

STATE OF MICHIGAN
IN THE
MICHIGAN SUPREME COURT

Brandon Brightwell,

Plaintiff-Appellant,

SC: 138920

COA: 280820

v.

Wayne CC: 07-718889-CZ

Fifth Third Bank of Michigan,

Defendant-Appellee.

Sharon Champion,

Plaintiff-Appellant,

SC: 138921

COA: 281005

v.

Wayne CC: 07-718890-CZ

Fifth Third Bank of Michigan,

Defendant-Appellee.

APPELLANTS' BRIEF ON APPEAL

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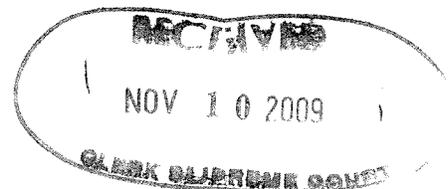


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I. STATEMENT OF THE FACTS AND MATERIAL PROCEEDINGS

A. Plaintiff Sharon Champion's Claim of Unlawful Employment Discrimination Based on Race.

Plaintiff Sharon Champion is an African American. Plaintiff commenced her employment with Defendant in December 2000. Plaintiff was initially assigned to Defendant's branch located in Novi, Michigan. From February 2001 until December 2006, Plaintiff was assigned to Defendant's branch located in Clinton Township. During relevant times while Plaintiff was employed by Defendant in Clinton Township, the following persons reported to/were supervised by Plaintiff:

Brandon Brightwell, African American, Assistant Branch Manager

Amanda Costine, Caucasian, Customer Service Manager

Willie Lewis, African American, Financial Services Representative

Plaintiff and the three persons who reported to her were all involved in mortgages made by Defendant.

In or about December 2006, Plaintiff, who lives in Detroit, applied for a position as the Branch Manager of a new branch which Defendant was to open in Detroit, Wayne County, Michigan. Plaintiff was selected for the position and began working at that branch in January 2007. In April 2007, Plaintiff was promoted to the position of Assistant Vice President and continued to work at the new branch in Detroit.

Plaintiff believes, based wholly on unconfirmed rumors, that at some point in time, Defendant became suspicious that Plaintiff and the persons who reported to her in Clinton Township had engaged in some misconduct involving mortgage loans made by Defendant. Based on its suspicions, Defendant investigated Plaintiff and the two African Americans who reported to her, but not Ms. Costine, who is Caucasian. Defendant's

investigation consisted of a search of Defendant's office in Detroit and the computer that Plaintiff used in her office in Detroit. Defendant did not find any evidence of wrongdoing, but nevertheless terminated Plaintiff and the two African Americans who had reported to her, but not Ms. Costine. In this regard, on or about May 17, 2007, Defendant called Plaintiff at her house in Detroit and advised her that her employment at the Detroit Branch office was being terminated for the following reasons: (1) for five years, Plaintiff used the Bank's computer and computer software to prepare a tax return for an elderly disabled American veteran, Glen Romain, who received only VA benefits which were not subject to taxation;¹ and (2) Plaintiff referred to another lender, a friend who was trying to get a turn down letter from a lender so that he could get back an earnest money deposit he had made in connection with an offer to purchase real estate in another state.² The reasons given by Defendant for the termination of Plaintiff's employment are clearly pretextual as implicitly concluded by Unemployment Agency Administrative Law Judge Roger E. Winkelman, after hearing the facts:

FINDINGS OF FACT

Claimant worked for the employer from December 3, 2000 through May 16, 2007, as a full-time, salary of \$56,000, financial center manager. Claimant was discharged for preparing tax returns for Glen Romain and referring business to another competitor.

Claimant did an informational return on behalf of Glen Romain for 5 years. As per Exhibit 1, **Glen Romain had an adjusted gross income for 2006 of \$34.00.** Claimant never charged Mr. Romain for this service. Mr. Romain was a very good customer of the bank and claimant was not

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- 1 Mr. Romain is a World War II veteran who is paralyzed on one side of his body as a result of a traumatic brain injury caused by shrapnel.
- 2 Defendant does not make loans for such out of state properties.

aware this was contrary to the bank's policy. (emphasis added)

Claimant also acknowledged that she referred a friend with Homeland Security who was in town for only a short period of time, to a competitor. The friend needed to get a second turn down notice as soon as possible from a financial institution in order to get his escrow returned to him. Claimant first tried to get her lender [Underwriter] to act but he was not available. Claimant did refer him to a competitor but it was only so he could receive the turn down letter and not to receive a loan. Claimant was not aware this was against the employer's policy.

* * * * *

REASONING AND CONCLUSIONS OF LAW

The claimant's testimony was unopposed at the hearing. The employer did not appear, neither did the employer request an adjournment. Notice of Hearing was mailed to the employer's address of record, the same address used for other correspondence sent to the employer. Therefore, it appears the employer elected not to participate in the hearing process.

Based on the foregoing findings of fact and the claimant tried to be a good employee and act in the employer's interest, I find that the claimant is not disqualified under Section 29(1)(b) of the Act. The employer has not met the burden of proof demonstrating misconduct by a preponderance of the evidence.

Plaintiff Champion commenced this action in the Circuit Court for the County of Wayne because she was employed by Defendant in Wayne County at the time of her termination and Defendant has alleged that it terminated her employment on the basis of misconduct that she engaged in in Wayne County only. App., p.5-8. In her Complaint, Plaintiff alleged the following:

6. Plaintiff commenced her employment with Defendant in or about December 2000.

7. On or about May 16, 2007, Defendant terminated Plaintiff's employment for the alleged reason that she referred potential business to a competitor.

8. At least one white employee has repeatedly referred potential business to a competitor without being disciplined.

9. Defendant disciplined Plaintiff who is an African American far more harshly than a similarly situated white person, in violation of the Elliott-Larsen Civil Rights Act.

10. Defendant's actions have caused Plaintiff to suffer both economic and emotional distress damages. App., p.5-8.

B. Plaintiff Brandon Brightwell's Claim of Unlawful Employment Discrimination Base on Race

Plaintiff Brandon Brightwell is an African American. Plaintiff commenced his employment with Defendant in December 2002 as an Assistant Bank Branch Manager after receiving his Bachelor's Degree from the University of Michigan. In September 2006, Plaintiff was assigned by Defendant to work at its branch office located at 3201 E. Jefferson, Detroit, Michigan as a Relationship Manager. Thereafter, Defendant became suspicious of Plaintiff's relationship with a customer of the bank, a young Black male real estate developer and investor, with whom Plaintiff also had a personal friendship. Defendant's suspicions appear to have been based solely on the fact that Plaintiff and the customer were both young Black males. Based on its suspicions, Defendant conducted a search of Plaintiff's office in Detroit and Defendant accessed the computer that Plaintiff used in the Detroit office. The search took place during working hours so that everyone in the Detroit office knew that Plaintiff was being investigated. Defendant did not find any wrongdoing which justified its suspicions, but nevertheless terminated Plaintiff's employment for the following reasons: (1) Defendant found an open box of checks in Plaintiff's desk which had been returned by a customer because of a misspelling of the word "Millennium" on the checks, but none of the checks had been used or could have been used in any way by Plaintiff; (2) Plaintiff allowed a bank customer, who was also a friend of Plaintiff's, to use Defendant's copier, fax machine and computer printer from

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time to time during work hours to duplicate a few documents with the full knowledge of everyone in the Bank, including the Branch Manager; Plaintiff waived annual fees on three loan transactions in the total amount of \$65.00 per transaction, as he was authorized to do and which was considered to be a good banking practice for the advancement of customer relations; and Plaintiff is alleged to have failed to verify certain information provided on loan applicants, which was not one of the Plaintiff's job duties and which failure Plaintiff denies. Believing that Defendant had discriminated against him by terminating his employment, Plaintiff Brightwell commenced this action in the Circuit Court for the County of Wayne. App., p. 0-4. In his Complaint, Plaintiff alleged the following:

6. Plaintiff commenced his employment with Defendant in or about December 2002.
7. On or about May 16, 2007, Defendant terminated Plaintiff's employment for reasons which are pretextual.
8. By terminating Plaintiff's employment, Defendant disciplined Plaintiff, who is an African American, far more harshly than similarly situated white persons have been disciplined for the same or similar conduct.
9. Defendant's actions as above stated, are a violation of the Elliott-Larsen Civil Rights Act.
10. Defendant's actions have caused Plaintiff to suffer both economic and emotional distress damages. App., p. 0-4.

II. PLAINTIFFS' BASIS FOR COMMENCING SUIT IN WAYNE COUNTY AND THE DECISION OF THE TRIAL COURTS

Under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq* (hereinafter the "CRA"), venue is proper, *inter alia*, in the county *where an alleged violation of the Act occurred or where the person against whom an action is brought has its principal place*

of business.

Sec. 801.(1) A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county *where the alleged violation occurred*, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business. MCL 37.2801(emphasis added)

Plaintiffs Brandon Brightwell and Sharon Champion were employed by and worked for Defendant in Detroit/Wayne County. Plaintiff Brightwell's employment was terminated by Defendant while Brightwell was at his place of employment in Detroit/Wayne County and Plaintiff Sharon Champion's employment was terminated by Defendant while she was at home in Detroit/Wayne County. Plaintiffs filed suit in Wayne County alleging a violation of the CRA and Defendant filed Motions to Change Venue to Oakland County, which were denied. App., p. 9-20; 21-32; 77 and 78. Wayne County Circuit Court Judge Prentis Edwards denied Defendant's Motion in the Brightwell case for the following reason:

THE COURT: Okay. The cases and the law all point[] to the question of where the act occurred. And it seems to me that in this case since Mr. Brightwell's permanent place of employment its appears was in the City of Detroit on Jefferson Avenue as an assistant bank manager and the termination, he was terminated from that position while there, that the act occurred in this venue and this venue is proper, and for that reason the motion is denied. App., p. 62.

III. THE DECISION OF THE COURT OF APPEALS AND THE RELIEF SOUGHT

On appeal to the Michigan Court of Appeals, a majority of a panel of that Court, relying on Barnes v. Int'l Business Machines, 212 Mich App 223, 226 (1995) and what it regarded as "the clear language of the statute," held that "defendant's alleged violation occurred in Oakland County where it made *the decision* to terminate plaintiffs'

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employment.” App., p. 314-316. In a concurring opinion, Judge Michael Talbot wrote separately to elaborate on the reasoning underlying the majority opinion and stated that the intent of the legislature in enacting the venue provision of the CRA was to:

“forbid [][employers, employment agencies and labor organizations] from making *decisions* regarding the hiring, firing, compensation or other terms of employment because of religion, race, color, national origin, age, sex, height, weight or marital status. . . Hence, at its most basic level, the CRA precludes decision makers from using characteristics such as race, sex and gender, as determining factors in *decisions* impacting employment.” App., p. 318-20.(emphasis added)

Judge Elizabeth L. Gleicher dissented. App., p. 322-25 In her view, the violation of the Act did not occur until the *decision* to terminate the plaintiffs’ employment was *effectuated*:

Although defendant apparently formulated its decision to terminate plaintiffs’ employment at its regional headquarters in Oakland County, it discharged plaintiffs in Wayne County. The CRA simply does not proscribe the employment-related investigation defendant conducted in its Oakland County office, or the *decisions* made in the same location. These undertakings, standing alone, do not constitute adverse employment actions or violations of the CRA. Because defendant violated the CRA only by *actually terminating* plaintiffs, not by considering, discussing or investigating their termination, venue properly rested in Wayne County, the location of both allegedly wrongful discharges. Consequently, the circuit courts did not clearly err by denying defendant’s motions to change venue. I would affirm. *Id.*(emphasis added)

Judge Gleicher appears to have the better argument. In this regard, the CRA appears to proscribe *actions* and not *decisions* as follows:

Sec. 202. (1) **An employer shall not:**

(a) **Fail or refuse to hire, or recruit, or discharge, or otherwise discriminate** against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. (emphasis added)

In the case at bar, Plaintiffs did not complain that Defendant made a *decision* to

discharge them. Instead, Plaintiffs claimed that they had been *discriminated against* and *discharged* in violation of the CRA. Without regard to where the decision to discharge Plaintiffs was made, *discrimination and discharge*, the alleged violations of the CRA about which Plaintiffs in the case *sub judice* complained, occurred in Wayne County. Venue was therefore proper in Wayne County and the decision of the Court of Appeals should be reversed for that reason.

IV. THE STANDARD OF REVIEW

As stated by the Court in Massey v. Mandell, 462 Mich 375, 379 (2000):

This Court reviews a trial court's ruling in response to a motion to change improper venue under the clearly erroneous standard. Shock Bros, Inc v Morbark Industries, Inc., 411 Mich. 696, 698-699; 311 N.W.2d 722 (1981). Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. People v Kurylczyk, 443 Mich. 289, 303; 505 N.W.2d 528 (1993).

The decisions of the trial courts were not "clearly erroneous" and the Court of Appeals erred in reversing those decisions for that reason.

V. ARGUMENT

A. The Decision of the Court of Appeals is *Ipse Dixit* and its Reliance on Barnes is Misplaced.

In reversing the decisions of the trial courts, Judge Bandstra relied on "the clear language of the statute" in reaching the conclusion that "defendant's alleged violation occurred in Oakland County where it made *the decision* to terminate plaintiffs' employment." In his concurring opinion, Judge Talbot found that it was the intent of the legislature in enacting the CRA "to forbid *[the] making of decisions* . . . because of religion, race, color, national origin, age, sex, height, weight or marital status." The conclusions of Judge Bandstra and Judge Talbot are clearly *ipse dixit*. The language of the

venue provision of the CRA does not “clearly” support the conclusion that the situs of *discriminatory decisions* is the place where an alleged violation of the Act occurred and the intent of the legislature to make *discriminatory decisions* a violation of the CRA, as opposed *acts of discrimination*, cannot be discerned from the language used in the CRA.

Judge Bandstra’s reliance on Barnes is also misplaced. In Barnes, the plaintiff, who did not work in Wayne County, sued his employer in Wayne Circuit Court alleging racial discrimination resulting from “adverse employment decisions” made by his employer in Oakland County. The plaintiff also alleged the tort of intentional infliction of emotional distress. The employer filed a motion for change of venue, which the trial court denied, and the employer appealed. On appeal, the Michigan Court of Appeals rejected the plaintiff’s argument that venue was proper in Wayne County because that is where he experienced some of the effects of the defendant’s decisions and where he suffered resulting damages:

Plaintiff argues..., that venue is proper in Wayne County because that is where he experienced at least some of the effects of defendants’ decisions and where he suffered resulting damages... Plaintiff’s position is based upon *Lorencz v. Ford Motor Co*, **439 Mich. 370, 375, 377; 483 N.W.2d 844** (1992), and *Witt v CJ Barrymore’s*, **195 Mich. App 517, 521-522; 491 N.W.2d 871** (1992). [fn1] In *Lorencz*, our Supreme Court held that the “all or part of the cause of action” language meant that an action could be brought where any of the elements of the cause of action arose. *Lorencz, supra* at 375. The court listed “damages” as one of the elements of a cause of action. *Id.* In *Witt*, this Court explicitly held, following *Lorencz*, that an action could be brought where damages accrued. *Witt, supra* at 521-522.

The Supreme Court has recently clarified *Lorencz* and implicitly overruled *Witt*. The Court held that, in determining where a tort action accrues, the place where damages were sustained (if different from where the injury or the breach of duty occurred) does not constitute a proper venue. *Gross v General Motors Corp*, **448 Mich. 147, 165; 528 N.W.2d 707** (1995). Plaintiff therefore may not pursue his tort action in Wayne County because he alleged only that damages resulted in that county. [fn2]

Although the Supreme Court’s decision in *Gross* does not technically apply to discrimination cases, we believe that its reasoning does. As noted by the

Court, allowing an action to be brought where its effects or damages occur would encourage forum shopping in contravention of the goals of the venue provisions. *Id.* at 164. Further, the civil rights statute clearly provides that venue is proper where “the alleged violation occurred,” not where its effects were felt or where the damages accrued. See MCL 37.2801 (2) ; MSA 3.548 (801) (2).

In Gross, the court construed the venue provision for tort actions that is set out in MCL 600.1629, which provides *inter alia* that an action may be brought in “[a] county in which all or part of the cause of action arose” and the Court rejected the plaintiffs’ argument that venue was properly laid in Wayne County because corporate decisions about the allegedly defective designs were made in Wayne County. In this regard, the Court in Gross stated:

The legislative history of MCL 600.1629; MSA 27A.1629 strongly suggests that the Legislature considered and rejected a tort venue statute strictly limiting venue to the place where the injury occurred. However, we do not interpret this decision to mean that the Legislature repudiated its overall desire to limit abusive forum shopping.

Under plaintiffs’ interpretation of MCL 600.1629; MSA 27A.1629, any county in which corporate executives make decisions regarding product development could become proper venue. Such a rule could greatly intensify the problem of venue shopping. Telephone conferences could result in proper venue being established in counties with only the most remote connection to the actual design of a product.

After first stating agreement with the reasoning of the Court in Gross, the Court in Barnes rejected the rule set out in Gross and held that “the place of corporate decision making is an appropriate venue in actions under the CRA as follows:

In Gross, the Supreme Court stated that, in design defect cases, the place of corporate decision making did not provide an independent place for venue where the actual design of the product took place elsewhere. Gross, *supra* at 159-160. Here, however, the actions allegedly giving rise to liability are the corporate decisions themselves and therefore the place of corporate decision making is an appropriate venue. (emphasis added)

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While the venue provision for tort actions and the venue provision for actions under the CRA are clearly different, the legislative and judicial concern for abusive venue shopping and uncertainty about the proper place to commence an action is not and the construction of either statute so as to limit abusive venue shopping and uncertainty about the proper place to commence an action is appropriate. The decision of the Court in Gross would have had the result of limiting abusive venue shopping and would have provided for greater certainty in determining the proper place for the commencement of an action. The footnote holding of the court in Barnes, that venue under the CRA is proper where corporate decisions are made, erroneously provides for abusive venue shopping and introduces unnecessary uncertainty about the proper place to commence an action under the CRA. The following hypothetical illustrates the point being made here. Assume that A, who is employed by the Company, is supervised by B, who in turn is supervised by C. B works with A, but lives in an adjoining county. C's office is in another part of the state and he lives in an adjoining county. A's employment is terminated and he files suit against the Company in the county where he had been employed. Under the rule advocated by Defendant, i.e., that the county in which the decision to terminate A's employment was made is the proper county in which to litigate A's claims under the ELCRA, the Company could file a Motion for Change of Venue, which should be granted, on the basis of B's affidavit that he made the decision to terminate A's employment, subject to review by C, while at his house in the adjoining county or C's affidavit that he made the ultimate decision at his office or at his house in a county in another part of the state. Thus, the county in which B lives would be the proper county to litigate A's claims, even though there are no witnesses or relevant documents or other evidence in that county,

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or the county in which C works and/or lives could be the proper county to litigate A's claims, even though those counties are hundreds of miles from where A lives and worked.³ The Michigan legislature could not have intended such a result. Instead, it is far more likely that by providing that "an action... may be brought in the circuit court for the county where the alleged violation occurred, or the county where the person against whom the civil complaint is filed resides or has his principal place of business," the Michigan legislature intended to give plaintiffs the choice of commencing suit in the place where they were employed, i.e., the place where the violation occurred, or the place where relevant employment decisions were made, i.e., the place where the employer has its principal place of business.

The court in Barnes did not clearly address or decide the issue whether all alleged violations of the CRA occur in the county where corporate decisions are made and any

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In the case at bar, Plaintiff worked in Wayne County. "B" works and lives in Oakland County and "C", Defendant's corporate offices, are located in Grand Rapids, which is more than 150 miles away from where Plaintiff was employed. In this regard, Judge White correctly concluded as follows in Barnes:

For example, an employee who works for a chain store in Berrien County need not sue in Wayne County regarding an alleged discriminatory decision made at corporate headquarters in Wayne County and implemented in Berrien County. Id.

Otherwise, under the rule advocated by the Defendant in the case at bar, a plaintiff who worked in a high level professional position for say, General Motors in Flint/Genesee County, who believed that he or she had been discriminated against because of age or sex, would be required to bring action under the ELCRA in Wayne County upon General Motors' assertion that the relevant employment decisions about which the plaintiff complained were made at General Motors' headquarters in Wayne County.

reliance on Barnes for such a proposition is misplaced for that reason.

B. The Appropriate Analytical Framework for Interpreting the Venue Provision of the CRA is Set Out in Dimmit & Owens Financial, Inc. v. Deloitte & Touche (ISC), LLC,

Dissenting below, Judge Gleicher stated that the appropriate analytical framework for interpreting the venue provision of the CRA is set out in Dimmit & Owens Financial, Inc. v. Deloitte & Touche (ISC), LLC, 481 Mich 618, 624 (2008). In Dimmit, the plaintiffs retained the defendant to conduct financial audits of its operations and its assets and to generate reports, which the plaintiffs would make available to the bank which provided plaintiffs with a line of credit. The plaintiffs alleged that a significant portion of its assets were vastly overstated in the financial statements that were audited and reviewed by the defendants. The plaintiffs also alleged other accounting errors and omissions which ultimately resulted in the plaintiffs having to liquidate their assets. Thereafter, the plaintiffs filed a complaint in the Wayne Circuit Court, alleging accounting malpractice. They also alleged negligence, fraud/intentional misrepresentation, constructive fraud, breach of contract, and breach of fiduciary duty and sought a declaratory judgment. In lieu of answering plaintiffs' complaint, defendants sought a change of venue. Defendants contended that they had performed the accounting work relevant to plaintiffs' complaint at Dimmitt's offices in Oakland County and therefore, venue was proper in Oakland County pursuant to MCL 600.1629 (1)(a) which provides that in an action based on tort or another legal theory seeking damages for personal injury, venue is proper *inter alia* in "(a) The county in which the original injury occurred . . ."

Plaintiffs responded by asserting *inter alia* that the financial statements which the defendant audited and reviewed had all originated from defendants' headquarters in

Wayne County. The trial court denied defendants' motion to change venue and on defendants' application for leave to appeal, the Court of Appeals reversed. It held that "defendants' alleged negligence in collecting and analyzing data and information presented only *the potential* for future injury, but plaintiffs suffered the original injury when they relied on defendants' allegedly faulty information in making investment decisions." The Court thus held that venue was proper in Oakland County where the plaintiffs had their places of business. The Michigan Supreme Court disagreed. As stated by the Court:

The Court of Appeals held that "plaintiffs suffered the original injury when they *relied* on defendants' allegedly faulty information in making investment decisions. "[fn27] We have explained, however, that "Michigan law requires more than a merely speculative injury. . . . It is a *present* injury, not fear of an injury in the future, that gives rise to a cause of action under negligence theory." [fn28] At the time of plaintiffs' reliance, plaintiffs suffered only a *potential* injury, namely, that their investment decisions based on defendants' negligence *might* turn out to be poor ones that *might* injure plaintiffs. The original injury did not occur until plaintiffs allegedly suffered an *actual* injury as a result of their reliance on defendants' service. The first actual injury plaintiffs allegedly suffered occurred when Dimmitt could not satisfy its financial obligations and was forced to liquidate its assets. [fn29] Both plaintiffs' principal places of business are in Oakland County, and, therefore the alleged original injury was suffered in Oakland County. Accordingly, venue was properly laid in Oakland County.

Applying the analytical framework of the Court in Dimmitt to the facts at bar, Defendant's decision to terminate Plaintiffs' employment was a *potential* violation of the Act. The actual violation of the Act did not occur until the *decision* was *effectuated* and Plaintiffs were discharged, which occurred in Wayne County. The decision of the Court of Appeals should accordingly be reversed.

C. Venue Should be Deemed Proper in Wayne AND Oakland Counties Because both Counties had a Sufficient Connection to Plaintiffs' Causes of Action.

The following definition of venue is found in Black's Law Dictionary:

venue (ven-yoo). [Law French “coming”]

Procedure. 1. The proper or a possible place for the trial of a case, usu. because the place has *some connection* with the events that have given rise to the case. (emphasis added)

In Am Jur 2d, Venue § 34, it is similarly stated:

The venue statutes in a number of jurisdictions provide that transitory actions may be brought in the county where the cause of action arose or, as expressed in some statutes, in the county where the injury or wrong was inflicted or [“]occurred,[“] or where the cause accrued. The intent of the rule permitting an action to be brought in a county in which there was a transaction or occurrence out of which the cause of action arose is to permit the plaintiff to institute suit against the defendant in the county most convenient for the plaintiff and the plaintiff’s witnesses and to assure that the county selected has a *substantial relationship* to the controversy between the parties, thus making it a proper forum to adjudicate the dispute. (emphasis added)

The place where allegedly discriminatory employment decisions were made AND the place where allegedly discriminatory employment decisions are effectuated both have a sufficient relationship to a cause of action under the CRA such that a choice between the two should not be required. Such was the finding of the Court in Flight Line v. Tanksley, 608 So 2d 1149 (Miss 1992), where the court construed the term “occurred” as used in a venue statute not unlike the CRA.⁴ Before reaching its conclusion, the Court in Flight Line first stated:

Of right, the plaintiff selects among the permissible venues, and his choice must be sustained unless in the end there is no credible evidence supporting the factual basis for the claim of venue. [citations omitted]

⁴ The venue statute at issue in Flight Line provided as follows:

civil actions of which the circuit court has original jurisdiction shall be commenced. . . , if the defendant is a domestic corporation, in the county in which said corporation is domiciled or in the county where the cause of action may occur or accrue. . . .

Michigan law is in accord. See Chilingirian v. City of Fraser, 182 Mich App 163, 165 (1989) (“[P]laintiff’s initial choice of venue is to be accorded deference.”); and Duyck v. Int’l Playtex, Inc., 144 Mich App 595, 599 (1985) (“it is [] well established that plaintiff’s choice of venue should be accorded deference.”)

In Flight Line, the Court held that the term “occurs” was broad enough to encompass each county in which a “***substantial component***” of the claim takes place:

In the final analysis, venue is about convenience. The legislative prescription implies a legislative finding [that] counties meeting certain criteria will generally be more convenient to the parties. The use of “occur” makes sense because important witnesses will often be accessible where the action occurs. Yet, there is nothing in the phrase “where the cause of action may occur. . . .” that limits the judicial search for but a single county. Torts arise from breaches of duties causing injuries, and it is common experience that breach and causation and impact do not always happen at once. **At the very least, the word “occur” connotes each county in which a *substantial component* of the claim takes place.** *Id.* at p.6 of Exhibit A. (emphasis added)

Keuhn v. State Police, 225 Mich App 152 (1997), illustrates the rule which is set out in Flight Line. In Keuhn, the plaintiff who worked for the defendant in Livingston County, filed a complaint under the CRA in Livingston County in which he alleged that “he had been passed over for promotion. . . .” *Id.* at 153. “Rel[ying] heavily on Barnes v. IBM Corp.,” the employer defendant filed a motion for change of venue on the ground that “venue [wa]s proper in Ingham County because defendant’s headquarters is the locus not only of defendant’s ultimate promotional decision, but also where defendant’s policies, on which promotional decisions are based, are established .” The Keuhn Court rejected the defendant’s argument on the basis of its conclusion that discrimination had also allegedly occurred in the county in which the plaintiff was employed. The result reached in Keuhn should also obtain in the case at bar. Relevant employment decisions may well

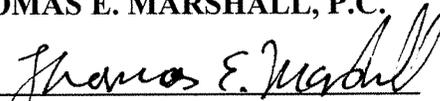
have been made in another county, but discrimination also allegedly occurred in Wayne County where the discriminatory employment decisions were effectuated. The decision of the Court of Appeals should be reversed for this reason.

VI. CONCLUSION

For the reasons set out herein, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

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