STATE OF MICHIGAN

COURT OF APPEALS

DREW, COOPER & ANDING, P.C., Plaintiff-Appellee,	UNPUBLISHED June 27, 2013
v	No. 311028 Kent Circuit Court
OLDNAR CORPORATION, d/b/a NARTRON, and UUSI, L.L.C., d/b/a NARTRON, Defendants-Appellants.	LC No. 12-002654-CK

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

In this action for an account stated and breach of contract, defendants appeal by leave granted a trial court order denying their motion to change venue. For the reasons set forth in this opinion, we reverse and remand.

Defendants Oldnar Corporation and UUSI, LLC, collectively referred to as Nartron, are Michigan corporations that design, develop, manufacture and market proprietary electronic systems and components for the automotive, truck, military and consumer product markets. Their principal place of business is Reed City, Osceola County, Michigan.

According to Nartron, in 2008, with legal representation provided by the Hyman Lippitt law firm, it sued Cooper-Standard Automotive in the Oakland Circuit Court and asserted multiple claims arising from Cooper-Standard's alleged misappropriation of Nartron's trade secrets. In June of 2010, Nartron's action was removed to the United States District Court for the Eastern District of Michigan.

On August 23, 2011, Nartron entered into a letter of engagement with plaintiff, a Grand Rapids-based law firm, pursuant to which it retained plaintiff to represent Nartron in the suit pending in the US District Court. Plaintiff later withdrew as counsel and Nartron's suit was dismissed by stipulated order. According to plaintiff, by letter dated March 1, 2012, plaintiff notified Nartron that it owed plaintiff $52,826.14 and demanded payment within 10 days as required by the terms of the letter of engagement. Nartron did not respond to the letter. Plaintiff then commenced this action in the Kent Circuit Court.

On May 15, 2012, defendants moved to change venue to Osceola County. According to Nartron, venue was improperly laid in Kent County because Nartron lacked systematic and

continuous dealings within the county and did not conduct its usual and customary business within the county and, thus, had no "real presence" in Kent County. Any contact Nartron had with Kent County was merely "incidental or coincidental" to Nartron's federal litigation taking place in a county other than Kent. Rather, venue was properly laid in Osceola County, pursuant to MCL 600.1621(a), because Nartron has its registered office and conducts its usual and customary business in Reed City, which is located within Osceola County.

Nartron appended to its motion the affidavit of Norman Rautiola, the president and CEO of defendant Oldnar and the sole member of UUSI, LLC. In the affidavit, Rautiola averred that all or most of its primary customers are located in Southeast Michigan and several other Midwestern states. Rautiolar also averred that the companies did not have any office, manufacturing facilities, warehouse facilities, any personnel, or any customers in Kent County.

Plaintiff responded, arguing that venue was properly laid in Kent County because Nartron actively solicited and contracted for plaintiff's services in Kent County and then, for approximately six months, maintained systematic and continuous dealings with plaintiff in connections with the legal services plaintiff was providing Nartron, the "vast majority of which were performed in Grand Rapids."

The trial court denied Nartron's motion for change of venue. The court found that Nartron made "systematic and continuous contact" in Kent County when it entered into a contract with plaintiff for the provision of legal services. This appeal ensued.

On appeal, Nartron claims that the trial court clearly erred when it denied the motion to change venue where plaintiff offered no reasonable or supported interpretation of MCL 600.1621(a) that would establish that venue properly lies in Kent County. Plaintiff contends that venue is proper in Kent County because Nartron solicited, retained, and contracted for plaintiff's services there, because Nartron engages in frequent litigation and often hires counsel from Kent County, and finally, because Kent County is the most convenient forum.

We review a trial judge's ruling on a motion to change venue for clear error. *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 94; 738 NW2d 770 (2007). To the extent that the venue dispute involves an issue of statutory construction, however, we exercise de novo review. *Id.*

When a defendant challenges venue, 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. *Id.* "The choice of venue must be based on fact, not mere speculation." *Id.* Venue is determined at the time the lawsuit is filed, *Shiroka v Farm Bureau Gen Ins Co*, 276 Mich App 98, 104; 740 NW2d 316 (2007), not when the cause of action accrues, *DesJardin v Lynn*, 6 Mich App 439, 442-443; 149 NW2d 228 (1967).

Venue for breach of contract claims is governed by MCL 600.1621. *Ferguson v Pioneer State Mut Ins Co*, 273 Mich App 47, 51-54; 731 NW2d 94 (2006). The statute provides in pertinent part:

[V]enue 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. [MCL 600.1621.]

"Under § 1621, venue is appropriate where a defendant has systematic and continuous dealings inside the county or conducts its 'usual and customary business' within the county . . . ." *Miller v Allied Signal*, *Inc*, 235 Mich App 710, 719; 599 NW2d 110 (1999) (citation omitted). "A company conducts business in a county for venue purposes if the company has some real presence such as might be shown by systematic or continuous dealings inside that county." *Schultz v Silver Lake Transport*, *Inc*, 207 Mich App 267, 271-272; 523 NW2d 895 (1994). Conversely, "[c]onducting business does not include the performance of acts merely incidental to the business in which the defendant is ordinarily engaged." *Hills & Dales Gen Hosp v Pantig*, 295 Mich App 14, 23; 812 NW2d 793 (2011) (quotation and citation omitted). Rather, the defendant's "activity must be of such a nature as to localize the business and make it an operation within the county." *Id*. (quotation omitted). Thus, in order for venue to properly lie in a county, there must be "a true business connection between the defendant and the selected venue." *Id.*

In the present case, plaintiff commenced its breach of contract action in Kent Circuit Court. Because Nartron challenges plaintiff's venue choice, plaintiff bears the burden of establishing that its choice was a proper one. *Provider Creditors*, 275 Mich App at 94. Plaintiff has not carried and cannot carry this burden. As previously observed, and not disputed by plaintiff, Nartron designs, develops, manufactures and markets proprietary electronic systems and components for the automotive, truck, military and consumer product markets with its primary place of business in Reed City, Osceola County. There is no evidence to support that Nartron has "systematic or continuous dealings" in Kent County. *Shultz*, 207 Mich App at 271-272. Nartron is not in the business of initiating or defending lawsuits. Such activities fall within the nature of plaintiff's business. The fact that Nartron may on occasion seek to protect its proprietary interests in its intellectual property by commencing a lawsuit or defending a lawsuit is a reality incidental to its usual and customary business of designing, developing, manufacturing and marketing proprietary electronic systems and components. Thus, Nartron's act of retaining plaintiff to provide legal representation in a suit Nartron commenced is necessarily an activity incidental to Nartron's real business. See e.g., *Chiarini v John Deere Co*, 184 Mich App 735, 738-739; 458 NW2d 668 (1990). Moreover, the activities of soliciting legal services and of entering into an agreement for those services are not activities the nature of which localize Nartron's business and make Nartron an operation within Kent County. For these reasons, the trial court clearly erred when it denied Nartron's motion to change venue. Venue properly lies in Osceola County and the trial court should have entered an order transferring the case to that venue at plaintiff's cost. See MCR 2.223(A)(1) (when the venue in a civil action is improper, the trial court "*shall* order a change of venue on timely motion of a defendant[.]") (emphasis added); MCR 2.223(B)(1) ("The court *shall* order the change at the plaintiff's cost . . .") (emphasis added).

Reversed and remanded for entry of an order changing venue consistent with this opinion. Defendants having prevailed in full, may tax costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ Deborah A. Servitto