

STATE OF MICHIGAN

IN THE 6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MATTHEW ZEMSKI, an individual

Plaintiff

v.

Case No. 2022-195349-CB

Hon. Victoria Valentine

WAVEZ COLLECTIVE, LLC,
a Michigan limited liability company,
MICHAEL KELLOGG, an individual
JAMES CLAY BEST, an individual
SEAN BRAZEAU, an individual

Defendants.

At a session of said Court held on the
16th day of December 2022 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter before the Court on Defendant Michael Kellogg's motion to change venue under MCR 2.223 and MCL 600. 1655. The Court heard oral argument on December 14, 2022, at took the matter under advisement. The Court, having read the briefs,¹ having heard oral argument, and otherwise being advised in the premises, agrees with Defendant Kellogg that venue is improper in Oakland County. Therefore, the Court GRANTS Defendant's Motion for the reasons set forth below.

FACTS

Plaintiff is a Wisconsin resident and is allegedly a member of Defendant Wavez Collective,

¹ The Court file reflects that Plaintiff filed a Reply. MCR 2.119(A)(2)(b), however, provides that "[e]xcept as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed." Consequently, because Defendant did not seek leave of court to file his Reply, it is not considered by the Court.

LLC ("Wavez").² He filed his complaint against Defendant Wavez and its individual members and manager,³ alleging breach of the operating agreement, breach of fiduciary duty and declaratory relief. It is undisputed that each of the individual defendants reside in Wisconsin. It is also undisputed that Defendant Wavez was organized on August 29, 2019, and its filing with the State of Michigan list its registered agent and registered office in Okemos Michigan.⁴ Its Resident Agent, however, resigned on November 11, 2021, effective December 15, 2021.⁵ Significantly, a certificate of change of its resident agent and resident office was not filed until November of 2022, *after* the filing of this lawsuit.

Allegedly on February 7, 2022, Defendants entered in an agreement for the sale of Defendant Wavez to nonparty Green Collective LLC ("Green").⁶ It is alleged that Defendants misrepresented that Plaintiff was not a member of Defendant Wavez while they fraudulently negotiated the sale of Defendant Wavez to nonparty Green.⁷

On October 5, 2022, Plaintiff filed this complaint. Subsequently, in November of 2022, a Certificate of change of registered office and/or resident agent was filed, which changed Defendant Wavez's resident agent to Richard Lehr and its registered office to Waterford, Michigan.⁸ This is the same resident office location for nonparty Waves of Green Collective LLC.⁹

Plaintiff's complaint regarding venue vaguely alleges that:

² Plaintiff's Complaint, ¶1.

³ Plaintiff's Complaint, ¶¶ 4-7.

⁴ Plaintiff's Response, Exhibit 2.

⁵ Plaintiff's Response, Exhibit 1.

⁶ Plaintiff's Complaint, ¶13.

⁷ Plaintiff's Complaint, ¶ 28.

⁸ Defendant Wavez's Response, Exhibit 2.

⁹ Defendant Wavez's Response, Exhibit 1.

8. Venue is proper pursuant to MCL 600.1621 because Defendant has conducted business in Oakland County, Michigan.

To support this claim, Plaintiff argues that “Defendants conducted business in Oakland County when they sold membership interests in Wavez Collective, LLC (hereafter "Wavez") to Waves of Green Collective, LLC [a nonparty to this lawsuit] which is located in the city of Waterford in Oakland County. Selling membership interests is conducting business. Therefore, Oakland County is the proper.”¹⁰ This Court disagrees.

ANALYSIS

“Venue is determined at the time the suit is filed and is not normally defeated by subsequent events.” *Shiroka v Farm Bureau Gen Ins Co of Mich*, 276 Mich App 98, 104 (2007). It is the plaintiff’s burden to establish that the county chosen is the proper venue. *Karpinski v St John Hosp - Macomb Ctr Corp*, 238 Mich App 539, 547 (1999). Upon the defendant’s timely motion to change venue and a finding that venue is improper, the trial court must transfer the case to a county with proper venue. MCL 600.1651; MCR 2.223(A); *Miller v Allied Signal, Inc*, 235 Mich App 710, 716-717 (1999).

“Venue is controlled by statute in Michigan.” *Omne Fin, Inc v Shacks, Inc*, 460 Mich 305, 309 (1999). In relevant part, MCL 600.1621(a), the venue statute applicable to this case, provides that 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.”

Further, under MCL 450.4515(1) of the Michigan Limited Liability Act: provides:

- (1) **A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's**

¹⁰ Plaintiff’s Response, pp 1-2.

principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member . . . (Emphasis added).

Plaintiff's complaint attaches the "Agreement of Sale of Member's Interest in Wavez Collective LLC to Waves of Green Collective, LLC." This Agreement, set forth in part below, establishes that Lansing, Michigan is the location of Defendant Wavez's principal place of business, which is in Ingham County.¹¹

Seller owns and desires to sell their membership interest in the company known as Wavez Collective, LLC which represents 100% of the membership interest in the company known as Wavez Collective, LLC (collectively referred to as the "Seller's Membership Interest", "Company," or "Business"), with principal place of business at: 3110 Turner St. Bldg 2, Lansing, Michigan 48906.

Based on the above, the Court finds that at the time the complaint was filed in October of 2022, Defendant Wavez did not have a current resident agent or resident office. However, Defendant Wavez's principal place of business is unequivocally located in Lansing Michigan. Consequently, in accordance with MCL 450.4515(1) and MCL 600.1621(a) venue is proper in Ingham County, which is the county of Defendant Wavez's principal place of business.¹²

Conclusion

For the above stated reasons, IT IS HEREBY ORDERED that:

- Defendant Kellogg's Motion for Change of Venue to Ingham County is GRANTED.
- Plaintiff shall pay the applicable statutory filing fee directly to the receiving court. MCR 2.223(B)(1).

¹¹ Under MRE 201 the Court takes judicial notice of this fact.

¹² Under MRE 201 the Court takes judicial notice of this fact.

- Defendant Kellogg shall submit to the Court the appropriate order on a SCAO-approved form. MCR 2.226(A).
- Defendant Kellogg's request for attorney fees is respectfully denied.

IT IS SO ORDERED.

This is a final order and closes out the case.

