

STATE OF MICHIGAN
COURT OF APPEALS

VALASSIS COMMUNICATIONS, INC.,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 185586

LC No. 94-421906-CK

AMERICAN HOME ASSURANCE COMPANY,

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and Hood and H.D. Soet,* JJ.

MICHAEL J. KELLY, P.J., (Concurring)

I concur in remand to the trial court for specific consideration of the necessary factors for determination of forum non conveniens as set forth by the Supreme Court in *Cray v General Motors*, 389 Mich 382 (1973), because I do not think the trial court's lumping together the *Royal* defendants and this defendant was appropriate. Even if it was, the subsequent settlement of the *Royal* case while appeal was pending resulted in a stipulated dismissal of that matter on November 21, 1995 some seven months after the trial court's 32 page decision of April 24, 1995.

It seems to me the settlement of the case against the *Royal* defendants will have a major impact on the matters remaining in dispute against this defendant particularly in view of its brief filed below in support of the *Royal* defendants' motion to dismiss and the finding of the New York Supreme Court to the effect that the Michigan contacts, especially regarding coverage questions, weighed heavily in favor of resolving the dispute in a Michigan forum.

On remand I would specifically direct the trial court to address the import of considerations that preexisted April 24, 1995, peculiar to this defendant and events that have occurred since, affecting the issues still in dispute between these parties.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Michael J. Kelly