

RECEIVED

SEP 24 2024

ROOM 521

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

DOCKETED

SEP 24 2024

INFORMAL
COMMERCE PROGRAM

CHESCO CORING & CUTTING, INC.,

Plaintiff,

v.

FLEET FUEL SERVICES, LLC d/b/a
X-PRESS ENERGY,

Defendant.

May Term 2023

No. 362

Commerce Program

Control Number 23065013

ORDER

AND NOW, this 24th day of September 2024, upon consideration of the preliminary objections of defendant Fleet Fuel Services, LLC, d/b/a X-Press Energy to the amended complaint, the response of plaintiff Chesco Coring & Cutting, Inc., the supplemental submissions of the parties, and in accord with the attached opinion, it is **ORDERED** that

1. The preliminary objections based on improper venue are **SUSTAINED**. This matter shall be transferred to the Court of Common Pleas of Chester County. The costs and fees for transfer and removal of the record shall be paid by the plaintiff.
2. The remaining preliminary objections are held in abeyance to be decided by the Judge assigned in Chester County.

BY THE COURT,


ABBE F. FLETMAN, J.

WSTOJ-Chesco Coring



23050036200069

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

CHESCO CORING & CUTTING, INC.,	:	May Term 2023
	:	
Plaintiff,	:	No. 362
	:	
v.	:	Commerce Program
	:	
FLEET FUEL SERVICES, LLC d/b/a	:	Control Number 23065013
X-PRESS ENERGY,	:	
	:	
Defendant.	:	

OPINION

Before the court are the preliminary objections of defendant Fleet Fuel Services, LLC, d/b/a X-Press Energy ("X-Press Energy") to the amended complaint of plaintiff Chesco Coring & Cutting, Inc. ("Chesco Coring"). The preliminary objections raise an objection to venue in Philadelphia County.¹ For the reasons discussed below, the Court sustains the preliminary objection based on improper venue and this matter is transferred to the Court of Common Pleas of Chester County.

BACKGROUND

Chesco Coring, a provider of professional precision concrete cutting and drilling services, owns property at 2047 Charlestown Road, Malvern, Pennsylvania 19335 (the "Property"), where it maintains four separate multi-purpose buildings that include office and warehouse space. (Docket ("Dkt.") 6-8-23, Amended Complaint ¶¶ 5, 7). Building 1 is heated by a Lanair MX Series Waste Oil Heater (*Id.* ¶ 9). In or around September 2022, Chesco Coring hired X-Press Energy, a full-service provider of propane, oil and HVAC services, to service and repair the oil

¹ X-Press Energy also filed preliminary objections for improper service and the legal sufficiency of the amended complaint.

heater. (*Id.* ¶¶ 6, 11). From September 2022 to November 2022, employees of X-Press Energy visited the Property and serviced the oil heater. (Dkt. 6-8-23, Amended Complaint ¶¶ 12-22).

After the close of business on November 15, 2022, and after a service visit from X-Press Energy, Building 1 became engulfed in flames that spread to the three other buildings on the Property and caused extensive damage to the structures. (*Id.* ¶¶ 23-24). Chesco Coring alleges the fire started at the oil heater and caused it to suffer actual losses of its building, equipment, and business interruption exceeding \$3,000,000. (*Id.* ¶¶ 25-34). Additionally, Chesco Coring alleges that because of the fire, its insurance company refused to renew its policy for 2023-2024. (*Id.* ¶ 36).

On May 3, 2023, Chesco Coring filed a complaint against X-Press Energy. (Dkt. 5-3-23, Complaint). After preliminary objections were filed, Chesco Coring filed an amended complaint on June 8, 2023, alleging claims for breach of contract and negligence against X-Press Energy. (Dkt. 6-8-23, Amended Complaint). On June 26, 2023, X-Press Energy filed preliminary objections that included objections to venue in Philadelphia County. On July 20, 2023, the Court issued a rule to show cause and gave the parties the opportunity to conduct discovery and submit supplemental briefs on the issue of venue. (Dkt. 7-20-23, Rule).

Discovery revealed that X-Press Energy is located at 383 Schuylkill Road in Phoenixville, Pennsylvania, and has two other locations, one at 761 Cockerham Lane, Exton, Pennsylvania, and the other at 799 Spring City Road, Spring City, Pennsylvania. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. I, deposition of Stephen Koon (“Koon dep.”), 52:20-53:5). It has no locations in Philadelphia. The vast majority of X-Press Energy’s business, 90 percent, consists of delivering oil and propane to customers (*id.*, 16: 2-17) and less than 10 percent consists of performing heating, ventilation and air conditioning (“HVAC”) service. (*Id.*,

16:8-17:15) X-Press delivers propane and oil to customers in Chester, Delaware, Montgomery and Berks Counties. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. I, Koon dep., 29:12-16; 30: 11-20). The lion's share of the business is in Chester County. (*Id.*, 29: 22-24). It delivers no propane or oil to Philadelphia. (*Id.*, 40: 6-10). Only one of its 6000 customers is in Philadelphia, and it was visited only once for an air conditioning service call.² (Dkt. 2-21-24, X-Press Energy Supp. Submission, Ex. A, Customer List with State and Zip Code; Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. K, letter dated 4-24-24.) X-Press Energy buys no products, including propane and oil, from any Philadelphia-based companies. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. I, Koon dep., 46: 2-4). In addition, from 2013 until 2023, X-Press Energy generated no gross revenue in Philadelphia. (*Id.* at 52:3-13.)

DISCUSSION

I. Venue based on regularly conducting business requires a quantity and quality analysis.

An action against a limited liability company, may be brought in and only in a county where (1) the registered office or principal place of business is located; (2) where it regularly conducts business; (3) where the cause of action arose; (4) where a transaction or occurrence took place out of which the cause of action arose, or (5) 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. Pa.R.Civ.P. 2179(a). A plaintiff generally gets to choose the forum "so long as the requirements of personal and subject matter jurisdiction are satisfied." *See Hangey v. Husqvarna Professional Products, Inc.*, 304 A.3d 1120, 1141 (Pa. 2023) (*quoting*

² A second customer was identified on its customer list as being from Philadelphia, but that was a fictitious name set up as a test of the X-Press Energy system. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. K, letter dated 4-24-24.)

Purcell v. Bryn Mawr Hosp., 579 A.2d 1282, 1284 (Pa. 1990)). A party seeking a venue transfer bears the burden of proving that a change of venue is necessary. *Id.*

In determining whether a limited liability company “regularly conducts business” in a given county for purposes of venue under Rule 2179(a)(2) of the Pennsylvania Rules of Civil Procedure, Pennsylvania employs the “quality-quantity” analysis. *Hangey v. Husqvarna Professional Products, Inc.* 304 A.3d at 1142. The business engaged in must be sufficient in quantity and quality. *Id.* (quoting *Shambe v. Delaware & Hudson R.R. co.*, 135 A. 755 (Pa. 1927)). The term quality of acts means those directly furthering, or essential to, corporate objects; they do not include incidental acts. *Id.* The term quantity of acts is those acts that are so continuous and sufficient to be termed general or habitual. *Id.* A single act is not enough. *Id.* Each case must depend on its own facts. *Id.* (quoting *Shambe v. Delaware & Hudson R.R. Co.*, at 757-758 (Pa. 1927)). A limited liability company may perform acts regularly even though these acts make up a small part of its total activities. *Zampana-Barry v. Donaghue*, 921 A.2d 500, 506 (Pa. Super. 2007)(the fact that a defendant law firm derived three to five percent of its total income from cases filed in Philadelphia “was sufficient to satisfy the quantity aspect of the venue test.”)

In *Hangey*, the Supreme Court clarified the proper consideration of revenue percentages when performing the “quantity” analysis in the context of venue. The Court held that “the trial court erred when applying the quantity prong” by giving “dispositive weight to the percentage of defendant’s national revenue attributable to direct sales in Philadelphia County,” and concluded that “the percentage of a defendant corporation’s national revenue derived in the forum county is not alone sufficient to determine the corporation did not regularly conduct business there for purposes of Rule 2179(a)(2).” *Id.* at 1142, 1143. The Court reasoned that like the continuity

requirement, the sufficiency requirement is also related to the “general or habitual” nature of the acts. *Id.*

When a company maintains a constant physical presence in the forum county to perform acts that are “directly furthering, or essential to, its corporate objects,” even when it does so through an authorized dealer, its business activities are necessarily “so continuous and sufficient to be termed general or habitual.” *Id.* at 1149. The Superior Court held, however, that a trial court that transferred venue from Philadelphia did not err “in declining to include sales of defendant’s products generated by big-box retailers in its analysis of defendant’s business activities in Philadelphia County, since once defendant sells its products to big-box retailers, it has no control over where the retailers sell the products.” *Watson v. Baby Trend Inc.*, 308 A.3d 860, 868 (Pa. Super. 2024).

II. X-Press Energy does not regularly conduct business in Philadelphia County.

Applying the quality-quantity analysis in this case, the Court finds that X-Press Energy does not regularly conduct business in Philadelphia County. Addressing the quality of X-Press Energy’s contacts with Philadelphia, X-Press Energy entered Philadelphia on only one occasion to service one air conditioner, which work represents less than 10 percent of its business. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. K, letter dated 4-24-24; *id.*, Ex., Koon dep., 16:18--17:15) In addition, the president of X-Press Energy testified that the company does no business in Philadelphia and does business only in Chester, Montgomery, Berks and Delaware Counties. (Ex. I, 29:12-22, 30:11-20; 40: 6-10). In fact, there is no evidence of gross revenue from any customers serviced in Philadelphia. (*Id.*, 52:3-13.) The one service call in Philadelphia and the fact that service itself makes up less than 10 percent of X-Press Energy’s business is *de*

minimis and incidental to X-Press Energy's business, making venue in Philadelphia inappropriate.

The quantity analysis suffers the same fate. X-Press Energy has no business activity in Philadelphia that is regular, continuous nor habitual. It owns or leases no real property in Philadelphia, nor does it maintain a place of business in Philadelphia County. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. I, Koon dep., 52:20-53:5.)

Chesco Coring attempts to manufacture a Philadelphia presence for X-Press Energy, alleging that it purchases products including propane and oil in Philadelphia, products that are essential to its business. The evidence, however, does not support this allegation. The invoices from Buckeye Energy Services, LLC and R.E. Michel Company, LLC show that X-Press Energy bought propane in Malvern, PA, and Norristown, PA, and delivered to it in Phoenixville, PA. (Dkt. 4-26-24, Chesco Coring Supp. Submission, Ex. L, Invoices.) While these suppliers request that payment for their invoices be sent to a Philadelphia post office box, the remittance of payment to a post office box chosen by two X-Press Energy's suppliers is incidental and collateral to X-Press Energy's business. *See Purcell v. Bryn Mawr Hosp.*, 579 A.2d 1282, 1285 (Pa. 1990) (distinguishing corporate acts that are "collateral and incidental" to corporate objectives from those that are "direct" or "necessary to its existence.")

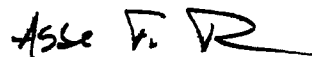
Similarly, the fact that X-Press Energy may service customers who then travel to Philadelphia is irrelevant to determining X-Press Energy's quality and quantity contacts because where X-Press Energy's customers conduct business is not at issue in this analysis. *Watson v. Baby Trend Inc.*, 308 A.3d 860, 868 (Pa. Super. 2024)(The trial court that transferred venue from Philadelphia did not err "in declining to include sales of defendant's products generated by big-box retailers in its analysis of defendant's business activities in Philadelphia County, since once

defendant sells its products to big-box retailers, it has no control over where the retailers sell the products.”) X-Press Energy has no physical presence in Philadelphia; consequently, the requirement of continuous and habitual conduct is not satisfied.³

CONCLUSION

For all the foregoing reasons, the preliminary objections based on improper venue are sustained. This matter shall be transferred to the Court of Common Pleas of Chester County. The costs and fees for transfer and removal of the record shall be paid by the plaintiff. The remaining preliminary objections are held in abeyance to be decided by the Judge assigned in Chester County.

BY THE COURT:



ABBE F. FLETMAN, J.

³ Chesco Coring argues that X-Press Energy has purposefully failed to produce documents relevant to venue and requested in discovery. If Chesco Coring deemed document production in response to discovery requests necessary, it should have pursued production by filing a discovery motion.