

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

PENN-MONT BENEFITS SERVICES, INC.	:	March Term 2004
	:	
	:	
Plaintiff,	:	No.: 07283
v.	:	
	:	Commerce Program
GREAT SOUTHERN LIFE INSURANCE COMPANY	:	Control No.: 093430
	:	
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 12th day of January 2005, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint and Plaintiff's Response thereto, it is hereby **ORDERED** and **DECREED** that:

- 1) Defendant's Preliminary Objection based on *lis pendens* is **OVERRULED**; and
- 2) Defendant's Preliminary Objection based on improper venue is **SUSTAINED** and this matter is hereby **TRANSFERRED** to the Court of Common Pleas of Montgomery County, with costs to be borne by Plaintiff.

BY THE COURT,

GENE D. COHEN, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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	:	Commerce Program
GREAT SOUTHERN LIFE INSURANCE COMPANY	:	
	:	Control No.: 093430
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Defendant.	:	

MEMORANDUM OPINION

COHEN, J.

Presently before the court are Defendant Great Southern Life Insurance Company's ("Great Southern") Preliminary Objections to Plaintiff Penn-Mont Benefit Services, Inc.'s ("Penn-Mont") Complaint.

Originally, on November 18, 2002, Penn-Mont filed a confession of judgment against Great Southern (the "November Action"). The confessed judgment was transferred to Montgomery County on January 8, 2003. Great Southern filed a petition to strike and/or open the confessed judgment and this court stayed execution on the confessed judgment on February 12, 2003. Penn-Mont sought to transfer the matter to Montgomery County, but this court denied the motion on August 26, 2003. Great Southern filed a motion to amend its petition on September 23, 2003 and that motion remains undecided.

Thereafter, on July 30, 2004, Penn-Mont filed its Complaint in the above-captioned action. Great Southern makes two arguments in its Preliminary Objections.

First, Great Southern asserts that this matter is identical to the November Action and should be stayed or dismissed. Second, Defendant argues that a forum selection clause in the relevant contract requires transfer of this case to Montgomery County.

To assert the defense of *lis pendens*, a party must demonstrate “that the case is the same, the parties are the same, and the rights asserted and relief prayed for is the same.”

Crutchfield v. Eaton Corp., 806 A.2d 1259, 1262 (Pa. Super. 2002). The November Action is a confession of judgment action, filed pursuant to 42 Pa.C.S. §2950 *et seq.* The current matter seeks damages for breach of contract. Therefore, the cases are not identical and Defendant’s objection on the basis of *lis pendens* is overruled.

Generally, a court with jurisdiction will decline to proceed with a case where the parties have freely agreed to conduct the litigation in another forum. Central Contracting Co. v. C.E. Youngdahl & Co., 418 Pa. 122, 133, 209 A.2d 810, 816 (1965). The agreement, however, must be reasonable; it cannot seriously impair the plaintiff’s ability to pursue its cause of action. Id. The burden of proving the unreasonableness of the agreement lies with Penn-Mont, id., at 134, 816, and it has not accomplished this task. Thus, Defendant’s objection on the basis of the forum selection clause is sustained and this matter shall be transferred.

BY THE COURT,

GENE D. COHEN, J.