

# Court of Appeals, State of Michigan

## ORDER

Benteler Automotive Corporation v Wellington Industries Inc.

Joel P. Hoekstra  
Presiding Judge

Docket No. 316713

William B. Murphy, C. J.

LC No. 2013-000249-CK

Jane M. Beckering  
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's June 10, 2013 order denying defendant's emergency motion to change venue, REVERSES the ruling therein, and REMANDS for transfer to Wayne County. Occasional visits to the Galesburg plant in Kalamazoo County to check the quality of parts or to discuss other business matters cannot be fairly characterized as "systematic and continuous business dealings within [that] county." And even accepting as true that there were isolated occasions when defendant delivered the parts to plaintiff in Galesburg, that too would not constitute "systematic and continuous business dealings." Plaintiff did not dispute that the usual practice was for its trucks to go to defendant's Wayne County facility and pick the parts up. Furthermore, Wayne County is where defendant conducts "its usual and customary business," and the occasional visits to the Galesburg plant or occasional deliveries of parts to that Kalamazoo location, is not activity "of such a nature as to localize the business and make it an operation within the county." *Hills and Dales Gen Hosp v Pantig*, 295 Mich App 14, 22-23; 812 NW2d 793 (2011) and cases cited therein. Therefore, Kalamazoo County is not a county in which defendant conducts business. And because it is undisputed that defendant does not reside, have a place of business or have a registered office in Kalamazoo County, MCL 600.1621(a), plaintiff has not carried its burden of establishing that Kalamazoo County is a proper venue. *Johnson v Simongton*, 184 Mich App 186, 188; 457 NW2d 129 (1990). Therefore, the circuit court clearly erred in denying defendant's change of venue motion. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). We do not retain jurisdiction.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUL 16 2013

Date

*Angela P. DiSessa*  
Acting Chief Clerk