

tactical training for first-responders, emergency medical staff as well as executive training, crisis management training, intelligence workshops, campus seminars and related services.³

Richmon is allegedly the face of the company and is solely responsible for the company's sales efforts as well as managing, designing and performing its training and research operations. Perelman is responsible for the American "back-office" operations of the company, including overseeing the company's finances and managing its books, and various writing and research tasks.⁴

In February 2013, Perelman informed Richman of this desire to withdraw from the operations of ITRR and allegedly began a competing business. Since informing Richman of his intended departure Perelman allegedly became derelict in performing his duties for ITRR including but not limited to failing to perform file tax returns, record keeping and managing ITRR accounts receivable and accounts payable. Additionally, Perelman has allegedly siphoned off approximately \$200,000 out of ITRR's accounts for his and his wife's sole use, purportedly as return on his investment in ITRR instead of paying off ITRR's creditors, employees and operations.⁵

On August 1, 2013, Richman and ITRR filed a complaint and a motion for preliminary injunction against Perelman alleging conversion and theft, breach of fiduciary duty. Richmon and ITRR also sought an accounting, injunction and a declaratory judgment. On August 21, 2013, the court held a hearing on the motion for preliminary injunction. At the hearing the parties reached an agreement on a framework within which to resolve their disputes and the court

³ Complaint, ¶ 6.

⁴ Complaint, ¶¶ 9, 11.

⁵ Id. at ¶¶ 13, 15-16.

entered a stipulated order outlining that framework. The stipulated order reserved the issue of venue. Perelman filed the preliminary objection asserting improper venue.

DISCUSSION

A plaintiff's choice of forum is given great weight and a defendant has the burden in asserting a challenge to the plaintiff's choice of venue. However, the trial court is vested with discretion in determining whether to grant a petition to transfer venue.⁶ Here plaintiffs argue that Pa. R. Civ. P. 2179 governs venue in this case because "this is a dispute between two members of a not-for-profit company in which claims have been brought on behalf of the Company, and claims will be brought against the Company".⁷ The court does not agree. Although, the dispute is among two members of a not-for-profit company, ITRR is not a defendant and therefore Pa. R. Civ. P. 2179, which governs venue when a personal action is filed against a corporation or similar entity, does not apply.⁸ Instead, the applicable venue standard is found in Pennsylvania Rule of Civil Procedure 1006 (a) (1), which discusses an action against individuals.

Pa. R. Civ. P. 1006 provides, in relevant part, as follows:

- (a) Except as otherwise provided by subdivisions (a.1), (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which
 - (1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law....

⁶ *Gilfor ex rel. Gilfor v. Altman*, 2001 PA Super 68, 770 A.2d 341, 343-44 (Pa. Super. Ct. 2001)(citing *Masel v. Glassman*, 456 Pa.Super. 41, 689 A.2d 314, 316 (1997).

⁷ Plaintiffs' memorandum in opposition to defendant's preliminary objection p. 4.

⁸ The court notes that in *Feltoon v. Nolen*, 2002 WL 31474537 (Pa. Com. Pl. Phila. Cty. Nov. 1, 2002), a case upon which plaintiffs heavily rely, is distinguishable. In *Feltoon*, the Corporation at issue was sued as a nominal defendant; hence application of Pa. R. Civ. P. 2179 was appropriate.

As it pertains to Perelman, an individual and the only defendant, venue lies only in the county where he could be served or where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.⁹ Generally, an individual may be properly served in any county where he resides or at any office or place of business.¹⁰ Perelman resides in York and was in fact served at his residence in York County. Original process may also be served at any office or usual place of business of the defendant to his agent or to the person for the time being in charge.¹¹ The allegations in the complaint make it clear that Perelman's office or usual place of business is York. Based on the foregoing, venue, based on the service requirement of Pa. R. Civ. P. 1006, is not proper in Philadelphia.

Rule 1006 also states that an action against an individual may also be brought in and only in a county in which the cause of action arose or where the transaction or occurrence took place out of which the cause of action arose. Plaintiffs argue that the conversion claim arose out of an injury inflicted in Philadelphia. Plaintiffs allege Perelman converted property, assets belonging to ITRR, including but not limited to funds transferred by Perelman from an ITRR account to an account under his sole control.¹² ITRR's bank accounts were opened at Sovereign Bank in York.¹³ Funds paid to ITRR by its clients are received by wire and mailed check. The funds are deposited in the ITRR account at Sovereign Bank/Santander which has branches around the

⁹ Pa.R.C.P. 1006(a).

¹⁰ Pa.R.C.P. 402.

¹¹ Id.

¹² Complaint ¶¶ 29, 30, 41, 42.

¹³ Plaintiffs' response to defendant's preliminary objection paragraph 13.

world.¹⁴ Plaintiffs failed to produce any evidence that the actual transfer of funds occurred in a Philadelphia branch of Sovereign/Santander. Moreover, since ITRR does not have a physical office in Philadelphia and since it is alleged that Perelman is responsible for the “back office” operations of the company, including the finances, the act of converting the funds occurred in York. Based on the foregoing, venue is not proper in Philadelphia.

CONCLUSION

For the foregoing reasons, defendant’s preliminary objection is sustained and the above action shall be transferred to the Court of Common Pleas of York County, Pennsylvania, with the cost and fees for the transfer and removal of the record to be paid by Plaintiffs.

BY THE COURT,



PAMELA PRYOR DEMBE, J.

¹⁴ Defendant’s preliminary objection paragraph 13 and plaintiffs’ response in opposition to paragraph 13.