

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

ANTHONY JOHNSON	:	
	:	TRIAL DIVISION – CIVIL
	:	
Appellant/Plaintiff	:	
	:	MARCH TERM, 2010
V.	:	No.: 02123
	:	
INGERSOLL RAND PLC, OMNITECH SALES COMPANY, STAINLESS SYSTEM SERVICE	:	SUPERIOUR COURT No. 2819 EDA 2011
	:	
Appellees/Defendant	:	
	:	
	:	
	:	
	:	
V.	:	
	:	
VERDELLI FAMRS, INC.; f/k/a VERDELLI FRAMS EAST, INC., VERDELLI HOLDINGS, LLC, FRESH EXPRESS, INC., a/k/a FRESH EXPRESS INCORPORATED, CHIQUITA BRANDS INTERNATIONAL, INC AND REM STAFFING, INC.	:	
	:	
Appellees/Defendant	:	

OPINION

PROCEDURAL HISTORY

Plaintiff, Anthony Johnson, appeals an Order dated October 3, 2011, wherein this Court granted Additional Defendants Verdelli Farms, Inc., f/k/a Verdelli Farms East, Inc., Verdelli Holdings, LLC, Fresh Express, Inc., a/k/a/ Fresh Express Incorporated, Chiquita Brands International, Inc., and REM Staffing, Inc.’s Petition to

Transfer Venue to Dauphin County, Pennsylvania, based on the doctrine of *forum non conveniens*.

FACTUAL BACKGROUND

On September 22, 2008, Plaintiff Anthony Johnson (hereinafter “Johnson”) was employed as a laborer with REM Staffing Inc, and was assigned to and working at Verdelli Farms, processing and packing produce. (Complaint ¶ 18-20). At the aforesaid date and place, Plaintiff Johnson was operating an Ingersoll Rand Overhead Zimmerman Rail System, when the hoist and drum components of said system fell, striking Johnson, causing him injury. (Complaint ¶ 29).

Plaintiff commenced this action by filing his complaint on March 12, 2010.¹ (See Docket). The Complaint contains five separate claims. Counts I-III are negligence claims against the Defendants (Ingersoll Rand PLC, Stainless System Service, and Omnitech Sales Company (collectively “Defendants”). Count IV is a strict liability claim against the Defendants. Count V is a breach of warranties claim against the Defendants. (Complaint ¶ 34-54).

Defendants answered the complaint on April 1, 2010. (See Docket). On August 10, 2010, Defendant Stainless System Service, filed a Joinder Complaint against Verdelli Farms, Inc., f/k/a Verdelli Farms East, Inc., Verdelli Holdings, LLC, Fresh Express, Inc., a/k/a/ Fresh Express Incorporated, Chiquita Brands International, Inc., and REM Staffing, Inc., hereinafter called “Additional Defendants.” *Id.* On January 20,

¹ It should be noted that Plaintiff filed his first lawsuit relating to this matter on September 14, 2009, in the Court of Common Pleas of Dauphin County, Pennsylvania, against Additional Defendant Verdelli Farms, Verdelli Farms, Inc., f/k/a Verdelli Farms East, Inc., Verdelli Holdings, LLC, Fresh Express, Inc., a/k/a/ Fresh Express Incorporated, Chiquita Brands International, Inc., and REM Staffing, Inc. Inc. The Plaintiff dismissed the Complaint on January 5, 2010. (See Additional Defendant’s Motion to Transfer Venue at ¶ 2, 6).

2011, Additional Defendants filed a Joinder Complaint against Ergonomic Handling Systems, Inc. *Id.*

On September, 2, 2011, Additional Defendants filed a Motion to Transfer Venue based on *forum non conveniens*. *Id.* Additional Defendants argued that trial in Philadelphia County would be oppressive and vexatious to the witnesses and defendants involved in the case because: Several Fresh Express employees may be called to testify, all of whom live in or work near Dauphin County; Plaintiff's treating physicians all work in or near Harrisburg and Dauphin County, Pennsylvania; and due to a possible dispute over the location of the injury, which gives rise to a dispute over the manufacturer of the equipment that injured the Plaintiff, the Defendants will request a jury view of the area in question, which would prove more convenient for a Dauphin County jury, as opposed to a Philadelphia jury; Plaintiff acknowledged that Dauphin County is a convenient forum by filing his first lawsuit related to the incident in Dauphin County. (See Additional Defendant's Motion to Transfer Venue ¶¶16-20).

On September 9, 2011, Original Defendant Omnitech filed a Joinder Motion to Transfer Venue to Dauphin County. (See Docket.) The Plaintiff filed an Answer to both Motions to Transfer Venue on September 26, 2011. *Id.* Plaintiff alleged the Additional and Original Defendants had not met the standard for transferring a case based on *forum non conveniens*, and venue in Philadelphia is neither oppressive nor vexatious to Additional Defendants because: Plaintiff's witnesses would need to take off from work regardless of where the trial is held and Philadelphia is easily accessible for them; employees of Additional Defendants would be compensated for their time in testifying; Philadelphia County would guarantee a quick case management track; both

parties' attorneys are based in Philadelphia; discovery was held in Philadelphia; and a site visit is not necessary. (Plaintiff's Memo in Opposition to Transfer pg. 1-2 and 6-8).

On September 28, 2011, Additional Defendants filed a Reply Memo in support of their petition to Transfer Venue based on *forum non conveniens*. (See Docket). Plaintiff Johnson filed a Supplemental Memo in Support of his Motion to Transfer on October 3, 2011. *Id.*

This Court granted Additional Defendants' Motion to Transfer Venue to Dauphin County based on *forum non conveniens* on October 6, 2011. (See Docket). After this Court granted Additional Defendants' Motion to Transfer Venue, Plaintiff appealed this Court's decision on October 19, 2011. (See Docket). Plaintiff then filed his Statement of Errors Complained of on Appeal on December 23, 2011. *Id.*

The sole issue to be addressed on appeal is whether this Court abused its discretion or committed an error of law when it granted Additional Defendants' Motion to Transfer Venue to Dauphin County based on the doctrine of *forum non conveniens*, where the appropriate supporting evidence shows venue in Philadelphia County is oppressive and vexatious to Defendants.

LEGAL ANALYSIS

In Pennsylvania, "it is well established that a trial court's decision to transfer venue will not be disturbed absent an abuse of discretion." *Jackson v. Laidlaw Transit Inc.*, 822 A.2d 56, 57 (Pa. Super. Ct 2003). An abuse of discretion occurs when the court overrides or misapplies the law, or exercises judgment in a manifestly unreasonable manner, or renders a decision based on partiality, prejudice, bias, or ill-

will. *Zappala v. Brandolini Property Management Inc.*, 589 Pa. 516, 536, 909 A.2d 1272, 1284 (2006). If there is any basis for the trial court's decision, its ruling must stand. *Id.* Furthermore, in *Johns v. First Union Corp.*, 777 A.2d 489,490, (Pa. Super. Ct 2001) (citing *Keuther v. Snyder* 444 Pa. Super. 468, 664 A.2d 168, 169 (Pa. Super. 1995)). The State Supreme Court opined that a "trial court has considerable discretion in granting a change of venue based on *forum non conveniens*."

Pennsylvania Rules of Civil Procedure 1006(d)(1) permits the court to transfer any action to the appropriate court in any county where the action could have originally been brought, for the convenience of parties and witnesses. Pa.R.C.P. 2179(a)(3) states that an action against a corporation may be brought in a county where the cause of action arose. The alleged negligence took place at 7505 Grayson Road, Harrisburg, PA 17111, located in Dauphin County. As both the Original and Additional Defendants are corporations, venue would be proper in Dauphin County.

Plaintiff argues that this Court abused its discretion when it granted the Additional Defendants' October 6, 2011, Motion to Transfer Venue based on the doctrine of *forum non conveniens*. The standard for transfer of venue cases based on this doctrine was established in *Cheeseman v. Lethal Exterminator, Inc.* 549 Pa. 200, 701 A.2d 156 (1997). Here, our Pennsylvania Supreme Court stated, "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." *Id. at 162*. The Court stated the two ways for the defendant to meet this burden: (1) by showing "with facts on the record that the plaintiff's chosen forum was designed to harass the defendant, even at some

inconvenience to the plaintiff himself;” or (2) by showing “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 the premises involved in the dispute.” *Id.*

In *Wood v. E.I. du Pont de Nemours and Co.*, 829 A.2d 707 (Pa. Super 2003), a delivery man sustained injuries after falling during a delivery stop at the defendant’s plant in Bradford County, Pennsylvania. The defendant, incorporated in the State of Delaware, had a research facility in Philadelphia. Even though the incident occurred in Bradford County and witnesses were located in Bradford County, the suit was brought in Philadelphia.

In *Wood*, the trial court followed the *Cheeseman* standard in transferring venue to Bradford County. In support of its position to transfer venue based on *forum non conveniens*, the defendant supplied the court with affidavits of witnesses stating the difficulties that trial in Philadelphia would present to them, both professional and personal. The superior court found no abuse of discretion, because “DuPont placed detailed information on the record establishing that many of its critical witnesses were plant employees who would be forced to travel over 190 miles to attend trial in Philadelphia.” *Id.* at 713 The court also noted that no particular form of proof is required under *Cheeseman*. Rather, “All that is required is that the moving party present a sufficient factual basis for the petition. *Id.* at 714 (citing *Cheesman* 701 A.2d at 162). As the defendant provided a sufficient factual basis for the petition, the decision of the trial court to transfer venue to Bradford County was upheld.

In the matter at hand, Additional Defendants have sufficiently stated, with detailed facts on the record, how trial in Philadelphia County would be oppressive and vexatious.² Additional Defendants have met the standard set forth in *Cheeseman*. Additional Defendants submitted an affidavit of Mr. Leon M. Letcavage. Mr. Letcavage is employed by Fresh Express, the successor to Verdelli Farms. (See Additional Defendants' Motion to Transfer Venue, pg. 6). He will testify at trial about the layout of the area where the Plaintiff's accident occurred, the equipment involved, and prior problems with said equipment. *Id.* Mr. Letcavage states in his affidavit that traveling to Philadelphia would take approximately one hour and fifty-two minutes. (See Affidavit of Leon Letcavage, pg. 1). Furthermore, he provides care to his ailing father, who is hospitalized. *Id.* If he is not available to care for his father, then his mother and one hundred year old grandmother are left to tend to his father's needs. *Id.* Mr. Letcavage states that it would be extremely helpful to him if he only had to travel to Dauphin County, as opposed to Philadelphia County to appear in the proceedings. *Id.*

Additional Defendant's produced an affidavit of Mr. Michael Turns. Mr. Turns was employed by Fresh Express at the time of the Plaintiff's accident. (See Additional Defendants' Motion to Transfer Venue, pg. 7). Mr. Turns was responsible for maintenance of the equipment involved in the accident. *Id.* Mr. Turns states that traveling to Philadelphia would take approximately one hour and forty-eight minutes. (See Affidavit of Michael Turns, pg. 1). Furthermore, he has a special needs child and a wife with medical ailments for whom he provides care. *Id.* He states that time spent in Philadelphia would limit his ability to support and care for his family. *Id.*

² Because Defendant Omnitech has joined Additional Defendant's Motion to Transfer Venue based on *forum non conveniens*, the foregoing analysis also applies to Omnitech.

Moreover, the affidavit of John Phipps, the plant manager, further demonstrates the oppressive nature of holding the trial in Philadelphia County. According to Mr. Phipps, the plant is currently understaffed, with the second shift manager position vacant. (See Affidavit of John Phipps, pg. 1). Mr. Phipps asserts that time away from the plant will result in a greater burden on other managers, and may result in safety issues for employees. *Id.* Travel time to Philadelphia for Mr. Phipps would be one hour and fifty-three minutes. *Id.*

In addition, the Additional Defendants supplied an affidavit of Mr. Roberto Escalet, President of REM Staffing. Mr. Escalet will testify to the hiring, training and control of Plaintiff within the scope of his work. (See Additional Defendant's Motion to Transfer Venue, pg. 8). Mr. Escalet avers that traveling to Philadelphia would take approximately one hour and fifty-nine minutes. (See Affidavit of Roberto Escalet, pg. 1). Due to recent reductions in staff size in the Pennsylvania and St. Louis, Missouri locations of REM Staffing, Mr. Escalet is performing additional duties, including traveling to St. Louis every other week. *Id.* At pg 1-2. A trial in Philadelphia would be oppressive for Mr. Escalet.

Analogous to *Wood*, here Additional Defendant's identified important witnesses that would be unduly burdened by trial in Philadelphia County. Aside from the lengthy travel time, each witness demonstrated a hardship that trial in Philadelphia would induce. A trial in Philadelphia County would be oppressive and vexatious to Additional Defendants.

Pennsylvania courts have consistently granted similar transfer of venue motions where similar facts exist. See *Mateau v. Stout*, 2003 Pa. Super 93, 819 A.2d 563 (2003)

(transfer from Philadelphia County to Delaware County is appropriate when accident, witnesses, and medical treatment occurred in Delaware County); *Borger v. Murphy*, 797 A.2d 309 (202) (Court transferred action from Philadelphia county to Lehigh County because witnesses reside and work in Lehigh County and trial in Philadelphia would burden defendant's business.)

Additionally, Additional Defendants plan to call some, if not all of Plaintiff's treating physicians. These physicians are located in the Dauphin County.

Additional Defendants will request a site visit for the jury, which would be more convenient for a Dauphin County jury as opposed to one from Philadelphia County. It should be noted that in *Wood, supra* at 713, the Court stated that a view of the accident scene could assist the jury's deliberations, and transporting them 170 miles to the accident site would be an unnecessary burden on them, as well as an unnecessary court cost. In *Wood*, the court determined "it is necessary for the jury to view the pavement where the alleged fall took place in order to determine if a hole existed, was repaired or paved over at anytime prior to, or after the alleged accident. *Id.*

Pa.R.Civ.P. 219 provides "the allowance of the application [for a jury view] shall be within the discretion of the court, which may impose upon the applicant such reasonable costs or expenses as may be involved in connection with such view." In the present case, the Additional Defendants have made it clear they will request a jury view. An issue exists as to whether the equipment that injured the Plaintiff was manufactured by Ingersoll Rand or Ergonomic Handling Systems. Plaintiff's accident occurred in the "spin dryer deck" area, which is approximately 100 feet in length. Both companies manufactured equipment that was in use in the "spin dryer deck" area. Additional

Defendants assert a jury view is necessary to determine where the accident occurred, so the jury can assign liability to the appropriate manufacturer. (See Additional Defendants' Motion to Transfer Venue, pg. 7, 8).

Akin to the disputed existence of the hole in *Wood*, here a legitimate question exists as to where in the spin dryer deck area the Plaintiff sustained injury. The location is necessary to determine the manufacturer of the equipment that injured the Plaintiff. A jury view may aid in making this determination. Transporting a jury from Philadelphia County to Dauphin County will result in a burden on the jury and substantial cost.

The Plaintiff attempts to distinguish the facts at hand by drawing attention to two Superior Court cases. First, *Cooper v. Nationwide Mutual Insurance Co.*, 761 A.2d 162 (Pa. Super. Ct. 2000), and *Hoose v. Jefferson Home Health Care, Inc.*, 754 A.2d 1 (Pa. Super. Ct. 2000).

In *Cooper*, the superior court ruled the trial court erred in transferring the case from Philadelphia to Pike County where Nationwide failed to demonstrate on the record vexation or oppressiveness to witnesses, and mere inconvenience did not justify transfer. In *Cooper*, the defendants supplied affidavits from three claims attorneys who averred that trial in Philadelphia would be detrimental to their clients. However, the court noted that it is the burden on the witnesses, not their clients that must be demonstrated on the record. *Id.* at 166 (citing *Hoose, supra at 3*). Furthermore, the court opined that even though Nationwide claimed operations would be impacted by trial in Philadelphia, they failed to indicate precisely how operations would be impacted. *Id.*

In the present case, Additional Defendants demonstrated with evidence on the record, precisely how defense witnesses and their corresponding duties would be unduly impacted. Trial in Philadelphia County would be oppressive and vexatious for the Additional Defendants. Therefore, transfer to Dauphin County was not an abuse of discretion.

CONCLUSION

For the foregoing reasons, this Court respectfully requests its decision to grant Additional Defendants Verdelli Farms, Inc., f/k/a Verdelli Farms East, Inc., Verdelli Holdings, LLC, Fresh Express, Inc., a/k/a/ Fresh Express Incorporated, Chiquita Brands International, Inc., and REM Staffing, Inc.'s Motion to Transfer Venue to Dauphin County, Pennsylvania be **AFFIRMED**.

BY THE COURT:

5-24/2012

ALLAN L. TERESHKO, J.

DATE

cc:

All Counsel

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