STATE OF MICHIGAN

COURT OF APPEALS

RAMA MADUGULA,

       Plaintiff/Counter-Defendant-
       Appellee,

v

BENJAMIN A. TAUB,

       Defendant/Counter-Plaintiff-
       Appellant,

and

DATASPACE INC.,

       Defendant,

and

ANDREW FLOWER,

       Defendant.

UNPUBLISHED
October 25, 2012

No. 298425
Washtenaw Circuit Court
LC No. 08-000537-CK

Before: RONAYNE KRAUSE, P.J., AND BORRELLO, AND RIORDAN, JJ.

BORRELLO, J. (*concurring*).

On appeal, defendant argues that because this case involved an equitable remedy this matter should have been a bench, rather than a jury trial. Defendant further argues that a party only enjoys the right to a jury trial by statute or Constitution. I express no opinion as to defendant's argument on this issue relative to his limited reading of the right to a trial by jury.

Citing *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007), my learned colleagues hold that the trial court did not abuse its discretion by trying the matter before a jury. While I concur with their decision, I do so based on entirely different grounds.

This Court has previously visited the issue of whether a lawsuit brought pursuant to MCL 450.1489 entitles the parties to have their claims heard by a jury. *Forsberg v Forsberg Flowers Inc.*, unpublished per curiam opinion of the Court of Appeals, issued December 5, 2006 (Docket No. 263762). While I am fully cognizant, as my learned colleagues correctly state, that

Nuculovic v Hill, 287 Mich App 58, 68; 783 NW2d 124 (2010), compels us to hold that unpublished opinions have no precedential value, I nonetheless find the reasoning set forth in Chief Judge Murphy's partial concurrence and dissent in *Forsberg* compelling. Accordingly, on the issue of whether plaintiff was entitled to a jury trial, I would adopt the reasoning set forth by Chief Judge Murphy in *Forsberg*. Therefore, I would hold that plaintiff should prevail on this issue for the reasons set forth in Chief Judge Murphy's partial concurrence and dissent in *Forsberg*.

On all other matters, I concur with the majority.

/s/ Stephen L. Borrello