles as a forum for this case." (Strauss Decl., ¶ 3; Exhibit 2.)

In addition, the letter from the Chargers' counsel confirms that the Chargers' venue selection was an effort to avoid the proper venue, San Diego County. In rejecting the City's proposal to stipulate to transfer this action to the proper county, the Ms. Posner stated as follows:

> While we are prepared to consider alternatives to Los Angeles, we are not willing, as you request, to stipulate to transfer the Action to San Diego. (Strauss Decl., ¶ 3; Exhibit 2.)

Ms. Posner also expressed a clear desire to obtain venue anywhere but in the proper county, and confirmed her disregard for the applicable venue statutes, stating that "the Chargers are prepared to stipulate to transfer the Action to the Superior Court for either Orange County or San Francisco." (Strauss Decl., ¶ 3; Exhibit 2.) Of course, neither Orange County nor San Francisco is a proper venue for this action.

The Chargers' venue shopping is further demonstrated by public statements revealing the improper underlying reasons for the decision to file this action in Los Angeles County. For example, in a statement issued on the day this action was filed, the Chargers expressly stated that the decision to file the Complaint in Los Angeles was motivated, in part, by the fact that Los Angeles "is the location of the Chargers' long time counsel." (Strauss Decl., ¶ 4; Exhibit 3.) Surely the Chargers and their attorneys know that convenience of counsel is *not* a permissible consideration with regard to venue. (*Willingham v. Pecora* (1941) 44 Cal.App.2d 289, 293).

As a further demonstration of their venue shopping, the Chargers public statements suggest that they chose not to file in the proper venue based on their perception that San Diego County is not a "neutral" venue. (See Strauss Decl., ¶ 4; Exhibit 3 [referring to "a 'neutral' forum (other than San Diego)"].) That is also an improper basis for venue selection. A party seeking a neutral county in an action brought by a city[9] must proceed under Section 394(a), which does not apply here, since the Chargers – owners of the *San Diego* Chargers football team – have their principal place of business in San Diego County. (*Westinghouse Elec. Corp. v. Superior Court* (1976) 17 Cal.3d 259, 266.) Further, Section 394(a) is a removal statute which is only applicable to actions commenced in a proper court. (*Ventura Unified School Dist. v. Superior Court* (2001) 92 Cal.App.4th 811, 814.) The Chargers' unfounded claim of bias is not a good faith basis for filing this action in the wrong venue.

Because the City made a reasonable effort to stipulate to transfer before filing this motion, and because the filing of this action in Los Angeles County was not in good faith, the City should be awarded its reasonable expenses and attorneys' fees incurred in making this motion, in the amount set forth in the accompanying declaration of Steven M. Strauss.

[9] Section 394 does not apply for the additional reason that this action was not brought by the City, but by the Chargers.

V.

CONCLUSION

For all the foregoing reasons, the Court should grant the City's motion to transfer venue to San Diego County, order this action transferred to the Central Division of the Superior Court for the County of San Diego and award the City its reasonable expenses and attorneys' fees incurred in connection with this motion.

DATED: December 5, 2003

PROCOPIO CORY HARGREAVES
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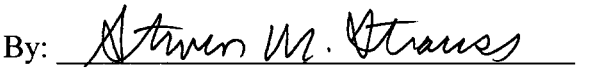
By: 

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