

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

INTERNATIONAL MILL SERVICES, INC.,	:	June Term, 2001
Plaintiff,	:	
	:	No. 1559
v.	:	
	:	Commerce Program
ALLEGHENY LUDLUM CORPORATION,;	:	
Defendant.	:	Control No. 102215

ORDER

AND NOW, this 11th day of April, 2002, upon consideration of the Petition to Transfer Venue of Allegheny Ludlum Corporation, to the Complaint of International Mill Services, Inc., all responses thereto, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Petition to Transfer Venue based on forum non conveniens is GRANTED, and therefore this action is TRANSFERRED to the Court of Common Pleas of Washington County.

BY THE COURT:

JOHN W. HERRON, J.

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OPINION

Allegheny Ludlum Corporation (“Allegheny”) filed this petition to transfer venue based on forum non conveniens to the complaint of International Mill Services, Inc. (“IMS”). For the reasons stated below, the petition is granted and this action is transferred from Philadelphia County to Washington County.

BACKGROUND

This is a case arising from a dispute over the removal of scrap metal and slag from a steel mill in western Pennsylvania. The defendant, Allegheny, is the owner and operator of a steel-mill and melt shop in Houston, Washington County, Pennsylvania. Located approximately 15 miles from the Ohio border, this steel mill and melt shop generates certain by-product materials defined as slag, melt shop clean-up, spills, furnace tear-out materials, slag pot skulls, slag and ladle skulls, breakout scrap and other materials commonly known as pit scrap. The plaintiff, IMS, with its principal place of business in Horsham, Montgomery County, Pennsylvania, is in the business of removing such by-products from

steel mills and melt shops in order to process and recover metallics and scrap in preparation for further processing.

On July 1, 2000, IMS executed an agreement (“Agreement”) with Allegheny whereby IMS was to perform its scrap handling services at Allegheny’s steel mill in western Pennsylvania. In preparation for the January 2001 service, IMS had procured specialized equipment. However, on January 18, 2001, IMS received a fax from Allegheny stating that Allegheny’s scrap pad project at the Houston, Washington County plant, had not been approved and as such it allegedly did not need IMS’s services.

On June 14, 2001, IMS filed this action in Philadelphia County, where absolutely nothing occurred in this case, alleging breach of contract, specific performance, and unjust enrichment against Allegheny for the services to be performed at the western Pennsylvania steel mill. On November 9, 2001, Allegheny filed this petition to transfer venue based on forum non conveniens. This Court, on January 8, 2002, ordered discrete discovery to develop a record concerning whether Philadelphia County is a vexatious or oppressive venue to try this case.

DISCUSSION

In evaluating a petition to transfer venue on the grounds of forum non conveniens, “[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.” Shears v. Rigley, 424 Pa. Super. 559, 564, 623 A.2d 821, 824. See also, Goodman by Goodman v. Pizzutillo, 452 Pa. Super. 436, 445, 682 A.2d 363, 367 (1996) (stating that a “party seeking a change of venue bears a heavy burden of justifying the request...”). For a court to grant a petition to transfer based on forum non conveniens, a petitioner must show that the proceedings

would be vexatious or oppressive:

[T]he defendant may meet its burden of showing that the plaintiff's choice of forum is vexatious to him by establishing with facts on the record that the plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff himself.... Alternatively, the defendant may meet his burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct a view of premises involved in the dispute. But, we stress that the defendant must show more than that the chosen forum is merely inconvenient to him.

Cheeseman v. Lethal Exterminator Inc., 549 Pa. 200, 213, 701 A.2d 1565, 162 (1997). Finally, the defendant's burden requires a demonstration of claimed hardships on the record, Jones v. Borden Inc., 455 Pa. Super.110, 687 A.2d 392 (1996), although there is no necessity for an evidentiary hearing on a petition. Cheeseman, 549 Pa. at 213 n.8, 701 A.2d at 162 n.8.

As evidence of vexatiousness or oppressiveness, a petitioner must provide a court with the names of witnesses who are to be called, a general statement of what their testimony will cover and what hardships the witnesses would suffer. Johnson v. Henkels & McCoy Inc., 707 A.2d 237, 240 (Pa.Super. 1997). See also, Petty v. Suburban General Hosp., 363 Pa. Super. 277, 285, 525 A.2d 1230, 1234 (1987) (stating that “[i]f a party has merely made a general allegation that witnesses will be necessary, without identifying them and indicating what their testimony will be the application for transfer will be denied”); Hoose v. Jefferson Home Health Care Inc., 754 A.2d 1, 5 (Pa. Super 2000) (stressing that “there is a vast difference between a finding of inconvenience and one of oppressiveness”). Furthermore, a defendant's claims “that no significant aspect of the case involves the chosen forum, and that litigating in another forum would be more convenient... do not amount to a showing that the chosen forum is oppressive or vexatious.” Cheeseman, 549 Pa. at 214, 701 A.2d at

162. Finally, “a plaintiff’s choice of forum is accorded less deference when the plaintiff does not live in the forum district and none of the operative events occurred there.” Watt v. Consolidated Rail Corp., 1997 WL 288607, *2 (E.D.Pa.). Guided by these principles, this Court turns to the instant case.

I. Allegheny Has Met Its Burden by Establishing on the Record that Trial in Philadelphia County is Oppressive and Vexatious

A. Philadelphia County is an Oppressive Venue for Trial of This Case

According to Allegheny, all of its witnesses likely to be called at trial, live or work near Washington County. Def’s Supp. Mem of Law at 4. Specifically, Allegheny provides affidavits and deposition testimony establishing that former employees, Nathaniel Miljus and Dennis Rodal, who were involved in the procurement of the scrap handling services and negotiations of the Agreement, live in western Pennsylvania and would suffer undue hardship if called to testify in Philadelphia County. Id. at 5 (citing Miljus Aff ¶¶1,2; Rodal Aff ¶¶1-3; Vietmeier Dep. Test. at 19, 21, 55; Strader Dep. Test. at 29). Miljus, now retired, resides in Allegheny County “and traveling more than 300 miles to Philadelphia” would be a hardship since by air it “would take [him] a minimum of 4 hours (one way) considering [his] travel time to the airport outside of Pittsburgh (approximately 1 hour); the security checks; flight time; and transportation to the courthouse.” Miljus Aff. ¶5. Similarly, Rodal who lives in Washington County, would experience a “severe hardship” not only by traveling to Philadelphia, but trial in Philadelphia would impact Rodal’s employment. Rodal Aff. ¶5. Currently, Rodal is employed by

ELG Metals in McKeesport, Pennsylvania and traveling to Philadelphia would impact his job as it “would cause [him] to be absent from [his] job for at least a full day for each day [his] presence would be required.” Id. at Rodal Aff ¶¶4,5.

Other important witnesses of Allegheny would also experience hardships if this case were to proceed in Philadelphia County. Ronald Minkus, Doug Kittenbrink, David Vietmeier, and John Sample, former and current employees of Allegheny who would provide “knowledge pertinent” to the Agreement, all work and live in Western Pennsylvania. Id. at 7 (citing Minkus Aff.; Strader Dep. Test at 47; Vietmeier Dep. Test. at 19, 39-42, 66, 72-74, 84). Specifically, Minkus, who lives in Allegheny County, is the Purchasing Director for Allegheny Technologies Inc. (“ATI”)¹ and is “familiar with and [has] personal knowledge” of the issues related to the Agreement. Minkus Aff. ¶¶1-6. Both Kittenbrink, the current president of ATI and former president of Allegheny, and Vietmeier, the current Vice President of Procurement for Allegheny, were involved in the decision and execution of the Agreement with IMS and would offer such testimony at trial. Def’s Supp. Mem. of Law at 7. Finally, Sample, who lives in Butler County, is the Director of Transportation for Allegheny and was involved in the negotiations and procurement of various proposals received for scrap handling services, including IMS’s proposal. Id at 7.

All of these individuals claim that they would suffer hardships to their jobs should they need to travel to Philadelphia County to testify as to their expertise and knowledge on the subject of the Agreement. Id at 8. Specifically, Minkus, who is the “point-of-contact” for negotiating agreements with

¹ ATI is Allegheny’s parent company.

various vendors, would be forced to cease all negotiation of agreements while in Philadelphia, as junior inexperienced members of his recently consolidated staff would be unable to take on such responsibility. *Id.* at 6 (citing *Minkus Aff.* ¶¶2, 9). Similarly, Sample, who as part of a project team, oversees all transportation of materials from Allegheny in Washington County to all parts of the United States, would be unable to delegate his role on the project team should he be required to travel across the state to Philadelphia. *Id.* at 7 (citing *Sample Aff.* ¶¶4,5). As such, trial in Washington County, a distance of no more than one hour travel for these individuals, would provide much easier access to all of Allegheny's witnesses.

Finally, besides its own witnesses, Allegheny also points to certain IMS witnesses likely to be called at trial who currently work and reside, not in Philadelphia, but in western Pennsylvania or Ohio. *Id.* Specifically, Ralph Castalano, Richard Planton, John Berkert, and Bud Bauer all were on IMS's project team that negotiated the details of the Agreement with Allegheny while in western Pennsylvania. *Id.* at 9 (citing *Strader Dep. Test.* at 9, 18, 27, 66-67). As such, all of these current and former IMS employees would provide details of "every stage of the development, negotiation, and execution of the Agreement." *Id.* (citing *Strader Dep. Test.* at 27, 31, 42). "Nevertheless," argues Allegheny, "[IMS] commenced this action over 300 miles away from the place where these employees live." *Id.* In addition, Jerry Strader, Ray Kalouche and Bill Miller, current IMS employees, all work and reside in Montgomery County and thus even they would have to travel an hour each way to testify in Philadelphia County. *Pl.'s Mem. of Law* at 2. On this record, this court concludes that trial in Washington County would provide easier access to all these witnesses and eliminate their respective hardships of traveling to Philadelphia County for trial.

B. Philadelphia County is a Vexatious Venue for Trial of This Case

Allegheny also argues that trial in Philadelphia County is vexatious. This court agrees.

It is axiomatic that, when selecting a trial venue over 300 miles away from all events and witnesses in the case, harassment of these witnesses and the party occurs. Moreover, given the fact that the plaintiff's project team of four individuals, who are likely witnesses, all reside in western Pennsylvania, it appears that IMS intentionally selected Philadelphia County "... even at some inconvenience to the plaintiff himself." Cheeseman, 701 A.2d at 162.

C. Trial In Washington County Would Provide Easier Access to Evidence

In addition to providing easier access to witnesses, trial in Washington County would also provide easier access to any sources of proof and other evidence needed to resolve IMS's claims of breach of contract, specific performance, and unjust enrichment against Allegheny. Specifically, trial in Washington County would provide easier access to the steel mill, the subject of the Agreement, as it is only approximately ten miles from the courthouse.

Besides the location of some of Allegheny's offices, Philadelphia has no other connection to this Agreement that called for the removal of scrap material from a steel mill in western Pennsylvania. Not only are there no witnesses from Philadelphia County, but also there appears to be nothing in the record demonstrating that there are documents relating to IMS's causes of action in Philadelphia County. Moreover, IMS's offices and principal place of business are not in Philadelphia County, but rather in Montgomery County. Pl's Mem. of Law at 1. Finally, none of the operative facts alleged took

place in Philadelphia County. Complaint ¶¶10-16. As such, trial in Washington County would provide easier access to evidence in resolving IMS's causes of action.

CONCLUSION

This court concludes that Allegheny has met its burden requiring a demonstration of claimed hardships on the record. Here, to force parties and witnesses, the clear majority of whom reside in western Pennsylvania, to testify about events, most of which transpired in western Pennsylvania, in a court in an uninvolved county, 300 miles across the Commonwealth, is not merely inconvenient, but precisely the unabashed oppressiveness and vexatiousness our Supreme Court in Cheeseman intended to thwart. Courts should also be mindful of the fact that following the events of September 11th, required use of air travel by witnesses is no longer the risk and hassle free mode of transportation it once was. It is now a costly and time consuming venture such that when venues for trial are selected the necessity of using air travel for witnesses should be factored into the analysis of the Cheeseman test for forum non conveniens. On this record, this Court grants Allegheny's petition to transfer venue based on forum non conveniens from Philadelphia County to Washington County.

BY THE COURT:

JOHN W. HERRON, J.

DATE: April 11, 2002