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THE MICHIGAN COURT OF APPEALS REVERSES THE DENIAL OF A MOTION FOR CHANGE OF VENUE WHERE PLAINTIFF SUED IN BOTH TORT AND CONTRACT

By Tara Hanley Bratton

The Michigan Court of Appeals in a June 19, 2007 published opinion, *Shiroka v Farm Bureau General Insurance Company of Michigan et al*, __ Mich App __; __ NW2d __ (2007) held that the venue statute, MCL 600.1641(2), should be enforced when Plaintiff brings both tort and contract claims in the same lawsuit. Plaintiff brought a contract claim for personal injury protection benefits and uninsured motorist benefits against Farm Bureau and a tort claim for bodily injury against a driver, Kennedy, who was defaulted for his failure to defend the lawsuit in Wayne County Circuit Court.

Plaintiff, a resident of Macomb County was injured in an accident in April 2005 in Macomb County. The policy of insurance with Farm Bureau was purchased in Macomb County. Farm Bureau filed a motion for change of venue from Wayne County to Macomb County presenting two arguments:

> The policy of insurance provided that any court action regarding uninsured coverage and benefits must take place in the venue of the county and state in which the policy was purchased; and MCL 600.1629(1), the venue statute for tort actions, governed.

Plaintiff countered arguing that venue was proper in Wayne County given:

> The venue provision in the policy of insurance was void pursuant to governing law; and MCL 600.1621, the venue statute for contract claims, governed.

The lower court held that the claims against Farm Bureau were contractual in nature and therefore the contract venue statute applied. Since Farm Bureau conducted business in Wayne County, venue was proper. This ruling by the court was made after Kennedy had been defaulted with only contractual claims remaining to be litigated.

Farm Bureau filed an application for leave to appeal and the Court of Appeals granted the application and stayed the trial court proceedings pending the appeal.

The Venue Provision in the Policy of Insurance

With regard to Farm Bureau's argument that venue was established in the policy of insurance, the Court of Appeals panel consisting of Judge William C. Whitbeck, Judge Kurtis T. Wilder and Judge Stephen L. Borrello, relied on *Omne Financial, Inc. v Shacks, Inc,* 460 Mich 305, 596 NW2d 591 (1999) to

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Venue provisions in insurance policies that conflict with court rules or statutory venue provisions are unenforceable.

If a Plaintiff files both a tort and contract claim, venue will be determined in accordance with, MCL 600.1629, which limits their options. Venue will not simply apply to any county that the defendant does business.

rule this contention was without merit. The Michigan Supreme Court in Omne Financial concluded that "contractual provisions establishing venue for potential causes of action that may arise after the contract is executed are unenforceable." Id at 317, (emphasis original). The Shiroka panel followed the Omne Financial court agreeing that such provisions were in conflict with court rules and statutory venue provisions and therefore unenforceable.

Contract Claim vs Tort Claim

With regard to Farm Bureau's second argument that the contract venue provision should apply, Judge Whitbeck, Judge Wilder and Judge Borrello, initially examined the joinder venue statute, MCL 600.1641. Since Plaintiff pled both tort and contract claims when the Complaint was filed, the Court of Appeals panel ruled that MCL 600.1641(2) applied and venue was to be determined under MCL 600.1629. MCL 600.1641(2) provides:

> 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 any other 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.

In an attempt to follow the goal of statutory interpretation to ascertain and give effect to the intent of the Legislature, this panel of the Court of Appeals concluded that MCL 600.1629(1)(a)(i) was not applicable since there were **two** defendants and they both **did** not satisfy the subsection.

In further analysis the panel of the Court of Appeals concluded that MCL 600.1629(1)(a)(ii) was not applicable since **neither** of the two defendants had corporate registered offices in Macomb County.

Finally, the panel of the Court of Appeals concluded that MCL 600.1629(1)(b)(i) was applicable since the accident occurred in Macomb County and Plaintiff resided in Macomb County.

Plaintiff attempted to argue that since Kennedy was no longer in the case, there was only a contract claim pending. The panel, however, found that the plain language of MCL 600.1641(2) was to be enforced since Plaintiff filed the Complaint alleging a contact and tort claim.

The *Shiroka* panel further indicated that Macomb County was "a fitting and convenient forum for both parties:" the accident occurred there, Plaintiff resided there and Farm Bureau conducted business there.

At the conclusion of the analysis, the lower court's ruling was reversed and venue was transferred to Macomb County Circuit Court.

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