

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.

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

FEB 26 2015

Defendants move the Court to order a change of venue on the ground that venue is not proper in Oakland County. Plaintiffs have the burden to establish that the county they chose is a proper venue. *Johnson v Simongton*, 184 Mich App 186, 190; 457 NW2d 129 (1990).

Both parties assert that the applicable venue statute is MCL 600.1621, the statute that generally governs venue for contract claims. However, MCL 600.1641(2) states that if a complaint pleads more than one claim and one of the claims is based on tort, venue is determined under MCL 600.1629. Because Plaintiffs' complaint pleads a tort theory, breach of fiduciary duty, the Court must determine venue under MCL 600.1629.

Determining venue under the tort statute involves considering a series of alternatives. In the first alternative, venue is proper in the county where "the original injury occurred" and where one of two conditions is met (i) the defendant resides, has a place of business, or conducts business in that county or (ii) a defendant's corporate registered office is located. MCL

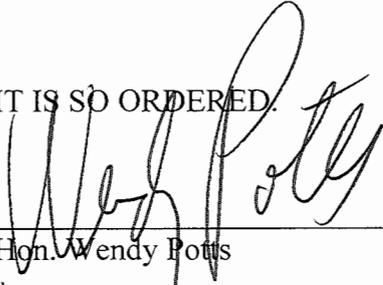
600.1629(1)(a)(i-ii). If there is no county that meets these criteria, Plaintiff can bring an action in the county where the original injury occurred and either (i) the plaintiff resides, has a place of business, or conducts business, or (2) a plaintiff's corporate registered office is located. MCL 600.1629(1)(b)(i-ii). Defendants correctly note that the combinations under §1629(1)(a)(i) and (b)(i) would apply only if there is one Defendant or one Plaintiff because those provisions refer to "the defendant" and "the plaintiff." *Massey v Mandell*, 462 Mich 375, 382; 614 NW2d 70 (2000). However, §1629(1)(a)(ii) and (b)(ii) refer to "a defendant" and "a plaintiff," and thus would apply if there is a county where both the original injury occurred and one of the Defendants or one of the Plaintiffs has a corporate registered office. *Massey, supra* at 383.

The first step in the analysis is to determine where the original injury occurred. The original injury for purpose of determining venue is "the first injury resulting from an act or omission of a defendant." *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 630; 752 NW2d 37 (2008). Plaintiffs contend that the original injury occurred in Oakland County because Defendants' conduct injured Plaintiffs at Osprey's "nerve center" in Oakland County. However, Plaintiffs did not cite any evidence or factual allegations to support their claim that they suffered injury in Oakland County. Further, Plaintiffs did not adequately brief or explain what the original injury is or why it occurred at their Oakland County facility. Even if the Court had sufficient information to determine where the original injury occurred, neither party presented evidence or argument on whether any of the Plaintiffs or Defendant Lyon Properties Associates, LLC has a corporate registered office in Oakland or Livingston County.

Within seven days, either party may file a supplemental brief limited to five pages addressing venue under MCL 600.1629 with specific argument, evidence, or factual allegations of where the original injury occurred and whether any of the parties have corporate registered

offices in Livingston or Oakland Counties. The Court will issue an opinion after receiving the supplemental briefs.

IT IS SO ORDERED.



Hon. Wendy Potts

Dated:

FEB 26 2015

JH