

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

KMART OF PENNSYLVANIA, L.P.,	:	NOVEMBER TERM, 2004
Plaintiff,	:	No. 03258
v.	:	COMMERCE PROGRAM
MACDADE MALL ASSOCIATES, L.P. and	:	Control No. 020997
MD MALL ASSOCIATES, LLC,	:	
Defendants.	:	

ORDER

AND NOW, this 24th day of March 2005, upon consideration of defendants' Preliminary Objections, plaintiff's response in opposition, the briefs in support and opposition, all other matters of record, and in accord with the Opinion being filed contemporaneously, it is **ORDERED** that the Objections are **SUSTAINED**. This action is transferred to the Court of Common Pleas of Delaware County.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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

KMART OF PENNSYLVANIA, L.P., : NOVEMBER TERM, 2004
Plaintiff, : No. 03258
v. : COMMERCE PROGRAM
MACDADE MALL ASSOCIATES, L.P. and : Control No. 020997
MD MALL ASSOCIATES, LLC, :
Defendants.

.....

OPINION

Albert W. Sheppard, Jr., J. March 24, 2004

Plaintiff, Kmart of Pennsylvania, L.P. (“Kmart”), is the lessee of mall property located in Delaware County. Kmart filed this declaratory judgment action against its landlord, MacDade Mall Associates, L.P. (“MacDade LP”), and MacDade LP’s general partner, MD Mall Associates, LLC (“MD LLC”), seeking a declaration that a letter, which purports to terminate the lease between MacDade LP and Kmart, is void and of no effect. Defendants have filed Preliminary Objections which are presently before the court.

MD LLC urges that it should not have been named as a party because it is not a party to the lease and it did not issue the alleged termination letter that is the subject of this suit. Kmart argues that because MD LLC is the general partner of MacDade LP, it is jointly and severally liable with MacDade LP, so it was properly named as a party. *See* 15 Pa. C.S. § 8327; Holt’s Cigar Co v. 222 Liberty Assoc., 404 Pa. Super. 578, 591 A.2d 743 (1991). If this were an action for damages, it would make sense for Kmart to sue both the partnership and the general partner to ensure that it would find sufficient property against which to execute judgment. *Compare* Pa.

R. Civ. P. 2132(a) (“a judgment entered against a defendant partnership sued in its firm name only shall support execution upon the partnership property only.”) *with* Pa. R. Civ. P. 2132(b) (“a judgment entered against a defendant partnership sued in the name or names of the partners . . . shall support execution upon the partnership property and upon the individual property of any partner named as a party . . .”). But, in this declaratory judgment action there will be no need for execution against the property of the general partner. Entry of a judgment with respect to the partnership property is all that Kmart seeks.

Accordingly, MD LLC was not properly named as a party and should be dismissed.

MacDade LP correctly points out that once MD LLC ceases to be a party to this action, venue is no longer appropriate in Philadelphia County.¹ Venue in an action against a partnership lies:

in and only in a county where the partnership regularly conducts business, or in a county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose or in a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R. Civ. P. 2130(a). In that the leased mall property at issue is located in Delaware County, and since MacDade LP does business only in Delaware County, Delaware County is the proper venue for this action.² Therefore, the court will transfer this action to Delaware County. *See* Pa. R. Civ. P. 1006(e) (“If a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall . . . be transferred to the appropriate court of that county.”)

¹ Venue was appropriate here with respect to MD LLC because its registered office is located in Philadelphia County. *See* Pa. R. Civ. P. 2179(a)(1). If MD LLC had remained a party, then venue would also have been appropriate in this county with respect to its jointly liable co-defendant MacDade LP. *See* Pa. R. Civ. P. 1006(c)(1).

² The court notes that there is a related ejectment action already pending between the parties in Delaware County.

CONCLUSION

For these reasons, defendants' Preliminary Objections are sustained. The court will issue an Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.