

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

McNEELEY, et al,
Plaintiff,

Case No. 2014-139044-CB
Hon. Wendy Potts

v

KMAK,
Defendant.

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR CHANGE OF VENUE

At a session of Court
Held in Pontiac, Michigan

On

JUL 31 2014

The matter is before the Court on Defendant's motion for change of venue to Wayne County under MCR 2.222. The February 20, 2014 complaint alleges breach of contract and tortious interference regarding the parties' joint-ownership in a medical practice. The Court held oral argument on Defendant's motion on July 30, 2014 and took the matter under advisement.

Where a tort claim is alleged, venue is governed by MCL 600.1629. Section 1629(1)(a) states, venue is proper in the county where the original tortious injury occurred and where (1) the defendant resides, has a place of business, or conducts business, or (2) the corporate registered office is located. If the parties have agreed to an express forum-selection clause, the Court will enforce that provision as written. *Turcheck v. Amerifund Fin., Inc.*, 272 Mich. App. 341, 344 (2006).

Although somewhat unclear from Defendant's motion, Defendant appears to assert because Plaintiff's complaint alleges a tort claim, MCL 600.1629 governs venue. Thus,

Defendant argues, venue is proper only where the alleged tortious injury occurred, which is Wayne County. Defendant further argues even if MCL 600.1629 does not govern venue, the Court should nevertheless transfer venue to Wayne County for the convenience of the parties. Defendant also moves sanctions under MCR 2.114(E) for Plaintiff's impermissible Oakland County filing.

Plaintiff responded that because Defendant's motion is brought under MCR 2.222, change of venue when venue is otherwise proper, Defendant has the burden to demonstrate inconvenience or prejudice in the chosen forum and that Defendant's motion fails to meet that burden. Further, by failing to bring this motion under MCR 2.223, change of venue where venue is improper, Defendant concedes venue in Oakland County. Plaintiff further argues Defendant's motion ignores Clause X, Section 8 of the parties' agreement which mandates a forum-selection clause, under which, venue is proper in any Michigan court. Thus, according to Plaintiff, the Court must consider the forum-selection clause and deny the motion. Finally, Plaintiff argues that the Court should deny Defendant's request for sanctions under MCR 2.114(E) because Defendant's motion does not support a finding of mandatory sanctions.

As an initial matter, Defendant's request for sanctions under MCR 2.114(E) is denied because Defendant fails to demonstrate entitlement to sanctions. Further, to the extent Defendant argues venue should be changed for the parties' convenience, the argument is without merit because Defendant fails to make a persuasive showing of inconvenience substantial enough to justify a venue change. See *Kohn v Ford Motor Co.*, 151 Mich App 300, 305 (1986); See MCR 2.222. Finally, Plaintiff's claim that the forum-selection clause governs venue is without merit as the parties' agreement refers only to "jurisdiction" in any Michigan court, and not "venue," with specificity.

Although Defendant's motion was filed under MCR 2.222, this Court nevertheless has authority to order a change of venue on the Court's own initiative. MCR 2.223(A)(2). The Court agrees with Defendant that, to the extent Plaintiff alleges a tortious allegation in the complaint, venue is determined by MCL 600.1629(1)(a). See MCL 600.1641(2). Although somewhat unclear from the pleadings where the alleged "original injury" occurred, a tort action's "original injury" is generally the "first injury resulting from an act or omission of a defendant." *Dimmitt & Owens Financial, Inc v Deloitte & Touch (ISC), LLC*, 481 Mich 618, 630 (2008). Thus, if the alleged tort caused Plaintiff's injury in Wayne County, then venue is proper in Wayne County.

After reviewing the pleadings, the Court opines that Plaintiff's complaint alleges Defendant's tortious interference occurred at the parties' medical practice, located in Wayne County. MCL 600.1629(1)(a). At the July 30, 2014 hearing, Plaintiff did not appear to dispute that the alleged tortious activity occurred in Wayne County. Further, it is undisputed Defendant resides in Wayne County. MCL 600.1629(1)(a)(i). Therefore, venue in Oakland County is improper. MCR 2.223(A)(2); MCL 600.1629(1)(a).

For all these reasons, the Court GRANTS Defendant's motion. Plaintiff must pay the statutory filing fee to Wayne County within 56 days. MCR 2.223(B)(1) and (2). The fee will be delivered to the Oakland County Clerk's Office, who will effectuate the transfer upon receipt of Wayne County's filing fee. For reasons stated above, the Court declines to award Defendant any further fees, costs, or sanctions.

This order resolves the last pending claim and closes the case.

Dated:

JUL 31 2014

IT IS SO ORDERED.

Hon. Wendy Potts