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

MESNE PROPERTIES, INC., et al.,	:	July Term, 2000
Plaintiffs	:	
	:	No. 1483
v.	:	
	:	Commerce Case Program
PENN MUTUAL LIFE INSURANCE CO.,	:	
Defendant	:	Control No. 011681

MEMORANDUM OPINION

Defendant Penn Mutual Life Insurance Co. ("Penn Mutual") has filed preliminary objections ("Objections") to the second amended complaint ("Complaint") of Plaintiffs MESNE Properties, Inc. ("MESNE") and St. John's Holdings, Inc. ("St. John"). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order ("Order") sustaining the Objections in part and overruling the Objections in part. The Order also directs the Parties to take depositions and file briefs as to the question of venue.

BACKGROUND

On September 27, 1990, MESNE entered into a loan agreement ("Loan Agreement") with Penn Mutual for a loan of $8.9 million ("Loan"), with St. John guaranteeing repayment.[1] MESNE used the Loan to purchase an office building and parking lot ("Property") and granted Penn Mutual a mortgage on the Property ("Mortgage"). The Mortgage was recorded in the Office for Recording of Deeds in Montgomery County, Pennsylvania.

[1]The document evidencing this guarantee has not been submitted to the Court.

On April 15, 1997, Penn Mutual commenced an action for confession of judgment under the Loan Agreement against MESNE and St. John ("Confession Action"). Sometime thereafter, the Parties entered into a settlement agreement ("Settlement Agreement") under which the Plaintiffs discharged Penn Mutual from all Mortgage-related liability arising from events that occurred prior to the date of the Settlement Agreement.[2] The Plaintiffs assert that, in accordance with the Settlement Agreement's terms, the Mortgage was fully satisfied by October 31, 1997.

Toward the end of October 1997, the Plaintiffs allege that they and their agents made a tender of expenses to Penn Mutual and its agents and requested that the Mortgage be marked satisfied. When no response was received, the Plaintiffs' agent forwarded to Drinker Biddle & Reath, LLP, Penn Mutual's supposed agent, a written demand that the Mortgage be marked satisfied ("Demand"). The Demand is alleged to have been sent on June 4, 1999. The Complaint states that Penn Mutual did not reply to the Demand and failed to mark the Mortgage satisfied.

In July 1999, the Plaintiffs attempted to refinance the Property and learned that Penn Mutual still had not taken any action with respect to the Mortgage. Upon making this discovery, the Plaintiffs assert that they asked Penn Mutual to mark the Mortgage satisfied once more. According to the Complaint, Penn Mutual marked the Mortgage satisfied on September 13, 2000, more than 450 days after the Demand was sent. As a result of the delay allegedly caused by Penn Mutual's inaction, the Plaintiffs incurred additional expenses and were forced to pay a higher interest rate for refinancing the Property.

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[2] The Settlement Agreement attached to the Complaint is undated and unexecuted.

In July 2000, the Plaintiffs filed a first complaint, which the Court found insufficiently specific. The Plaintiffs filed the most recent Complaint in January 2001, asserting claims for a statutory fine for failing to mark the Mortgage satisfied and breach of the Settlement Agreement. The Objections, in response, assert improper venue, failure to attach a writing, legal insufficiency, pending prior action, lack of capacity to sue, improper demand for a jury trial and lack of specificity.

DISCUSSION

The Plaintiffs base their claim for a statutory fine on two Pennsylvania statutes. The first is 21 Pa. C.S. § 681 ("Section 681"), which dictates when a mortgagee must mark a mortgage satisfied:

> Any mortgagee of any real or personal estates in the Commonwealth, having received full satisfaction and payment of all such sum and sums of money as are really due to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction either upon the margin of the record of such mortgage recorded in the said office or by means of a satisfaction piece, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

If a mortgagee fails to comply with the requirements of Section 681, 21 Pa. C.S. § 682 ("Section 682") allows an "aggrieved party" to bring a claim for a statutory fine:

> And if such mortgagee, by himself or his attorney, shall not, within forty-five days after request and tender made for his reasonable charges, return to the said office, and there make such acknowledgment as aforesaid, he, she or they, neglecting so to do, shall for every such offence, forfeit and pay, unto the party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this Commonwealth, by bill, complaint or information.

Because Penn Mutual allegedly failed to mark the Mortgage satisfied within forty-five days of their various requests, the Plaintiffs assert that they are entitled to damages under Section 682. In addition, the Plaintiffs claim that Penn Mutual's conduct violates the "Further Assurances" provision in Settlement Agreement, giving rise to a breach of contract cause of action.

I. The Settlement Agreement Does Not Bar the Plaintiffs from Proceeding with Their Claims

According to Penn Mutual, the release provision in the Settlement Agreement ("Release") absolves it of all liability connected to the Mortgage ("Release"). According to its terms, the Release applies to liability arising from "agreements, transactions, occurrences, acts or omissions whatsoever that were commenced, done or committed, or occurred at any time prior to the date of [the Settlement Agreement]." Settlement Agreement at ¶ 11 (emphasis added).[3] See also Id. at ¶ 12 (the Release applies to claims resulting from "acts or omissions occurring before the date of [the Settlement Agreement]").

While the Settlement Agreement is not dated, it appears that it was executed between June 25, 1997 and October 31, 1997.[4] This signals that Penn Mutual is not absolved of liability arising from actions taken after October 1997, including its alleged refusal to mark the Mortgage satisfied in response to the Demand in the summer of 1999. Cf. Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994) ("releases are strictly construed so as not to bar the enforcement of a claim

[3] A release is to be given effect according to the ordinary meaning of its language. Seasor v. Covington, 447 Pa. Super. 543, 547, 670 A.2d 157, 159 (1996). This requires strictly limiting a release to the matters specified therein. Harrity v. Medical College of Pa. Hosp., 439 Pa. Super. 10, 22-23, 653 A.2d 5, 11-12 (1995) (distinguishing Buttermore v. Aliquippa Hosp., 522 Pa. 325, 561 A.2d 733 (1989)). See also Vaughn v. Didizian, 436 Pa. Super. 436, 439, 648 A.2d 38, 40 (1994) ("it is crucial that a court interpret a release so as to discharge only those rights intended to be relinquished").

[4] The Settlement Agreement states that Penn Mutual filed an answer in the Confession Action on June 25, 1997 and that the transaction contemplated by the Settlement Agreement will close on October 31, 1997. Settlement Agreement at ¶¶ C, 5.

which had not accrued at the date of the execution of the release"). As a result, the Release does not bar the instant action.

II. The Complaint May Not Be Dismissed for Failure to Attach a Writing

If a claim set forth in a complaint is based on a writing, a plaintiff must attach a copy of the writing to the complaint. Pa. R. Civ. P. 1019(i).[5] Where the court and the defendant are both in possession of the document in question, however, an objection based on Rule 1019(i) will be overruled. See St. Hill & Assocs., P.C. v. Capital Asset Research Corp., May 2000, No. 5035, slip op. at 3 (C.P. Phila. Sept. 2, 2000) (Herron, J.) (overruling objection based on 1019(i) where plaintiff supplied both the court and the defendant with a copy of the missing document).[6] Cf. McLellan v. Health Maint. Org. of Pa., 413 Pa. Super. 128, 145 n.10, 604 A.2d 1053, 1061 n.10 (1992) (objections based on a failure to attach a document were without merit where the complaint alleged that the document was in the possession of the defendants and set forth the substance of the document).[7]

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[5] Rule 1019(h) was amended effective January 1, 2001 to be relettered as Rule 1019(i).

[6] Available at http://courts.phila.gov/cptcvcomp.htm.

[7] It is also important to note that "[t]he Rules of Civil Procedure are designed to achieve the ends of justice and are not to be accorded the status of substantive objectives requiring rigid adherence . . . . [C]ourts should not be astute in enforcing technicalities to defeat apparently meritorious claims." Lewis v. Erie Ins. Exch., 281 Pa. Super. 193, 199, 421 A.2d 1214, 1217 (1980) (citations omitted). See also Pa. R. Civ. P. 126 (allowing the rules of civil procedure to be "liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable" and allowing a court "to disregard any error or defect of procedure which does not affect the substantial rights of the parties"); Dream Pools of Pa., Inc. v. Baehr, 326 Pa. Super. 583, 588-89, 474 A.2d 1131, 1134 (1984) (allowing liberal construction of the Pennsylvania Rules of Civil Procedure to ensure justice and disregarding procedural errors that "do not affect the substantial rights of the parties").

Even if the counts in the Complaint are based on the Mortgage, the Plaintiffs assert that Penn Mutual, "as mortgagee, [has] access to the [M]ortgage." Plaintiffs' Memorandum at II.B. This claim is supported by the fact that Penn Mutual has attached a copy of the Mortgage to the Objections. Because the Court and each of the Parties have a copy of the Mortgage, Penn Mutual has suffered no prejudice due to a failure to attach the Mortgage to the Complaint. As a result, the Objections based on a failure to attach the Mortgage are overruled.

III. Both Plaintiffs have Standing and the Capacity to Sue under Section 682[8]

Lack of capacity to sue "refers to the personal disability of a plaintiff by virtue of some statute." Goodrich-Amram 2d 1017(b):34 (citing Commonwealth ex rel. Sheppard v. Central Penn Nat'l Bank 31 Pa. Commw. 190, 375 A.2d 874 (1977)). Similarly, standing relates to who may make a legal challenge and "may be conferred by statute or by having an interest deserving of legal protection." Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Dep't of Labor & Indus., Prevailing Wage Appeals Bd., 552 Pa. 385, 391, 715 A.2d 1068, 1071 (1998). Penn Mutual contends that, because St. John is not a mortgagor, it lacks standing and the capacity to sue under Section 682.

[8] Under Rule 1028(a)(5), a party may raise a preliminary objection based on "a lack of capacity to sue." It is unclear if Pennsylvania law distinguishes between capacity to sue and standing. Compare Witt v. Commonwealth, Dept. of Banking, 493 Pa. 77, 83 n.7, 425 A.2d 374, 377 n.7 (1981) (quoting 67A C.J.S. Parties § 10 distinction between "capacity to sue" and "standing"), with In re Estate of Alexander, 758 A.2d 182, 189 (Pa. Super. Ct. 2000) (using the terms "capacity to sue" and "standing" interchangeably). However, courts of the Commonwealth permit parties to file challenges to standing in preliminary objections. See, e.g., Kee v. Pennsylvania Tnpk. Comm'n, 685 A.2d 1054, 1056 (Pa. Commw. Ct. 1996).

Section 682 permits recovery by "the party or parties aggrieved."[9] See also Lepore v. Italian Victory Bldg. & Loan Ass'n., 171 Pa. Super. 35, 37, 90 A.2d 327, 328 (1952) (a Section 682 fine is "intended to accomplish two purposes: Damages as compensation to the aggrieved party, and a penalty with the object of punishing the offender"). No case has provided a definition of "aggrieved party" for Section 682.[10]

Here, the Plaintiffs allege that each of them "incurred additional expenses and delays due to [Penn Mutual's] failure to mark the mortgage satisfied." Complaint at ¶ 24. This allegation must be accepted as true for the purposes of preliminary objections, leading to the conclusion that both Plaintiffs are "aggrieved parties." Thus, both Plaintiffs have standing and the capacity to sue under Section 682. Cf. Specktor v. Specktor, 158 Pa. Super. 323, 44 A.2d 767 (1945) (affirming Section 682 judgment in favor of non-mortgagor owners of mortgaged property).

IV. The Claim for Relief Based on Section 682 is Legally Sufficient

[9] In interpreting a statute, "[w]here the language of a statute is unambiguous, [courts] must not ignore the plain language under the guise of pursuing the spirit of the law. Words and phrases are to be given their common and approved meaning unless they are technical words that have acquired special meaning." O'Donoghue v. Laurel Sav. Ass'n, 556 Pa. 349, 356, 728 A.2d 914, 917 (1999) (citations omitted).

[10] While such holdings may be of limited value, courts in other contexts have held that, "to be 'aggrieved,' a party must have a direct, substantial and immediate interest in the subject matter of the litigation." Interstate Gas Mktg., Inc. v. Pennsylvania Pub. Util. Comm'n, 679 A.2d 1349, 1354 (Pa. Commw. Ct. 1996). By way of further explanation, "the requirement that an interest be 'direct' simply means that the subject matter causes harm to the interest. The remaining requirements, i.e., that the interest be 'immediate' and 'substantial,' are concerned with the nature of the causal connection between the subject matter and the harm. Id., 679 A.2d at 1354 n.10. Cf. 13 Pa. C.S. § 1201 (defining "aggrieved party" as a "party entitled to resort to a remedy").

The Pennsylvania Supreme Court has interpreted the request requirement of Section 681 liberally, permitting Section 682 claims based on even an oral request to a mortgagee that a mortgage be marked satisfied. O'Donoghue v. Laurel Sav. Ass'n, 556 Pa. 349, 356, 728 A.2d 914, 917-18 (1999). Here, however, Penn Mutual asserts that the Settlement Agreement mandates the manner in which all notice, including the Demand, must be given. Because the Plaintiffs failed to comply with these requirements, it contends, their Section 682 claim is legally insufficient.

Paragraph 22 of the Settlement Agreement ("Notice Provision") addresses notice given under that Agreement:

> 22. Notice. (a) All notices, requests, demands, and other communications under this Stipulation shall be in writing and shall be given to each party hereto as follows:
>
> . . .
>
> If to Penn Mutual:
>
> G.E. Capital Realty Group, Inc.
> Two Bent Tree Tower
> 16479 Dallas Parkway
> Suite 400
> Dallas, TX 75248-2661
> Attn: Douglas M. Goldrick
>
> with a copy to:
>
> Andrew C. Kassner, Esquire
> DRINKER BIDDLE & REATH LLP
> 1345 Chestnut Street
> PNB Building, Suite 1100
> Philadelphia, PA 19107-3496

Thus, if the Notice Provision is triggered, it requires that both G.E. Capital Realty Group, Inc. and Andrew C. Kassner of Drinker Biddle & Reath LLP be notified.

The crux of the dispute on this issue is whether the Demand is a notice, request, demand or other communication made under the Settlement Agreement. In this instance, the plain meaning of the Notice Provision reveals the Parties' intent to address only those matters that arise under the Settlement Agreement and nothing more.[11] While the Plaintiffs' breach of contract claim can easily be seen as arising from the Settlement Agreement, the Section 682 claim has no basis therein. As such, the Notice Provision does not apply to the Demand, and the fact that the Demand comports with the statutory requirements of Section 682 renders the Plaintiffs' claim legally sufficient.

V. MESNE Has Waived its Right to Demand a Jury Trial, but St. John Has Not

Paragraph 6.02 of the Loan Agreement states that MESNE "waives the right to trial by jury in any action arising hereunder, under the other Loan Documents or otherwise in connection with the Loan."[12] Penn Mutual argues that this "Waiver" precludes the Plaintiffs from demanding a jury trial for their claims.

As an initial matter, St. John is not a party to the Loan Agreement. This means that, regardless of the Waiver's terms, it cannot bind St. John, and any waiver of the right to demand a jury trial in the

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[11] In general, "a clear and unambiguous contract provision must be given its plain meaning unless to do so would be contrary to a clearly expressed public policy." Insurance Co. of Evanston v. Bowers, 758 A.2d 213, 220 (Pa. Super. Ct. 2000) (citing Antanovich v. Allstate Ins. Co., 507 Pa. 68, 76, 488 A.2d 571, 575 (1985)). When interpreting a contract, "the intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." Charles D. Stein Revocable Trust v. General Felt Indus., Inc., 749 A.2d 978, 980 (Pa. Super. Ct. 2000) (citation omitted).

[12] This language is significantly broader than that in the Notice Provision.

Loan Agreement is limited to MESNE only.[13] Accordingly, there is no bar to St. John's demand for a jury trial for its claims.[14]

Under Pennsylvania law, "[t]he right to trial by jury may be waived as part of an express agreement." Rodney v. Wise, 347 Pa. Super. 537, 541, 500 A.2d 1187, 1189 (1985). See also Beach v. Burns Int'l Sec. Servs., 406 Pa. Super. 160, 166, 593 A.2d 1285, 1288 (1991) (a written waiver of the right to demand a jury trial made before a claim arises does not violate public policy). Here, the plain language of the Loan Agreement precludes MESNE from demanding a jury trial for any action connected to the Loan.

The Plaintiffs counter that "the Loan Agreement is not the subject of this lawsuit" and that Waiver thus does not apply. Plaintiffs' Memorandum at II.F. While the Plaintiffs' claims may not be based on the Loan Agreement, the Waiver applies broadly to all actions arising "in connection with the Loan" and not only to Loan Agreement disputes. Although the instant action focuses on Section 682 and not the Mortgage or the Loan Agreement, it clearly is "connected" to the Loan: both Counts have a connection to Penn Mutual's alleged failure to acknowledge full satisfaction of the Loan. As a result, the MESNE has waived its right to demand a jury trial for its claims.[15]

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[13] It is axiomatic that "a contract cannot impose obligations upon one who is not a party to the contract." Juniata Valley Bank v. Martin Oil Co., 736 A.2d 650, 663 (Pa. Super. Ct. 1999).

[14] Although both Plaintiffs ratified the terms of the Loan Agreement in Paragraph 3 of the Settlement Agreement, the Waiver specifies only that MESNE has waived the right to a jury trial. Thus, St. John's ratification of the Loan Agreement serves as an acknowledgment only that MESNE has waived its right and cannot be understood as a waiver by St. John.

[15] While there does not appear to be any Pennsylvania case that addresses a trial at which one plaintiff's claim is heard by a jury while a second plaintiff's similar claim is heard by the court, this procedure has precedence in other jurisdictions. See In re Aircrash Disaster Near Roselawn, Ind. on

VI. The Complaint is Adequately Specific

To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (citation omitted). See also In re The Barnes Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should . . . fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based"). The Complaint sets forth the dates of the communications to Penn Mutual and its agent and the content of these communications. Complaint at ¶¶ 15-16, 18-21. Thus, the Complaint allows Penn Mutual to prepare a defense to the Plaintiffs' claims and is sufficiently specific.

Oct. 31, 1994, 909 F. Supp. 1083, 1114 (N.D. Ill. 1995), aff'd, 96 F.3d 932 (7th Cir. 1996) (stating that claims against one defendant would be tried by the court and claims against all other defendants would be tried by a jury).

VII. The Objections to Venue Raise Disputed Issues of Material Fact and Require Discovery[16]

When preliminary objections challenge venue, "the defendant is the moving party and bears the burden of supporting [its] claim" of improper venue. Liggitt v. Liggitt, 253 Pa. Super. 126, 131, 384 A.2d 1261, 1263-64 (1978). Cf. Gale v. Mercy Catholic Med. Center Eastwick, Inc., Fitzgerald Mercy Div., 698 A.2d 647, 652 (Pa. Super. Ct. 1997) (concluding that the moving party did not meet its burden of showing that the original choice of venue was improper). Consequently, to prevail, Penn Mutual must show that Philadelphia constitutes improper venue.

An action against a corporation may be brought in any of the following places:

> (1) the county where its registered office or principal place of business is located;
> (2) a county where it regularly conducts business;[17]
> (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.

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[16] This Objection purports to be "in the nature of a motion to transfer venue," and asks the Court to "transfer the action to Montgomery County, the situs of the Property at issue, and Penn Mutual's principal place of business, where venue would be proper." Plaintiffs' Objections at ¶¶ 1-11. Objections to venue must be raised in preliminary objections. Triffin v. Turner, 348 Pa. Super. 6, 8, 501 A.2d 271, 272 (1985) (citing Rule 1006(e)). If a Pennsylvania court finds that venue is improper, it may transfer the matter to another county automatically and without any need for a hearing. United States Cold Storage Corp. v. City of Philadelphia, 431 Pa. 411, 419, 246 A.2d 386, 390 (1968). If venue is proper, however, a defendant is precluded from using preliminary objections to secure a transfer and must instead file a petition to transfer in accordance with Rule 1006(d). Hosiery Corp. of Amer., Inc. v. Rich, 327 Pa. Super. 472, 473-74, 476 A.2d 50, 50-51 (1984). See also McCrory v. Abraham, 441 Pa. Super. 258, 267, 657 A.2d 499, 504 (1995) (discussing difference between objections to venue and a petition to transfer).

[17] To determine whether a corporation regularly conducts business in a specific county, a court must focus on the quantity and quality of the corporation's alleged acts in that county: "[a]cts satisfying the quality test are those directly, furthering or essential to, corporate objects; they do not include incidental acts. Acts of sufficient quantity are those so continuous and sufficient to be general or habitual." Gale, 698 A.2d at 651-52 (citations and quotation marks omitted).

Pa. R. Civ. P. 2179(a). When the defendant is an insurance company, venue is also proper in the county where the insured property is located. Rule 2179(b). The conditions in Rule 2179 are "disjunctive, so any one of the enumerated acts will result in venue attaching in the appropriate county." Goodrich-Amram 2d § 2179:1 (citing Deeter-Ritchey-Sippel Assocs. v. Westminster College, 238 Pa. Super. 194, 357 A.2d 608 (1976)).

Here, Penn Mutual has set forth a litany of reasons why it believes venue is improper in Philadelphia, including the claim that it "does not regularly conduct business in Philadelphia County." Penn Mutual's Objections at ¶ 5. The Plaintiffs, in turn, assert that Penn Mutual does indeed conduct business in Philadelphia on a regular basis. Plaintiffs' Response at ¶¶ 3-4, 10.[18]

Disputes such as these must be resolved through interrogatories, depositions or an evidentiary hearing, with depositions or written interrogatories being the preferred method of investigation. See Phila Civ. R. *206.1(E); American Hous. Trust III v. Jones, 548 Pa. 311, 319-20, 696 A.2d 1181, 1185 (1997) ("[t]he trial court may not reach a determination based upon its view of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories, depositions, or an evidentiary hearing"); Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A., January 2000,

[18] To bolster their claim, the Plaintiffs have submitted copies of Penn Mutual advertisements in the Philadelphia Yellow Book. Advertisements in a county's phone books and newspapers, however, "fail to meet . . . standards for exercise of venue." Kubik v. Route 252, Inc., 762 A.2d 1119, 1124 (Pa. Super. Ct. 2000) (quoting Purcell v. Bryn Mawr Hosp., 525 Pa. 237, 248, 579 A.2d 1282, 1287 (1990)). Similarly, Penn Mutual's assertion that less than one percent of Penn Mutual's premium revenues are derived from Philadelphia is not dispositive, since "[a] corporation may perform acts 'regularly' even though these acts make up a small part of its total activities." Canter v. American Honda Motor Corp., 426 Pa. 38, 43, 231 A.2d 140, 142 (1967) (citation and quotation marks omitted).

No. 3633, slip op. at 11-12 (C.P. Phila. Oct. 11, 2000) (Herron, J.) (citing Luitweiler v. Northchester Corp., 456 Pa. 530, 535, 319 A.2d 899, 902-03 (1974), Ambrose v. Cross Creek Condominiums, 412 Pa. Super. 1, 13-14, 602 A.2d 864, 869 (1991) and Slota v. Moorings, Ltd., 343 Pa. Super. 96, 100, 494 A.2d 1, 2 (1985)).[19] Accordingly, the Court is ordering that the Parties take depositions as to those facts that either confirm or refute the assertion that Penn Mutual regularly conducts business in Philadelphia.[20] These depositions are to be completed within forty-five days of the issuance of this Opinion and in accordance with Pennsylvania Rule of Civil Procedure 4007.1. Once this has been accomplished and within sixty days of the issuance of this Opinion, the Parties are to file briefs addressing the issue of venue and referencing the depositions and any other relevant evidence. In the interim, the Objections to venue will be held under advisement.

CONCLUSION

The Objections to MESNE's demand for a jury trial are sustained and the Objections asserting improper venue are held under advisement. The remaining Objections are overruled.

BY THE COURT:

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JOHN W. HERRON, J.

Date: April 6, 2001

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[19] Available at http://courts.phila.gov/cptcvcomp.htm.

[20] The Plaintiffs have submitted a supplemental response to the Objections that references admissions by Penn Mutual, including an admission that Penn Mutual sells insurance policies to Philadelphia County residents. Resp. to Req. for Admission No. 21. Without a response from Penn Mutual and additional information as to the volume of such sales, however, the Court cannot resolve the Objection.

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

MESNE PROPERTIES, INC., et al., Plaintiffs	:	July Term, 2000
	:	No. 1483
v.	:	
	:	Commerce Case Program
PENN MUTUAL LIFE INSURANCE CO., Defendant	:	Control No. 011681

ORDER

AND NOW, this 6th day of April, 2001, upon consideration of the Preliminary Objections of Defendant Penn Mutual Life Insurance Co. to the Complaint of Plaintiffs MESNE Properties, Inc. and St. John's Holdings, Inc. and Plaintiffs' response thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED as follows:

1. The Objections asserting that MESNE's demand for a jury trial is improper are SUSTAINED, and MESNE's demand for a jury trial is STRICKEN;

2. The Objections asserting improper venue will be held under advisement for sixty days so that within forty-five days, depositions pursuant to Pa. R. Civ. P. 4007.1 may be taken to resolve the factual questions regarding venue. After the forty-fifth day but on or before the sixtieth day, the Parties shall file with this Court briefs offering any further argument and referencing the depositions or other relevant evidence; and

3. All remaining Objections are OVERRULED.

BY THE COURT:

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JOHN W. HERRON, J.