

**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY,  
FLORIDA**

DEEPGULF, INC. and  
TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E"

**DEFENDANT'S MOTION TO DISMISS FOR PROCEDURAL ABUSE,  
JURISDICTIONAL MANIPULATION, AND JUDICIAL ESTOPPEL, WITH  
SUPPORTING MEMORANDUM OF LAW**

COMES NOW the Defendant, Marc Moszkowski, appearing pro se, and respectfully moves this Court to dismiss the present action on grounds of procedural abuse, jurisdictional manipulation, and judicial estoppel. In support of this Motion, Defendant states the following:

**INTRODUCTORY STATEMENT**

Defendant has now been subjected to the same essential claims, on the same underlying facts, four times across two jurisdictions. In each instance, Plaintiff has reshaped its procedural posture and narrative to suit momentary advantage. After removal of the case to federal court based on

diversity of citizenship—a jurisdictional basis jointly affirmed by both parties—Plaintiff fully litigated in that forum, lost, and then reversed course to refile in state court, this time denying the very diversity it had previously asserted. This amounts to not merely relitigation, but procedural fraud.

## **I. PROCEDURAL HISTORY**

1. Plaintiff originally filed suit in Florida state court.
2. Defendant removed the case to the U.S. District Court for the Northern District of Florida under 28 U.S.C. § 1441, asserting diversity of citizenship. Defendant stated:
  - That he was a citizen of France,
  - That DeepGulf, Inc. was a Florida corporation,
  - That the named co-plaintiff "Toke Oil and Gas, Inc." was fictitious and did not destroy diversity.

*Refer to Exhibit AG: Notice of Removal.*

3. Plaintiff did not oppose removal and affirmatively litigated the case in federal court, including submitting filings in the name of both DeepGulf and Toke Oil and Gas, Inc.

4. After losing in district court, Plaintiff appealed to the U.S. Court of Appeals for the Eleventh Circuit.
5. In its appellate brief, Plaintiff reiterated that diversity jurisdiction was proper, citing the same logic initially asserted by Defendant.

*Refer to Exhibit BG: Brief of Appellant Statement of Jurisdiction*

6. Only when the Eleventh Circuit sua sponte questioned diversity did Plaintiff abruptly reverse position and argue that jurisdiction had never existed.
7. Based on this reversal, the case was remanded to Florida state court, where Plaintiff now seeks to relitigate what it previously lost.
8. Within twenty days of the remand (June 2021), Defendant filed a Motion to Strike the Complaint as a Sham.
9. Plaintiff failed to respond for over two years, at which point the Court ordered administrative closure of the case.
10. Thirty days after that closure, Plaintiff filed a 621-page Motion to Take Judicial Notice, composed entirely of excerpts from the federal court docket and stating, verbatim, that the federal depositions "will promote the expedient resolution of this action."

11. After another full year of inactivity, the Court again ordered again administrative closure.
12. Sixty days following the second closure, Plaintiff filed a Motion for Summary Judgment and Memorandum of Law.
13. Plaintiff responded to Defendant's Motion to Strike the Complaint three years and eight months after it was filed.
14. Nineteen days after that response, the Court denied Defendant's Motion to Strike, without having addressed Plaintiff's long delay.

## **II. MEMORANDUM OF LAW**

### **A. Judicial Estoppel**

The doctrine of judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase."

- *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001).

The Supreme Court in *New Hampshire* laid out three factors:

1. Whether a party's later position is clearly inconsistent with its earlier position;

2. Whether the party succeeded in persuading a court to accept that earlier position;
3. Whether the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Here, all three criteria are met:

- Plaintiff first endorsed diversity in federal court and is now denying it.
- The federal court accepted that position and exercised jurisdiction.
- Plaintiff now seeks a second bite at the apple in state court after losing federally.

## **B. Res Judicata (Claim Preclusion)**

Under Florida and federal law, res judicata bars the relitigation of claims that were or could have been raised in a prior action resolved by final judgment on the merits.

- *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004).
- *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1550 (11th Cir. 1990).

Plaintiff's claims were litigated and resolved in the U.S. District Court and should not be revisited now under a different caption or jurisdiction.

### **C. Abuse of Process**

Abuse of process arises where legal procedure is misused to achieve an end not justified by that procedure.

- Bothwell v. Republic Tobacco Co., 912 F. Supp. 1221, 1225 (N.D. Ga. 1996).

Plaintiff's shifting jurisdictional arguments and use of a fictitious party to toggle between forums for strategic advantage constitutes precisely this type of procedural abuse.

### **III. APPLICATION TO THIS CASE**

Plaintiff's behavior illustrates a calculated manipulation of legal process:

- Suing under a fictitious name,
- Allowing federal removal, litigating fully, then reversing stance,
- Exploiting jurisdictional doubt to avoid adverse judgment,
- Refiling in state court with the same factual basis.
- Failing to respond to dispositive motions for nearly four years,
- Deliberately reviving the case only after administrative closures,
- And ultimately citing the same federal record they had previously sought to escape.

Defendant anticipates that Plaintiff will argue that the remand to state court was ordered by the Court of Appeals and therefore beyond its control. However, this assertion distorts the procedural record. The Eleventh Circuit questioned diversity sua sponte, but it was Plaintiff who chose to reverse its jurisdictional stance—a stance it had previously affirmed in both district and appellate filings. Plaintiff could have stood by its initial representation that diversity jurisdiction was proper and that "Toke Oil and Gas, Inc." was a fictitious entity not destroying diversity, as tacitly admitted in federal court. But doing so would have required explaining why it had litigated for two years in the name of a fictitious party it now disclaimed. Instead, Plaintiff embraced remand as a strategic exit from an adverse judgment. That decision was tactical, not compelled.

Moreover, the Court's own handling of the record raises grave concerns about procedural regularity and the appearance of impartial adjudication. After Defendant diligently filed a Motion to Strike the Complaint as a Sham within twenty days of remand, and after Plaintiff delayed response for over three and a half years, the Court denied the motion in a one-page order devoid of legal reasoning, factual findings, or reference to the Plaintiff's delay. Such judicial treatment would strain credibility in a fictional setting; in real court, it undermines confidence in the integrity of the process.

The legal system is not a roulette wheel. Parties may not litigate the same issue repeatedly until they find a favorable forum. The current action is not a new controversy but a resurrection of a defeated one, undermining judicial finality and due process.

#### **IV. PRAYER FOR RELIEF**

WHEREFORE, Defendant respectfully requests that this Court:

1. Dismiss the Complaint in its entirety with prejudice;
2. In the alternative, require Plaintiff to show cause why its conduct does not warrant judicial estoppel or dismissal;
3. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted on this 21<sup>st</sup> day of May, 2025.

Marc Moszkowski, Pro Se  
Email: m.moszkowski@deepgulf.net  
Le Verdos  
83300 Châteaudouble, France





## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 21<sup>st</sup> day of May, 2025, a copy of this Motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

*M. Maszkowski*



of interest and costs, because the demand letters attached to the Complaint sought payment from Defendant of \$3,914,292.66.

5. Defendant is informed and believes that Plaintiff DeepGulf, Inc. was, and still is, a corporation organized under the laws of the State of Florida with its principal place of business in the State of Florida. Defendant Marc M. Moszkowski was, at the time of the filing of this action, and still is a citizen of the French Republic. As such there is complete diversity of citizenship between Plaintiff DeepGulf, Inc. and Defendant Marc M. Moszkowski.

6. The Complaint in the state court action also names as a plaintiff Toke Oil and Gas, Inc., which was fraudulently joined and should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §1332 and 28 U.S.C. §1441(b) for one or more of the following reasons. (a) Defendant is not aware of the existence of Plaintiff Toke Oil and Gas, Inc. and he found no record of Toke Oil and Gas, Inc. on the Florida Department of State, Division of Corporations website. As a fictitious entity, the citizenship of this plaintiff, if any, should be disregarded. (b) There exists no claim upon which Toke Oil and Gas, Inc. could possibly recover against Defendant Moszkowski.

WHEREFORE, Defendant Marc M. Moszkowski prays that this action be removed to the United States District Court for the Northern District of Florida, Pensacola Division.



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Marc M. Moszkowski, Pro Se  
Defendant  
Le Verdos  
83300 Châteaudouble, France  
Phone: (850)316 8462  
Email: m.moszkowski@deepgulf.net

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof is being furnished by hand-delivery to the Attorney for the Plaintiffs this \_\_\_\_\_ day of June 2018.

Braden K. Ball, Jr.  
Florida Bar No. 89000  
LITVAK BEASLEY WILSON & BALL, LLP  
226 East Government Street  
Pensacola, Florida 32502  
Office: (850) 432-9818  
Facsimile: (850) 432-9830  
braden@lawpensacola.com



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Marc M. Moszkowski, Pro Se

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and  
TOKE OIL AND GAS, INC.,  
Plaintiffs,

vs.

CASE NO: 2018 CA 000543  
DIVISION: K

MARC M. MOSZKOWSKI,  
Defendant.

**NOTICE OF FILING OF NOTICE OF REMOVAL**

TO: Clerk of the Circuit Court in and for Escambia County, Florida, 190 W. Government St., Pensacola, FL 32502

TO: Plaintiffs *DeepGulf, Inc. and Toke Oil and Gas, Inc.* and their attorney of record, Braden K. Ball, Jr., , Litvak Beasley Wilson & Ball LLP, 226 E. Government Street, Pensacola, FL 32591

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441(b) Defendant Marc M. Moszkowski did, on the 25<sup>th</sup> day of June 2018, file a Notice of Removal in the United States District Court for the Northern District of Florida, Pensacola Division, a copy of which is attached hereto, and that said matter shall hereafter proceed in the United States District Court for the Northern District of Florida, Pensacola Division.

Marc M. Moszkowski, Pro Se  
Defendant  
Le Verdos  
83300 Châteaudouble, France  
Phone: (850)316 8462  
Email: m.moszkowski@deepgulf.net 15/15

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof is being furnished by hand-delivery to the Attorney  
for the Plaintiffs.

Braden K. Ball, Jr.  
Florida Bar No. 89000  
LITVAK BEASLEY WILSON & BALL, LLP  
226 East Government Street  
Pensacola, Florida 32502  
Office: (850) 432-9818  
Facsimile: (850) 432-9830  
braden@lawpensacola.com

Marc M. Moszkowski, Pro Se

**STATEMENT OF JURISDICTION**

Appellants initiated this action in the Circuit Court in and for Escambia County, Florida. Appellee removed this case to the Federal District Court for the Northern District of Florida.

DeepGulf is incorporated in Florida and has its principal place of business in Florida. [Doc. 1, P.22]. Toke is a company domiciled in Timor Leste. [Doc. 1, P.22] Appellee is a resident of France. [Doc. 1, P.1-2]. As such, there is complete diversity between the parties pursuant to 28 U.S.C. §1332. Further, the amount at controversy in this case exceeds the jurisdictional threshold of the federal district courts set out in 28 U.S.C. §1332(a)(1). [Doc.1, P.1-2, Doc.1, P.31-32].

This Court has jurisdiction of appeals from all final decisions of the district courts of the United States pursuant to 28 U.S.C. §1291. This is an appeal from certain pre-trial Orders issued by the lower court, specifically an Order denying Motion to Amend [Doc. 130], and an Order on Motions for Summary Judgment granting and denying certain claims made by the Appellants and Appellee [Doc.150]. The Order on Motions for Summary Judgment left one Count to be tried, which trial was held on June 17, 2020. Subsequent to said trial, a Corrected Final Judgment was entered on July 2, 2020 [Doc. 168].

Appellants timely filed its Notice of Appeal directed to both orders and Corrected Final Judgment on July 31, 2020 [Doc. 169]. The two orders appealed from collectively dispose of all the parties' claims.