

TABLE OF CONTENTS

Table of Contents..... ii

Table of Citations..... iii

Statement of the Case and Facts..... 1

Summary of the Argument..... 11

Argument..... 13

 I. Enforcing the Forum Selection Clause Is Unjust Or Unreasonable. 13

 II. The Students' Claims Against Key Bank Are Inextricably
 Intertwined With Those Against The Four Other Defendants. 22

 III. Enforcement Of The Venue Clause Would Be Contrary To Public
 Policy. 30

 IV. The Promissory Notes Are Unconscionable. 32

 V. The Unpublished Key Bank Federal Trial Court Orders Cited by
 Appellants Are Not Legal Precedent, Are Not Binding And Are
 Not Properly Included In Key Bank's Initial Brief. 37

Conclusion..... 41

Certificate of Service..... 41

Certificate of Compliance..... 42

TABLE OF CITATIONS

Cases

<i>Allen v. Lloyd's of London</i> , 94 F. 3d 923 (4 th Cir. 1996)	38
<i>America Online, Inc. v. Booker</i> , 781 So. 2d 423 (Fla. 3 rd DCA 2001)	14, 16, 20
<i>Aqua Sun Mgmt., Inc. v. Divi Time, Ltd.</i> , 797 So. 2d 24 (Fla. 5 th DCA 2001)	19, 20
<i>Beaubien v. Cambridge Consol., Ltd.</i> , 652 So. 2d 936 (Fla. 5 th DCA 1995)	23, 27
<i>Bellsouth Mobility, L.L.C. v. Christopher</i> , 819 So. 2d 171 (Fla. 4 th DCA 2002)	34
<i>Bennett v. Behring Corp.</i> , 466 F. Supp. 689 (S.D. Fla. 1979)	32
<i>Bombardier Capital, Inc. v. Progressive Mktg. Group, Inc.</i> , 801 So. 2d 131 (Fla. 4 th DCA 2001)	20
<i>Bovis Homes, Inc. v. Chmielewski</i> , 872 So. 2d 1038 (Fla. 2d DCA 2002)	21
<i>Carlson-Southeast Corp. v. Geolithic, Inc.</i> , 530 So. 2d 1069 (Fla. 1 st DCA 1988)	24
<i>Carnival Cruise Lines, Inc. v. Shute</i> , 499 U.S. 585, 111 S. Ct. 1522 (1991)	14, 15
<i>Celmins v. America Online, Inc.</i> , 748 So. 2d 1041 (Fla. 2d DCA, 1999)	21
<i>Copacabana Records, Inc. v. Wea Latina, Inc.</i> , 791 So. 2d 1179 (Fla. 3 rd DCA 2001)	21, 17
<i>Corsec, S.L. v. VMC Int'l Franchising, L.L.C.</i> , 909 So. 2d 945 (Fla. 3 rd DCA 2005)	25
<i>Dept. of Legal Affairs v. District Court of Appeals, 5th District</i> , 434 So. 2d 310, (Fla. 1983)	37

<i>Derrick & Assoc. Path., P.A. v. Kuehl</i> , 617 So. 2d 866 (Fla. 5 th DCA 1993)	21, 22, 29
<i>Dore v. Roten</i> , 911 So. 2d 218 (Fla. 2 nd DCA 2005)	26, 29
<i>First Pacific Corp. v. Sociedade de Emp. e Const., L.T.D.A.</i> , 566 So. 2d 3 (Fla. 3 rd DCA 1990)	30, 31
<i>Girdley Constr. Co., Inc. v. Architectural Exteriors, Inc.</i> , 517 So. 2d 137 (Fla. 5 th DCA 1987)	23, 29
<i>Greenstreet Mgmt., Inc. v. Barke.</i> , 833 So. 2d 183 (Fla. 5 th DCA 2002)	19
<i>Halls Ceramic Tile, Inc. v. Tiede-Zoeller Tile Corp.</i> , 522 So. 2d 111 (Fla. 5 th DCA 1988)	23,24,29
<i>Haws & Garret Gen. Contractors, Inc. v. Panhandle Custom Decorators & Supply, Inc.</i> , 500 So. 2d 204 (Fla. 1 st DCA 1986)	31
<i>Interval Marketing Assoc., Inc. v. Sea Club Assoc. IV, Ltd.</i> , 468 So. 2d 262 (Fla. 2 nd DCA 1985)	28
<i>Kohl v. Bay Colony Club Condo., Inc.</i> , 398 So. 2d 865 (Fla. 4 th DCA 1981)	32
<i>Lee v. St. Johns County Brd. of Cnty. Comm.</i> , 776 So. 2d 1110 (Fla. 5 th DCA 2001)	1
<i>Lobaoa-Bleidt v. Lobata</i> , 688 So. 2d 431 (Fla. 5 th DCA 1997)	28
<i>Maas v. Maas</i> , 440 So. 2d 494 (Fla. 2 nd DCA 1983)	36
<i>Manrique v. Fabbri</i> , 493 So. 2d 437 (Fla. 1986)	13, 14, 15, 23, 31
<i>McNair v. Monsanto Co.</i> , 279 F. Supp. 2d 1290 (M.D. Ga. 2003)	25
<i>MGJ Ind., Inc. v. Greyhound Fin. Corp.</i> , 826 F. Supp. 430 (M.D. Fla. 1993)	35

<i>M/S Bremen v. Zapata Off-Shore Co.</i> , 407 U.S. 1, 92 S. Ct. 13, 14, 15, 22, 26, 1907 (1972)	35, 38
<i>Operadora Seryna, S.A. v. Banco Bilbao, S.A.</i> , 762 So. 2d 595 (Fla. 5 th DCA 2000)	19
<i>Peacock Hotel, Inc. v. Shipman</i> , 103 Fla. 633, 138 So. 44 (1931)	35, 36
<i>Roche v. State</i> , 462 So. 2d 1096 (Fla. 1985)	37
<i>SAI Ins. Agency, Inc. v. Applied Sys., Inc.</i> 858 So. 2d 401 (Fla. 1 st DCA 2003)	27
<i>Southwall Tech., Inc. v. Hurricane Glass</i> , 846 So. 2d 669 (Fla. 2 nd DCA 2003)	27
<i>State v. Dwyer</i> , 332 So. 2d 333 (Fla. 1976)	25, 37
<i>State v. Fitzpatrick</i> , 491 P. 2d 262 (Wash. App.)	37
<i>State v. Kirk</i> , 362 So. 2d 352 (Fla. 1 st DCA 1978)	36
<i>Steinhardt v. Rudolph</i> , 422 So. 2d 884 (Fla. 3 rd DCA 1982)	34, 35
<i>Stewart Org., Inc. v. Ricoh Corp.</i> , 487 U.S. 22, 108 S. Ct. 2239 (1988)	15, 35
<i>SunTrust Bank v. Sun Int'l Hotels, Ltd.</i> , 184 F. Supp. 2d 1246 (S.D. Fla. 2001)	33
<i>Ullah v. State</i> , 679 So. 2d 1242, 1244 (Fla. 1 st DCA 1996)	38
<i>Unger v. Publisher Entry Serv., Inc.</i> , 513 So. 2d 674 (Fla. 5 th DCA 1987)	41
<i>Webster v. Royal Caribbean Cruises, Ltd.</i> , 124 F. Supp. 2d 1317 (S.D. Fla. 2000)	9
<i>W.G. Mills, Inc. v. Hughes Supply, Inc.</i> , 816 So. 2d 225 (Fla. 5 th DCA 2002)	28

Statutes

<i>18 United States Code Annotated § 1962</i>	13
<i>Florida Statute § 501.201 et seq.</i>	30
<i>Florida Statute § 559.551 et seq.</i>	10, 30, 31, 39
<i>Florida Statute § 772.101 et seq.</i>	11, 30, 31, 40
<i>Ohio Revised Code Annotated § 1345.01 et seq.</i>	30

Secondary Sources

Webster's II New College Dictionary, (Houghton Mifflin Co. 2001).	16
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STATEMENT OF THE CASE AND FACTS

Key Bank (one of three Appellants and five Defendants) is the national primary lender for vocational student loans not guaranteed by the federal government.¹ Key Bank has created a unique lending market by teaming with and funding financially unsound, unqualified, or corrupt vocational schools effectively secured only by the good credit of students. The students are enticed by the joint advertisements of Key Bank and the vocational school into contracting with Key Bank and taking out loans. (Appellees' App. Tab 1). Key Bank funds the operations of the vocational schools through the issuance of loans ostensibly "to" students who, in fact, never see or control the money.

Key Bank entered an agreement with², or formed a joint business enterprise with TAB Express Int'l, Inc. ("TAB"), (the "Agreement"), the flight school in

¹ "When considering a motion to dismiss, the allegations of the complaint must be accepted as true." *Lee v. St. Johns County Brd. Cty. Comm.*, 776 So. 2d 1110, 1113 (Fla. 5th DCA 2001). This rule must apply as the parties will likely have not conducted, or have been permitted to conduct, discovery, except for the deposition of one of TAB's principals, Robert Adamo. The trial court below granted Key Bank's motion for stay and protective order on discovery before the hearing on the Motion to Dismiss. Appellees' App., Tab 2. The Students argued, unsuccessfully, that discovery should be allowed so that additional facts reflecting the unreasonableness or injustice of enforcing the venue clause could be developed. Appellees' App., Tab 3.

² Adamo Depo., p. 40, line 22- p. 41, line 20. TAB and Key Bank are now litigating the collapse of their business relationship in the United States District Court for the Middle District of Florida, Orlando Division, Case No. : 6:05-CV-00965-ORL-JFF. The Students were the intended third party beneficiaries of the Key Bank-TAB Agreement (TAB's Answer, ¶48.)

Deland, Florida in which the Students³ enrolled. The Students enrolled with and contracted with TAB.⁴ Key Bank performs no due diligence on the business histories, technical qualifications, or financial wherewithal of these schools. Key Bank doesn't even verify if the students are actually enrolled. (2nd Amd. Complaint, ¶ 73). Regardless, Key Bank disbursed the loans in the Students' names directly to the school, with no accounting oversight whatsoever. (2nd Amd. Complaint, ¶¶ 62, 69, 71, 73-75).⁵ This left the operators of the school free to take the money and run, which is what happened.⁶

³ The Plaintiffs/Appellees are comprised of students and their personal guarantors on their promissory notes. For ease of reference, the Plaintiffs will be referred to collectively herein as the "Students."

⁴ This contract with TAB, the *sine qua non* of Key Bank's promissory notes, contains a Volusia County venue clause requiring the Students to bring any action against TAB in Volusia County, Florida:

This Contract and any and all disputes between the parties shall be governed by Florida law. The exclusive venue and jurisdiction for any lawsuit or similar action to enforce or interpret the terms of this Contract or arising out of any other dispute between the parties shall be brought in Volusia County, Florida, and the parties waive any objection to venue or jurisdiction in Volusia County, Florida.

Appellants' App., Tab 4, Ex. K.

⁵ Plaintiffs allege Key Bank had been the sole, or primary, lender of other flight and vocational schools closed under suspicious circumstances in other states including Oklahoma, North Carolina, Wisconsin, Utah, Virginia, Massachusetts, and Pennsylvania (2nd Amd. Complaint, ¶ 73).

⁶ It is also what happened in the Airline Training Academy school debacle recently in Central Florida, as briefly mentioned in the Key Bank *Rios* federal trial court order relied upon by Key Bank (improperly) as authority supporting its Motion to Dismiss and now its Initial Brief. Appellants' App., Tab 2, Ex. 1.

Hundreds of thousands of dollars, with some loans exceeding \$100,000 each, went directly into the coffers of co-Defendant TAB. The money disappeared and TAB closed its doors. The Students, who had relied on the financial backing of Key Bank, based on its joint advertising with TAB, were lured into a false sense of security in signing promissory notes and enrolling in the school.⁷

As a direct result of Key Bank's vocational school scheme with TAB in this case, the Students' personal and professional lives have been traumatized:

- Almost one-quarter of the Students, many with spouses and children, have had to move into the homes of parents or relatives.⁸
- Sixty percent of the Students have had to take money from family and/or friends to pay daily living expenses.⁹
- Seventy-four percent of the Students have had to use credit cards, take out home equity loans, or take out other loans to pay daily living expenses.¹⁰
- Fifteen have met with bankruptcy counselors¹¹
- Fifty-seven percent of the Students have had to sell property to pay daily living expenses, including having to sell homes and liquidate 401k plans.¹²
- Several have gone through divorces as a result of the financial strain.¹³

⁷ Appellants' App. Tab 3, Ex. C (Palin and Samples Affidavits). These affidavits were two of 37 affidavits submitted to the trial court in opposition to the Appellants' Motion to Dismiss.

⁸ *Supra.* (Affidavit of Keith W. Bergen, Elected Spokesperson for the Students).

⁹ *Supra.*

¹⁰ *Supra.*

¹¹ *Supra.*

¹² *Supra.*

¹³ *Supra.* (Roe and Humphrey Affidavits)

Student Gary Roach is "literally homeless."¹⁴ He relies on "his friends' good graces for a temporary place to live."¹⁵ Student Ryan Hartl has had to borrow \$14,000 from his parents to pay for living expenses.¹⁶ Student Scott Kimbrell, who is almost 40 years old and will probably never become a pilot, is now dependent upon his wife for support.¹⁷

Student Scott D. Kimbrell testified:

I am close to 40 years old and my window of opportunity to fly for the airlines is shrinking. It is an extremely frustrating feeling to have left my previous job of 10 years, invest a tremendous amount of time, money and effort to change careers only to be left holding a large debt and no prospects of a successful future.¹⁸

Student Nelson Finkbeiner's father is supporting Nelson and his family of five.¹⁹ Student Nomar Acevedo's monthly living expenses are more than three times his monthly income. He has to borrow money from his mother to support his wife and two kids.²⁰

Student Edward C. Roe testified:

I left my wife and daughter in New Jersey in our brand new home that we had built and lived separate from them for over a year which put an emotional strain on our family relationship

¹⁴ *Supra.* (Roach Affidavit)

¹⁵ *Supra.*

¹⁶ *Supra.* (Hartl Affidavit)

¹⁷ *Supra.* (Kimbrell Affidavit)

¹⁸ *Supra.* (Kimbrell Affidavit)

¹⁹ *Supra.* (Finkbeiner Affidavit)

²⁰ *Supra.* (Acevedo Affidavit)

