

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OSPREY, S.A., et al,

Plaintiffs,

v

Case No. 2014-144505-CK

Hon. Wendy Potts

MICHAEL J. BIBER, et al,

Defendants.

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SUPPLEMENTAL OPINION AND ORDER RE: DEFENDANT'S MOTION FOR  
CHANGE OF VENUE, PROTECTIVE ORDER, AND STAY OF PROCEEDINGS

At a session of Court  
Held in Pontiac, Michigan

On  
APR 13 2015

Defendants moved the Court to order a change of venue on the ground that venue is not proper in Oakland County. The Court issued an opinion concluding that venue in this action must be analyzed under MCL 600.1629, because Plaintiffs' complaint pleads a tort theory. As the Court already determined, §1629(1)(a)(i) and (b)(i) do not apply because there is more than one Defendant and more than one Plaintiff. *Massey v Mandell*, 462 Mich 375, 383; 614 NW2d 70 (2000). However, venue could be proper if the original injury occurred in Oakland County and one of Defendants or one of Plaintiffs has a corporate registered office here. MCL 600.1629(1)(a)(ii) and (b)(ii). The Court ordered the parties to brief these issues.

Based on the supplemental briefs, it undisputed that venue in Oakland County is not proper under §1629(1)(a)(ii) because none of the Defendants has a corporate registered office in Oakland County. Moreover, none of the Defendants are corporations. Therefore, §1629(1)(a) does not apply irrespective of where the original injury occurred. Similarly, venue is not proper

under § 1629(1)(b)(ii) because none of the Plaintiffs are corporations and none of them have corporate registered offices here. Because neither (a)(ii) nor (b)(ii) are met, it is irrelevant where the original injury occurred. *Massey, supra* at 383.

The next question is whether venue here is proper under §1629(1)(c), which allows Plaintiffs to bring an action where (i) the plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county, and (ii) the defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county. (Emphasis added) However, because there is more than one Plaintiff and more than one Defendant, §1629(1)(c) is also inapplicable.

Because no county satisfies the criteria under subdivision (a), (b), or (c), MCL 600.1629(d) allows Plaintiffs to bring their action in a county that satisfies the criteria of MCL 600.1621. Under MCL 600.1621(a), venue would be proper here if a Defendant resides, has a place of business, or conducts business in Oakland County. Plaintiffs do not dispute that the individual Defendant Michael Biber lives in Livingston County. Further, there is no allegation or evidence that Biber or Defendant Lyon Properties Associates, LLC currently has a place of business in Oakland County. Thus, the question is whether Biber or Lyon Properties conducts business here. Defendants conduct business in Oakland County if they have “some real presence such as might be shown by systematic or continuous business dealings inside the county.” *Marposs Corp v Autocam Corp*, 183 Mich App 166, 172; 454 NW2d 194 (1990).

Plaintiffs note that Biber maintained a legal practice in Oakland County from 1988 until his recent move to Livingston County. Plaintiffs also allege that Biber (1) provided consultation under the parties’ agreement to Plaintiff Osprey S.A., Ltd’s executives in Troy, (2) conducted Osprey partner meetings at his office in Troy and at Osprey’s “nerve center” in Troy while acting

as Osprey's General Partner, and (3) conducted business meetings at local restaurants in Troy and Southfield. Based on these allegations and evidence, Plaintiffs met their burden of demonstrating that Biber has systematic and continuous business dealings in Oakland County.

Even if Plaintiffs had not shown that Biber conducted business in Oakland County, venue is still proper here under MCL 600.1621(b). The statute states that if none of the defendants meet the criteria in subdivision (a), the county in which a plaintiff resides or has a place of business, or in which the registered office of a plaintiff corporation is located, is a proper county in which to commence and try an action. Because Osprey has a place of business in Troy, venue is proper in Oakland County.

Still, Defendants argue that the Court should transfer this case to Livingston County for reasons of convenience and judicial economy under MCR 2.222. The decision to transfer venue under MCR 2.222 is discretionary, although Defendants have the burden of making "a persuasive showing of inconvenience justifying a change of venue." *Kohn v Ford Motor Co*, 151 Mich App 300, 305 (1986). Defendants contend that Plaintiffs' claims arise out of Defendants' conduct in a prior suit in Livingston County, and that Judge Hatty in Livingston County is intimately familiar with the prior lawsuit and best suited to preside over this case. However, Plaintiffs argue that the Livingston case related only to events occurring before August 2010, while this case pertains to events after March 2011. Plaintiffs also allege that Judge Hatty was not privy to the agreements breached by Defendant Biber and would likely be disqualified from presiding over this case under MCR 2.003(C)(1)(c) and MCR 8.111(C)(1). Plaintiffs further contend that requiring Defendants to travel from Livingston to Oakland County does not constitute a "persuasive showing" of inconvenience or prejudice which would justify a change of venue. *Chilingirian v Fraser*, 182 Mich App 163, 165; 451 NW2d 541 (1989). Considering all

these factors, Defendants have not met their burden of demonstrating that Oakland County would be an inconvenient venue for this dispute.

For all these reasons, the Court denies Defendants' motion for change of venue and will enter the parties' proposed scheduling order.

IT IS SO ORDERED.

Hon. Wendy Potts

JH

Dated: APR 13 2015