

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

JOSHUA HUGHES, individually and on behalf	:	August Term 2019
Of all others similarly situated,	:	
Plaintiff,	:	No. 192
v.	:	
NATIONWIDE TRUST COMPANY, FSB,	:	Commerce Program
Formerly known as Nationwide Bank,	:	
Defendant.	:	Control Number 20023639

**ORDER**

**AND NOW**, this 13th day of August, 2020, upon consideration of Defendant's Petition to Transfer Venue and Forum Non Conveniens, Plaintiff's response in opposition, all matters of record and the attached Opinion, it hereby is **ORDERED** Defendant's Petition for Forum *Non Conveniens* is **Granted** and this matter shall be transferred to the Court of Common Pleas in Lawrence County. The Petition to Transfer for Improper Venue is **Denied** as improper.

The Office of Judicial Records shall forward to the Prothonary of Lawrence County certified copies of the docket entries, process, pleadings, depositions and other papers filed in the action. The costs and fees of the petition for transfer and the removal of the record shall be paid by the Petitioner, Nationwide Trust Company, FSB formerly known as Nationwide Bank to be taxable as costs in the case.

**BY THE COURT**



**RAMY I. DJERASSI, J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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JOSHUA HUGHES, individually and on behalf	:	August Term 2019
Of all others similarly situated,	:	
Plaintiff,	:	No. 192
v.	:	
NATIONWIDE TRUST COMPANY, FSB,	:	Commerce Program
Formerly known as Nationwide Bank,	:	
Defendant.	:	Control Number 20023639

**OPINION**

Presently before the court is defendant Nationwide Trust Company, FSB formerly known as Nationwide Bank's ("Nationwide") petition to transfer for forum *non conveniens*. For the reasons discussed below, the petition is granted and this matter shall be transferred to the Court of Common Pleas of Lawrence County.<sup>1</sup>

On July 9, 2013, plaintiff Joshua Hughes ("Hughes"), a resident of Lawrence County, Pennsylvania, signed a promissory note and consumer security agreement to refinance a vehicle loan with Nationwide. Nationwide has a principal place of business in Columbus, Ohio. On September 17, 2015, Nationwide repossessed Hughes' vehicle in Lawrence County, Pennsylvania. Nationwide mailed Hughes a notice of repossession at an address in Lawrence County. The notice of repossession allegedly did not comply with 13 Pa. C. S. § 9614 because it did not set forth the intended method of disposition and the time and place of any public sale.

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<sup>1</sup> Nationwide's petition also sought to transfer venue based on improper venue. Defendant's petition to transfer venue based on improper venue is not proper since a challenge for improper venue shall be raised exclusively by preliminary objection. *Zappala v. Brandolini Property Management, Inc.*, 589 Pa. 516, 909 A.2d 1272 (2006); see also, Pa. R. Civ. P. 1006 (e). As such, the petition to transfer based on improper venue as part of this motion is denied as improper. We note, however, that Defendant has asserted improper venue in two separate preliminary objections. Neither preliminary objection was decided by this court as both became moot when Plaintiff unilaterally amended his complaint twice.

Additionally, the notice allegedly did not comply with 13 Pa. C. S. § 9623(b) and (c) because it failed to state the documents necessary to redeem the vehicle prior to any sale.

On October 30, 2015, Nationwide sold Hughes' repossessed vehicle. Plaintiff alleges Nationwide mailed him a Post-Sale notice on or about March 22, 2016 and a second Post-Sale Notice on or about April 12, 2016. Plaintiff claims neither complied with requirements under 13 Pa. C. S. § 9616.

On September 17, 2018, Hughes filed a class action complaint against Nationwide in the Western District of Pennsylvania alleging statutory violations of post repossession and post-sale notice requirements mailed to Nationwide's auto loan customers. On July 9, 2019, the federal court dismissed the action for lack of subject matter jurisdiction. On August 5, 2019, Hughes transferred the action to this court pursuant to 42 Pa. C. S. § 5103 (b)- Transfer of Action and has requested a jury trial. Since the transfer of this action to this court, Plaintiff's complaint has been amended three times following the filing of preliminary objections, always before court decision. At this time the operative complaint is the third amended complaint.

## DISCUSSION

Plaintiff's choice of forum, which is entitled to great weight and deference, is not absolute or unassailable.<sup>2</sup> Indeed, Pa. R. Civ. P. 1006 which governs venue sets forth three means in which a defendant may challenge a plaintiff's choice of forum; they are improper venue by preliminary objection, forum *non conveniens* and inability to hold a fair and impartial trial.<sup>3</sup> As it pertains to forum *non conveniens*, at issue in this petition, Pa. R. Civ. P. 1006 (d)(1), provides in relevant part as follows:

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<sup>2</sup>See, *Conner v. Crozer Keystone Health System*, 832 A.2d 1112, 1116 (Pa. Super. 2003), quoting *Jackson v. Laidlaw Transit Inc. et. al.*, 822 A.2d 56, 57 (Pa. Super. 2003).

<sup>3</sup> See, *Zappala v. Brandolini Property Management, Inc.*, 589 Pa. 516, 909 A.2d 1272 (2006).



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.  
Pa. R. Civ. P. 1006 (d)(1).

In *Cheeseman v. Lethal Exterminator, Inc.* 549 Pa. 200, 701 A.2d 156, 160 (Pa. 1997), the Pennsylvania Supreme Court held that a petition to transfer venue based on forum *non conveniens* “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.”<sup>4</sup> The court went on to state that a defendant may show that the plaintiff’s choice of forum is vexatious by:

“establishing with facts on the record that the plaintiff’s choice of forum was designed to harass the defendant, event 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.”<sup>5</sup>

Most recently, in *Bratic v. Rubendall*, 626 Pa. 550, 99 A.3d 1 (Pa. 2014), the Pennsylvania Supreme further clarified defendant’s burden in filing a petition for forum *non conveniens*. The defendant in *Bratic* petitioned the court to transfer venue from Philadelphia County to Dauphin, County. The trial court granted defendant’s petition to transfer venue to Dauphin County but the Pennsylvania Superior Court reversed the decision of the trial court.

The Pennsylvania Supreme Court accepted allocator, reversed the Superior Court and affirmed the decision of the trial court. In reaching its decision that Philadelphia was a forum *non*

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<sup>4</sup> *Id.* at 162.

<sup>5</sup> *Id.*

*conveniens*, the *Bratic* Court reaffirmed the *Cheeseman* standard but held that the showing of oppression needed for a judge to exercise discretion is not as severe as suggested by post *Cheeseman* cases.<sup>6</sup> The Court went on to state that while mere inconvenience is not sufficient to transfer venue, a near draconian standard is not required. The *Bratic* court, in deciding the matter before it, relied upon witnesses' affidavits which stated the distance from Dauphin County to Philadelphia County, 100 miles, without any further explanation.

...As between Philadelphia and adjoining Bucks County, the situation in *Cheeseman*, we speak of mere inconvenience; as between Philadelphia and counties 100 miles away, simple inconvenience fades in the mirror and we near oppressiveness with every milepost of the turnpike and Schuylkill Expressway. We affirm the *Cheesman* standard, but hold the showing of oppression needed for a judge to exercise discretion in favor of granting a forum *non conveniens* motion is not as severe as suggested by the Superior Court's post *Cheeseman* cases. Mere inconvenience remains insufficient, but there is no burden to show near-draconian consequences.<sup>7</sup>

As in *Bratic*, defendant here supports its petition to transfer venue for forum *non conveniens* with affidavits by Kathleen M. Brisendine and Thomas P. Reed, employees of defendant. Ms. Brisendine is currently an employee of Nationwide Mutual Insurance Company and serves as Technical Director for Nationwide Financial Product Smart Credit. Ms. Brisendine avers that she has knowledge of the storage, drafting and sending of notices of repossession and post-sale notices at issue here. Ms. Brisendine works and lives in Ohio and avers that it would be extremely burdensome for her to travel from her home or work to Philadelphia which would amount to an eight hour drive. Ms. Brisendine avers that travel to Lawrence County from her home or work is less burdensome and would amount to three hours. She avers that trial in

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<sup>6</sup> *Bratic*, supra. P. 8-10.

<sup>7</sup> *Bratic*, supra.

Philadelphia County would impose significant hardship because of home, family and work obligations.<sup>8</sup>

Defendant also produced the affidavit of Thomas P. Reed, the Chief Financial Officer of Nationwide Trust Company, FSB. Mr. Reed avers that Nationwide Trust would face a hardship if Ms. Brisendine along with other employees were absent from work by having to travel to a distant forum for a trial in this matter, especially Philadelphia, given the unpredictable nature of the trial scheduling and arrangement of airfare at the last minute. Mr. Reed avers that Lawrence County is less burdensome.<sup>9</sup>

In addition to the affidavits of Ms. Brisendine and Mr. Reed, the court takes judicial notice that the geographical distance between Nationwide's principal place of business in Columbus, Ohio and the courthouse in Philadelphia County is 470 miles.<sup>10</sup> Additionally, the court takes judicial notice that the geographical distance between Nationwide's principal place of business in Columbus, Ohio and the courthouse in Lawrence County is 200 miles.<sup>11</sup>

Based on the affidavits of Ms. Brisendine and Mr. Reed, the distances between the respective courthouses of Philadelphia County and Lawrence County to the witnesses and the Supreme Court's decisions in *Cheeseman* and *Bratic*, the court finds that defendant has sustained its burden of oppressiveness to establish that Philadelphia is a forum *non conveniens*. The court appreciates plaintiff's offer to travel to Nationwide's offices to depose its representatives, however given the extraordinary circumstances presented by the Covid 19 Pandemic and the

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<sup>8</sup> Defendant's Petition to Transfer, Affidavit of Ms. Brisendine- Exhibit "B".

<sup>9</sup> Defendant's Petition to Transfer, Affidavit of Mr. Reed- Exhibit "C".

<sup>10</sup> See *Cubano v. Sheehan*, 146 A3d 791 n. 5 (Pa. Super. 2016) (the court may take judicial notice of geographical facts). See Defendant's Petition to Transfer- Affidavit of Mr. Perlman Exhibit "C" and "D" to Exhibit "A".

<sup>11</sup> *Id.*



geographical distance, 470 miles, that witnesses and plaintiff would be required to travel, the court finds that the Lawrence County is a more convenient forum. Moreover, while air travel would serve to decrease the actual traveling time of the witnesses from Columbus, Ohio to Philadelphia, Pennsylvania, the burden of flying, including but not limited to flight delay and cancellations as well as anxiety that may be caused by flying during a pandemic, is elevated and becomes oppressive. Based on the foregoing, the more convenient forum is Lawrence County.

### CONCLUSION

For the foregoing reasons, defendant's petition to transfer venue based on forum *non conveniens* is granted and this matter is transferred to Lawrence County.

BY THE COURT

A handwritten signature in blue ink, appearing to read 'Ramy I. Djerrassi', is written over a horizontal line.

RAMY I. DJERASSI, J.