

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

TIMOTHY BRACEY,

Plaintiff,

Case No. 14-02092-CKB

vs.

HON. CHRISTOPHER P. YATES

MACKER BASKETBALL, LLC;
and SCOTT McNEAL, jointly and
severally,

Defendants.

OPINION AND ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE

The Gus Macker brand is woven into the fabric of West Michigan. From humble beginnings in Lowell to its zenith at a 20,000-competitor event in Belding, Gus Macker basketball has become an essential component of our local culture. The Gus Macker summer series of three-on-three events has faithfully made an annual stop in the greater Grand Rapids area for a quarter of a century, staging its vaunted “All World Tour” in the downtown area and, more recently, at Fifth Third Ballpark. So when Plaintiff Timothy Bracey – a true basketball legend in his own right – became embroiled in a contract dispute with Defendants Scott McNeal and Macker Basketball, LLC (“Macker”), he filed suit in the Kent County Circuit Court. The defendants, in turn, moved for change of venue, asserting that the matter should be resolved in the 8th Circuit Court, which encompasses Ionia and Montcalm Counties. Although the Court acknowledges that this case certainly could have been initiated in the 8th Circuit Court, the Court shall deny the defendants’ motion for change of venue because the Kent County Circuit Court is the proper venue to assign the judge – or, in Macker parlance, the Gusbuster – to resolve this dispute.

I. Factual Background

The glorious history of Gus Macker basketball is spelled out on the official Macker website, www.macker.com, and well-known to longtime basketball aficionados, high-school hoopsters, and little dribblers alike. In 1974, Defendant Scott McNeal organized the inaugural three-on-three event, which took place on his parents' driveway in Lowell. In time, the event outgrew its original home, so McNeal moved the flagship competition to the small town of Belding, which is located in Ionia County. The Belding tournament, which quickly grew into a 5,000-team extravaganza, spawned a collection of additional Macker events across the country, including an annual competition in Grand Rapids. Huge crowds swarmed to join the action or simply to take in the spectacle, which included legendary mainstays such as Melvin "Sugar" McLaughlin, 5'5" dunking sensation Porter Maberry, Jumpin' Jack Kelly, Plaintiff Timothy Bracey (a former standout at Creston High School and Eastern Michigan University), and even the mythical Slam Dunkley.

When Plaintiff Bracey's playing days ended, he embarked upon a legal career and became adept at lining up funding for events through sponsorship opportunities. See Affidavit of Timothy Bracey, ¶ 4. This skill, coupled with Bracey's notoriety in basketball circles, attracted the attention of Defendant McNeal. Id. at 5. In the fall of 2011, Bracey and McNeal met "at a Big Boy restaurant in downtown Grand Rapids" and reached a "Sponsorship Manager" agreement that entitled Bracey to commissions for recruiting sponsors of Macker events. See id., ¶ 6 & Exhibit A. Bracey alleges that he recruited sponsors for Macker in the Grand Rapids area, id., ¶ 7, performed his obligations under the parties' agreement, and even received payments from McNeal. Id. Over time, the business relationship broke down, purportedly leaving Bracey inadequately compensated while the defendants continued to reap the residual benefits of Bracey's work in lining up sponsors for Macker.

On March 10, 2014, Plaintiff Bracey filed this suit against Defendants Macker and McNeal, advancing claims for violation of the Michigan Sales Representatives' Commissions Act, see MCL 600.2961, breach of contract, promissory estoppel, and "piercing the corporate veil." Both of the defendants promptly moved for change of venue, contending that the case should be resolved as a matter of Michigan law in Ionia County. In framing the venue dispute, the parties essentially agree upon the controlling principles, but they disagree about how the Court should apply those principles to determine whether this action should be maintained in Kent County or, instead, transferred to the 8th Circuit Court in Ionia County for further proceedings. As a result, the Court must determine the appropriate venue for this litigation.

II. Legal Analysis

If a plaintiff files a civil action in a 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). Beyond that, if venue is proper, the Court nonetheless "may order a change of venue . . . for the convenience of parties and witnesses." See MCR 2.222(A). "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). In this case, the Court's analysis turns upon whether Defendants Macker and McNeal "conduct business" in Kent County. On this issue, "the plaintiff has the burden to establish that the county [he] 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).

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. In this case, the defendants have staged a series of summer tournaments in Kent County, which rises to the level of “conducting business” in a manner sufficient to support venue in Kent County pursuant to MCL 600.1621(a). See id. Accordingly, the Court must deny the defendants’ motion for mandatory change of venue under MCR 2.223.

The defendants’ request for discretionary change of venue, as contemplated by MCR 2.222, presents a closer question. Pursuant to MCR 2.222(A), “[t]he court may order a change of venue of a civil action . . . for the convenience of the parties and witnesses or when an impartial trial cannot be had where the action is pending.” The defendants implicitly concede that they can receive a fair trial in Kent County, but they insist that a change of venue to the circuit court in Ionia County will be more convenient for the parties and witnesses alike. To be sure, the defendants conduct their core operations in Ionia County. But this case involves claims for unpaid sales commissions, and most of the witnesses to the transactions supporting those commission claims work for businesses in Kent County. Moreover, Plaintiff Bracey resides in Kent County, and he negotiated the agreement at the heart of this dispute while conversing with Defendant McNeal in Kent County. Consequently, the Court concludes that the case should remain in the Kent County Circuit Court despite the defendants’ request for discretionary change of venue under MCR 2.222.

III. Conclusion

For all of the reasons set forth in this opinion, the Court concludes that the defendants have not demonstrated an entitlement to a change of venue, either as a matter of right pursuant to MCR 2.223 or as a matter of discretion under MCR 2.222. Accordingly, the Court shall deny the motion for change of venue and proceed with the action in the Kent County Circuit Court. The Gus Macker events have taught the world that they can put up a backboard anywhere and have a great game. In this case, the legal backboard has been set up in Grand Rapids and the contest will take place in Kent County.

IT IS SO ORDERED.

Dated: April 21, 2014



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