

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SUMMIT MECHANICAL, INC., a Michigan corporation,

Plaintiff,

vs.

Case No. 2013-3370-CZ

LINDA LEWIS, an individual,

Defendant,

vs.

JEFFREY ROBINSON, WILLIAM QUINN, and
PHILLIP SITARSKI,

Third-Party Defendants.

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OPINION AND ORDER

Defendant has filed a motion for change of venue pursuant to MCR 2.223. Plaintiff and Third-Party Defendants have filed a joint response requesting that Defendant's motion be denied.

Factual and Procedural History

Defendant is a current shareholder of, and former employer, director and treasurer of, Plaintiff. Prior the filing of this matter, Defendant's employment was terminated, and Defendant was removed as director and treasurer. Defendant has, at all pertinent times, resided in St. Clair County.

On August 20, 2013, Plaintiff filed its complaint against Defendant. Plaintiff's complaint contains claims against Defendant for: Breach of Fiduciary Duty by Director or Officer (Count I), Fraud/Misrepresentation (Count II), Breach of Fiduciary Duty (Count III), Common Law and

Statutory Conversion (Count IV), Embezzlement (Count V), and Unjust Enrichment/Quantum Meruit (Count VI).

Defendant now contends that venue is improper and requests that this matter be transferred to St. Clair County.

Standard of Review

Venue is controlled by statute in Michigan. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). Venue is determined at the time the lawsuit is filed. *Shiroka v Farm Bureau General Ins Co*, 276 Mich App 98, 104; 740 NW2d 316 (2007). Where a defendant challenges venue, the plaintiff has the burden of establishing proper venue. *Provider Creditors Committee v United American Health Care Corp*, 275 Mich App 90, 94; 738 NW2d 770 (2007). The choice of venue must be based on fact, not mere speculation. *Id.* Furthermore, if any one of the defendants satisfies the venue requirements, then venue is proper for all defendants. *Hunter v Doe*, 61 Mich App 465, 467; 233 NW2d 39 (1975).

Arguments and Analysis

In this case, Plaintiff contends that venue in Macomb County is proper under MCL 600.1621 because Defendant has a place of business in Macomb County. MCL 600.1621 provides, in pertinent part:

Except for actions provided for in sections 1605, 1611, 1615, and 1629, venue is determined as follows:

- (a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.

The purpose of this section of the statute is to require that the action be instituted in a county where the defendant has 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, 172-173; 454 NW2d 194 (1990) citing *Pulcini v Doctor's Clinic, PC* 158 Mich App 56, 59; 404 NW2d 702 (1987), lv den 428 Mich 894 (1987).

It appears undisputed that at the time this matter was initiated Defendant's only role/relationship with Plaintiff was as a shareholder. The Michigan Court of Appeals has held that "[e]quating stock ownership with 'conducting business' expands the statutory language beyond the plain meaning of the term." *Hills and Dales General Hosp v Pantig*, 295 Mich App 14; 812 NW2d 793 (2011). Accordingly, Plaintiff may not use Defendant's shareholder interest to form the basis for venue in Macomb County. Further, because Defendant's role as shareholder is the only basis upon which Plaintiff asserts that venue is proper in Macomb County, Plaintiff has failed to sustain its burden and Defendant's motion must be granted.

In addition, Defendants have requested costs and attorney fees as provided for by MCR 2.223(B)(1). MCR 2.223(B)(1) provides:

The Court shall order the change [of venue] at the plaintiff's cost, which shall include the statutory filing fee applicable to the court to which the action is transferred, and which may include reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending the wrong court.

Pursuant to MCR 2.223(B)(1), Plaintiff is obligated to pay the statutory filing fee of St. Clair County, the county to which this matter is being transferred. However, the Court is not satisfied that Defendant should be awarded attorney fees in this matter.

Conclusion

Based upon the reasons set forth above, Defendant's motion for change of venue is GRANTED, and this matter is TRANSFERRED to St. Clair County. Defendants' request for costs is GRANTED, IN PART, and DENIED, IN PART. Plaintiffs shall pay the statutory filing

fee in St. Clair County. Defendant's request for attorney fees is DENIED. This *Opinion and Order* closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ Judge John C. Foster 28189

Dated: November 18, 2013

JCF/sr

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