STATE OF MICHIGAN

COURT OF APPEALS

E. LLWYD ECCLESTONE, JR., IBIS LANDING VENTURE, LTD., and IBIS CLUB OPERATIONS, INC.

Plaintiffs-Appellants,

V

RICHARD BLOUGH, DOUGLAS EBERT, JOHN CARTON, and ROBERT MYLOD,

Defendants-Appellees.

UNPUBLISHED
December 18, 2001

No. 225425
Oakland Circuit Court
LC No. 99-014613-CZ

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial courts' orders granting defendants' motion for a change of venue, denying plaintiffs' motion for reconsideration, and granting defendants' motion for summary disposition. We affirm.

Plaintiffs first assert that the trial court improperly transferred venue from Wayne County to Oakland County. Plaintiffs argue that venue in Wayne County was proper because at least three defendants conduct business and had sufficient contacts in Wayne County. This Court reviews a trial court's decision to change venue under the clearly erroneous standard. *Massey v Mandell,* 462 Mich 375, 379; 614 NW2d 70 (2000). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*

The instant parties dispute whether defendants "conduct business" in Wayne County for purposes of determining proper venue in this matter.[1] Defendants assert that venue was proper in

[1] Because this action involves claims of fraud and tortious interference, venue is governed by MCL 600.1629(1). Because the original injury did not occur in Michigan, MCL 600.1629(1)(c) applies, which provides that venue is proper in the county in which both the plaintiff and defendant reside, have places of business, conduct business, or have their corporate registered offices. There is no dispute that plaintiff Ecclestone conducts business in Wayne County. There is also no claim that defendants reside, have places of business, or corporate registered offices in Wayne County. Thus, the only inquiry involves whether defendants "conduct business" in Wayne County.

Oakland County because three of the four defendants reside in Oakland County and the contacts with which defendants have in Wayne County do not establish that defendants "conduct business" in Wayne County. Plaintiffs claim that three of the four defendants' contacts with Wayne County, which primarily include attending meetings, entertaining, and socializing in Wayne County, serving on various organizational boards, soliciting contributions for various organizations, and employing Wayne County accountants, are sufficient to establish that defendants "conduct business" in Wayne County.

In Michigan, plaintiffs bear the burden of demonstrating the propriety of their venue choice. *Gross v Gen'l Motors Corp*, 448 Mich 147, 155; 528 NW2d 707 (1995). The purpose behind the venue statute is that an action should be instituted in a county in which defendant has some "real presence," as might be shown by systematic or continuous dealings inside the county. *Chiarini v John Deere Co*, 184 Mich App 735, 737; 458 NW2d 668 (1990); *Saba v Gray*, 111 Mich App 304, 315; 314 NW2d 597 (1981). "Conducting business does not include the performance of acts merely incidental to the business in which the defendant is ordinarily engaged." *Chiarini, supra* at 737.

After reviewing the evidence in this case regarding whether defendants conduct business in Wayne County, we are not left with a definite and firm conviction that the trial court's change of venue to Oakland County was clearly erroneous. *Massey, supra* at 379. Defendants' numerous contacts cited by plaintiffs are merely incidental to the business in which defendants are ordinarily engaged and do not constitute a "real presence" in Wayne County. Moreover, even if the trial court did improperly transfer venue to Oakland County, the Michigan Legislature has provided that "[n]o order, judgment, or decree shall be void or voidable solely on the ground that there was improper venue." MCL 600.1645; *Bass v Combs*, 238 Mich App 16, 22; 604 NW2d 727 (1999); see, also, *Nat'l Bank of Rochester v Meadowbrook Heights, Inc.*, 80 Mich App 777, 785; 265 NW2d 43 (1978) ("[i]mproper venue alone may not be the basis for disturbing a judgment"). Therefore, the Oakland Circuit Court's orders granting summary disposition in favor of defendants and denying plaintiffs' reconsideration motion cannot be set aside merely on the basis that the Wayne Circuit Court improperly transferred venue. *Bass, supra* at 22-23.

Plaintiffs further argue that the trial court erred in granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7) and (C)(10). We disagree. On appeal, a trial court's decision regarding a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In this case, the November 1, 1995 Supplemental Agreement between the parties states that the agreement "sets forth the entire agreement between the parties . . . and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties . . . ." The Release states in relevant part that plaintiffs released defendants "from any and all claims, defenses, demands, actions, and claims for relief of whatsoever kind or nature, whether in law or in equity, from the beginning of time to the date of this Release, which Releasing Party now has or may claim to have, whether known to it or not, against Released Party." Under MCR 2.116(C)(7), summary disposition is appropriate when a party's claim is barred because of a release.

With respect to plaintiffs' claim alleging fraud against defendants because defendants allegedly told plaintiffs on or about October 31, 1995, before the November 1, 1995 agreement was executed that plaintiffs would have an additional reasonable time to purchase the project after October 31, 1995, we conclude that the trial court properly granted summary disposition in favor of defendants. Generally, parol evidence of prior or contemporaneous agreements that contradict or vary the written contract is not admissible to vary the terms of an agreement that is clear and unambiguous. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). In this case, the supplemental agreement is clear that it represented the final agreement of the parties, and there is no mention in the agreement that plaintiffs would have a right to reacquire the property after the agreement was executed. However, parol evidence is admissible to demonstrate fraud, as alleged by plaintiffs in this case. *UAW-GM, supra* at 493, 502, 503. However, if a contract contains an integration clause that releases all antecedent claims, as is true in the instant case, "only certain types of fraud would vitiate the contract." *Id*. at 503.

> [F]raud that relates solely to an oral agreement that was nullified by a valid merger clause would have on effect on the validity of the contract. Thus, when a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause. [*Id*.]

As defendants point out, plaintiffs do not claim in this case that they were defrauded regarding the existence of the integration clause contained in the Supplemental Agreement or defrauded into believing that the written contract included a provision permitting them more time to purchase the project. Further, plaintiffs do not deny that they were aware of the clear and unambiguous terms of the November 1, 1995 agreement, which specifically states that the agreement represents the entire agreement between the parties. Thus, the trial court did not err in granting defendants' motion for summary disposition regarding plaintiffs' fraud claim. Further, because the integration clause and release contained in the Supplemental Agreement are valid, any claim of tortious interference occurring before November 1, 1995 is also without merit.

Plaintiffs also assert that the trial court erred in granting summary disposition with respect to their claim of tortious interference with a business relationship that occurred after the November 1, 1995 agreement was executed. Specifically, plaintiffs claim that defendants tortiously interfered with their relationship with Blackstone, one of the ultimate purchasers, because defendants indicated to Blackstone that they did not want plaintiffs involved in the project. Plaintiffs' claim fails.

With regard to this issue, the trial court stated that

> the Defendants had no obligations to the Plaintiffs with respect to any future business opportunity or expectancy since the subject development was transferred to MNB. Once MNB became the owner of the development, it was up to MNB to determine the disposition of the property and whether it wanted to have the Plaintiffs involved in the development.

"The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff." *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996), cert den 522 US 1153; 118 S Ct 1178; 140 L Ed 2d 186 (1998). Further, a party who claims tortious interference "must allege the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). To establish that a lawful act was done with malice and without justification, the plaintiff must establish with specificity affirmative acts by the defendant that corroborate the improper or unlawful motive of the interference. *BPS Labs, supra* at 699; *Feldman, supra* at 369-370. However, where the defendant's actions were "motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *BPS Labs, supra* at 699.

In the present case, defendants' advising Blackstone that they did not want plaintiffs involved in the IBIS development did not constitute improper interference because it was motivated by legitimate business reasons. *Id*. Plaintiffs had already defaulted on the loan MNB had provided them for the IBIS project, and as owner of the IBIS development after November 1, 1995, MNB could determine, as the trial court in this case opined, the disposition of the property and whom it wanted involved in the project. Plaintiffs' tortious interference claim is without merit, and the trial court properly granted summary disposition to defendants on this issue.

With regard to plaintiffs' contention that the November 1, 1995 agreement contemplates plaintiff's continuing involvement in the IBIS project because it states that MNB agrees to provide Ecclestone Signature Homes the same benefits and cooperation given to any other builder on the projects, we disagree that this provision gives plaintiffs any rights or expectancy of reacquiring the project. First, as defendants correctly state, Ecclestone Signature Homes is not a party to this action, nor is there any allegation that it was involved with plaintiffs' attempts to reacquire the property. This provision is merely a commitment to treat a separate Ecclestone entity the same as other builders at the project.

We affirm.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Jane E. Markey