

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

THE CITY OF PHILADELPHIA, Acting by And Through	:	MAY TERM, 2001
The Board of Directors of City Trusts, Administrator for	:	
the Girard Estate,	:	
	:	
Plaintiff	:	No. 2799
	:	
v.	:	COMMERCE PROGRAM
	:	
MAMMOTH COAL COMPANY, and PAGNOTTI:	:	
ENTERPRISES, INC.,	:	
	:	
Defendants	:	Control No. 100911

OPINION

Presently before this Court are Defendants’ Preliminary Objections to the Amended Complaint, asserting improper venue and seeking to transfer the case to the Court of Common Pleas of Schuylkill County. For the reasons set forth in this Opinion, the Preliminary Objections are overruled.

BACKGROUND¹

This matter arises from a dispute over reimbursement for costs incurred in remedying a hazardous environmental situation pursuant to a Compliance Order of the Pennsylvania Department of Environmental Protection (“DEP”).

Plaintiff, the City of Philadelphia, acting by and through the Board of Directors of City Trusts, Administrator for the Girard Estate (“Girard Estate”), operates and administers the real and personal property through various testamentary trusts, including the property devised under the Will of Stephen Girard. Am. Compl., ¶ 6. Girard Estate operates two mines and a coal processing plant on approximately 8,000 acres of land in Schuylkill County, Pennsylvania and the surrounding counties. Am. Compl., ¶ 8.

¹Many of the material facts in this section were gleaned from the Amended Complaint.

Girard Estate holds a permit from the DEP to conduct certain mining operations on the John Barren Jr. tract of lands, the Hammond Bank area and other properties located in Union Township, Schuylkill County, Pennsylvania. Id. at ¶ 9.

Defendant, Pagnotti Enterprises, Inc. (“Pagnotti”) is a Pennsylvania corporation with its principal place of business located at 46 Public Square, Suite 600, Wilkes-Barre, PA 18701. Id. at ¶ 2. Defendant, Mammoth Coal Company (“Mammoth”) merged into Pagnotti Coal Company on May 5, 1997. See Pl. Answer to Prel. Objs., Exhibit 1 - Articles of Merger. Pagnotti Coal Company later merged directly into Pagnotti Enterprises. See Pl. Supplemental Mem. of Law, at 2 n.1. Pagnotti and Mammoth Coal also hold permits by the DEP for coal mining operations on the John Barren Jr. tract of lands and the Hammond Bank area located in Union Township, Schuylkill County, Pennsylvania. Am. Compl., ¶ 10.

On August 14, 1996, Girard Estate entered into an Agreement of Sale with Mammoth Coal for the purchase of 137 acres of land in the Hammond Bank area in Schuylkill County, Pennsylvania. Id. at ¶ 11. See also, Am. Compl., Exhibit A. Mammoth Coal purportedly reserved all of the coal refuse banks which were located on the surface of the property, as well as any minerals beneath the surface, from the sale of the property and therefore owns and/or controls the coal refuse banks. Am. Compl., ¶ 13. Prior to the sale of the property, Mammoth Coal and/or Pagnotti allegedly placed or allowed placement of waste tires on the coal refuse banks. Id. at ¶ 15. On or about July 13, 2000 and again on July 20, 2000, a portion of the waste tires located on the refuse banks caught or were set on fire. Id. at ¶ 18. As alleged, Girard Estate did not cause, nor was responsible for the fire and had no control or ownership of the coal refuse banks. Id. at ¶¶ 14, 17, 19.

On or about July 24, 2000, the DEP issued a Compliance Order to Girard Estate, requiring that

it remove the remaining tires and clean up the waste from the fire, notwithstanding the reservation by Mammoth Coal or the lack of involvement by Girard Estate. *Id.* at ¶ 20. See also, Am. Compl., Exhibit B. Despite Girard Estate's objections and lack of interest in the coal refuse banks, the DEP refused to withdraw the Compliance Order against Girard Estate and cited it for clean-up costs. Am. Compl., ¶¶ 21-23. As a result, Girard Estate has allegedly suffered damages in costs to remove the hazardous conditions on the coal refuse banks and in legal fees and professional expenses to resolve the Compliance Order. *Id.* at ¶¶ 24-26.

With this background, Plaintiff has filed its Amended Complaint against Defendants, setting forth counts for contribution under the Pennsylvania Hazardous Sites Cleanup Act,² negligence, negligence per se, private nuisance, common law contribution, indemnity and restitution. *Id.* at ¶¶ 27-75. Each of these causes of action relate to the alleged hazards located on the coal refuse banks. *Id.* Defendants filed Preliminary Objections, asserting improper venue and seeking to transfer the matter to Schuylkill County. On November 30, 2001, the Court held the Preliminary Objections under advisement, pending discrete discovery on the venue issue over a period of sixty (60) days. Following a joint request by the parties, on January 16, 2002, the Court extended the discovery period and the submission of supplemental briefs for an additional thirty (30) days. Now, the Preliminary Objections are ripe for resolution.

DISCUSSION

Preliminary objections which would result in dismissal of a complaint should be sustained only in cases that are clear and free from doubt. Butler v. Illes, 747 A.2d 943, 944 (Pa. Super. Ct. 2000)(citing

²codified at 35 Pa.C.S.A. §§ 6020.101 et seq.

Baker v. Brennan, 419 Pa. 222, 225, 213 A.2d 362, 364 (1965)). A defendant’s challenge to venue must be raised by preliminary objection. See Pa. Rs. Civ. P. 1028(a)(1);1006(e). As the moving parties, defendants bear the burden of supporting their claim of improper venue. Gale v. Mercy Catholic Med. Center Eastwick, Inc. Fitzgerald Mercy Div., 698 A.2d 647, 652 (Pa. Super. Ct. 1997)(the moving party has the burden of showing that the original choice of venue is improper); Liggitt v. Liggitt, 253 Pa. Super. 126, 131, 384 A.2d 1261, 1263-64 (1978). “A plaintiff’s choice of forum is given great weight.” Masel v. Glassman, 456 Pa. Super. 41, 45, 689 A.2d 314, 316 (1997)(citations omitted). However, the trial court has discretion in deciding whether or not to transfer venue. Id.

Rule 2179 of the Pennsylvania Rules of Civil Procedure (“Pa. R. Civ. P.”) sets forth where an action may be asserted against a corporation. The rule provides, in pertinent part, as follows:

(a) Except as otherwise provided by an Act of Assembly or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

- (1) the county where its registered office or principal place of business is located;
- (2) a county where it regularly conducts business;
- (3) the county where the cause of action arose; or
- (4) a county where a transaction or occurrence took place out of which the cause of action arose.

Pa. R. Civ. P. 2179(a). Subdivisions (2) and (4) of this rule are relevant in the present case.³ Plaintiff also asserts that venue is proper in Philadelphia County because Philadelphia has exclusive jurisdiction of all

³In its response to the Preliminary Objections, Plaintiff relies only on these two subdivisions of Rule 2179. Further, Plaintiff concedes that Pagnotti and/or Mammoth Coal’s principal place of business is in Wilkes-Barre, Pennsylvania and that all of the causes of action relate to the coal refuse banks which are located in Schuylkill County. Am. Compl., ¶¶ 2-3, 11-14, 24-26.

matters involving the assets of the Girard Estate.

Certain sections of the Decedents, Estates and Fiduciaries Code (“the Probate Code”), codified at 20 Pa.C.S.A. §§ 101 et seq., mandate that jurisdiction and venue over the administration and distribution of real and personal property held in testamentary trust lie exclusively in the county in which the situs of the trust is located and where the will was first probated. Section 722 of the Probate Code provides as follows:

When a Pennsylvania court has jurisdiction of any trust, testamentary or inter vivos, except as otherwise provided by law, the venue for all purposes shall be in the county where at the time being is the situs of the trust. The situs of the trust shall remain in the county of the court which first assumed jurisdiction of the trust, unless and until such court shall order a change of situs under the provisions of this chapter.

20 Pa.C.S.A. § 722 (emphasis added). See also, 20 Pa.C.S.A. § 721 (venue “for all purposes” lies in the county where testamentary letters are granted to the personal representative in the case of a decedent’s estate).

In Esposita v. Peden, 9 Pa. D. & C.3d 712 (C.P. Somerset Cty. Nov. 21, 1978), the plaintiff filed a complaint for specific performance of a contract for the sale of land in Somerset County against the defendant, who was appointed executor of an estate by the Westmoreland County Orphans’ Court Division. 9 Pa. D. & C.3d at 713. The Court of Common Pleas of Somerset County found that the sale of the decedent’s land was made for purposes of administration and distribution and clearly fell within Section 711(1) of the Probate Code. Id. at 721. Jurisdiction therefore lay with the orphans’ court division if it has venue. Id. The court then examined Section 721 of the Probate Code and determined that proper venue was in Westmoreland County where the administration was raised and letters testamentary issued.

Id. at 722.

Further, Plaintiff relies on three cases, involving the Girard Estate, in which the trial courts found that proper venue lay in Philadelphia County. See Jordan Realty Inc. v. The City of Philadelphia Under the Will of Stephen Girard, Deceased, Acting by the Board of City Trusts, No. S-737-1995 (C.P. Schuylkill Cty Sept. 14, 1995)(holding that venue in breach of contract action is proper in Philadelphia County, not Schuylkill County, pursuant to Pa.C.S.A. § 722); Loree Associates, et al. v. The City of Philadelphia, Trustee under the Will of Stephen Girard, deceased, No. S-477-1990 (C.P. Schuylkill Cty Apr. 10, 1990)(dissolving the temporary injunction to restrain the defendant-lessor from entering the leasehold property and transferring the matter to the Court of Common Pleas of Philadelphia County pursuant to Pa. R. Civ. P. 2103(b)); McGuire v. Board of City Trusts, 51 Pa. D. & C. 493 (C.P. Schuylkill Nov. 22, 1943)(quashing a writ of trespass on the grounds that the courts of Philadelphia alone have jurisdiction over the defendant as a public municipal corporation).⁴

Here, it is undisputed that the Will of Stephen Girard was probated in Philadelphia and the situs of the trust is in Philadelphia. The fact that Girard Estate owns property in Schuylkill County and that the causes of action relate to the coal refuse banks located on the property does not negate the statutory language in the Probate Code. Rather, the Schuylkill County property is an asset of the estate and its value is affected by the present action. Therefore, under 20 Pa.C.S.A. § 722, venue shall be in Philadelphia for all purposes. However, were it not for the fact that this case involves an asset of a testamentary trust, venue

⁴These cases were attached to Plaintiff's Answer to the Preliminary Objections at Exhibits 5-7.

would otherwise not be proper under subsections (a)(2) or (a)(4) of Rule 2179.⁵

CONCLUSION

For the reasons set forth above, this Court is issuing a contemporaneous Order, overruling the Preliminary Objections for improper venue.

BY THE COURT,

JOHN W. HERRON, J.

Dated: April 11, 2002

⁵First, the fact that the Agreement of Sale of the property may have been executed in Philadelphia does not constitute a “transaction or occurrence” but is merely one step in a series of steps that led to the causes of action for reimbursement for an environmental hazard on the property. See Craig v. W.J. Thiel & Sons, Inc 395 Pa. 129, 134, 149 A.2d 35, 37 (Pa.1959) (holding that the mere placing of an order in one county is merely one step in the formation of a contract and is insufficient for venue purposes in a breach of contract action); Estate of Leo L. Werner v. Werner, 781 A.2d 188, 191-92 (Pa. Super. Ct. 2001)(holding that certain preliminary meetings in one county were too tenuous to constitute a “transaction or occurrence” and insufficient for venue purposes in a civil conspiracy action).

Further, the fact that a subsidiary of Pagnotti may sell insurance through an independent broker in Philadelphia or that coal may be shipped through Philadelphia on its way to Quebec is insufficient to conclude that Pagnotti “regularly conducts business” in Philadelphia. See Pl. Supplemental Mem. of Law, at 11-14

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Plaintiff	:	No. 2799
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MAMMOTH COAL COMPANY, and PAGNOTTI :	:	
ENTERPRISES, INC.,	:	
	:	
Defendants	:	Control No. 100911

ORDER

AND NOW, this 11th day of April, 2002, upon consideration of Defendants' Preliminary Objections to the Amended Complaint, Plaintiff's response in opposition thereto, all other matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Preliminary Objections are **Overruled**. Defendants shall file an Answer to the Amended Complaint within twenty (20) days from the entry of this Order.

BY THE COURT,

JOHN W. HERRON, J.