

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AMERICORP FINANCIAL, L.L.C., d/b/a  
PARATA FINANCIAL COMPANY,

UNPUBLISHED  
January 16, 2014

Plaintiff-Appellant,

v

BACDAMM INVESTMENT GROUP, INC., d/b/a  
GOLDEN ROCK PHARMACY, JOHN  
CHARLES PEREZ, BERNARD R. PEREZ, and  
DONALD J. PEREZ,

No. 312522  
Oakland Circuit Court  
LC No. 2012-125512-CZ

Defendants-Appellees.

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Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Americorp Financial L.L.C. d/b/a Parata Financial Company, appeals as of right an order of dismissal in favor of defendants, Bacdamm Investment Group Inc. d/b/a Golden Rock Pharmacy, John Charles Perez, Bernard R. Perez, and Donald J. Perez. The trial court concluded that Michigan was not a reasonably convenient forum to litigate the case. We reverse.

**I. BASIC FACTS**

Plaintiff, a Michigan company, is apparently the leasing arm of Parata Systems, a North Carolina Company. Parata Systems manufactures a robotic dispensing system (RDS). Defendant Bacdamm is a corporation located in the Virgin Islands. Defendant John Perez is the president of Bacdamm, and defendants Bernard Perez and Donald Perez are vice presidents of Bacdamm. Two of the Perezes live in Florida and one resides in the Virgin Islands.

Plaintiff bought or obtained the leasing rights to the RDS from Parata Systems and leased the RDS to the pharmacy. John Perez signed the lease agreement on behalf of the pharmacy. The agreement included his personal guaranty. Bernard and Donald Perez also signed guarantees. The lease and guarantees contained forum selection clauses in which defendants consented to try any action in Michigan. John Perez, on behalf of the pharmacy, entered into a separate agreement with Parata Systems for the delivery, installation, and maintenance of the RDS. According to defendants, the RDS never functioned properly. After four years of problems and repeated service calls, the pharmacy asked to cancel the lease and stopped making lease payments. Plaintiff filed this action in the Oakland Circuit Court, seeking damages from

the pharmacy for breach of contract and from the Perezes under the guarantees. Defendants moved to dismiss under the doctrine of forum non conveniens. The trial court granted the motion and plaintiff now appeals as of right.

## II. ANALYSIS

Plaintiff argues that the trial court erred in granting the motion to dismiss based on its conclusion that Michigan was not a reasonably convenient forum to litigate the action. We agree.

The trial court's decision whether Michigan is a reasonably convenient forum such that it may exercise personal jurisdiction pursuant to MCL 600.745 is reviewed for an abuse of discretion, but its ultimate determination to exercise jurisdiction under the statute is reviewed de novo. *Lease Acceptance Corp v Adams*, 272 Mich App 209, 223; 724 NW2d 724 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

MCL 600.745(2) governs whether the court should entertain an action when the defendant's consent to jurisdiction under a forum selection clause provides the sole basis for exercising jurisdiction. It provides:

If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:

- (a) The court has power under the law of this state to entertain the action.
- (b) This state is a reasonably convenient place for the trial of the action.
- (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (d) The defendant is served with process as provided by court rules.  
[MCL 600.745(2).]

The doctrine of forum non conveniens allows the court to decline to exercise jurisdiction if the court's own forum is inconvenient and there is a more appropriate forum elsewhere. *Radeljak*, 475 Mich at 604; *Robey v Ford Motor Co*, 155 Mich App 643, 645; 400 NW2d 610 (1986), overruled in part on other grounds by *Radeljak*, 475 Mich at 616.

The parties concede that only § 745(2)(b) is at issue here. Michigan is a reasonably convenient place for trial if it "is a logical venue that is well-suited for the purpose of deciding this action." *Lease Acceptance Corp*, 272 Mich App at 225-226. The so-called *Cray* factors in the context of forum non conveniens also "provide a court with a framework for evaluating whether Michigan is a reasonably convenient place for a trial" in a given case, although not

every factor may be relevant to a particular case. *Id.* at 227-228. In *Lease Acceptance Corp*, this Court noted that whether the forum is “reasonably convenient” is a “less burdensome standard” that does not require as great a showing as does “what is ‘inconvenient’” for the purpose of declining to exercise jurisdiction under the doctrine of forum non conveniens. *Id.* at 228 ns 11 and 13, 231.

The *Cray* factors include the following:

1. The private interest of the litigant.
  - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
  - b. Ease of access to sources of proof;
  - c. Distance from the situs of the accident or incident which gave rise to the litigation;
  - d. Enforcibility [sic] of any judgment obtained;
  - e. Possible harassment of either party;
  - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
  - g. Possibility of viewing the premises.
2. Matters of public interest.
  - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
  - b. Consideration of the state law which must govern the case;
  - c. People who are concerned by the proceeding;
3. Reasonable promptness in raising the plea of *forum non conveniens*.  
[*Cray v Gen Motors Corp*, 389 Mich 382, 395-396; 207 NW2d 393 (1973).]

The trial court granted defendants’ motion because it found that there was nothing about the case that made Michigan a convenient forum. It concluded:

I understand, you know, they . . . contracted for this, but under the case law I’m still to look at the statute and the *Cray* factors, and that tells me I still have to look at whether this is a convenient forum. And what I’m not seeing here is what about Michigan is convenient at all for this case? There has to be something more convenient about Michigan than . . . another jurisdiction. . . .

[I]f you contract for a forum I say you're bound by it; but that's not what case law says so I can't say that. So the case law tells me, yes, they contracted for it but you have to look at all these factors and . . . determine what's a more convenient forum. I look at this case and . . . say what about Michigan is convenient at all.

\* \* \*

Clearly under the case law I have to apply the *Cray* factors. It's not simply what the party has contracted for, although it admittedly made a contract for Michigan being the . . . forum for this case. But following the *Cray* factors, I don't see anything that makes Michigan the more convenient forum. We have the witnesses, the evidence, the people that it affected, the breaches; everything occurred in either . . . U.S. Virgin Islands or Florida; nothing occurred in Michigan and there's no witnesses, really, that are located in Michigan that are going to be relevant to the real issues in this case. Everyone is located in the U.S. Virgin Islands or Tampa. [T]he access to all the proofs is easier in either the U.S. Virgin Islands or Tampa. [A]nd again, the . . . public interest; we have people that it affected, even though they might not be witnesses and it might not be evidence, there's people that it affected that will have an interest in this case and they're located in the U.S. Virgin Islands, so there's a public interest, too, in having it located in either there or Florida; Florida being obviously closer to the U.S. Virgin Islands than Michigan.

[S]o therefore I'm granting defendants' motion for summary disposition based on the *Cray* factors.

We conclude that the trial court's decision falls outside the principled range of outcomes.

Factor 1(a) favors a finding that Michigan is reasonably convenient. Defendants all consented to trying the case in Michigan courts. The cost of having them travel to Michigan is no more onerous than having plaintiff's witnesses travel outside of Michigan. There are no other necessary witnesses, such as those familiar with and inconvenienced by the problems with the RDS, because that involves a separate issue against a different company. The pharmacy has not made Parata Systems a party to this action, and the pharmacy's obligation to plaintiff is independent of any dispute between the pharmacy and Parata Systems.<sup>1</sup>

Factor 1(b) favors a finding that Michigan is reasonably convenient. Presumably each party has equal access to its own lease records and could produce them whether the case were

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<sup>1</sup> The lease provides for "Lessee's Waiver of Warranties," pursuant to which "Lessor makes no warranty, express or implied, as to any matter whatsoever, including the condition of the equipment, its merchantability, or its fitness for any particular purpose[.]" It further provides that if the equipment "does not operate as represented or warranted by Parata Systems, LLC, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against Parata Systems, LLC and shall continue to pay Lessor all rent payable under this lease."

tried in Michigan or elsewhere. Because Michigan and Florida and the Virgin Islands are all part of the United States, there would be no problem with obtaining documents from a foreign country as was the case in *Radeljak*, 475 Mich at 608.

Factors 1(c) and (g) appear to be irrelevant because this is a breach of contract action, not a tort action, and payments under the lease were made by automatic transfer.

Factor 1(d) favors a finding that Michigan is reasonably convenient. A judgment rendered by a Michigan court would be enforceable in Michigan and would be entitled to full faith and credit elsewhere in the United States.

Factor 1(e) appears to be irrelevant because neither party has presented a meaningful claim of harassment by the other party.

Factor 1(f) favors a finding that Michigan is reasonably convenient. There are no practical problems in trying a contract action governed by Michigan law in a Michigan court, apart from the inconvenience associated with defendants' travel to Michigan, which they presumably did not perceive to be overly burdensome because they agreed to be tried in Michigan. Again, defendants' argument is based on the pharmacy's potential cause of action against Parata Systems, but the pharmacy's obligation to plaintiff is independent of any dispute between the pharmacy and Parata Systems. Further, the pharmacy consented to try its claims against Parata Systems in North Carolina and agreed that the lease support agreement would be governed by North Carolina law. Therefore, even if defendants did join Parata Systems as a party to this action and the claim was not severed from plaintiff's action against defendants, the Virgin Islands would not be an appropriate forum.

Factor 2(a) concerns "administrative difficulties," which "follow for courts when litigation is piled up in congested centers instead of being handled at its origin." *Radeljak*, 475 Mich at 610 (citation and internal quotation marks omitted). There is nothing in the record to indicate that Michigan courts are significantly more overburdened by cases of this kind than other courts of the United States. Therefore, this factor favors a finding that Michigan is reasonably convenient.

Factor 2(b) favors a finding that Michigan is reasonably convenient because the lease is governed by Michigan law.

Factor 2(c) appears to be neutral. The persons of each state or territory involved are equally interested in seeing that their fellow citizens' claims are redressed. The pharmacy customers affected by the malfunctioning RDS do not have an interest in the contractual arrangements between plaintiff and defendants.

Factor 3(c) favors defendants in that they raised the issue promptly, but that has little bearing on whether Michigan is or is not reasonably convenient.

This is a breach of contract action concerning the pharmacy's failure to pay rent as required under the lease and the individual defendants' liability for that failure under the guarantees. Defendants agreed to try the issues in Michigan courts and Michigan law is applicable. The pharmacy's problems with the leased equipment do not appear to be relevant, in

part because that involves a claim against a separate company that has not been made a party to this action and in part because pharmacy's obligation to plaintiff is independent of any dispute between the pharmacy and Parata Systems. Therefore, the trial court abused its discretion to the extent that it concluded that Michigan is not a reasonably convenient forum.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly