



1 reconsideration based on the Michigan Supreme Court’s rejection of pre-dispute, contractual venue  
2 selection clauses in *Omne Financial, Inc. v. Shacks, Inc.*<sup>3</sup> Cited for the first time in Skillnet’s  
3 request for leave to seek reconsideration, the court in *Omne* held unenforceable a contractual  
4 provision establishing venue for a potential cause of action arising after a contract is executed.<sup>4</sup>  
5 The court reasoned that in the absence of any legislative action providing for parties to agree to  
6 venue in advance, venue in Michigan is governed by the applicable statutory provisions.<sup>5</sup> The court  
7 thus declined to enforce the agreement as to venue, which conflicted with the statutory scheme for  
8 venue and would have limited the trial court’s authority to order a change of venue under the court  
9 rules.<sup>6</sup>  
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11 Skillnet argues that under *Omne*, the venue selection clause that this court found to be  
12 determinative is unenforceable and must be stricken pursuant to the severability provision  
13 contained in the parties’ Services Agreement. That provision provides in relevant part:

14 If, but only to the extent that, any provision of this Agreement is found to be  
15 illegal, unenforceable, or void, then both parties shall be relieved of all  
16 obligations arising under such provision, it being the intent and agreement of  
17 the parties that this Agreement shall be deemed amended by modifying such  
18 provision to the extent necessary to make it legal and enforceable while  
preserving its intent. If that is not possible, another provision that is legal and  
enforceable and achieves the same objective shall be substituted.<sup>7</sup>

19 The venue selection clause is contained within Section 16E of the purchase orders (“POs”). Section  
20 16E reads:

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23 <sup>3</sup> 460 Mich. 305 (1999).

24 <sup>4</sup> *See id.* at 317.

25 <sup>5</sup> *Id.* at 311-313 (distinguishing legislative treatment of venue from that of personal jurisdiction for  
26 which Michigan statute permits parties to contractually agree in advance).

27 <sup>6</sup> *See id.* at 317.

28 <sup>7</sup> *See* Docket No. 7 (Periard Decl. in Support of Def.’s Mot. To Dismiss or Transfer Venue), Ex. A,  
Art. 6, Sec. 6.7 (Services Agreement).

1 This PO Contract shall be construed and controlled by the laws of the State  
2 of Michigan and Vendor [Skillnet] consents to exclusive jurisdiction and  
3 venue in the federal and state courts located in or nearest to Oakland County,  
Michigan. Vendor waives all defenses of lack of personal jurisdiction and  
forum non conveniens.<sup>8</sup>

4 Entertainment responds that *Omne* may be read narrowly to apply to a state court action in  
5 which the agreed-upon venue is inconsistent with the state venue statutes. Because the parties'  
6 agreement in this case is consistent with the applicable venue statute, Entertainment argues that the  
7 venue provision should not be stricken. If the court decides otherwise, however, Entertainment  
8 argues that the appropriate result would be to strike only those parts of Section 16E that relate to  
9 venue.<sup>9</sup> With the jurisdictional and choice of law clauses still intact, Entertainment argues that the  
10 court may dismiss the action or independently determine venue to be proper within Michigan and  
11 to order the case transferred accordingly.

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13 After careful consideration, the court agrees with Skillnet that, under Michigan law, the  
14 holding in *Omne* precludes enforcement of a contractual venue selection clause that establishes  
15 venue for causes of action that may arise after the contract is executed. Although the concurring  
16 justices in *Omne* would have set a narrower precedent only applicable when the contractual  
17 arrangement interferes with the court's ability to enforce the statutory provision addressing transfer  
18 motions in actions brought in an improper venue,<sup>10</sup> the plurality's holding is unequivocal as to  
19 venue selection provisions. The *Omne* court does not disturb, however, the enforceability of  
20 contractual forum selection provisions, and is actually careful to distinguish between venue and  
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24 <sup>8</sup> See Docket No. 7, Exs. H and I (Purchase Order(s)).

25 <sup>9</sup> If stricken according to Entertainment's argument, Section 16E would read:  
26 This PO Contract shall be construed and controlled by the laws of the State of  
27 Michigan and Vendor [Skillnet] consents to exclusive jurisdiction ~~and venue~~ in the  
federal and state courts located ~~in or nearest to Oakland County,~~ Michigan. Vendor  
waives all defenses of lack of personal jurisdiction and forum non conveniens.

28 <sup>10</sup> See 460 Mich. 305, 317-18 (Corrigan, J., concurring).

1 jurisdiction as the basis for forum.<sup>11</sup> Michigan courts since *Omne* have disregarded venue selection  
2 clauses<sup>12</sup> but have continued to enforce forum selection clauses, as declarations of consent to  
3 exclusive jurisdiction in a particular forum.<sup>13</sup>

4 As noted above, the venue selection clause at issue is contained in Section 16E of the  
5 parties' POs, which is a provision that also establishes forum and choice of law. Under Skillnet's  
6 reading of the severability provision in the overarching Services Agreement, the unenforceability  
7 of the venue selection provision renders Section 16E of the POs void in its entirety. Skillnet relies  
8 on a portion of Section 6.7 of the Services Agreement, which states "to the extent that, any  
9 provision of this Agreement is found to be illegal, unenforceable, or void, then both parties shall be  
10 relieved of all obligations arising under such provision." Yet Skillnet ignores the second half of the  
11 same sentence, which continues, "it being the intent and agreement of the parties that this  
12 Agreement shall be deemed amended by modifying such provision to the extent necessary to make  
13 it legal and enforceable while preserving its intent."<sup>14</sup> Read plainly and in its entirety,<sup>15</sup> the  
14 meaning of this sentence leaves little doubt that the parties are not obligated to comply with a void  
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17 <sup>11</sup> See *id.* at 312 (citing Mich. Compiled Laws 600.711(2), which provides that under certain  
18 circumstances, "[i]f the parties agreed in writing that an action on a controversy may be brought in  
19 this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this  
20 state shall entertain the action").

21 <sup>12</sup> See, e.g., *Shiroka v. Farm Bureau General Ins. Co. of Mich.*, 276 Mich. App. 98, 103 (2007)  
22 (finding "without merit" defendant's argument that the contractual venue provision is controlling,  
23 because "Michigan precedent establishes that 'contractual provisions establishing venue for  
24 potential causes of action that may arise after the contract is executed are unenforceable'" (quoting  
25 *Omne Financial*, 460 Mich. 305, 317)).

26 <sup>13</sup> See, e.g., *Turcheck v. Amerifund Financial, Inc.*, 272 Mich. App. 341, 345 (2006) ("It is  
27 undisputed that Michigan's public policy favors the enforcement of contractual forum-selection  
28 clauses and choice-of-law provisions.") (citing *Offerdahl v. Silverstein*, 224 Mich. App. 417, 419  
(1997)).

<sup>14</sup> See Docket No. 7, Ex. A, Art. 6, Sec. 6.7.

<sup>15</sup> The entire sentence in Section 6.7 states: "If, but only to the extent that, any provision of this  
Agreement is found to be illegal, unenforceable, or void, then both parties shall be relieved of all  
obligations arising under such provision, it being the intent and agreement of the parties that this  
Agreement shall be deemed amended by modifying such provision to the extent necessary to make  
it legal and enforceable while preserving its intent."

1 or unenforceable provision of the agreement, but that such provision should be modified to the  
2 extent necessary to make it enforceable while preserving its intent.

3 There is no basis in law or in the contractual language to strike those portions of Section  
4 16E that pertain to acceptance of exclusive jurisdiction in the Michigan courts. Under the terms of  
5 the severability provision of the Services Agreement, rather than be stricken in its entirety, Section  
6 16E should be modified to preserve both intent and enforceability, as suggested by  
7 Entertainment.<sup>16</sup> With the jurisdictional language intact, and for the reasons set forth in its March 2  
8 Order, the court finds the forum selection clause – excluding the specific venue language – to be  
9 valid and enforceable.  
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11 Skillnet’s motion for reconsideration is DENIED. This case should be transferred to the  
12 Eastern District of Michigan without further delay.

13 **IT IS SO ORDERED.**

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15 Dated: 5/14/2012

  
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16 PAUL S. GREWAL  
17 United States Magistrate Judge

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26 <sup>16</sup> This reading also is consistent with the express terms of the POs, Section 16I of which states,  
27 “Severability. If any term of any PO Contract is invalid or unenforceable for any reason, such term  
28 shall be deemed reformed or deleted only to the extent necessary to comply with the applicable  
law, and the remaining provisions shall remain in full force and effect.” Docket No. 7, Exs. H and I  
(Purchase Order(s)).