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

LISA AND MICHAEL WASSERMAN,	:	**CIVIL TRIAL DIVISION**
Appellant/Plaintiff,	:	**JULY TERM, 2006** **No. 2601**
v.	:	
HARRY BARFORD et al.	:	**Superior Court Docket No. 81 EDA 2007**
Appellees/Defendants.	:	

O P I N I O N

PROCEDURAL HISTORY

Plaintiff appeals from the Order dated December 7, 2006, wherein this Court granted Defendants' Preliminary Objections and transferred Plaintiff's case to Bucks County.

FACTUAL BACKGROUND

On August 2, 2004, Plaintiff Lisa Wasserman was driving her mini-van northbound on Route 309 intending to turn left into the Hatfield Athletic Club, when a vehicle driven by Harry Barford (hereinafter Barford) exited a private parking lot on the right side of northbound Route 309 across the northbound lanes of travel of Route 309 and into the path of Plaintiff's mini-van causing an accident. (Complaint, ¶5). The specific injuries that Plaintiff sustained as a result of the accident were not listed anywhere in the pleadings.

Thereafter, Plaintiffs Lisa Wasserman and Michael Wasserman (hereinafter Plaintiffs) filed their Complaint on July 21, 2006, stating that Barford was negligent in the operation of his motor vehicle. (Complaint, ¶6). Plaintiffs also alleged that Barford was acting within the scope of his employment and as an agent of Defendant Carroll Engineering Corporation at the time of the accident. (Complaint, ¶4). Michael Wasserman asserted an action for loss of consortium for the loss of his wife's companionship and income as a result of the accident. (Complaint, ¶9).

On August 21, 2006, Defendants filed their Preliminary Objections to Plaintiffs' Complaint. (See Docket). The Preliminary Objections alleged, *inter alia*, that Philadelphia County is an improper venue in which to bring this action. (Preliminary Objections, pgs. 2-4). By Order dated September 20, 2006, the Court permitted the parties to conduct discovery limited to the issue of Defendants' business activities within Philadelphia County. (Order dated 10/20/06, Control # 081551). Both parties conducted discovery. Defendants submitted their supplemental brief in support of the Preliminary Objections on November 22, 2006 and Plaintiffs submitted their brief on November 27, 2006.

By Order dated December 7, 2006, the Court sustained the Preliminary Objections of Defendants and transferred the case to Bucks County. (See Docket). Plaintiffs filed their Notice of Appeal on January 4, 2007. A request for Statement of Matters was sent to Plaintiffs on January 10, 2007 and they issued their 1925(b) Statement of Matters on January 22, 2007.

The sole issue to be addressed by this Court is whether the Trial Court committed an error of law or abused its discretion in transferring the case to Bucks County because

the Plaintiffs have failed to show that Defendants have sufficient contacts with Philadelphia County to allow the case to proceed in this venue.

LEGAL ANAYLSIS

Pursuant to Pa.R.C.P. 1006(b), actions against corporations and similar entities may be brought in and only in the counties designated by Pa.R.C.P. 2179, which addresses venue. Rule 2179(a) states in pertinent part:

> (a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in
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> (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, or
>
> (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.

A Trial Court has "considerable discretion in determining whether or not to grant a petition for change of venue**,** and the standard of review is one of abuse of discretion." *Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 579 A.2d 1282, 1284 (Pa. 1990). "If there exists any proper basis for the trial court's decision to grant the petition to transfer venue**,** the decision must stand." *Estate of Werner ex. rel. Werner v. Werner*, 2001 PA Super 220, 781 A.2d 188, 190 (Pa. Super. 2001) (quoting *Masel v. Glassman*, 456 Pa. Super. 41, 689 A.2d 314, 316 (Pa. Super. 1997)). Because the plaintiff's choice of forum is given great weight, the moving party has the burden of proving that the original forum is

improper. *Goodman v. Fonslick*, 2004 Pa. Super. 18, P4, 844 A.2d 1252 (Pa. Super. 2004).

Plaintiffs have stated in their Complaint that they reside at 101 Bryn Way, Lansdale, Montgomery County, Pennsylvania. (Complaint, ¶1). Plaintiffs also stated that Defendant Harry Barford resides at 3838 Nanlyn Farm Circle, Doylestown, Bucks County, Pennsylvania and his employer ,Carroll Engineering Corporation, is a Pennsylvania corporation located at 949 Easton Road, Suite 100 Warrington, Bucks County, Pennsylvania. (Complaint, ¶2, 3). The accident itself occurred in Hatfield, Montgomery County, Pennsylvania. (Preliminary Objections dated 8/21/06, ¶2). All parties were served process at these respective locations. As a result, it is clear from the facts that according to Pa.R.C.P. 2179 (a)(1)(3) & (4) the venue for Plaintiffs' cause of action would more appropriately be addressed by either the Bucks or Montgomery County Courts.

In determining whether venue in an action against a corporation is proper on the ground that the corporate defendant regularly conducts business in the county (Pa.R.C.P. 2179 (a)(2)) in which it has been sued, we must focus on the nature of the acts the corporate defendant allegedly performs in that county. *Battuello v. Camelback Ski Corp.*, 409 Pa. Super. 642 , 646, 1029, 598 A.2d 1027, 1029 (1991). The business contacts of the corporate defendant with that county must be assessed both as to their quantity and their quality. Id. As the Supreme Court has recently described the proper analysis:

> 'A single act is not enough,' while 'each case must depend on its own facts.' 'Quality of act' means 'those directly, furthering or essential to, corporate objects; they do not include incidental acts.' Quantity means those acts which are 'so continuous and sufficient to be general or habitual.' In combined form . . . the acts of the corporation must be

> distinguished: those in 'aid of a main purpose' are collateral and incidental, while 'those necessary to its existence' are 'direct.' *Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 244, 579 A.2d 1282, 1285 (1990) (citations omitted) (quoting *Shambe v. Delaware and Hudson Railroad Company*, 288 Pa. 240, 135 A. 755 (1927)).

The crux of the Plaintiffs' argument is that pursuant to 2179(a)(2), Defendant Carroll "regularly conducts business," in Philadelphia County sufficient to bring their cause of action in this venue. In an attempt to bolster their argument, Plaintiffs attach two documents to their supplemental brief and present the deposition of Ms. Helen Parks. (Defendants' Brief In Support of Preliminary Objections, Exhibit D). Ms. Parks has worked for Carroll for approximately twenty (20) years and is a billing supervisor and assistant manager of the accounting department of Carroll. (Deposition, Helen Parks, pg.7-8). Her job includes the overseeing the staff of the accounting department and working with the treasurer of Carroll. (Id. at pg. 7-8). The documents provide a breakdown by county of the sources of revenue earned by Carroll for year 2005 and the first eight months of 2006. Using the figures, and charts she assembled for the deposition, Ms. Parks was able to convey, in both monetary values and percentages, how much revenue is generated from projects in Philadelphia County. (Deposition of Helen Parks, pg. 18-19). The charts that she assembled for purposes of the deposition were similar in nature to the ones that she prepares annually for the principals of the company, who want to know where the company's profits are derived from and how much the company is earning in its different client bases. (Id. at pg. 18-19).

In reviewing the charts, Ms. Parks was able to describe that the term "Philadelphia projects" represented not to clients who reside in Philadelphia, but rather to

projects that are performed within Philadelphia boundaries. (Id. at pg. 21-22). In addition, any projects done in Philadelphia are considered for "general clients," which are mostly builders, contractors and, sometimes, individuals who need small jobs performed for them. (Id. at pg. 14). These types of projects are compared with the "municipal clients," who represent counties and townships that Carroll contracts with on a yearly basis, to perform work as the sole engineering firm. (Id. at 13-15). It is important to note Philadelphia County is not considered one of Carroll Engineering's "municipal clients," this is because Carroll is not the registered engineer on record for Philadelphia City contracts. (Id. at pg. 20).

Through an itemization of all revenues by fees, man hours and percentages, Ms. Parks was able to provide a basic breakdown of how much of Carroll's profits came from work performed in Philadelphia County.

For year 2005, Philadelphia projects constituted 1.85% of the profits of "general clients" and only .73% of all client revenue. (Id. at 35-36). Of the .73 of all client work, .5119% was done in the Carroll main office located in Warrington, Bucks County and .219% was done on-site in Philadelphia County. (Id. at 35-36).

The most updated records of 2006 (January 1- August 31) revealed that Philadelphia projects constitute 2.49% of the profit of general clients and only 1.35% of all client revenue. (Id. at 44). Of the 1.35% of all client work, 1.23% was done in the office in Warrington, Bucks County and .12% was done on-site in Philadelphia County. (Id. at 44).

Such miniscule percentages reveal insufficient quantity to establish a "continuous" nature of doing business, while the quality of Carroll's business in

Philadelphia is incidental at best. (Defendants' Brief In Support Of Preliminary Objections pg. 9). The total of Carroll's business activity, which is actually conducted in Philadelphia, is insufficient to amount to anything that would permit Carroll to be hauled into Philadelphia County. (Id.).

In addition to the financial data and charts, there are various other factors, which lead to the conclusion that Philadelphia County is an inappropriate and improper venue for this case. According to Carroll's website, it has four main offices none of which are located in Philadelphia County. (Defendants' Brief In Support Of Preliminary Objections pg. 10). Three of these offices are in Pennsylvania and are specifically located in: 1) Warrington, Bucks County; 2.) Collegeville, Montgomery County and 3.) Coatesville, Chester County. (Id.). The fourth and final location is in Hillsborough, Somerset County, New Jersey.[1] (Id.).

Carroll's website also displays a number of "Featured Projects" to articulate its various disciplines and services that it provides. Of the twenty four featured projects, not one is located in Philadelphia County. The breakdowns of these projects are as follows: fourteen projects in Bucks County, eight in Montgomery and two in Chester County. (Id.). Carroll also does not advertise in Philadelphia County, nor does it list its services in the 2006 Verizon Yellow Pages. (Id.).

In *PECO Energy Co. v. Phila. Suburban Water Co.*, 2002 PA Super 210, 802 A.2d 666 (2002), our Superior Court addressed a similar issue of venue. The trial Court denied a request for change of venue because the defendant Philadelphia Suburban Water Company had approximately one mile of pipe in Philadelphia County and had purchased

[1] The Carroll website address is : http://www.carrollengineering .com/cec-locations.php?section=locations.

water from the City of Philadelphia in the past. Id. This denial came despite the fact that the defendant had no registered office or principal place of business in Philadelphia County and, both the cause of action and the transaction out of which the cause of action arose, were both in Montgomery County. Id. The Superior Court, in quoting the trial Court, stated,

> The trial court, in reviewing the evidence adduced through discovery on the venue issue, held that a sufficient nexus existed between certain of PSWC's isolated actions involving Philadelphia County to find that venue was proper there. Specifically, she found significant the fact that approximately one mile of PSWC's transmission pipeline runs through Philadelphia County, although it provides no water to Philadelphia County residents and accounts for only .036% of PSWC's overall piping system. Furthermore, the judge opined that a one-time purchase in the year 2000 of 300,000 gallons of water from the City of Philadelphia in Philadelphia County, which accounted for only .0007% of PSWC's overall water purchases over the last ten years, satisfied the quality and quantity requirement set forth in Purcell, supra.
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> The trial court found significant the deposition testimony of William Ross, Vice President of Engineering for PSWC, who testified that PSCW has and will continue to purchase water from the City of Philadelphia Water Department, as needed, and that PSWC has entered into other contracts with the City of Philadelphia enabling PSWC to purchase additional water from Philadelphia to supply its customers. Additionally, the trial court determined that joint water protection studies conducted by PSWC and the Philadelphia Water Department and protozoa analysis by the Philadelphia Water Department of PSWC's water constituted an additional nexus bolstering its holding that venue properly lies in Philadelphia County for this lawsuit. Id. at 670.

In reversing the trial Court, our Superior Court cited to *Masel v. Glassman*, 456 Pa. Super. 41, 689 A.2d 314, (1997), for support of their conclusion that venue in Philadelphia was improper. Id.

In *Masel,* the Superior Court determined that the plaintiff in a medical malpractice action demonstrated insufficient contacts between the defendant hospital and Philadelphia County for venue to lie there, despite the hospital's extensive advertising in Philadelphia newspapers and directories and various extensive contracts with Philadelphia vendors and institutions. *Masel,* 456 Pa. Super. at 49, 689 A.2d at 318. There, they held that the nature of the contacts was incidental in nature and not directly tied to furthering the main purpose of the corporation. *Id.* The Superior Court in *Peco* also cites to *Purcell v. Bryn Mawr Hospital,* 525 Pa. 237, 244, 579 A.2d 1282, 1285 (1990) to support their rationale.

In *Purcell,* our Supreme Court analyzed the question of whether certain contacts and contractual affiliations between Bryn Mawr Hospital, located in Montgomery County, and Philadelphia County were sufficient to vest venue in Philadelphia County in a medical malpractice action. *Purcell,* 525 Pa. at 247, 579 A.2d at 1287. The Court examined the hospital's connection to residency programs in Philadelphia County, recruitment and employment of medical residents by Bryn Mawr Hospital from Philadelphia teaching hospitals, purchases of goods and services from businesses within Philadelphia County for furtherance of its business in Montgomery County, maintenance of advertisements in the Philadelphia County telephone directories, and placement of advertisements in the Philadelphia Inquirer. Id. Despite these various affiliations, the Court concluded that Philadelphia was an improper venue for a negligence action filed by plaintiffs against Bryn Mawr Hospital and the medical personnel who cared for plaintiffs' deceased infant daughter. Id.

In *PECO*, the Superior Court likewise held that "it is undeniable that PSWC's contacts are minimal and incidental, at best. Moreover, we do not find that those contacts are essential to the furtherance of PSWC's business in any significant way. In comparing the nature of the contacts of PSWC to Philadelphia County in this case, we discern them to be far less in quantity, as well as quality, than the contacts cited in *Purcell* and *Masel*." Id.

In applying the Superior Court's rationale in *PECO, Masel* and *Purcell* the contacts percentage of Carroll profits from work performed in Philadelphia County is akin to the minimal and incidental contacts stated in the aforementioned cases. Such contacts are therefore insufficient to sustain venue in Philadelphia County.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Preliminary Objections were properly granted, and should be affirmed by the Court above.

BY THE COURT:

4-3-07

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Date **ALLAN L. TERESHKO, J.**

cc:
Richard C. Senker, for Appellant
Stephen Jude Bruderle/Ernest John Bernabei, III, for Appellees