STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

TERRY O. PETERS, as Trustee of the Terry O. Peters Living Trust dated December 11, 2007, SCOTT E. PETERS, as Trustee of the Scott E. Peters Living Trust dated August 15, 2017, and BRYON W. PETERS TRUST dated March 22, 2016,

Plaintiffs/Counter-Defendants,

v. Case No. 2024-004991-CB

JONATHAN J. PETERS, as Trustee of the Jonathan J. Peters Living Trust dated September 25, 2000,

Defendant/Counter-Plaintiff/
Third-Party Plaintiff,

v.

PETERS BROTHERS FARMS, LLC, a Michigan limited liability company; PETERS BROTHERS EQUIPMENT, LLC, a Michigan limited liability company; PETERS BROTHERS FARM SUPPLY, LLC, a Michigan limited liability company; and PETERS BROTHERS, LLC, a Michigan limited liability company,

Third-Party Defendants.
_____/

OPINION AND ORDER

This matter is before the Court on Defendant/Counter-Plaintiff/Third-Party Plaintiff Jonathan Peters' ("Defendant") motion to transfer venue.

I. Background

Plaintiffs/Counter-Defendants Terry Peters, Scott Peters, and Byron Peters (collectively, "Plaintiffs") and Defendant are each the trustee of their respective *inter vivos* trusts. The trusts are each equal members in four Michigan limited liability companies

(LLCs): Peter Brothers Farms, LLC; Peter Brothers Equipment, LLC; Peter Brothers Farm Supply, LLC; and Peter Brothers, LLC (collectively, the "Companies"). Plaintiffs and Defendant are also managers of the Companies. In December 2024, Plaintiffs voted in favor of a forced removal of Defendant's membership in each of the Companies pursuant to each company's Buy-Sell Agreement. However, a dispute arose regarding how much compensation Defendant is entitled to under the Buy-Sell Agreements for the redemption of his interest in the Companies due to his removal.

On December 23, 2024, Plaintiffs filed suit against Defendant seeking declaratory relief (Count I) and alleging a breach of contract claim (Count II). Defendant filed a motion to transfer venue under MCR 2.223 on January 16, 2025. Simultaneous with his motion to transfer venue, Defendant filed a counter-complaint and third-party complaint asserting claims of breach of contract and member oppression against Plaintiffs and the Companies. Plaintiffs filed their response to the motion to transfer venue on January 23, 2025. The Court heard oral arguments on January 27, 2025. Plaintiffs filed a supplemental brief on January 31, 2025, and Defendant file his supplemental brief on February 4, 2025. The Court has reviewed the supplemental briefs.

II. Standard of Review

When a challenge to venue has been raised under MCR 2.223, the burden is on the plaintiff to establish the chosen county is a proper venue with credible factual evidence. *March v Walter L Couse & Co*, 179 Mich App 204, 208; 445 NW2d 204 (1989). If a court determines venue is improper, it does not have discretion to refuse to transfer to the proper venue. *Shock Bros v Morbark Indus*, 411 Mich 696, 698; 311 NW2d 722 (1981). Where venue is proper, however, it is within the trial court's discretion to transfer

venue based on inconvenience to the parties. *Kohn v Ford Motor Co*, 151 Mich App 300, 309; 390 NW2d 709 (1986).

III. Law and Analysis

A. Proper Venue

MCL 600.1621(a) provides that in cases like this, venue is proper in "[t]he 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 . . . ." The parties' venue dispute is based solely on whether Defendant "conducts business" in Macomb County for purposes of MCL 600.1621(a). Defendant argues that proper venue is St. Clair County, not Macomb County, as he does not conduct business in Macomb County and any business he may have conducted in Macomb County as a member-manager of the Companies had ceased by the time the complaint was filed because by that time he was only a passive member of the Companies due to his forced removal.

Plaintiffs argue venue in Macomb County is proper because one of the Companies, Peters Brothers Farms, conducts business here, and because Jon was a manager of Peter Brothers Farms and still has a membership interest that company, he conducts business in Macomb County.

The respective affidavits from the parties agree that as of Spring 2024, Peters Brothers Farms owns or leases approximately 582 acres of farmland in Macomb County. (Pltfs.' Supp. Resp., Ex. D, ¶6; Def.'s Supp. Resp., Ex. A, A-1.) That Macomb County property accounts for approximately 5.5% of Peters Brothers Farms' total farmland.[1] (Id.)

[1] The majority of farmland owned or leased by Peters Brothers Farms is located in St. Clair County (12,325.88 acres, 87.1%) and Sanilac County (1,029.84 acres, 7.3%). (Def.'s Supp. Resp., Ex. A, ¶10, A-1.)

Additionally, according to Terry Peters, the Macomb County property generates approximately 15% of the company's income, and it generated 18% of the soybean revenue for the company for the 2023 crop year and 14% of its corn revenue for the 2024 calendar year. (Pltfs.' Supp. Resp., Ex. D, ¶¶3, 4, 6.)

In Defendant's affidavit, he does not dispute that Peters Brothers Farms "primarily operates to conduct farming operations on land which it leased from property owners." (Def.'s Supp. Resp., Ex. A, ¶9.) He also acknowledges, "Of the four Companies, the only entity that performed any regular business in Macomb County was Peters Brothers Farms, LLC." (Id., ¶8.) However, he avers that the net income attributable to the Macomb County property represents "only 2.3% of the total net income for all four of the Companies." (Id., ¶24.)

Under the "conducting business" element of the venue statute, the action must 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; 454 NW2d 194 (1990); see *Hills & Dales Gen Hosp v Pantig*, 295 Mich App 14, 23; 812 NW2d 793 (2011) ("[P]roper venue lies in the county where a defendant conducts 'its usual and customary business . . . . The activity must be of such a nature as to localize the business and make it an operation within the county.'") "Conducting business does not include the performance of acts merely incidental to the business in which the defendant is ordinarily engaged." *Chiarini v John Deere Co*, 184 Mich App 735, 737; 458 NW2d 668 (1990).

Michigan courts do not apply a mathematical formula for distinguishing between systematic or continuous business dealing and incidental acts. Case law demonstrates

that the analysis is based on what the nature of the business is, and whether its acts inside the county are an ordinary and material part of that business.

In *Schultz v Silver Lake Transp*, 207 Mich App 267; 523 NW2d 895 (1994), the defendant trucking company, Silver Lake, was sued in Wayne County. After the trial court transferred venue to Washtenaw County over the defendant's objection that venue was appropriate only in Baraga County because it conducted business in that county. The court agreed with defendant explaining,

> Silver Lake is a trucking company that has two customers located in Baraga County at which it makes regular pickups. In fact, Silver Lake had multiple vehicles in Baraga County doing business for defendant at the time of the accident.
>
> [* * * *]
>
> Silver Lake has customers in Baraga County, regularly services those customers, and in fact was present in Baraga County servicing customers when involved in the accident. We can think of nothing that more quintessentially defines the business of a trucking company than to drive along the road. Perhaps we might conclude that a trucking company does not conduct business in a county where its trucks merely drive across the county, making no stops within the county at or on behalf of a customer. However, in the case at bar, Silver Lake does not incidentally drive across Baraga County, but makes stops in Baraga County because it has customers in Baraga County. Accordingly, we conclude that Silver Lake does, in fact, conduct business in Baraga County. [Id. at 271-272.]

And in *Shock Bros v Morbark Indus*, 97 Mich App 616; 296 NW2d 125 (1980), the Court of Appeals determined that venue in a breach of contract claim against a manufacturer of farm implements was properly lodged in Macomb County, where the implement was contracted for and delivered, rather than in Isabella County, the defendant's principal place of business. The parties' affidavits showed that when the plaintiff had difficulties with the implement, the defendant sent service personnel to the plaintiff. *Id.* at 619-620. Further, the defendant had advertised, sold, and serviced other

implements in Macomb County. *Id.* The Court concluded, "For venue purposes, then, it can be seen that all of defendant's contacts with Macomb County seem to be in connection with the sale of its [implements]. Thus, the transaction defendant undertook with plaintiff was material and significant to the conduct of defendant's business." *Id*.

However, in *Grier v Bauman,* 165 Mich App 684, 688; 419 NW2d 53 (1988), the Court of Appeals held that an action against a defendant college which sent representatives into Genesee County for recruitment, alumni and fund-raising activities did not have proper venue in Genesee County since those activities were only incidental to its real business, education, which occurred and was located in Houghton County. Similarly, in *Saba v Gray,* 111 Mich App 304, 312–313; 314 NW2d 597 (1981), the Court of Appeals examined whether a real estate agent assigned to sell property in Monroe County could be sued in Wayne County. The agent advertised in newspapers that had "some circulation" in Wayne County and had received a single referral from Wayne County. *Id.* at 314. However, he never sold a property located outside of Monroe County. *Id.* Finding that "Defendant ha[d] restricted his real estate agency activities to properties located in Monroe County," the Court determined he could not be "properly characterized as conducting business in Wayne County," and the newspaper advertising in Wayne County was incidental. *Id.*

The Court is satisfied that this case is closer to the *Shultz* and *Shock Bros*. cases than the *Grier* and *Saba* cases. The evidence clearly demonstrates that Peters Brothers Farms primarily operates as a farming operation on land it leases from property owners. As part of that operation, it has farmed approximately 582 acres of leased farmland in Macomb County since at least 2023. The Court can think of nothing that more

quintessentially defines the business of a farming operation than farming. See Schultz, 207 Mich App at 272 ("We can think of nothing that more quintessentially defines the business of a trucking company than to drive along the road.") While the total Macomb County farmland only accounts for approximately 5.5% of Peters Brothers Farms' total farmland, this does mean that it is only incidentally acting in Macomb County. Its farming of over 500 acres in Macomb County is an ordinary and material part of its business operations, even if it only accounts for a relatively small portion of its overall farmland. Accordingly, the Court finds that Peters Brothers Farms conducts business in Macomb County.

Defendant argues that even if Peters Brothers Farms conducts business in Macomb County, because he is no longer managing any of the Companies, including Peters Brothers Farms, following his forced removal, he no longer conducts business in Macomb County, thus venue is not proper in Macomb County. He relies on *Hills & Dales Gen Hosp v Pantig*, 295 Mich App 14, 16; 812 NW2d 793 (2011) to support this argument.[2] This reliance is misplaced.

In *Hills & Dales Gen Hosp*, the plaintiff filed suit against two former physician employees and their new employer, Huron Medical Center, in Tuscola County for breach of a non-compete agreement. *Id.* at 16. The defendants moved to transfer venue to Huron County, where Huron Medical Center is located. *Id.* The plaintiff argued venue was proper in Tuscola County because Huron Medical Center "conducted business" in two joint

[2] In his supplemental response, Defendant also cites a Michigan Circuit Court opinion, *Summit Mechanical v Lewis*, unpublished opinion of the Macomb County Circuit Court, issued Nov 18, 2013 (Case No. 2013-3370-CZ). Circuit court opinions are not binding authority, nor does the Court find it persuasive.

ventures located in Tuscola County. *Id.* at 17-18. The Court of Appeals rejected the plaintiff's venue argument explaining that "[e]quating stock ownership with 'conducting business' expands the statutory language beyond the plain meaning of the term." *Id.* at 21. The Court based this conclusion, in part, on the lack of evidence suggesting that Huron Medical Center controls the daily business affairs of the two Tuscola LLCs.

Hills & Dales Gen. Hosp. is factually distinguishable from this case. Unlike that case, where the defendant's ownership interest was in two entities that were unrelated to the dispute, here Defendant's ownership interest in the Companies is an integral part of the dispute. Indeed, one of the primary disputes is what impact certain solar panel leases that were secured by Defendant while he was a member-manager of the Companies had on the valuation of the Companies. (Compl., ¶18; Ctr-Compl., ¶¶3, 5, 34-38.) Moreover, in this case, the evidence shows Defendant, as a member-manager, was actively involved in the operations of the Companies, including "managing the other members and the employees and managing accounts receivables" for Peters Brothers Farms. (Def.'s Supp. Resp., Ex. A, ¶17; See Ctr-Compl., ¶¶3, 5, 34-38.) Accordingly, the Court finds Defendant's active involvement in the operations of the Companies, and in Peters Brothers Farms in particular, is sufficient to establish he conducts business in Macomb County.

Defendant further argues that at the time the complaint was filed, he was no longer a manager of the Companies due to his forced removal, and as such he no longer conducts business in Macomb County for purposes of venue. In support of this argument, he cites *Michigan Plumbing, Sewer, & Drain Cleaning v Hein*, unpublished opinion of the Court of Appeals, issued September 17, 2020 (Docket No. 347514). As an unpublished

opinion, *Michigan Plumbing* is not binding precedent. MCR 7.215(C)(1). Nor does the Court find it persuasive. *Michigan Plumbing* stands for the simple proposition that an employee does not "conduct business" for purposes of the venue statue in counties he is directed to go to by his employer for work assignments. Unpub op at 2. This proposition does not apply here because Defendant was not an employee of the Companies, he was a member-manager conducting regular managerial functions for a company that conducts business in Macomb County. Nor does *Michigan Plumbing* indicate, as Defendant contends, that whether a defendant conducts business in a county is based entirely on its conduct on the date the complaint is filed, regardless of whether it conducted business in the years and months before the complaint was filed. In fact, *Michigan Plumbing* Court never addressed that issue. On the contrary, published caselaw regularly looks at a defendant's history of conduct within the county when evaluating whether it "conducts business" for purposes of venue. See *Shock Bros*, 97 Mich App at 619-620; *Schultz*, 207 Mich App at 271-272. The Court is unpersuaded that Defendant's forced removal from his role as a manager by the time the complaint was filed, means that venue is no longer proper in Macomb County.

B. Inconvenience

Defendant argues that even if venue is proper in Macomb County, the Court should exercise its discretion under MCR 2.222 and transfer venue to St. Clair County because it is more convenient to the parties and witnesses than Macomb County.

When venue is proper, a defendant may under MCR 2.222, move to change venue based on convenience of the parties and witnesses. When a motion for change of venue is brought under MCR 2.222, "the moving party has the burden of demonstrating

inconvenience . . . and a persuasive showing must be made." *Chilingirian v Fraser*, 182 Mich App 163, 165 (1989). A plaintiff's initial choice of venue should be accorded deference by a court considering a motion for change of venue under MCR 2.222. *Id.*

According to Defendant, nearly all the witnesses, business records, and physical evidence are located in St. Clair County, so "[l]itigating in Macomb County would impose unnecessary logistical and financial burdens on Defendant and other involved parties . . . ." (Mot., p. 9.) However, Defendant has not cited any evidence to support these assertions. Moreover, as Plaintiffs correctly note, Macomb and St. Clair counties abut one another, and their respective circuit courts are located approximately 40 minutes-drive from each other. Given these facts, the Court finds that Defendant has not made a persuasive showing of inconvenience to justify a change in venue to St. Clair County. See *Dairyland Ins Co v Mews*, 347 Mich App 568, 591; ___ NW3d ___ (2023) ("[t]he inconvenience caused by travel between two adjoining counties does not constitute a 'persuasive showing' of inconvenience or prejudice which would justify a change of venue.")

IV. Conclusion

For the reasons set forth above, Defendant's motion for change of venue is DENIED. This Opinion and Order neither resolves the last pending claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: 02/20/2025

COUNTY OF MACOMB · STATE OF MICHIGAN ·

Kathryn A. Viviano

Signed by KATHRYN VIVIANO 02/20/2025 03:52:40 xC9hMTbF

Hon. Kathryn A. Viviano, Circuit Court Judge