

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

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MEDICAL STAFFING NETWORK, INC.	:	July Term, 2001
Plaintiff,	:	
v.	:	No. 1641
KEYSTONE CARE CORPORATION,	:	
d/b/a CHESTER CARE CENTER;	:	Commerce Program
MANCHESTER NURSING HOME;	:	
DOWDEN NURSING HOME & REHAB;	:	Control No. 111059
CHESTER CARE CENTER; MANCHESTER		
HOUSE NURSING AND CONVALESCENT		
CENTER; DOWDEN NURSING HOME &		
REHAB; BISHOP NURSING HOME, INC.		
d/b/a MANCHESTER HOUSE NURSING		
& CONVALESCENT c/o MANCHESTER		
NURSING HOME; COMMONWEALTH REAL		
ESTATE INVESTORS c/o MANCHESTER		
NURSING HOME; and WALTER STRINE		
c/o BISHOP NURSING HOME, INC.		
d/b/a MANCHESTER HOUSE NURSING		
& CONVALESCENT c/o MANCHESTER		
NURSING HOME		
Defendants.		

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**ORDER**

AND NOW, this 8th day of July, 2002, upon the consideration of the Preliminary Objection of Defendants to the Amended Complaint of Plaintiff Medical Staffing Network, Inc., the responses thereto, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the preliminary objection asserting improper venue is GRANTED and therefore, this action is TRANSFERRED to Delaware County.

BY THE COURT:

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JOHN W. HERRON, J.

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MANCHESTER NURSING HOME and	:	
DOWDEN NURSING HOME & REHAB	:	Control No. 111059
and		
CHESTER CARE CENTER		
and		
MANCHESTER HOUSE NURSING		
AND CONVALESCENT CENTER		
and		
DOWDEN NURSING HOME & REHAB		
and		
BISHOP NURSING HOME, INC.		
d/b/a MANCHESTER HOUSE NURSING		
& CONVALESCENT		
c/o MANCHESTER NURSING HOME		
and		
COMMONWEALTH REAL ESTATE		
INVESTORS		
c/o MANCHESTER NURSING HOME		
and		
WALTER STRINE		
c/o BISHOP NURSING HOME, INC.		
d/b/a MANCHESTER HOUSE NURSING		
& CONVALESCENT		
c/o MANCHESTER NURSING HOME		

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**OPINION**

Defendants Keystone Care Corp., et al (“Defendants”) filed this preliminary objection to the

Amended Complaint of Plaintiff Medical Staffing Network (“Medical”) asserting improper venue. For the reasons stated below, the preliminary objection is granted, and therefore this action is transferred to Delaware County.

## **BACKGROUND**

This case arises out of an alleged breach of a purported oral contract between Medical, a medical staffing company in Montgomery County, and Defendants, a group of nursing home and personal care providers in Delaware County. Under this July 1999 oral contract, Defendants agreed to pay Medical for the recruiting and staffing of Defendants facilities in Delaware County.

Despite receiving staffing services from Medical, Defendants have yet to remit full payment. In October, 2001, Medical commenced this action in Philadelphia County attempting to recover \$341,010,21 from Defendants. Medical’s Amended Complaint contains claims of breach of contract and unjust enrichment against all the Defendants.

Subsequently, on November 16, 2001, Defendants timely filed these preliminary objections asserting improper venue. This Court, on January 23, 2002, ordered discrete discovery to develop a record concerning whether Philadelphia County is an improper venue to try this case.

## **DISCUSSION**

### **I. Venue in Philadelphia County is Improper Because Defendants Do Not Regularly Conduct Business Here**

Defendants object to venue in Philadelphia County. Medical argues that venue is proper in Philadelphia County because Defendants “regularly conduct business in Philadelphia County including

but not limited to obtaining staffing services from individuals located in Philadelphia County.” Am. Complaint ¶9. The court disagrees with Medical and sustains the objection.<sup>1</sup>

“[A] plaintiff’s choice of forum is given great weight.” Masel v. Glassman, 689 A.2d 314, 316 (Pa. Super. 1997). For a defendant to challenge venue, one must raise a preliminary objection. See Pennsylvania Rules of Civil Procedure (“Rule”)1028(a)(1); See also Rule 1006(e). Although a “defendant has the burden in asserting a challenge to... venue,” Masel 689 A.2d 314, 316, the trial court has discretion in deciding whether or not to transfer venue. Gale. v. Mercy Catholic Med. Ctr., 698 A.2d 647, 650 (Pa. Super. 1997), app. denied, 552 Pa 696, 716 A.2d 1249 (1998).

Medical asserts that venue is proper in Philadelphia County because Defendants regularly conduct business here. Rule 2179 of the Pennsylvania Rules of Civil Procedure states:

- (a)...a personal action against a corporation or similar entity may be brought 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; or
- (4) a county where a transaction or occurrence took place out of which the cause of action arose.

The issue of whether a corporation regularly conducts business in a county is an issue of fact. New v. Robinson-Houchin Optical Co., 357 Pa. 47, 53 A.2d 79, 80 (1947). The court must analyze the quality and quantity of the Defendants’ contacts with Philadelphia. Purcell v. Bryn Mawr Hosp., 525 Pa. 237, 579 A.2d 1282, 1285 (1990). Under the regularly conducts business test of Rule 2179(a)(2),

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<sup>1</sup> Since the preliminary objection asserting improper venue is sustained, the court need not address Defendants’ remaining preliminary objections under Pa.R.C.P. 1028a(3),(4).

the contacts need not be related to the cause of action. Id. at 1286.<sup>2</sup>

**A. Defendants' Contacts Do Not Meet the Quality Prong of Pa.R.C.P.**

**2179(a)(2).**

To meet the quality prong of the test, a defendant's contacts with the county must be essential to or in direct furtherance of corporate objects, rather than being incidental acts. Purcell, 579 A.2d at 1285. "Those [acts] in 'aid of a main purpose' are collateral and incidental, while 'those necessary to its existence' are 'direct.'" Masel v. Glassman, 689 A.2d 314, 317 Pa.Super Ct. 1997) (citation omitted). Mere advertisement or solicitation of business within the county generally is not sufficient to satisfy the quality test, because advertisement is generally incidental to the corporate objects. Id.; Mathues v. Tim-Bar Corp., 652 A.2d 349, 351 (Pa.Super.Ct. 1994); Battuelo v. Camelback Ski Corp., 598 A.2d 1027, 1029 (Pa.Super.Ct. 1991). Rather, the defendant must have had physical presence in the county, for example, by operating a branch office in the county, Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc., 698 A.2d 647, 652 (Pa.Super.Ct.1997), or by entering the county to make sales, Canter v. American Honda Motor Corp., 231 A.2d 140, 143 (Pa.1967); Monaco v. Montgomery Cab Co., 208 A.2d 252, 256 (Pa.1965).

Here, in applying this standard the court must first look to Defendants' contacts with

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<sup>2</sup> All parties seem to be confused as to the proper standard to be applied in this case. Medical incorrectly asserts that the Defendants have the burden of proving that the "chosen forum is vexatious and unduly burdensome." Pl. Response to Reply at 5 (quoting Cheeseman v. Lethal Exterminator, Inc., 549 Pa. 200, (Pa. 1997)). This legal standard, however, must be met when addressing the issue of forum non conveniens, where venue is proper but inconvenient. (See Kubik v. Route 252, Inc., 762 A.2d 1119, 1123 (2000)). Here, however, the Defendants have raised the issue of improper venue through preliminary objections which is "...a far cry from the standard in forum non conveniens cases." Id., at 1123.

Philadelphia County. The record reflects that none of the Defendants have a physical presence in Philadelphia County as they neither own property, operate a branch, nor have assets here. Defs' Supp. Mem of Law at 8., Exh D (Gillis Dep. 3/27/02 at 30-33; Gillis Dep. 4/29/02 at 27-33). Further, while Defendants have produced evidence showing the existence of two corporate objects: (1) Defendant Commonwealth Real Estate Investors ("CREI") invests in real estate; and (2) the remaining defendants operate nursing home care facilities, there is no evidence showing how Defendants further their corporate objectives in Philadelphia County. Defs' Mem. of Law at 11. In fact, Defendants' nursing home care facilities are all located in Delaware County. Id. In addition, with the exception of a few properties in Northumberland County and Florida, all of CREI's real estate holdings are in Delaware County. Id. (citing Gillis Depos. 3/27/02 at 32). Without a physical presence in Philadelphia County, it is very difficult to find that Defendants further their respective corporate objectives. Therefore, the Defendants lack the requisite contacts to meet the quality prong of Pa.R.C.P. 2179 (2).

In its Amended Complaint, Medical alleges that venue is proper in Philadelphia County because Defendants obtained "staffing services from individuals located in Philadelphia County." Amended Complaint ¶9. However, here the record shows that it was not the Defendants who conducted business in Philadelphia by directly contracting with Philadelphia residents to work in their facilities in Delaware County. Instead, Defendants contracted with Medical, who in turn, recruited, staffed and employed Philadelphia residents to work in Delaware County. Defs' Mem. of Law at 4. Admittedly, if Defendants had branch nursing care facilities in Philadelphia from where these Philadelphia resident employees of Medical worked, then it would be clear that Defendants would be furthering their corporate objectives in Philadelphia County. However, this is not the case. Here, the contacts of Medical in Philadelphia

County to unilaterally staff Defendants' Delaware County facilities with Philadelphia residents, are simply insufficient to establish that Defendants regularly conduct business in Philadelphia.

Medical also asserts that Defendants regularly conduct business here because Defendants advertise in a local newspaper. Although Defendants admit to having advertised in The Philadelphia Inquirer, our Supreme Court has held that this fact, in and of itself, is not sufficient evidence of regularly conducting business for venue to be properly had in Philadelphia County. Purcell, 579 A.2d at 1287 (holding that it is "clear that advertisements in Philadelphia's phone books and newspapers fail to meet our standards for the exercise of venue."); see also Masel, 689 A.2d at 316 (listing advertisements in The Philadelphia Inquirer was an insufficient contact for establishing venue). Since Defendants' contacts do not meet the quality prong of the test, they do not regularly conduct business in Philadelphia County.<sup>3</sup>

**B. Defendants' Contacts Do Not Meet the Quantity Prong of Pa.R.C.P.**

**2179(a)(2).**

To meet the quantity prong, the contacts must be "so continuous and sufficient to be general or habitual." Purcell, 579 A.2d at 1285 (citation omitted). Where the defendant is physically present in the

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<sup>3</sup> Medical finally asserts that the Strine family, who owns stock in the Defendant corporations, has contacts with Philadelphia County because they also own shares of stock in Telenium and Keystone Quality Transit that do own property in Philadelphia. Defs' Supp Mem. of Law, Exh D. (Gillis Dep. 4/29/02 at 46-47); Defs' Reply to Pl's Response, Exh A (Aff. Walter M. Strine Jr., ¶ 11, 12). However, because neither Telenium, nor Keystone Quality Transit, are named defendants in this action, the court need not consider whether these entities regularly conduct business in Philadelphia County. Gale v. Mercy Catholic Medical Center, 698 A.2d 651 (Pa.Super.Ct 1997) (holding that it was "irrelevant" for improper venue purposes to consider two corporations who were not in the complaint and not parties to the dispute).

county, courts have generally accepted any amount of business as satisfying the quantity prong. See Canter, 231 A.2d at 143 (holding that venue was proper in Philadelphia where defendant auto dealer demonstrated and sold cars in Philadelphia, even though the defendant's Philadelphia sales were only 1-2% of total business); Monaco, 208 A.2d at 256 (holding that venue was proper in Philadelphia where defendant cab company drove passengers to Philadelphia, even though those fares were only 5-10% of the total business). On the other hand, where the defendant never entered the county in furtherance of the corporate object, the mere fact that the defendant conducted some of its business with county residents was not sufficient to confer venue. Masel, 689 A.2d at 317 (1997) (holding that venue was improper in Philadelphia County when physician services company received 20% of gross revenues from Philadelphia third party payers and 3% from Philadelphia residents, but conducted no operations in Philadelphia).

Here, none of the Defendants' contacts with Philadelphia County are so continuous and sufficient to be general or habitual to satisfy the quantity test. As an initial matter, none of the Defendants have entered the county to conduct business as they neither provide health care services nor invest in real estate in Philadelphia County. However, Medical argues that Defendants regularly conduct business in Philadelphia County because Defendants collect over fifty percent of their receivables in a lock box with a Philadelphia address.<sup>4</sup> Pl's Supp. Resp. at 15-18. Defendants assert,

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<sup>4</sup> Medical does not allege that the Defendants' third party payors, or vendors, are located in Philadelphia, only that the lock box is located in Philadelphia. However, even if these payers were located in Philadelphia, this would still not be enough to show that Defendants regularly conduct business in Philadelphia County because Defendants do not have business operations in Philadelphia County. See Masel, 689 A.2d at 317 (1997) (holding that venue was improper in Philadelphia County when physician services company received 20% of gross revenues from Philadelphia third party payers



however, that Commerce Bank arranged this location for the lock box and that Defendants' vendors were required to send checks to this address. Defs' Supp. Mem. of Law, Exh. D; Defs' Resp. to Pl's Reply, Exh A. Defendants also show that they had no access to this box and all funds were collected by an agent of the bank. Id. at 30; Id. at ¶17. Since Defendants' main purpose is not to collect monies from a lock box, but to invest in real estate and operate nursing home facilities in Delaware County, this court finds that these contacts are not only incidental in nature, but also insufficient to establish venue in Philadelphia County.<sup>5</sup>

### CONCLUSION

For the reasons discussed above, the Defendants' preliminary objection asserting improper venue is granted. The case shall be transferred to Delaware County.

BY THE COURT:

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and 3% from Philadelphia residents, but conducted no operations in Philadelphia).

<sup>5</sup> Medical also argues that venue is proper here because the City of Philadelphia filed two separate complaints against Defendants in Philadelphia County for failure to pay Philadelphia City Wage Tax. However, the fact that venue was proper in those tax collection cases is irrelevant for purposes of determining whether venue is proper in this case. In cases involving tax payments venue is proper in the county where the taxes are due. See e.g., Commonwealth v. Boyle, 532 A.2d 306 (Pa. 1987); Commonwealth v. Bershad, 693 A.2d 1303 (Pa.Super.Ct. 1997). Here, pursuant to Pa.R.C.P. 2179(2) venue is proper only if the Defendants regularly conduct business in Philadelphia County.

JOHN W. HERRON, J.

DATE: July 8, 2002