

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

ANTHONY BROOKS and	:	
SHERIE BROOKS h/w	:	
	:	CIVIL TRIAL DIVISION
	:	
Appellants/Plaintiffs	:	JANUARY TERM, 2010
	:	No. 1873
	:	
v.	:	Superior Court Docket No.
	:	637 EDA 2011
COMCAST CORPORATION, et al.	:	
Appellees/Defendants	:	

OPINION

PROCEDURAL HISTORY

Plaintiffs appeal from the Order dated January 13, 2011, wherein this Court granted Defendants, Comcast Corporation, Comcast Cable Communications Holdings, Inc., Comcast Cable Communications Management, LLC, Comcast Communications of Pennsylvania, Inc., Comcast Cable Communications, Inc.'s (hereinafter Comcast Defendants) Motion to Transfer Venue to Cumberland County based on forum non conveniens.

FACTUAL BACKGROUND

Anthony Brooks and Sherie Brooks resided at 4800 Orchard Street, Harrisburg, Pennsylvania in Dauphin County. Anthony Brooks (hereinafter Plaintiff) was an employee of Vitel Communications, LLC. (Complaint, ¶23). On January 18, 2008, Plaintiff was assigned to activate cable service for a Comcast cable customer on Center

Street in Enola, Pennsylvania. To activate the cable, Plaintiff was required to connect the cable service running from a tap on the Comcast cable near a utility pole located across the street from the customer's house. (Id.). The line running to the house had already been installed and Plaintiff was required to perform the necessary functions at the main cable near the utility pole to enable Comcast cable television service to the customer's house. (Id.).

Plaintiff was supplied a twenty-eight (28) foot Werner extension ladder by his employer Vitel Communications, LLC (hereinafter Vitel). (Complaint, ¶24). Vitel purchased the ladder from Defendant National Ladder & Scaffold Co. (hereinafter National Ladder). The ladder was made of fiberglass and was equipped with ladder extensions at the base of either leg and hooks to be placed over the strand at the top. (Id.). The ladder extenders were designed, manufactured, sold and distributed by New Werner Holding Company, Inc. (hereinafter New Werner). (Id.). The hooks were positioned on the ladder above the top rung for purposes of hanging the ladder over the catenary utility strands. (Id.).

The Plaintiff was provided with the strand by Comcast Corporation for the purpose of hanging the ladder while working at the cable tap. (Complaint, ¶25).

Upon completing his service of the customer, plaintiff began to descend the ladder he heard a rapid clicking from below and felt the ladder slide to his left and down the catenary slope. (Complaint, ¶29). The right hook of the ladder then lifted off the strand and the left side of the ladder slid toward the center and the right side swung violently to the left until it came to sudden stop, causing the Plaintiff to be thrown from a

significant height to the macadam surface below. (Id.). As a result Plaintiff suffered bilateral wrist injuries.

On January 18, 2010, Plaintiffs commenced this action by filing their Complaint alleging counts of negligence against Defendants New Werner, National Ladder and Comcast. Plaintiffs also included product liability claims against New Werner and National Ladder. Plaintiff Sherrie Brooks asserted a loss of consortium claim.

By Order dated March 5, 2010, this Court granted the Preliminary Objections filed by Comcast Defendants and dismissed the Complaint against them. Plaintiff thereafter filed an Amended Complaint against New Werner, National Ladder and Comcast Defendants.

In their Answer to the Amended Complaint, Defendants advised that Defendant Comcast Corporation was a valid corporate entity, but that Defendant Comcast Cable Communications Holding, Inc., Comcast Communications of Pennsylvania, Inc. and Comcast Cable Communications, Inc. were no longer viable business entities. (Comcast Answer, ¶12). Defendants further responded that Comcast Cable Communications Management, LLC (hereinafter CCCM) was a valid business entity. (Id.). Defendants also responded that the unnamed party, Comcast of Southeast Pennsylvania, LLC (CCSEPA) owned the cable strand and cable franchise for East Pennsboro Township where the accident occurred. (Id.).

On December 17, 2010, Comcast Defendants filed their Motion to Transfer based on forum non conveniens. Plaintiffs responded on January 6, 2011.

By Order dated January 13, 2011, this Court granted the Motion to Transfer and transferred the case to Cumberland County.

On February 11, 2011, Plaintiffs filed their Notice of Appeal and issued their Statement of Errors Complained of upon Appeal pursuant to Pa.R.A.P. 1925.

The sole issue to be addressed by this Court is whether the lower Court abused its discretion in granting defendants Motion to Transfer Venue to Cumberland County where Evidence shows that it would be vexations and oppressive to have the case remain in Philadelphia County.

LEGAL ANALYSIS

The standard of review in cases of *forum non conveniens* is abuse of discretion. *Johnson v. Henkels & McCoy, Inc.*, 707 A.2d 237 (Pa.Super. 1997)(citing *Keuther v. Snyder*, 444 Pa. Super. 468, 664 A.2d 168 (1995)). A trial court's ruling on venue will not be disturbed if the decision is reasonable in light of the facts. *Borger v. Murphy*, 797 A.2d 309, 312; 797 A.2d 309 (2002).

Pa.R.C.P. 1006(d) “vests considerable discretion in the trial judge to determine whether to grant a petition for a change of venue. *Id.* On appeal from such an order, the only issue is whether the trial judge abused his discretion.” *Fox v. Pennsylvania Power & Light Co.*, 315 Pa.Super. 79, 81, 461 A.2d 805, 806 (1983), (citing *Plum v. Tampax, Inc.*, 399 Pa. 553, 560, 160 A.2d 549, 553 (1960)).

The Supreme Court has described the heavy burden facing an appellant from a discretionary trial court determination: “[I]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power.” *Id.* (citing *Mackarus's Estate*, 431 Pa. 585, 596, 246 A.2d 661, 666-67 (1968)). If there is any basis for the trial court's decision, the decision must stand.

Brown v. Delaware Valley Transplant Program, 371 Pa. Super. 583, 587, 538 A.2d 889, 891 (1988).

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused. *Brown*, 538 A.2d at 891.

A petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant." *Wood v. E.I. du Pont de Nemours & Co.*, 2003 PA Super 268, 829 A.2d 707, 711-712 (2003).

A 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. *Cheeseman v. Lethal Exterminator*, 549 Pa. 200, 213; 701 A.2d 156, 162 (1997) (citing *Hoose v. Jefferson Home Health Care, Inc.*, 2000 PA Super 143, 754 A.2d 1 (Pa. Super. 2000)). 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. *Id.* However, a defendant is required to show something more than inconvenience to meet this burden. *Id.* *Wood* and *Cheeseman* create the standard by which the test for *forum non conveniens* is measured, while Pa.R.C.P. 1006 vest authority in the trial court to make such a determination.

Pa.R.C.P. 1006(d)(1), provides:

(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

Defendants set out several reasons in their motion to support the oppressive nature of using Philadelphia as a forum for this action.

According to the facts of the case, the site of the alleged injury occurred in Cumberland County. At the time Plaintiffs filed their Amended Complaint, they were residents of Harrisburg, Pennsylvania which is located in Dauphin County, which is the neighboring county to Cumberland County and much closer in proximity than Philadelphia.

At all times relevant, the franchise to operate cable communications within East Pennsboro Township, Cumberland County was issued to non-party Comcast of Southeast Pennsylvania, LLC (CCSEPA). Defendant CCCM also had a contractual relationship with Vitel regarding the supplying of cable communications in Cumberland County (Affidavit of Jim Sundy).

CCCM and CCSEPA's operations in East Pennsboro Township, Cumberland County occurred from offices at 4601 Smith Street, Harrisburg, Dauphin County. (Comcast Defendants' Motion to Transfer, pg. 4). Those at CCSEPA involved with the placement of cable catenary strands at issue were employed at the same office address. At no time did either CCCM or CCSEPA do business in Philadelphia County. (Id.). Neither are any of the other remaining Defendants (New Werner or National Ladder) located in Philadelphia County. Therefore none of the pertinent Defendants in this case have any physical presence in or near Philadelphia County.

Additionally several potential fact witnesses that would be required to be deposed and testify at trial are not located in Philadelphia County, rather they are located in Dauphin and Cumberland Counties.

Robert Gill is the Township Manager for East Pennsboro Township. (Affidavit of Robert Gill). Mr. Gill resides in Cumberland County. As part of his job responsibilities, he is familiar with the Franchise Agreement between East Pennsboro Township and CCSEPA. (Id.). Mr. Gill testimony would be required to testify regarding the Franchise Agreement. If the case were to remain in Philadelphia County, Mr. Gill would be required to travel over two hundred (200) miles from his office. The roundtrip would be approximately four (4) hours each way. (Id.).

Additionally, John Detweiler and Jim Sundy are employees of CCSEPA. Both individuals are familiar with contractual obligations between Vitel Communications, LLC, CCSEPA and CCCM. (Affidavits of Jim Sundy and John Detweiler).

Detweiler is the Construction Manager for CCSEPA. He attests that at no time did his service territory include Philadelphia County, nor did CCSEPA or CCCM provide services in Philadelphia County. (Detweiler Affidavit).

Detweiler presently resides and works in Dauphin County, Pennsylvania. (Id.).

Detweiler states that he is familiar with the employees of CCCM and CCSEPA that perform cable maintenance, and these individuals work out of the facility located at 4601 Smith Street, Harrisburg, Dauphin County. (Id.). These individuals reside in Dauphin County or the counties adjoining Dauphin County, such as Cumberland County, Perry County, Lancaster County, and York County. Detweiler says that it would be

oppressive or vexations to have these employees attend trial or other legal matters associated with this case in Philadelphia County.

The Affidavit of Jim Sundy reiterates the same concerns as that of John Detweiler. As Senior Manager of Technical Operations, Sundy oversees the day-to-day operations of CCSEPA. Sundy resides in Cumberland County. Sundy states that it would be oppressive, vexatious and disruptive to the day-to-day operations of CCSEPA to release employees of CCSEPA or CCCM to provide testimony, attend hearings and/or trial in Philadelphia County given the great distance and time that would be involved in their traveling to Philadelphia.

In addition to the aforementioned, there are additional facts which further support transferring the case from Philadelphia County (Comcast Defendants' Motion to Transfer, pgs. 5-6):

1. None of the alleged acts, omissions, transactions or occurrences contained in Plaintiffs Complaints occurred in Philadelphia County.
2. None of the Co-Defendants reside in Philadelphia County.
3. After his fall, Plaintiff sought treatment at Holy Spirit Hospital which is located in Cumberland County.
4. Plaintiff sought further treatment at Hersey Medical Center, which is located in Derry Township, Dauphin County.
5. The cable strands and lines at issue in this case would be subject to Cumberland County and East Pennsboro Township Zoning Planning and Building Codes and could involve a jury view and testimony of township and borough officials.

6. The only relationship that exists between Philadelphia and this action is that Plaintiffs' counsel's office is located in Philadelphia and that Plaintiff had subsequent medical treatment in Philadelphia.

Appellant also cannot cite to any legitimate inconvenience that they would suffer as a result of having their case transferred to Cumberland County.

For all the aforementioned reasons, this Court believes that the forum of Philadelphia County is oppressive and the interests of the parties are best served by transferring the case pursuant to the caselaw of *Cheeseman* and *Wood*. Therefore, the Court was acting within its discretion in removing the case to Cumberland County.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Motion for Transfer of Venue based on forum non conveniens to Cumberland County was properly granted, and respectfully requests that it be Affirmed by the Court above.

BY THE COURT:

8/17/2011

Date

ALLAN L. TERESHKO, J.

cc:

Thomas L. Gowen, Jr., for Appellant
Michael J. Dunn, for Appellee New Werner Holding
Robert James Cosgrove, for Appellee Jershon, Inc.
Stephen Elias Geduldig, for Appellee Comcast Corp., et al.