

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROSE and JEFF THOMAS, h/w	:	
Plaintiffs	:	
vs.	:	NOVEMBER TERM, 2012
	:	
COMCAST OF SOUTHEAST	:	No. 0218
PENNSYLVANIA, LLC	:	
Defendant	:	

MEMORANDUM IN SUPPORT OF ORDER DENYING
DEFENDANT'S MOTION TO TRANSFER VENUE

MASSIAH-JACKSON, J.

DOCKETED

APR 23 2013

J. DIROSA
DAY FORWARD

Thomas Vs Comcast Corporation-MEMOR



12110021800047

April 23rd, 2013

A. Factual Background and Procedural History

In February, 2011, Mrs. Rose Thomas attempted to assist a Comcast Technician push his work van out of her driveway. The vehicle was stuck in the snow and ice accumulation. The Comcast van pinned Mrs. Thomas against her garage door causing serious and permanent injuries.

In November, 2012, Plaintiff-Thomas and her husband commenced this litigation in the Court of Common Pleas of Philadelphia County. The Defendant, Comcast of Southeast Pennsylvania, LLC filed this Motion to Transfer Venue pursuant to Rule 1006(d)(1). Defendant-Comcast asserts that the location of Philadelphia County is both oppressive and vexatious and thus, a forum non conveniens. Defendant also states that it “regularly does business in Bucks County and not in Philadelphia.”

Comcast, LLC failed to meet its burden of proof. On April 17, 2013, this Court denied the Motion to Transfer and ordered the parties to move forward in this litigation.

B. Inconvenience is Not a Basis to Transfer to a Geographically Contiguous County

Rule 1006(d)(1) states:

“(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.”

In Zappala v. Brandolini Property Management, 909 A.2d 1272 (Pa. 2006), the Supreme Court relied on Cheeseman v. Lethal Exterminator, Inc., 701 A.2d 156 (Pa. 1997) to reiterate well-established guidelines. A Trial Court must consider whether the defendant has demonstrated more than that the plaintiff’s chosen forum is merely inconvenient. See

also, Defendant's Supplemental Memorandum, page 3. In this case, there has not been any suggestion that Plaintiff-Thomas' choice of forum was designed to harass the defendant. Nor has this Defendant established that travelling from Bucks County to Philadelphia is onerous.

The Affidavit submitted by Martin Delaney states, in part:

"Based upon my busy work schedule it would be much more convenient to attend a trial in Doylestown, Pennsylvania. If I were required to participate in this litigation in Philadelphia it would be very difficult for me."

The Affidavit of Stephen Joseph Slebodnik proffers an identical excuse:

"Based upon my busy work schedule it would be much more convenient to attend a trial in Doylestown, Pennsylvania. If I were required to participate in this litigation in Philadelphia it would be very difficult for me."

The case law is clear that conclusory assertions of oppressiveness or vexation, without detailed information can not satisfy Defendant-Comcast's burden. See, Hunter v. Shire US, Inc., 2010 Pa. Super. 39 (Pa. Superior Ct. 2010); Raymond v. Park Terrace Apartments, Inc., 882 A.2d 518, 521 (Pa. Superior Ct. 2005). The assertion that Doylestown is less inconvenient than Philadelphia is not a viable basis to support this Motion.

C. The Private Interest and Public Interest Factors Do Not Favor This Motion

Defendant-Comcast has expressed concerns about private interest factors and public interest factors as a basis for the Motion to Transfer Venue. Comcast's position is without merit.

It is well-settled that a plaintiff's choice of forum should rarely be disturbed. Lawyers are routinely required to travel to examine documents and records. Arrangements are easily made to obtain copies of such evidence -- computers, internet, Skype, zip drives, video monitors, the Cloud, etc. etc. No matter where this case proceeds the defendant will have to travel to bring evidence to the courthouse. The Philadelphia Metropolitan Area has many major highways to provide ease of travel for all witnesses.

Not a single one of the public interest factors presents a compelling reason supporting transfer to Bucks County. With respect to court dockets, Philadelphia's caseflow management protocols will permit clear and steadfast time limits for discovery and pre-trial preparation. This non-complex Major Jury Trial will most likely be given a trial date on or before November, 2014. Attention is directed to the comprehensive review and evaluation by the National Center for State Courts. Their Report concluded that the civil programs in the Philadelphia Court of Common Pleas are "the best-managed large urban civil trial court operation in the nation."

It must be noted that photographs and film of the incident site can easily be presented to a jury. The pre-trial discovery depositions may or may not be taken in Bucks County. Pre-trial and trial video testimony can be presented to the Philadelphia judge and jury if desired. The parties may also request a Trial Date Certain for this non-complex litigation.

Finally, Defendant-Comcast was provided an opportunity to develop its record in support of its Motion to Transfer Venue by Order, dated January 24, 2013. That opportunity was declined when this defendant chose to not present a corporate designee with particularized knowledge relating to where Comcast, LLC conducts business and other venue-related issues.

D. The Defendant Failed to Meet its Burden of Proof

As the moving party, Comcast, LLC has the burden of proving that its objections to venue are valid. In Gale v. Mercy Catholic Medical Center, 698 A.2d 647 (Pa. Superior Ct. 1997), the Trial Court's transfer order was deemed an abuse of discretion when the Medical Center failed to supplement the record as per Rule 1028(c)(2). In the case at bar, Defendant-Comcast failed to take advantage of the opportunities provided from January 24, 2013 through March 18, 2013. Defendant's initial Memorandum at page 2, states:

“Defendant Comcast of Southeast Pennsylvania, LLC regularly conducts business in Bucks County Pennsylvania and not in Philadelphia.

The Affidavit of Workplace Safety Specialist, Marty Basmajian, provides a similar conclusory statement:

“Comcast of Southeast Pennsylvania, LLC conducts business in Bucks County but does not regularly conduct business in Philadelphia, County, Pennsylvania.

Rule 2179 of the Pennsylvania Rules of Civil Procedure states in pertinent part:

“(a) Except as otherwise provided . . . , by a personal action against a corporation or similar entity may be brought in and only in . . .

(2) a county where it regularly conducts business;”

The Philadelphia business contacts of Comcast, LLC must be assessed as to their quantity and quality. The case law provides guidance that the focus is to consider the nature of the acts. A corporation may perform acts “regularly” even though the acts make up a small part of the total activity. Cantor v. American Honda Motor Corporation, 231 A.2d 140 (Pa. 1967).

In Cantor, the Pennsylvania Supreme Court reversed a Trial Court where it was disclosed at the deposition of the corporate representative that although the defendant’s places of business were located in Montgomery County and Delaware County, one to two percent of its business came from Philadelphia County. See also, Monaco v. Montgomery Cab Company, 208 A.2d 252 (Pa. 1965), holding that the act of driving into Philadelphia at the request of customers were acts directly essential to and in furtherance of corporate objects. The acts were performed “habitually” although not on a fixed schedule or route.

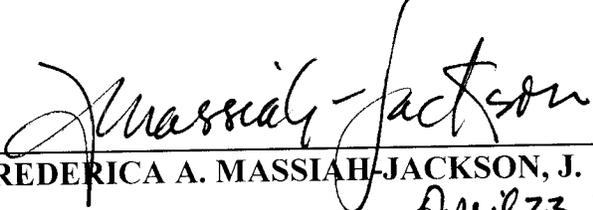
Plaintiff-Thomas proffers in her Supplemental Memorandum (unpaged):

“In short, Defendant conducts business by distributing and maintaining Comcast Corporation’s products and the distribution and maintenance to customers in its direct furtherance of Comcast Corporation’s business. Plaintiff was a Comcast customer. She purchased cable television from Comcast, by contacting Comcast. When her daughter made arrangements for service, technicians from Comcast of Southeast Pennsylvania LLC came to her home. The work van

they were driving was identified as a Comcast vehicle. That vehicle and the alleged negligence of Comcast employees, caused Plaintiff to suffer harm. Plaintiff seeks to bring suit against Comcast, by whatever name, in Philadelphia County a county in which Comcast regularly and continuously conducts business, houses its corporate headquarters, derives income and avails itself of the benefits of the county.”

See also, Lugo v. Farmers Pride, Inc., 967 A.2d 963 (Pa. Superior Ct. 2009) where 1.9% of total sales were to Philadelphia brokers venue challenge was inadequate; Zapana-Barry v. Hugh A. Donahue, Esquire, 921 A.2d 500 (Pa. Superior Ct. 2007) finding that 3% of a firm’s gross revenue is sufficient quantity of contacts. The acts of Comcast, LLC are of sufficient quality and quantity to confer venue over this action in Philadelphia County.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.
April 23, 2013