

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

DOCKETED

OCT - 6 2021

MICHAEL JAMES LAWSON, JR., and
TARA LAWSON, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

PENNSYLVANIA COLLEGE OF
TECHNOLOGY,

Defendant.

October Term 2020

No. 698

Commerce Program

Control Number 20122177

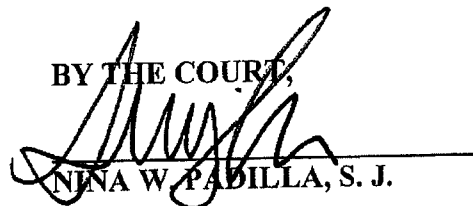
R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 5th day of October, 2021, upon consideration of Defendant Pennsylvania College of Technology's Preliminary Objections to Plaintiffs' Complaint and Plaintiffs' response in opposition, the record before the court, and in accord with the attached Opinion, it hereby is **ORDERED** that the Preliminary Objection based on Pa. R. Civ. P. 1028 (a) (1) for improper venue is **Sustained**. The Office of Judicial Records shall transfer this action and forward to the Prothonotary of Lycoming County certified copies of the docket entries, pleadings, depositions and other papers filed in this action.

It is further **ORDERED** that consistent with Pa. R. Civ. P. 1006 (e), the costs of the transfer are hereby taxed to Plaintiffs. The Office of Judicial Records shall serve a Bill of Costs on Plaintiffs' Counsel for the costs incurred in transferring this case to the Court of Common Pleas of Lycoming County, Pennsylvania, and Plaintiffs shall satisfy those costs within 20 days after service of the Bill.

BY THE COURT,


NINA W. PADILLA, S. J.

201000698-Lawson Etal Vs Pennsylvania College Of Technology



20100069800088

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TECHNOLOGY,	:	Control Number 20122177
	:	
Defendant.	:	

OPINION

This case arises as a result of COVID-19 and the resultant government ordered shutdowns. Plaintiffs, Michael James Lawson, Jr. and Tara Lawson, individually and on behalf of all others similarly situated (collectively "Plaintiffs"), bring this class action against defendant Pennsylvania College of Technology ("College") to recover tuition, fees and other costs for the Spring 2020 semester after in -person classes were cancelled and changed to an online/remote format, all campus buildings were closed and all students were required to leave the campus. Presently pending before the court are the College's preliminary objections to plaintiffs' complaint wherein improper venue is raised.¹

Factual Background

Pennsylvania College of Technology

The College, a Pennsylvania non-profit corporation with its principal place of business in Williamsport, Lycoming County, offers postsecondary education programs and degrees at its campus in Williamsport and through Internet-based online learning.² The College's curriculum

¹The College also filed a motion to transfer venue based on *forum non conveniens* as an alternative to the preliminary objection based on venue. Said motion shall be addressed in a separate order.

²See, Affidavit of Davie Jane Gilmour, President of the Pennsylvania College of Technology, attached as Exhibit "2" to Defendant's Preliminary Objections, Affidavit, Exhibit "2" ¶ 6.

includes in person hands-on learning in laboratories or clinical settings in the area of welding, building construction, automotive, electrical and manufacturing and machining.³ The College has never owned or leased office space or otherwise maintained a presence in Philadelphia County and none of its employees live or work in Philadelphia County.⁴

The College enrolls approximately 5,500 students⁵ and less than 1% of the students hail from Philadelphia.⁶ The College recruits students from Philadelphia County by attending college fairs⁷ and student recruitment events⁸ hosted by other schools and the Director of Athletics periodically recruits from Philadelphia County for the College Athletic Programs.⁹ The College also advertised in Philadelphia County on one occasion during an NFL Eagles playoff game and in the Philadelphia Inquirer in May 2019 for a prospective employee to work on its campus in

³ Plaintiffs' complaint ¶¶ 20-21, 24.

⁴ See, Affidavit of Davie Jane Gilmour, attached as Exhibit "2" to Defendant's Preliminary Objections ¶¶ 5-8.

⁵ Plaintiffs' complaint ¶ 5.

⁶ Affidavit of Davie Jane Gilmour, attached as Exhibit "2" to Defendant's Preliminary Objections at ¶¶ 9-14. In the 2017-18 academic year only 31 students (.65%) of all enrolled students had a permanent address within Philadelphia County, in 2018-2019 academic year only 28 students (.55%) enrolled students had a permanent address with Philadelphia County, in 2019-2020 academic year only 27 students (.61%) enrolled students had a permanent address with Philadelphia County, for the Spring Semester 2020 only twenty-four (24) students (.52%) had a permanent address with Philadelphia County, and in Fall Semester 2020 only 32 students (32.7%) had a permanent address with Philadelphia County. Id.

⁷ Plaintiffs' brief in opposition to Defendant's motion to transfer dated 4-28-21, Exhibit "3" Answer to Interrogatories and Request for Production of Documents Exhibit "1" –there were 22 College Fairs attended in Philadelphia County from September 15, 2018 to November 14, 2019.

⁸ Id. at Exhibit "3" 33 student recruitment events from July 1, 2018 to the present.

⁹ Deposition of Carolyn Strickland, Vice President for Enrollment Management and Associate Provost Exhibit "7" to Plaintiffs' brief in opposition to Defendant's motion to transfer dated 4-28-21, testified that the College recruits and enrolls from Philadelphia County. In 2019, she attended 13 College Fairs in Philadelphia County concentrated during the Fall and Spring Semesters. Strickland deposition p. 7 L8-11, 12-15, p. 22, p. 26. See also, Affidavit of Davie Jane attached as Exhibit "2" to Defendant's Preliminary Objections at ¶ 20.

Lycoming County.¹⁰ The College hired three contractors from Philadelphia County to perform work for the College on campus in Lycoming, Pennsylvania.¹¹

The College is accredited by the Middle States Commission on Higher Education which is located in Philadelphia County.¹² The College is accredited every eight - ten years.¹³ During this process, the College uploads all the information to a portal for review by the Middle States Commission.¹⁴ Any meetings that are necessary for the accreditation process are in person at the College's campus in Lycoming, Pennsylvania.¹⁵

In 2000, the College, entered into an Articulation Agreement with the Community College of Philadelphia ("CCP"). This agreement permits graduates of CCP's Automotive Technology Program who received an Associate's Degree to seek a Bachelor's degree in Automation Technology Management at the College. Since 2000, five students transferred from CCP to the College under this agreement.¹⁶

¹⁰ Plaintiffs' brief in opposition to Defendant's motion to transfer dated 4-28-21, Exhibit "10" Answer to Interrogatories and Request for Production of Documents Interrogatory #10 and Affidavit of Davie Jane Gilmour ¶ 19.

¹¹ Plaintiffs' brief in opposition to Defendant's motion to transfer dated 4-28-21, Exhibit "10".

¹² Affidavit of Davie Jane attached as Exhibit "2" to Defendant's Preliminary Objections at ¶ 28.

¹³ Deposition of Joanna Flynn, Dean of Curriculum & Instruction for the Pennsylvania College of Technology and Accreditation Liaison Office, Exhibit "3" to Plaintiffs' brief in opposition to Defendant's motion to transfer dated 4-28-21, p. 25 L 18-21.

¹⁴ Id. at p. 27 L 9-14.

¹⁵ See, Affidavit of Davie Jane Gilmour, President of the Pennsylvania College of Technology, attached as Exhibit "2" to Defendant's Preliminary Objections at Id. at ¶ 29.

¹⁶ See, Affidavit of Davie Jane Gilmour, President of the Pennsylvania College of Technology, attached as Exhibit "2" to Defendant's Preliminary Objections at ¶¶ 15-17.

The College also has a relationship with Philadelphia Futures, an organization that provides low-income, first generation to college students with the tools, resources and opportunities necessary for admission to and success in college. The College has participated in one Philadelphia Futures' event held in Montgomery County where the College had a table and spoke with prospective students about its program of study. In ten years, only two students attended College as a result of this relationship. ¹⁷

Plaintiffs

Plaintiff Michael Lawson, a resident of New Jersey, is currently enrolled as a full time student in the College's undergraduate program studying diesel technology.¹⁸ Plaintiff Michael Lawson chose to attend the College based on the in-person, on campus, hands on instruction.¹⁹ Most of Plaintiff Michael Lawson's classes were taught in a laboratory setting and require hands-on application.²⁰ Plaintiff Michael Lawson's education changed from in-person hands-on learning to online instruction midway through the spring 2020 semester because of COVID-19 and the resultant government shutdowns.²¹ At the College's request and direction, Plaintiff Michael Lawson moved out of on-campus housing on or about March 8, 2020 and has not lived on campus nor has he had any access to any meals under his meal plan or the facilities since that date. ²²

¹⁷ Affidavit of Davie Jane attached as Exhibit "2" to Defendant's Preliminary Objections at ¶¶ 25-27.

¹⁸ Plaintiffs' complaint at ¶¶ 13-14.

¹⁹ Id. at 22.

²⁰ Id. at ¶ 28.

²¹ Id. at ¶ 26.

²² Id. at ¶ 42.

Plaintiff Michael Lawson now alleges that the on-line instruction offered was not commensurate with classes being taught in person.²³ Plaintiff Michael Lawson has paid tuition for the spring 2020 semester for in-person classes, use of laboratories and facilities and for room and board either out of pocket or by utilizing student loan financing.²⁴ Plaintiff Tara Lawson is Michael Lawson's mother who has allegedly contributed a substantial sum toward paying the cost of Michael's tuition and fees, either out of pocket or through Federal Direct Parent Plus financing.²⁵ Plaintiffs' allege that the College refuses to offer any pro-rated reduction or refund on tuition for the Spring 2020 semester.

On October 12, 2020, Plaintiff Michael Lawson Jr. and Tara Lawson filed this class action against the College for breach of contract and unjust enrichment on behalf of themselves and purported class members seeking a refund for monies paid to the College for the Spring Semester 2020.²⁶ The College filed preliminary objections to the complaint asserting improper venue, lack of standing on behalf of Tara Lawson and legal demurrers to the claims for breach of contract and unjust enrichment. The parties have engaged in discovery and have submitted supplemental memoranda. The matter is now ripe for decision.

²³ Id. at ¶ 27.

²⁴ Id. at ¶ 15.

²⁵ Id. at ¶¶ 16-17

²⁶ Plaintiffs initially filed this lawsuit on May 5, 2020 in the United States District Court for the Middle District of Pennsylvania. Plaintiffs voluntarily dismissed the action without prejudice due to lack of federal jurisdiction.

Discussion

I. Venue is improper in Philadelphia County.

Plaintiff's choice of forum, which is entitled to great weight and deference, is not absolute or unassailable.²⁷ 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.²⁸

Pennsylvania Rule of Civil Procedure 2179 provides that a personal action may be brought against a corporation or similar entity 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;
- (4) a county where a transaction or occurrence took place out of which the cause of action arose;
- (5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Plaintiffs assert that venue is proper in Philadelphia County based on Pa. R. Civ. P. 2179 because the College regularly conducts business in Philadelphia County (Pa. R. Civ. P. 2179 (a)(2)) and targets potential students from within Philadelphia County and because Philadelphia County is where a transaction or occurrence took place (Pa. R. Civ. P. 2179 (a)(4)), that is, Philadelphia County residents enter into contracts with the College in Philadelphia. The court will address Plaintiffs' assertions *in sequentia*.

²⁷See, *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).

²⁸See, *Zappala v. Brandolini Property Management, Inc.*, 589 Pa. 516, 909 A.2d 1272 (2006).

A. The College does not Regularly Conduct Business in Philadelphia County.

To determine whether the College regularly conducts business in a particular county, a quantity-quality analysis is performed to determine if venue is proper.²⁹ Quantity of acts means those that are sufficiently continuous so as to be considered habitual.³⁰ When focusing on quantity, the Pennsylvania Supreme Court and Superior Court have consistently looked to percentages to assist in making this analysis. Most recently, an *en banc* panel of the Superior Court in *Hangey v. Husqvarna Professional Products*³¹ addressed the question of whether a percentage of a defendant's business is sufficient to satisfy the quantity prong. The *Hangey* Court held that the “percentage of a company's overall business that it conducts in a given county, standing alone, is not meaningful and is not determinative of the quantity prong.”³² The Court further opined that each case turns on its own facts, and a court must evaluate evidence of the extent of a defendant's business against the nature of the business at issue. Percentages are not to be considered in isolation.³³ Rather, courts must consider all of the evidence in context to determine whether the defendant's business activities in the county were regular, continuous, and habitual.³⁴

Quality of acts means those acts that are necessary to an entity's existence and directly further or are essential to the entity's business objective; acts in aid of an entity's main purpose

²⁹ *Hangey v. Husqvarna Professional Products, Inc.*, 247 A.3d 1136, 1141 (Pa. Super. 2021). *See also, Singley v. Flier*, 851 A.2d 200 (Pa. Super. 2004).

³⁰ *Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 579 A.2d 1282, 1285 (1990).

³¹ 247 A.3d 1136 (Pa. Super. 2021).

³² *Hangey*, 247 A.3d at 1142 (internal quotation marks omitted).

³³ *Id.*

³⁴ *Hangey, supra*.

are considered collateral and incidental.³⁵ Advertising, solicitation of business from a county, education programs for personnel in county, hiring of personnel from the county, or purchase of supplies from a county are some acts that courts have considered to be incidental.³⁶ Notwithstanding the forgoing, each case rests on its own facts and the question to be answered is whether the acts are being “regularly” performed within the context of the particular business.³⁷

Applying the foregoing to the case at bar, it is clear that the quantity and quality analysis is not met. Here, less than 1% of College students hail from Philadelphia County. The College does not maintain a physical presence in Philadelphia County, does not own or lease space or otherwise maintain a presence in Philadelphia County, nor do any College employees live or work in Philadelphia County. Additionally, while the College has entered into an Articulation Agreement with CCP and has a relationship with Philadelphia Futures’, the relationships have produced limited results, only five students transferred from CCP to the College under the Articulation Agreement since 2000 and only two students have attended College from the Philadelphia Futures’ over the course of ten years.

Plaintiffs rely upon the number of students enrolled at the College from Philadelphia County, the revenue generated from said enrollment and the number of Philadelphia County students who participated in remote learning in Philadelphia County as evidence that the College

³⁵ *Singley v. Filer*, 851 A.2d 200 (Pa. Super. 2004), *quoting Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 579 A.2d 1282 (1990). *see also Krosnowski v. Ward*, 836 A.2d 143, 147 (Pa. Super. 2003) (*en banc*) (business referrals to and from an independently operated business entity in another county do not establish venue in that county as referrals were in aid of main business purpose and not actual conduct of business in that county).

³⁶ *Zampana-Barry v. Donaghue*, 921 A.2d 500, 503–04 (Pa. Super. 2007).

³⁷ *Hangey*, *supra* *quoting Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 579 A.2d 1282, 1286 (1990) and *Monaco v. Montgomery Cab Co.*, 417 Pa. 135, 208 A.2d 252, 256 (1965).

regularly conducts business in Philadelphia County. This argument however is not persuasive given the fact that less than 1% of the students hail from Philadelphia County, the lack of evidence to show the number of students in Philadelphia County that in fact logged into remote learning in Philadelphia County as well as the *Hangey* court's instruction to consider all of the evidence in context to determine whether the defendant's business activities in the county were regular, continuous, and habitual.

Moreover, while the College does have contacts with Philadelphia County, those contacts when analyzed in the venue context, are collateral and incidental to the College's main purpose of educating students. The College has attended 33 student recruitment events in Philadelphia County from July 1, 2018 to present and 23 college fairs from September 15, 2018 to November 14, 2019 and even advertised on two occasions in Philadelphia County. While these acts certainly play a role in boosting the College's visibility and enrollment, they are not related to the College's vital business purpose of educating students. "Mere solicitation of business in a particular county do[es] not amount to conducting business." ³⁸

Similarly, the College's engagement of three Philadelphia County vendors is also collateral and incidental to the College's purpose of educating students. While the vendors may have been based in Philadelphia, the vendors performed their work on the College's campus in

³⁸ *Purcell*, *supra*. at 248, 579 A.2d at 1287 (citing *Law v. Atlantic Coast Line R.R. Co.*, 367 Pa. 170, 79 A.2d 252, 253 (1951)); *see also Krosnowski v. Ward*, 836 A.2d 143, 150 (Pa.Super.2003) (*en banc*) (advertisements in phone book, newspaper, and on internet do not amount to conducting business). *See Battuello v. Camelback Ski Corp.* 409 Pa.Super. 642, 646–47, 598 A.2d 1027, 1029 (1991) (finding that the defendant's activities, consisting "almost exclusively of advertisement, aimed at the solicitation of business" were insufficient to sustain venue"). *See also, Kring v. University of Pittsburgh*, 829 A.2d 673 (Pa. Super. 2003)(universities' activities of conducting seminars, and recruiting prospective students and soliciting alumni who live there are incidental to the University's main corporate object of delivering undergraduate education.).

Williamsport, Lycoming County, Pennsylvania.³⁹ Moreover, of the three vendors identified, only one vendor, a higher education speaker/consultant who made one presentation in August 2020, is a contact that relates to the College's direct purpose of education. This sole contact is not sufficient for this court to find that the College regularly conducts business in Philadelphia County. The other two vendors, a branding, marketing and development firm and an entertainment firm, do not relate to the College's direct purpose and fall in the category of collateral and incidental acts.⁴⁰

Lastly, the College's work with an accreditor located in Philadelphia also fails to show that the College regularly conducts business in Philadelphia. Accreditation occurs every eight to ten years, hence any contact with the accreditor is not regular, continuous or habitual.⁴¹ Furthermore, whenever contact is necessary, the College uploads the necessary information from its campus in Lycoming County to a portal for the accreditor to review and any meetings necessary for the accreditation process are conducted on campus in Lycoming County. These acts are not regular, continuous nor habitual.

The Superior Court's decision in *Singley v. Flier*, 851 A.2d 200 (Pa. Super. 2004) is instructive. In *Singley*, plaintiff sued a university in Philadelphia County that had only one campus located in Delaware County. A number of Philadelphia students attended the university and it conducted a limited number of classes and a nursing practicum in Philadelphia. However,

³⁹ Plaintiffs' Brief in Opposition to Defendant's Motion to Transfer dated April 28, 2021 Exhibit "10" Answer to Plaintiffs' Interrogatory 6.

⁴⁰ Id.

⁴¹ Dr. Gilmore's service as a Commissioner for the Middle States Commission of Higher Education is not as a representative of the College but in her personal capacity. See Brief in Opposition to Defendant's Motion to Transfer dated April 28, 2021 Exhibit "8" p. 11 L7-17. Plaintiffs As such, Dr. Gilmore's activities in Philadelphia County in her capacity as Commissioner are not discussed here.

because the university did not have a campus in Philadelphia, nor did it own or operate any real estate there, the Court held that venue was not proper in Philadelphia. The court concluded, that “Although one cannot dispute that the instruction of students is [the university's] main purpose, we find that these limited classes and practical experience offered in Philadelphia County, but not at a satellite campus, do not satisfy either the quality or quantity test.”⁴² Here, there are even less contacts with Philadelphia County, than in *Singley*, as there are no classes offered by the College in Philadelphia County. As in *Singley*, while the instruction of 1% of the students that hail from Philadelphia County does satisfy the main purpose of the College, the limited number of students and the College’s lack of a physical presence in Philadelphia County fails the quality and quantity test. Based on the record before this court, it is clear that the College’s acts in Philadelphia County are not continuous, sufficient or habitual to find the College regularly conducts business in Philadelphia County.

II. No transaction or occurrence took place in Philadelphia out of which the cause of action arose.

Plaintiffs’ other basis for establishing venue in Philadelphia County also fails. Plaintiff argues that venue is proper in Philadelphia County because the contract between the College and those students from Philadelphia County was accepted in Philadelphia County. While plaintiffs correctly announce the rule of law that the place of making a contract is where it is accepted,⁴³ here, based on the record evidence, the contract was accepted in Lycoming County not Philadelphia County.

⁴² *Singley, Id.* at 203.

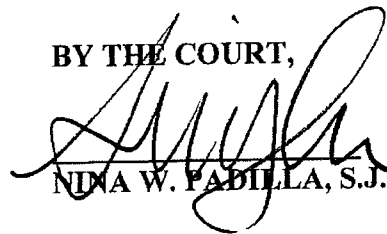
⁴³ *Craig v. W. J. Thiele & Sons, Inc.*, 149 A.2d 35, 37, 395 Pa. 129, 133 (Pa. 1959).

According to Carolyn Strickland, Vice President for Enrollment Management and Associate Provost, in order for an applicant to accept a written offer of admission, the applicant must indicate their intent to enroll by (1) accepting the offer of admission by completing an on-line form or by calling the admission office and (2) paying to the College a tuition deposit.⁴⁴ Only when the College receives from the applicant their reply to the offer and the tuition deposit at the campus in Williamsport will the College confirm the applicant as a student, assuming there is room in academic major.⁴⁵ Any Philadelphia County student would be required to follow this process. Given this established procedure for accepting students, it is clear that the contract for admission was accepted in Lycoming County and consequently, the transaction or occurrence out of which this cause of action arose is in Lycoming County. This result is consistent with the situs of the breach, where the in person classes for the 2020 Spring semester were canceled, Lycoming County.

CONCLUSION

Based on the foregoing, the College's preliminary objection based on improper venue is sustained and this matter shall be transferred to Lycoming County in accord with the order of this court.

BY THE COURT,



NINA W. PADILLA, S.J.

⁴⁴ Supplemental Affidavit of Carolyn Strickland ¶ 7, 17 attached as Exhibit "9" in praecipe to substitute affidavits filed with the court on February 15, 2021.

⁴⁵ Id. ¶ 8, 17.