

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

MICHAEL M. SMILKA and ALBA
SMILKA, husband and wife,
Plaintiffs,

v

File No. 94-12323-PD
HON. THOMAS G. POWER

GRAZIANO LUCIA and MARY A.
LUCIA, husband and wife,
Defendants.

David S. McCurdy (P24095)
Attorney for Plaintiffs

Mark C. Haddad (P 33 0 5 7)
Attorney for Defendant Mary Lucia

John F. Mills (P27587)
Attorney for Defendant Graziano Lucia

DECISION AND ORDER

Defendant Graziano Lucia made a Motion for a Change of Venue pursuant to MCR 2.223. The Court directed the filing of briefs in support and opposition. Defendant Graziano Lucia has filed a memorandum of law in support of his motion and Plaintiffs responded with a memorandum of law in opposition.

Pursuant to MCR 2.119(E)(3), the Court dispense with further oral arguments.

Defendant Graziano Lucia contends that venue in Grand Traverse county is improper for the reasons that all parties are residents of Macomb county and the action arises out of a contract executed in Macomb county. Plaintiffs respond that the cause of action is one for the recovery of tangible personal property, unharvested Christmas trees growing in Grand Traverse County. Therefore pursuant to MCL 600.1605, Plaintiffs contend that venue is proper in Grand Traverse County

Upon review of the parties' memorandums of law, the case file and the authority cited, the Court finds that Grand Traverse county is a proper venue.

MCL 600.1605(d) provides in part that:

The county in which the subject of action, or any part thereof, is situated, is a proper county in which to commence and try the following actions:

(d) the recovery of tangible personal property.

In *Groth v Stillson*, 20 Mich App 704 (1969), the Court held that growing Christmas trees were goods pursuant to the Uniform Commercial Code, MCL 440.2105. In *Barron v Edwards*, 45 Mich App 210 (1973) the Court, following *Groth*, supra' held that sod was personally pursuant to the Uniform Commercial Code. Clearly, it has been held that growing Christmas trees are tangible personal property and, pursuant to MCL 600.1605(d), venue is proper in Grand Traverse county.

The Court, on its own, further finds that venue is proper in Grand Traverse county pursuant to MCL 600.1621(a) for the reason that Defendants conduct business in Grand Traverse county through their Christmas tree growing activities. In the case of *Walter v M Walter & Co, Inc*, 179 Mich App 409 (1989), the Court recognized that growing and harvesting of Christmas trees constituted doing business in Michigan. For the reasons set forth above, this Court finds that venue is proper in Grand Traverse county.

The Motion for Change of Venue is denied.

IT IS SO ORDERED.

HONORABLE THOMAS G. POWER
Circuit Court Judge

Dated: 9/26/94