

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

CHALLENGE MFG. COMPANY,

Plaintiff,

vs.

VALIANT MACHINE & TOOL, INC.,

Defendant.

Case No. 15-00364-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANT’S MOTION TO CHANGE VENUE

Weld cells, which incorporate sophisticated robotics into production systems, are engineering marvels that enable manufacturers to quickly and consistently produce large quantities of automotive parts. In this case, Plaintiff Challenge Manufacturing Company (“Challenge”) accepted a purchase order from Defendant Valiant Machine & Tool, Inc. (“Valiant”) to construct a weld cell roughly the size of a football field for approximately \$13.6 million. Valiant began constructing the weld cell in Windsor, Ontario, for ultimate delivery to a Challenge production facility in Kansas City, Missouri. But when disagreements arose between the parties, Challenge filed this action against Valiant in the Kent County Circuit Court in Grand Rapids, which Challenge calls home. Valiant responded with an emergency motion to change venue under MCR 2.221, arguing that Kent County is an improper venue for this litigation. See MCR 2.223. The record reveals no business of Valiant in Kent County other than that which Challenge and Valiant have conducted, so the Court must decide whether the multi-million-dollar weld-cell contract involves “conduct[ing] business” in Kent County. See MCL 600.1621(a). Because the weld-cell contract clearly has required Valiant to conduct business in Kent County, the Court shall deny Valiant’s motion for change of venue.

I. Factual Background

Both parties routinely operate in the automotive-supply industry. Plaintiff “Challenge is a ‘Tier One’ automotive supplier that manufactures and supplies parts directly to original equipment manufacturers, like General Motors.” See Complaint, ¶ 4. Challenge’s headquarters are located in Kent County, “and its principal place of business is there.” Id., ¶ 5. In contrast, Defendant “Valiant is a Canadian company, with its headquarters in Windsor, Ontario, Canada.” Id., ¶ 7. Valiant has an American affiliate called Valiant International, Inc., that operates out of Troy in Oakland County. See Defendant’s Emergency Motion to Change Venue, Exhibit A (Affidavit of Tony Sauro, ¶ 11). As a result, “Valiant employees regularly attend meetings, perform engineering and design services, and otherwise conduct business at the offices of Valiant’s affiliated company, Valiant International, Inc., in Troy, Michigan.” Id.

Defendant Valiant has regularly solicited work from Plaintiff Challenge at the headquarters of Challenge in Kent County. In late 2013, Valiant issued a purchase order to Challenge regarding the production of a weld cell for more than \$13 million. See Complaint, ¶¶ 13-14. That purchase order was augmented on May 7, 2014, id., ¶¶ 15-16, and ultimately accepted by Challenge. And as a result, Valiant began building the weld cell to Challenge’s specifications. Predictably, the parties often engaged in discussions as the production of the weld cell moved forward. Dozens of meetings took place between representatives of Challenge and Valiant, primarily at Challenge’s headquarters located in Kent County. See Challenge’s Brief Opposing Valiant’s Emergency Motion to Change Venue, Exhibit A (Affidavit of Boyd Vor Broker, ¶ 5). The meetings involved “equipment reviews, process reviews, design reviews, CAD model reviews, and kick-off” discussions. See id. (Affidavit of Boyd Vor Broker, ¶¶ 6-7 & Exhibit 1 to Affidavit).

Although Plaintiff Challenge made at least two of the periodic payments mandated under the parties' contract, Defendant Valiant eventually became concerned about Challenge's ability to meet its remaining payment obligations. That concern blossomed into this lawsuit when Challenge took the position that Valiant was shirking its responsibilities to complete and deliver the weld cell on the timetable established by the parties' contract. But before the Court could turn to the merits of the dispute, Valiant moved to change venue to the Oakland County Circuit Court. Therefore, the Court must consider the propriety of proceeding in Kent County before issuing any decisions on the merits of Challenge's breach-of-contract and declaratory-judgment claims.

II. Legal Analysis

If a plaintiff files a civil action in any county where venue is improper, the Court "shall order a change of venue on timely motion of a defendant." See MCR 2.223(A)(1). "Venue is controlled by statute in Michigan." Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC, 481 Mich 618, 624 (2008). Under Michigan law, venue is proper in "[t]he county in which a defendant resides, has a place of business, or conducts business[.]" See MCL 600.1621(a). Here, the Court's analysis turns upon whether Defendant Valiant "conducts business" in Kent County. On this issue, "the plaintiff has the burden to establish that the county it chose is a proper venue, and the plaintiff must present some credible factual evidence that the venue chosen is proper[.]" Provider Creditors Committee v United American Health Care Corp, 275 Mich App 90, 94 (2007).

Plaintiff Challenge rests its venue argument exclusively upon its own business dealings with Defendant Valiant. That is, Challenge asserts that Valiant has not only regularly solicited business from Challenge in Kent County, but also landed the multi-million-dollar weld-cell contract at issue

in this action and sent representatives to Challenge's Kent County headquarters dozens of times for the purpose of carrying out that weld-cell contract. Indeed, Challenge has presented evidence that Valiant representatives have been to Kent County 44 times since May 2013 to solicit and work with Challenge. See Challenge's Brief Opposing Valiant's Emergency Motion to Change Venue, Exhibit A (Affidavit of Boyd Vor Broker, ¶¶ 5-7 & Exhibit 1 to Affidavit).

Our Court of Appeals recently reminded us that “the purpose behind the venue statute [is] that an action should be instituted in a county in which the defendant has some real presence such as might be shown by systematic or continuous business dealings inside the county.” Hills & Dales General Hospital v Pantig, 295 Mich App 14, 22 (2011). “Conducting business does not include the performance of acts merely incidental to the business in which the defendant is ordinarily engaged.” Id. at 23. Instead, Michigan precedent requires “a true business connection between the defendant and the selected venue.” Id. Significantly, our Court of Appeals has held (albeit in a tort action) that venue lies in a county in which the defendant “conducts business” by servicing two customers on a regular basis. See Schultz v Silver Lake Transport, Inc, 207 Mich App 267, 271-272 (1994). Here, Defendant Valiant has been deeply involved for many months in a multi-million-dollar project that has brought Valiant representatives to Kent County for dozens of meetings. Moreover, Valiant has solicited additional business from Challenge in Kent County on numerous occasions in recent years. Accordingly, Valiant has conducted business in Kent County in a manner and to a degree sufficient to support venue in Kent County. See MCL 600.1621(a). Therefore, the Court must deny Valiant's emergency motion to change venue to Oakland County.¹

¹ This decision excuses the Court from addressing Plaintiff Challenge's alternative argument that its own place of business in Kent County justifies venue under MCL 600.1621(b) because Defendant Valiant – as a Canadian company – does not conduct business anywhere in Michigan.

III. Conclusion

For all of the reasons stated in this opinion, the Court shall deny Defendant Valiant's motion to change venue pursuant to MCR 2.221. Venue is not improper in Kent County pursuant to MCR 2.223 because Valiant "conducts business" in Kent County, as contemplated by MCL 600.1621(a). Accordingly, the case shall proceed in the Kent County Circuit Court.²

IT IS SO ORDERED.

Dated: January 26, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

² The evidentiary hearing on Plaintiff Challenge's motion for a preliminary injunction shall commence as scheduled at 9:00 A.M. on Tuesday, January 27, 2015.