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STATE OF MICHIGAN

IN THE SUPREME COURT

STATE OF MICHIGAN, DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL,

Plaintiff/Appellant,

v

NRK RX, INC. and RAAD KOUZA,

Defendants/Appellees.

MSC Docket No. 167917
CoA Docket No. 364206

Ingham County Circuit Court
LC No. 22-441-CZ

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DEFENDANTS/APPELLEES' ANSWER TO PLAINTIFF/APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF QUESTION INVOLVED

1. Among other causes of action, Plaintiff's Complaint pled the torts of conversion and statutory conversion. MCL 600.1641(2) requires that where any part of a complaint pleads a tort, "venue shall be determined under the rules applicable to actions in tort as provided in section 1629."

Did the trial court and Court of Appeals correctly hold that—by virtue of MCL 600.1641(2)—venue had to be determined pursuant to MCL 600.1629?

Plaintiff answers: No.

Defendants answer: Yes.

Trial court answers: Yes.

Court of Appeals answers: Yes.

2. MCL 600.1629(1)(a)(ii) sets venue in the county in which the original injury occurred and in which any defendant has its registered office. Plaintiff's Complaint claimed Defendants committed conversion by refusing to return an alleged Medicaid overpayment. Food Town was in Oakland County when Plaintiff claims it deprived Plaintiff of the funds. Food Town's registered office is also in Oakland County.

Did the trial court and Court of Appeals correctly hold that venue should be transferred to Oakland County under MCL 600.1629(1)(a)(ii)?

Plaintiff answers: No.

Defendants answer: Yes.

Trial court answers: Yes.

Court of Appeals answers: Yes.

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INTRODUCTION

This Court should deny Plaintiff's Application. This case does not involve any question about the validity of a legislative act, the issues are not of significant public interest, and the issues do not involve legal principles of major significance to the state's jurisprudence. MCR 7.305(B). On the contrary, the issues in this case relate to whether the trial court and Court of Appeals appropriately transferred venue to Oakland County. The plain language of MCL 600.1641(2) and MCL 600.1629 demonstrate that the rulings below were proper.

MCL 600.1641(2) states that where any part of a complaint contains a cause of action based on a tort, venue "shall" be determined by the tort venue statute, MCL 600.1629. Plaintiff's Complaint contained two causes of action based on tort. Thus, the trial court and Court of Appeals held that MCL 600.1629 controlled, applied MCL 600.1629 to the allegations, and determined venue was improper in Ingham County, but proper in Oakland.

Plaintiff's Application mainly advances two arguments. First, Plaintiff claims—despite conceding the opposite in the trial court and despite the plain language of MCL 600.1641(2)—that MCL 600.1629 does not control. Instead, Plaintiff claims MCL 600.1631 and/or MCL 14.102 trump MCL 600.1641(2)'s mandate that venue be determined under MCL 600.1629 where the Complaint alleges a tort. The Court of Appeals appropriately rejected this argument when it held that § 1641(2) employs the mandatory verb "shall," where the other venue statutes are merely permissive.

Second, Plaintiff asserts that even if MCL 600.1629 applies, Ingham County is still the proper venue. Plaintiff is wrong. The trial court and Court of Appeals correctly held that MCL 600.1629(a)(1)(ii) required venue to be transferred to Oakland County because it was the location of the original injury and the location of Food Town's corporate registered office. More specifically, the trial court held that based on Plaintiff's allegations, the "original injury" occurred

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where defendant was located when it refused to return the property to "plaintiff, and in doing so, convert[ed] that property to its own use." (Appellant's Appx, p 3.) In other words, the place of alleged conversion was the situs of the original injury, which in this case occurred in Oakland County where Defendant Food Town was located when it allegedly converted the funds and deprived Plaintiff of their return. *Id*. Because it is undisputed that Food Town's corporate registered office is also in Oakland County, the trial court ordered that venue be transferred to Oakland County. MCL 600.1629(1)(a)(ii). In making that determination, the trial court properly applied MCL 600.1629. The Court of Appeals found the same when it affirmed: "The parties also do not dispute that [Food Town's] registered office is located in Oakland County. It follows, then, that the original injury occurred in Oakland County, the county in which [Food Town] has its corporate office and where it refused to return the funds to [Plaintiff]. In light of these circumstances, Oakland County is a proper venue under MCL 600.1629(1)(a)(ii)." (Appellant's Appx, p 358.)

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Factual Background and Plaintiff's Complaint.

Defendant NRK RX, Inc., d/b/a Food Town Drugs ("Food Town") was enrolled as a provider with the Michigan Department of Health and Human Services, Inc. ("MDHHS") to provide pharmacy services. (Appellant's Appx, p 8, ¶¶ 1-2; p 9, ¶¶ 10-11.) Food Town's registered office is in Oakland County, and the physical location of the pharmacy was in Monroe (Wayne County). (Appellant's Appx, p 8, ¶ 2.) Defendant Raad Kouza ("Kouza") allegedly owns NRK RX, Inc., and resides in Wayne County. (*Id*, ¶ 3.)

Plaintiff claimed that from January 1, 2011 through July 31, 2016, Food Town received $612,630.47 in Medicaid payments, but failed to maintain documentation sufficient to justify entitlement to those payments.[1] (Appellant's Appx, p 9, ¶ 13.) MDHHS eventually reduced the alleged overpayment to $541,590.71. (*Id*, p 10, ¶ 17.) Food Town contested Plaintiff's allegations. (*Id*, ¶ 18.) On June 19, 2019, an Administrative Law Judge issued a Proposal for Decision, recommending that "the Department's decision to recover $541,590.71 of overpayments made to Petitioner [Food Town Drugs] be AFFIRMED." (Appellant's Appx, p 48-82.) On July 29, 2019, MDHHS issued a purported Final Order adopting the June 19, 2019 Proposal for Decision. (Appellant's Appx, p 85.)

On July 8, 2022, Plaintiff filed the above-captioned case seeking to collect the alleged overpayment from Food Town and Food Town's alleged owner, Kouza. Plaintiff's Complaint contains five purported causes of action against both Defendants: (1) "Final Agency Decision,"

[1] This is unlike some Medicaid overpayment actions that involve allegations that services were billed but not rendered. Plaintiff acknowledges the alleged overpayments only resulted from Food Town not producing documents satisfactory to MDHHS showing it bought medication from an authorized wholesaler. (Appellant's Application, p 4.)

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(2) Conversion, (3) Statutory Conversion, (4) Breach of Contract, and (5) Unjust Enrichment. (Appellant's Appx, pp 11-17.)

Plaintiff filed its Complaint in Ingham County Circuit Court, asserting that "[v]enue is appropriate in Ingham County as it is the seat of state government. MCL 600.1631(a)." (Appellant's Appx, p 8, ¶ 5.)

II. Defendants' Motion to Change Venue; Plaintiff's Response.

On September 29, 2022, Defendants filed a Motion to Change Venue. (Appellant's Appx, pp 162-178.) Defendants' Motion argued that because Plaintiff's Complaint contained causes of action sounding in tort, the court must analyze venue according to the tort venue statutes, rather than under MCL 600.1631(a). *Id.* Defendants argued that when analyzed under the correct statutes, venue is improper in Ingham County, and the court must transfer venue. *Id*.

On October 21, 2022, Plaintiff opposed Defendants' Motion to Change Venue. (Appellant's Appx, pp 230-272.) Plaintiff's Response abandoned its pled claim that MCL 600.1631(a) set venue in Ingham County, and conceded that the venue statutes applicable to tort actions controlled: "In this case, Plaintiff asserted, among others, two tort claims: conversion and statutory conversion. Therefore, the special venue provisions for torts would apply." (*Id*, p 234.) Plaintiff, though, argued that after application of the tort venue statute (MCL 600.1629), venue was still proper in Ingham County. *Id*.

On November 3, 2022, Plaintiff filed a "Supplemental" brief taking its third position on venue, now arguing that the tort venue statutes did not control because the Complaint did not allege "corporeal injuries." (Appellant's Appx, p 179-180.) Plaintiff ostensibly changed its position based on an oral ruling issued the day before by a different judge in Ingham County, who ruled that the tort venue statutes did not apply unless the plaintiff is seeking damages for personal injury, property damage, or wrongful death. (Appellant's Appx, p 291.) The ruling of that other circuit

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court has since been peremptorily reversed by the Court of Appeals. (*State of Michigan v IRXPlus.com, Inc.*, CoA Docket No. 364030.)

The hearing on Defendants' Motion to Change Venue took place on November 9, 2022. (Appellant's Appendix, p 138.)

III. The Trial Court's Ruling.

On November 28, 2022, the trial court issued an opinion and order granting Defendants' Motion to Change Venue, transferring venue to Oakland County. (Appellant's Appx, p 1-4.) The trial court first recognized that *Angelucci v Dart Properties Inc*, 301 Mich App 209; 836 NW2d 219 (2013) rejected Plaintiff's most recent claim that the tort venue statutes only applied to cases in which damages related to physical harms. In this regard, the trial court held: "Neither the Legislature nor the Court of Appeals recognized any differen[ce] between torts relating to physical harms and 'non-physical' harms such as, as in the instant case, conversion of electronic funds. This Court follows *Angelucci* as binding precedent and finds that MCL 600.1641(2) does apply." (Appellant's Appx, p 2.)

Second, after holding that the tort venue statutes applied, the Court followed the plain language of MCL 600.1629 and held that the "original injury" in a conversion case "occurs when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use." (Appellant's Appx, p 3.) As applied to the specific allegations here, the trial court held that "the first actual injury occurred when Defendants refused to return the electronic funds to which Plaintiff was entitled, thus converting those funds to defendants' own use. This first actual injury occurred in Oakland County, where Defendant Food Town has its principle place of business and its corporate registered office." *Id*.

Thus, the trial court transferred venue to Oakland County pursuant to MCL 600.1629(1)(a)(ii). (Appellant's Appx, p 4.)

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IV. Appellate History.

On December 19, 2022, Plaintiff filed an application for leave to appeal in the Court of Appeals (Dkt No. 364206). On June 13, 2023, the Court of Appeals denied the application. On July 11, 2023, Plaintiff filed an application for leave to appeal in this Court (Dkt No. 165868). On October 3, 2023, this Court remanded to the Court of Appeals for consideration as on leave granted.

On November 20, 2024, the Court of Appeals issued a published decision affirming the trial court's order transferring venue to Oakland County. (Appellant's Appx, p 353.) The Court of Appeals held that because MCL 600.1641(2) states that where a complaint pleads a cause of action based on tort venue "shall" be determined under MCL 600.1629, and because Plaintiff's Complaint pled two causes of action based on tort, "we must apply MCL 600.1629 to determine proper venue." (Appellant's Appx, p 357.) In other words, the Court rejected Plaintiff's contention that MCL 14.102 and/or MCL 600.1631 somehow trump the mandatory language employed by MCL 600.1641(2) that venue "shall" be determined under MCL 600.1629.

The Court of Appeals then held that when applying MCL 600.1629, "the first step is to determine the county in which the original injury occurred," and here, the "original injury occurred when defendants refused to return the disputed Medicaid funds upon request." (Appellant's Appx, p 358.) The Court held that because the parties did not dispute that the registered office of the corporate defendant was in Oakland County, "[i]t follows, then, that the original injury occurred in Oakland County." *Id.* Thus, pursuant to MCL 600.1629(1)(a)(ii), the Court of Appeals affirmed the trial court's ruling that venue is proper in Oakland County because it was the location of the original injury and the county within which a corporate defendant has its registered office. *Id*; see also MCL 600.1629(1)(a)(ii) (venue proper in the county within which the original injury occurred and in which the corporate registered office of a defendant is located.)

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The dissent opined venue could be established under MCL 14.102, MCL 600.1631, MCL 600.1641, or MCL 600.1629, and that venue was proper in Ingham County or Oakland County. The dissent also advocated for remand to determine whether venue should nonetheless be transferred to Oakland County for convenience under MCR 2.222(A).

V. Related Cases.

At about the same time Plaintiff filed its initial 2022 application for leave to appeal in the Court of Appeals, applications for leave to appeal were filed in related cases brought by the same Plaintiff against at least one of the same Defendants (Raad Kouza). In every case, the Court of Appeals held—consistent with the now published opinion rendered by the Court below in this case—that MCL 600.1641(2) requires venue to be determined by MCL 600.1629.

A. MDHHS v IRXPlus.com Inc & Kouza et al. ("St. Paul") CoA Case No. 364030, MSC Case No. 165869.

In *St. Paul*, the trial court denied Defendants' Motion to Change Venue, holding that MCL 600.1641(2) did not apply. Defendants filed an application for leave to appeal, and the Court of Appeals peremptorily reversed holding that "[b]ecause some of appellee's causes of action sound in tort, MCL 600.1641(2) applies…." The Court ordered that the trial court determine venue "according to the rules applicable to tort actions as provided in MCL 600.1629."

Plaintiff appealed, and this Court denied leave.

B. MDHHS v Seaway Pharmacy PC & Kouza et al. ("Seaway") CoA Case No. 366394, MSC Case No. 166140.

In *Seaway*, the trial court denied Defendants' Motion to Change Venue, holding that venue did not have to be determined pursuant to MCL 600.1629. Defendants filed an application for leave to appeal, and the Court of Appeals peremptorily reversed. As in the *St. Paul* case, the Court of Appeals held that MCL 600.1641(2) applies and directed "that venue be determined according to the rules applicable to tort actions as provided in MCL 600.1629."

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Plaintiff appealed, and this Court denied leave.

C. MDHHS v Rockwood Pharmacy PC & Kouza et al. ("Rockwood") CoA Case No. 366395, MSC Case No. 166141.

In *Rockwood*, the trial court also denied Defendants' Motion to Change Venue on the basis that venue did not have to be determined pursuant to MCL 600.1629. On Defendants' application, the Court of Appeals peremptorily reversed, holding that MCL 600.1641(2) applies and directed "that venue be determined according to the rules applicable to tort actions as provided in MCL 600.1629."

Plaintiff appealed, and this Court denied leave.

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ARGUMENT

The trial court's ruling followed the plain language of MCL 600.1641(2) and MCL 600.1629. The Court of Appeals appropriately recognized as much when it affirmed.

I. Standard of Review.

Venue is controlled by statute, and questions of statutory interpretation are reviewed de novo. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). Courts interpreting statutes must discern the intent of the Legislature based on the words expressed in the statute. *Massey v Mandell*, 462 Mich 375, 379-80; 614 NW2d 70 (2000). It is a "fundamental principle of statutory construction…that a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Id.* at 380 (internal quotations omitted). Likewise, "when the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is to apply the terms of the statute to the circumstances in a particular case." *Id* citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). Words used by the Legislature are to be given "their common, ordinary meaning." *Id* citing MCL 8.3a.

The Court reviews a trial court's ruling on a motion to change venue under the clearly erroneous standard, which the reviewing court will find only when it is left with a definite and firm conviction that the trial court made a mistake. *Dimmitt & Owens Financial, Inc*, 481 Mich at 624.

II. MCL 600.1641(2) Controls.

MCL 600.1641(2) is a mandatory venue statute. It *requires* venue to be determined under § 1629 where any part of a complaint pleads a tort. It is clear, unambiguous, and without exception:

> If more than 1 cause of action is pleaded in the complaint or added by amendment at any time during the action and 1 of the causes of action is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, venue shall be determined under the rules applicable to actions in tort as provided in section 1629.

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MCL 600.1641(2) (Emphasis Added).

Because MCL 600.1641(2) states venue "shall" be determined under section 1629, the trial court and Court of Appeals appropriately recognized venue had to be analyzed pursuant to MCL 600.1629. *See Smitter v Thornapple Tp*, 494 Mich 121, 136; 833 NW2d 875 (2013) ("The Legislature's use of the word 'shall' generally indicates a mandatory directive, not a discretionary act.")

III. Plaintiff Abandoned Its Claims That MCL 600.1631(a) and/or MCL 14.102 Control.

Plaintiff's Complaint relied on MCL 600.1631(a) to try to establish venue in Ingham County. (Appellant's Appx p 5, ¶ 5.)Yet in the court below, Plaintiff abandoned that claim when it admitted venue was controlled by MCL 600.1641(2) and MCL 600.1629. To be sure, Plaintiff's response to Defendants' Motion to Change Venue conceded:

> [S]pecial venue rules apply to tort claims and are primarily concerned with bringing the case where the resulting injury occurred. MCL 600.1629; see also MCL 600.1641(2). In this case, Plaintiff asserted, among others, two tort claims: conversion and statutory conversion. Therefore, the special venue provisions for torts would apply.
>
> (Plaintiff's Response to Defendants' Motion to Change Venue, Appellant's Appx., p 234.)

"A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Czymbor's Timber, Inc v City of Saginaw*, 269 Mich App 551, 556; 711 NW2d 442 (2006).

After conceding MCL 600.1641(2) required analysis under MCL 600.1629, Plaintiff backtracked, arguing § 1641(2) should not apply because Plaintiff's Complaint did not seek damages for personal injury, property damage, or wrongful death, even though Plaintiff alleged two torts. (Appellant's Appx, p 180.) But Plaintiff never re-asserted its initial claim that MCL

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600.1631(a) established venue after it abandoned that claim via its Response to Defendants' Motion to Change Venue.[2]

Plaintiff also now claims MCL 14.102 takes priority over MCL 600.1641(2). But Plaintiff admits it never cited MCL 14.102 in the trial court. (Appellant's Application, p 8: "Here, it is true that the State did not rely on MCL 14.102 in the trial court.") The Court of Appeals recognized Plaintiff "did not cite MCL 14.102 in any of its filings in the trial court or in this Court" and that Plaintiff "first mention[ed] MCL 14.102 in its November 22, 2023 appellate brief on remand." (Appellant's Appx, p 359.) "Michigan generally follows the 'raise or waive' rule of appellate review." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). To preserve an issue for

[2] Plaintiff's Application also appears to abandon its argument that MCL 600.1641(2) does not apply because it does not seek damages for personal injury, property damage, or wrongful death. If this Court considers that argument, it should be rejected for the reasons set forth by the trial court and by the Court of Appeals in *Angelucci*, 301 Mich App 209. In *Angelucci*, the Court of Appeals convened a special panel to resolve a conflict between *Angelucci v Dart Props, Inc*, 298 Mich App 592; 828 NW2d 724 (2012), vacated in part *Angelucci v Dart Props, Inc*, 298 Mich App 802 (2012), and *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 94; 738 NW2d 770 (2007). In *Angelucci*, the plaintiff argued that although its allegations included tort claims, MCL 600.1641(2) should not apply because it was "not seeking damages for 'personal injury, property damage, or wrongful death.'" *Angelucci*, 301 Mich App at 213. The original panel in *Angelucci* agreed based on the Court's prior holding in *Provider Creditors Comm*, which had adopted an interpretation consistent with the plaintiff's interpretation. However, the *Angelucci* panel voiced its disagreement with the holding in *Provider Creditors Comm*, and invoked the conflict resolution procedure set forth in MCR 7.215(K). The conflict panel in *Angelucci* overruled *Provider Creditors Comm*, and held that "MCL 600.1641(2) applies if one of the causes of action pleaded in a multiple cause of action complaint is based on tort, regardless of whether damages sought are for personal injury, property damage, or wrongful death." *Angelucci*, 301 Mich App at 217 (Emphasis Added). Here, Plaintiff's Complaint alleges conversion and statutory conversion. (Appellant's Appx p 11 Count II (alleging conversion for failing to repay an alleged overpayment); p 12 Count III (alleging statutory conversion in violation of MCL 600.2912a(1)(a).) There is no dispute that conversion and statutory conversion are torts. *Dept of Agric v Appletree Mktg, LLC*, 485 Mich 1, 18; 779 NW2d 237 (2010) ("Conversion is an intentional tort"); *Aroma Wines & Equip, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 361; 871 NW2d 136 (2015) (statutory conversion is a "tort established in MCL 600.2919a(1)(a)…"). Thus, the trial court correctly held that MCL 600.1641(2) required venue to be determined pursuant to MCL 600.1629 even thought Plaintiff's Complaint did not seek damages for personal injury, property damage, or wrongful death.

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appellate review, a litigant must raise it in the trial court. *Id*. Accordingly, Plaintiff's entire argument that MCL 14.102 applies should be disregarded as unpreserved. *Herald Co, Inc v City of Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998) (explaining that appellate courts seldom review issues raised for the first time on appeal).

Although the Court of Appeals recognized that Plaintiff "failed to preserve this issue for appeal," over Defendants' objection, the Court of Appeals still considered the arguments that MCL 600.1631(a) and/or MCL 14.102 apply before ultimately rejecting them. This Court should similarly find that Plaintiff failed to preserve. Even if this Court follows the Court of Appeals' lead and considers the arguments, it should similarly reject them.

IV. Neither MCL 600.1631(a) nor MCL 14.102 Control.

Plaintiff argues MCL 600.1631(a) and/or MCL 14.102 control over MCL 600.1641(2). Both are general and permissive venue statutes that apply to actions commenced by the attorney general in the name of the state. MCL 600.1631(a) states:

> The county in which the seat of state government is located is a proper county in which to commence and try the following actions: (a) when the action is commenced by the attorney general in the name of the state or of the people of the state for the use and benefit thereof.
>
> MCL 600.1631(a) (Emphasis Added.)

MCL 14.102 is similar:

> Any action at law brought by the attorney general in the name of the state or of the people of the state, for the use and benefit thereof, may be begun in the circuit court in and for the county of Ingham, and may be prosecuted to final judgment and satisfaction thereof, with like effect as though the cause of action arose in such county. In any such case process issued out of and under the seal of said court may be served anywhere within the state of Michigan.
>
> MCL 14.102 (Emphasis Added.)

While unnecessary to its determination, the Court of Appeals recognized that these statutes only apply to cases in which the Attorney General or the State are the named plaintiff. (Appellant's

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Appx, p 361.) After all, MCL 600.1631(a) plainly only applies to actions "commenced by the attorney general in the name of the state" and MCL 14.102 only applies to cases "brought by the attorney general in the name of the state." The current case was not commenced or brought by the attorney general or the State of Michigan, but by the Department of Health and Human Service's Office of Inspector General. The Attorney General's office is simply the lawyer for the DHHS-OIG. The Attorney General's office often files cases in its own name or in the name of the State, but did not do so here. *See, e.g.*, *Attorney Gen v Diamond Mortgage Co*, 414 Mich 603; 327 NW2d 805 (1982) (attorney general was the named plaintiff in a case alleging violations of the Michigan Consumer Protection Act, and the Court held venue was proper in Ingham County under MCL 600.1631(a)); *Kelley v Atwell*, 59 Mich App 219; 229 NW2d 387 (1975) (attorney general was the named plaintiff in suit to enjoin violations of the Deceptive Advertising Act, finding the matter was properly filed in Ingham County under MCL 14.102.) Plaintiff's claim that the term "state" in these statutes encompasses all departments and agencies of the state is unsupported, and more importantly, is at odds with MCL 400.227, which states that the "Office of Inspector General is created as an independent and autonomous entity within the Michigan Department of Health and Human Services." MCL 400.227.

Even if the case had been brought in the name of the attorney general or the State of Michigan such that MCL 600.1631(a) and MCL 14.102 might apply, both are *permissive* venue statutes; MCL 600.1641(2) is mandatory. In *Attorney Gen on Behalf of People ex rel Michigan Dept of Labor v Kent Cnty. Rd Com'n*, 184 Mich App 525; 459 NW2d 11 (1990), the attorney general sued in Ingham County asserting venue was proper under MCL 600.1631(a). The defendant claimed venue should have been determined under MCL 600.1615, which applies to actions against a governmental unit. The Court of Appeals held that the indefinite article "a" in §

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1631(a) was an expression of the Legislature's intent that Ingham County was merely "a" proper venue. On the other hand, § 1615 used mandatory language designating the home county of a governmental unit as "the" proper venue. Thus, because § 1615 used mandatory language, and § 1631(a) was merely permissive, venue should have been determined under § 1615 rather than § 1631(a).

MCL 600.1641(2) employs mandatory language much like § 1615, stating that in any action alleging a tort "venue ***shall*** be determined under the rules applicable to actions in tort as provided in section 1629." MCL 600.1641(2). *People v Lockridge*, 498 Mich 358, 387; 870 NW2d 502 (2015) ("As we have stated many times, 'shall' indicates a *mandatory* directive.") (Emphasis in original). On the other hand, MCL 14.102 uses permissive and non-mandatory language much like that used in MCL 600.1631, stating that a cause of action brought by the attorney general "may" be commenced in Ingham County. *See Browder v Intl Fid Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982) ("A necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to the mandatory word 'shall' and the permissive word 'may' unless to do so would clearly frustrate legislative intent…."). Moreover, MCL 14.102 was enacted in 1919, 40+ years before the Revised Judicature Act. By enacting § 1641(2) in 1995, the Legislature recognized that venue statutes might seemingly conflict or otherwise provide varying means to determine venue. Section 1641(2) serves as the "tie breaker" when the complaint pleads a tort and where there is any question about which venue statute to apply, because it states that "venue shall be determined under the rules applicable to actions in tort as provided in section 1629" whenever any of the causes of action "is based on tort." MCL 600.1641(2) (emphasis added). It contains no exception for suits filed by the Attorney General's office.

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In its Application, Plaintiff asserts MCL 600.1629 is permissive in the same way as MCL 600.1631, such that venue is appropriate in Ingham County under MCL 600.1631. *Compare* MCL 600.1629(1)(a) ("county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action") with MCL 600.1631(a) ("county in which the seat of state government is located is a proper county in which to commence and try the following actions"). But Plaintiff's argument ignores MCL 600.1641(2) which—by employing the mandatory verb "shall"—requires venue to be analyzed under MCL 600.1629 where any part of a multi-count complaint pleads a tort. The plain language of MCL 600.1641(2) is clear, unambiguous, and must be enforced as written. *United States Fid & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 12; 795 NW2d 101 (2009) ("Court must enforce clear and unambiguous statutory provisions as written.") The Court of Appeals appropriately recognized as much when it held: "we agree with defendants that MCL 600.1631(a) and MCL 14.102 are permissive venue statutes, but MCL 600.1641(2) is mandatory and is controlling here." (Appellant's Appx, p 359.) The Court also held that it "cannot fathom a more unambiguous directive than that found in MCL 600.1641(2), 'venue shall be determined under the rules applicable to actions in tort as provided in section 1629.'" (Appellant's Appx, p 360.)

Even if this Court were to determine that the statutes are ambiguous, the Court should interpret the statutes in the manner that avoids a conflict. *People v Stephan*, 241 Mich App 482, 498; 616 NW2d 188 (2000) ("if two statutes lend themselves to a construction that avoids conflict, that construction should control.") Interpreting MCL 600.1631(a) and MCL 14.102 as permissive, and MCL 600.1641(2) as requiring venue to be determined under MCL 600.1629, is not only required by the plain language of the statutes, but it is also the only way to read all four statutes harmoniously and avoid a conflict. Plaintiff's contention that MCL 600.1631(a) and MCL 14.102

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give it the option to file and maintain this action in Ingham County conflicts with the mandate in MCL 600.1641(2) that any action pleading a tort requires venue to be determined under MCL 600.1629. The correct way to apply the venue statutes is that the Attorney General may file an action in the name of the State in Ingham County, unless the Complaint alleges a tort, in which case venue "shall" be determined under § 1629. MCL 600.1641(2). In this regard, the Attorney General is no different than any other lawyer filing a case subject to various permissive venue statutes (such as MCL 600.1621), but who must follow the requirements of MCL 600.1641(2) and MCL 600.1629 where part of the Complaint alleges a tort.

Even if the Court were to determine that MCL 600.1631(a) and MCL 14.102 irreconcilably conflict with MCL 600.1641(2), § 1641(2) would still control because it is more specific than § 1631(a) and MCL 14.102. "If two statutes conflict, then the specific prevails as an exception to the general." *In re Forfeiture of Chevrolet Blazer*, 183 Mich App 182, 184; 454 NW2d 201 (1990). MCL 14.102 and MCL 600.1631(a) are general. Read by themselves, they apply generally to every action filed by the Attorney General in the name of the State without regard to the causes of action alleged, subject matter, or relief sought. On the other hand, MCL 600.1641(2) applies only to a specific subset of cases that plead a tort as part of a multi-count complaint. So even if the statutes conflict, the general rule in MCL 600.1631(a) and MCL 14.102 must yield to the more specific rule in MCL 600.1641(2) requiring venue in tort cases to be determined under § 1629.

The unpublished case cited by Plaintiff (*Dep't of Nat Resources v Wisconsin Electric*, unpublished opinion per curiam of the Court of Appeals, Docket No. 360932 (July 20, 2023)) does not apply. In *Wisconsin Electric*, the Court addressed how MCL 14.102 and MCL 600.1631 interact with MCL 600.1621, not MCL 600.1641(2). The distinction between § 1621 and § 1641(2)

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is critical. MCL 600.1621 is even more general than MCL 14.102 and MCL 600.1631, and likewise uses permissive rather than mandatory verbs. MCL 600.1621 states:

> 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.
>
> (b) If none of the defendants meet 1 or more of the criteria in subdivision (a), the county in which a plaintiff resides or has a place of business, or in which the registered office of a plaintiff corporation is located, is a proper county in which to commence and try an action.
>
> (c) An action against a fiduciary appointed by court order shall be commenced in the county in which the fiduciary was appointed.
>
> MCL 600.1621 (Emphasis added).

The generality of MCL 600.1621 is clear. It specifically yields to several other venue statutes. Moreover, just like MCL 600.1631(a), MCL 600.1621 uses the permissive word "a": "a proper county in which to commence…." On the other hand, MCL 600.1641(2) states that venue in any action alleging a tort "shall be determined under the rules applicable to actions in tort as provided in section 1629." MCL 600.1641(2).

Plaintiff claims it can choose whether to follow MCL 600.1631(a) or MCL 600.1629 because MCL 600.1629 uses the phrase "a county."[3] But Plaintiff disregards MCL 600.1641(2)'s directive that trial courts "shall" follow MCL 600.1629. And nothing about MCL 600.1629 permits looking to MCL 600.1631(a). If Plaintiff's conclusion that it can choose whether to employ MCL 600.1629 or MCL 600.1631 in a case alleging a tort were correct, then MCL 600.1641(2) is

[3] *See* Appellant's Application, p 11: "First, even though MCL 600.1641(2) mandates the application of MCL 600.1629, in turn, MCL 600.1629(1)(a) *does not* exclude the possibility that other venues may be proper as well (through its use of the indefinite article 'a')." (*Emphasis in Original*).

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meaningless. In other words, if MCL 600.1629 permitted Plaintiff to choose whether to follow MCL 600.1629 or apply other substantive venue statutes (such as MCL 600.1631(a) or MCL 14.102), then MCL 600.1641(2)'s requirement that venue be determined by following MCL 600.1629 in any action alleging a tort has no meaning or utility. *Esurance Prop & Cas Ins Co v Michigan Assigned Claims Plan*, 507 Mich 498, 508–09; 968 NW2d 482 (2021) ("Courts must interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.")

The Court of Appeals recognized that interpreting the statutes as Plaintiff advocates would render MCL 600.1641(2) meaningless:

> [Plaintiff's] claim that it can choose whether to follow MCL 600.1631(a) or MCL 600.1629 because the latter statute uses the phrase 'a county' must be rejected. This interpretation ignores MCL 600.1641(2)'s directive that trial courts 'shall' follow MCL 600.1629, and there is nothing in MCL 600.1629 that allows MCL 14.102 or MCL 600.1631(a) to be determinative of venue. We agree with defendants that if [Plaintiff's] conclusion that it can choose whether to apply MCL 600.1629 or MCL 600.1631(a) is allowed, then the mandatory language of MCL 600.1641(2) is rendered meaningless and superfluous.
>
> Appellant's Appx, pp 361-61.

The Court of Appeals cited Justice Corrigan's concurring opinion in *Massey v Mandell*, 462 Mich 375; 614 NW2d 70 (2000), which aptly explained the practical effect of MCL 600.1641(2): MCL 600.1629 trumps over other venue provisions where plaintiff alleges a tort. Justice Corrigan stated:

> Subsection 1641(2) creates a preference for § 1629 over the other substantive venue statutes.
>
> Consider, for instance, a complaint that joins a cause of action sounding in tort with a cause of action sounding in contract. The proper venue for the tort cause of action would be determined by reference to § 1629, which is the substantive venue provision applicable to tort actions. The proper venue for the contract cause of action would be determined by reference to § 1621, which is the substantive venue provision applicable to contract actions. Under the general rule set forth in subsection 1641(1), either of these venues would be permissible for the entire case.

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> Under the exception set forth in subsection 1641(2), however, only the venue determined proper by reference to § 1629 would be permissible for the entire case. Thus, the practical effect of subsection 1641(2) is that, in cases involving joinder of multiple causes of action, venues determined by reference to § 1629 take precedence over venues determined by reference to the other substantive venue provisions.

Id. at 389-390 (Corrigan, J concurring).

Plaintiff's interpretation of MCL 600.1629 would render MCL 600.1641(2) meaningless, and is precisely what Justice Corrigan counseled against.

V. Application of MCL 600.1629.

After determining that MCL 600.1641(2) applied, the trial court and Court of Appeals appropriately turned to MCL 600.1629, which sets forth a hierarchy that courts must use to determine venue in an action alleging a tort.

MCL 600.1629 states:

> (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:
>
> (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
>
> (i) The defendant resides, has a place of business, or conducts business in that county.
>
> (ii) The corporate registered office of a defendant is located in that county.
>
> (b) If a county does not satisfy the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
>
> (i) The plaintiff resides, has a place of business, or conducts business in that county.
>
> (ii) The corporate registered office of a plaintiff is located in that county.
>
> (c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action:
>
> (i) The plaintiff resides, has a place of business, or conducts business in that

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county, or has its corporate registered office located in that county.

(ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

(d) If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action.

In summary, a complaint containing a cause of action sounding in tort must be filed in the county in which "the original injury" occurred and in which "the defendant" resides, has a place of business, conducts business, or in which the corporate registered office of "a defendant" is located. MCL 600.1629(1)(a). If no such county meets these criteria, then venue is proper where "the original injury" occurred and in which the *plaintiff* resides, has a place of business, conducts business, or is the location of plaintiff's corporate registered office. MCL 600.1629(1)(b). If no counties meet either criteria, then the court looks to whether there is a county within which both "the plaintiff" and "the defendant" reside, have a place of business, conduct business, or have corporate registered offices. MCL 600.1629(1)(c).

A. The Original Injury Occurred in Oakland County.

The first step of any analysis under MCL 600.1629 is to determine the location of "the original injury." Plaintiff's Complaint did not allege Defendants committed conversion by taking property that did not belong to them. On the contrary, the Complaint alleged Defendants committed conversion by failing to return funds Plaintiff claimed Defendants were no longer entitled to keep following a demand for return of the funds by Plaintiff. (Appellant's Appendix, p 14, ¶¶ 46-49.) In actions alleging this type of conversion, "the original injury" occurs where the defendant is located at the time of plaintiff's alleged entitlement to possession of the property.

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Ground Development, Inc. v Doyle & Lang, unpublished opinion *per curiam* of the Court of Appeals, issued November 1, 2005 (Docket No. 255202) (Appellant's Appx, p 177).[4]

In *Ground Development*, the defendant leased a piece of equipment to the plaintiff but repossessed the equipment for failing to make appropriate payments. *Id*. The plaintiff then issued a check for the full amount and contended it was entitled to the equipment. *Id.* The Court of Appeals held that the "original injury" occurred when the plaintiff made final payment under the lease, expected to obtain ownership, and the defendant refused to relinquish the equipment. *Id.* In that case, the refusal to return occurred in Gladwin County, and thus the "original tort injury occurred in Gladwin County" where the defendant was located when it refused to return the equipment. *Id*.

Here, as the trial court and Court of Appeals recognized, Plaintiff's first purported injury occurred when Defendants allegedly refused to return the funds to which Plaintiff claimed it was entitled, thus allegedly converting the funds to Defendants' own use and depriving Plaintiff of the funds. (Appellant's Appx p 014, ¶¶ 46-49; Appellant's Application, p 20.) Because neither Defendant was in Ingham County at the time of the alleged conversion, the trial court and Court of Appeals recognized that Defendants could not possibly have harmed (i.e., deprived Plaintiff of funds) in Ingham County. Instead, the original injury occurred in Oakland County, where Defendants were located when they allegedly refused to return and therefore deprived Plaintiff of the funds.

Plaintiff argues *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618 (2008) rejected *Ground Development*, but that is not true. *Dimmitt* did not involve a

[4] Defendants were unable to locate published authority addressing the location of the original injury in the context of this type of alleged conversion.

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claim of conversion. It was a malpractice case. The trial court recognized this, and addressed *Dimmitt* in its opinion and order. The trial court acknowledged that *Dimmitt* separated the wrongful conduct from the resulting injury, but held that "*Ground Development* and *Dimmitt* are not necessarily in conflict as it relates to the location of the first actual injury in a conversion case." (Appellant's Appx, p 3.) The trial court properly held that in a conversion case like this, the first actual injury occurs "when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use." *Id*.

Plaintiff tries to argue around this common-sense holding by claiming that "the first intangible and tangible harms occurred in Ingham County, where the Inspector General suffered the loss of possession of its funds and then repaid the federal share back to the U.S. Government." (Appellant's Application, pp 16-17.) Plaintiff's argument mischaracterizes the allegations it pled in its own Complaint. The Complaint does not allege Defendants wrongfully took (i.e., converted) funds from Plaintiff in Ingham County. On the contrary, Plaintiff's Complaint alleged the act of conversion occurred when Plaintiff made a demand for repayment, and Defendants refused to return the funds thereby allegedly converting them. As the trial court recognized, this occurred in Oakland County, where Defendant was located. As a result, Plaintiff's "injury"—that is, the place where it was deprived of its funds—occurred in Oakland County. The trial court ruled:

> As cited by Plaintiff's Complaint, ¶45, conversion occurs where the plaintiff had a right to immediate possession of some property, plaintiff made a legal demand to for [sic] that property, and 'the defendant under these circumstances refused to deliver the property to the plaintiff.' The Court finds that, in line with *Ground Development*, the first actual injury in a conversion case occurs when a defendant refuses to return deliver [sic] property to a plaintiff and, in doing so, converts that property to its own use. In this case, then, the first actual injury occurred when Defendants refused to return the electronic funds to which Plaintiff was entitled, thus converting those funds to Defendants' own use. This first actual injury occurred in Oakland County, where Defendant Food Town has its principle place of business and its corporate registered office.
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> Appellant's Appx, p 3.

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The Court of Appeals similarly recognize that Plaintiff's Complaint alleged that it was injured when Defendants refused to return the funds upon request, distinguishing this case from other cases that might allege conversion:

> Thus, with *Ground Development* as a guide, the original injury occurred when defendants refused to return the disputed Medicaid funds upon request. We acknowledge that a statutory conversion claim under MCL 400.111b(16) could encompass other types of conduct and other types of harms, including the harm that occurs as soon as a defendant wrongfully obtains money from state coffers, i.e., a conversion akin to that of straight-out Medicaid fraud. But that is not how DHHS alleges this conversion occurred. DHHS filed this case after administrative proceedings that determined the amount of the overpayment and defendants failure to return the overpaid funds. Thus, DHHS alleges that defendants' refusal to return the funds to it at that point constitutes a single injury.
>
> Appellant's Appx, p 358.

Plaintiff acknowledges the distinction between the loss of possession of funds and the alleged subsequent inability to use those funds to repay the federal government. (Appellant's Brief, p 16-17: "the State suffered the loss of possession of its funds and then repaid the federal share back to the U.S. Government." (Emphasis added)). But by arguing that its injury was somehow tied to its alleged repayment of a portion of the funds to the federal government, Plaintiff is conflating the injury with a later realized *consequence of the injury*.[5] Accepting the allegations as true, the inability to pay money to the federal government is, at best, a consequence of the original injury (alleged deprivation of funds).[6]

Plaintiff cites a handful of non-binding and unpublished cases from various other courts to argue its original injury occurred in Ingham County. None of those cases is analogous, none

[5] *See Moll v Abbott Laboratories*, 444 Mich 1, 18; 506 NW2d 816 (1993) (distinguishing, for purposes of the "discovery rule," between an injury and "a later realized consequence of the injury").

[6] At page 16 of its Application, Plaintiff asserts that "Michigan courts have defined 'the original injury' as the place of the plaintiff's first tangible harm." (Appellant's Application, p 16.) Plaintiff cites no authority supporting its claim and Defendants believe no such authority exists.

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analyzed venue, and none even mentioned MCL 600.1629, let alone addressed determination of where a plaintiff's "original injury" occurs in a conversion case. *LGT Enterprises, LLC v Hoffman*, 614 F Supp 2d 825 (ED Mich, 2009) and *Bagsby v Gehres*, 195 F Supp 2d 957 (ED Mich, 2002) analyzed minimum contacts for purposes of attempting to establish personal jurisdiction. To the extent that *LGT* is even remotely analogous, the case supports Defendants, not Plaintiff, because the court found that a Nevada resident's alleged conversion of funds in Nevada from a Michigan resident could not establish personal jurisdiction in Michigan. *Prescription Supply, Inc v Musa*, No. 16-12070, 2017 WL 747601 (ED Mich, 2017) addressed a choice of law issue and applied an Ohio choice of law analysis. It has no relevance to this case. Moreover, the court in *Prescription Supply* dismissed the plaintiff's conversion claim because it found there was no allegation that the defendant failed to return specific, identifiable funds. *Id.* at *7. *Solari v Goodyear Tire & Rubber Co*, 654 Fed Appx 763 (CA 6, 2016) involved a motion to dismiss based on *forum non-conveniens* in a workplace injury action in France. And *Emke v Compana, LLC*, No. CIV A 306-CV-1416-L, 2007 WL 2781661, at *5 (ND Tex, September 25, 2007) concerned a complicated choice of law analysis. The Northern District of Texas applied Nevada's choice of law rules to determine that California law applied, and that under California law, the plaintiff stated a claim for conversion of a domain name. *Id*. This case has no resemblance to *Emke.*

B. Venue is Proper in Oakland County Pursuant to MCL 600.1629(a)(1)(ii).

After determining the location of the original injury, MCL 600.1629 next requires determining whether "the defendant resides, has a place of business, or conducts business" in the same county as the location of the original injury. MCL 600.1629(1)(a)(i). Plaintiff, Defendants, the trial court, and the Court of Appeals all agree that, pursuant to existing Supreme Court precedent, subsection (1)(a)(i) does not apply here because there is more than one defendant. *See*

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Massey, 462 Mich at 385 (subpart (1)(a)(i) does not apply to cases with more than one defendant because it refers to "the" defendant, not "a" defendant.)

Although subpart (1)(a)(i) does not apply, subpart (1)(a)(ii) does. That subpart sets venue in the county within which the original injury occurred and in which the corporate registered office of "a" defendant is located. Here, the trial court and Court of Appeals acknowledged that the parties "do not dispute that [Food Town's] registered office is located in Oakland County." (Appellant's Appx, p 358.) Thus, the trial court and Court of Appeals held that venue is proper in Oakland County because the original injury allegedly caused by Food Town and the corporate registered office of Food Town are both located in Oakland County. Specifically, the Court of Appeals held:

> The parties also do not dispute that [Food Town's] registered office is located in Oakland County. It follows, then, that the original injury occurred in Oakland County, the county in which [Food Town] has its corporate office and where it refused to return the funds to DHHS. In light of these circumstances, Oakland County is a proper venue under MCL 600.1629(1)(a)(ii).
>
> Appellant's Appx, p 358.

Under MCL 600.1629(1)(a)(ii), the alleged original injury occurred in Oakland County, and because the corporate registered office of Food Town is also in Oakland County, venue was appropriately transferred to Oakland County.

Citing *Massey*, Plaintiff's Application claims that "as a preliminary matter, [MCL 600.1629](1)(a)(i) and (1)(c)(ii) do not apply because they refer to *the* defendant and Michigan courts have read these provisions to mean that the option does not apply where there are multiple defendants." (Appellant's Application, p 16.) While that is true, Plaintiff's Application says nothing about whether MCL 600.1629(1)(a)(ii) applies, which the trial court and Court of Appeals both found to be true. Plaintiff's Application omitted any analysis of subpart (1)(a)(ii), instead skipping ahead to subpart (1)(b), which neither the trial court nor the Court of Appeals reached because the analysis under MCL 600.1629 stops when subpart (1)(a)(ii) is satisfied.

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C. Even if § 1629(1)(d) Applies, Venue is Still Improper in Ingham County but Proper in Oakland.

In the alternative, Plaintiff argues that venue is proper under MCL 600.1629(1)(d), which states that where a county does not satisfy the criteria under §1629(1)(a), (b), or (c), then a county that satisfies the criteria under MCL 600.1627 or MCL 600.1621 is a county in which to file and try the action. Plaintiff then posits that venue is proper in Ingham County under § 1627 because it is where the cause of action arose. Plaintiff is wrong for at least three reasons.

First, like the trial court and Court of Appeals, this Court should never reach an analysis under § 1629(1)(d), because subsection (1)(a)(ii) is satisfied by virtue of the fact that Oakland County is the location of the original injury and the location of Food Town's registered office.

Second, even if the Court did reach an analysis under § 1629(1)(d), § 1627 looks to where a cause of action arose. Plaintiff's Complaint alleged Defendants committed conversion by failing to repay the alleged overpayment after receiving a demand for same. (Appellant's Appx p 14**,** ¶ 46-48.) Plaintiff did not present any evidence—or even make any allegations—that Defendants' alleged refusal to repay occurred in Ingham County or that the location of where the State was deprived of its funds was Ingham County. (Appellant's Appx p 5, ¶¶ 2-3.)

Third, Plaintiff omits any analysis under § 1621. MCL 600.1621 provides that venue is proper where "a defendant" (as opposed to "the defendant") "resides, has a place business, or conducts business, or in which the registered office of a defendant corporation is located…." MCL 600.1621. There is no allegation that any defendant resides, has a place of business, or conducts business in Ingham County. Again, Plaintiff alleges Kouza resides in Wayne County, and that Food Town is in Oakland County. (Appellant's Appx p 5, ¶¶ 2-3.) Nor has Plaintiff argued or submitted evidence establishing that Defendants have "systematic and continuous dealings inside [Ingham] county or conducts its 'usual and customary business' within [Ingham] county…"

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sufficient to satisfy the "conducts business" criteria in § 1621. *Miller v Allied Signal, Inc*, 235 Mich App 710, 720; 599 NW2d 110 (1999) citing *Chiarini v John Deere Co*, 184 Mich App 735, 738; 458 NW2d 668 (1990). Plaintiff bears the burden of proof and never presented any evidence—nor even made any allegations in its Complaint—that either Defendant resides in or conducts business in Ingham County. *Johnson v Simongton*, 184 Mich App 186, 188; 457 NW2d 129 (1990) ("When the defendant challenges venue, the plaintiff has the burden to establish that the county he chose is a proper venue.")

VI. MCR 2.222(A).

Plaintiff's Application claims the Court should decline to consider whether venue should be transferred to Oakland County based on convenience. But the opinion from the Court below did not direct the trial court to make any such consideration.

The only mention of MCR 2.222(A) from the Court of Appeals was in the dissenting opinion. The dissent correctly noted that Defendants raised an alterative argument in the trial court that venue should be changed for convenience under MCR 2.222(A), and that the trial court never ruled on that issue. However, the trial court was not required to so because it found venue to be improper in Ingham County. MCR 2.222(A) only applies when the original venue is proper. Moreover, Plaintiff cannot appeal the dissenting opinion, and the majority opinion did not remand for consideration under MCR 2.222(A). Nonetheless, *if* this Court reverses the trial court and the Court of Appeals and finds venue was proper in Ingham County, then it should nonetheless require the trial court to consider changing venue under MCR 2.222.

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The trial court properly found that MCL 600.1641(2) required venue to be determined pursuant to MCL 600.1629. The trial court then correctly held venue was improper in Ingham County and proper in Oakland County under MCL 600.1629(a)(1)(ii) because it was the location of the alleged original injury and the location of Food Town's registered office. The Court of Appeals correctly affirmed, and this Court should deny the Application.

Respectfully submitted,

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Dated: January 10, 2025

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.212(B)(1). The brief contains 8,821 words, excluding the parts of the brief exempted by MCR 7.212(B)(2).

/s/Christopher J. Ryan

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