

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WM. L. ROBINSON CONCRETE	:	NO. 03-01,984
CONTRACTOR, INC.,	:	
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
BELLUCCI CONSTRUCTION,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendant's Preliminary Objections to Plaintiff's Complaint, filed December 24, 2003. Argument was heard February 26, 2004.

In his Complaint, Plaintiff contends the parties entered an agreement whereby Plaintiff was to place and finish certain concrete floors at a Home Depot store being built in Bloomsburg, but that after the work was performed, Defendant failed to make payment due for said work in breach of the agreement. Plaintiff seeks payment in accordance with an invoice submitted to Defendant upon completion of the work. Defendant has preliminarily objected to venue in Lycoming County, asserting that the work took place in Columbia County and that no transaction or occurrence out of which the cause of action arose took place in Lycoming County. Plaintiff contends in response that venue in Lycoming County is proper as the action is one for breach of contract for failure to make payment and that payment was due in Lycoming County. It appears Plaintiff is correct.

As the Court stated in Lucas Enterprises, Inc. v. Paul C. Harman Company, Inc., 417 A.2d 720 (Pa. Super. 1980), the rule is universal in the absence of agreement to the contrary, that payment is due at the plaintiff's residence or place of business, and venue is proper there in a breach of contract action alleging failure to make payment. See also Triffin v. Turner, 501 A.2d 271 (Pa. Super. 1985)(quoting and citing Lucas). In the instant case, Plaintiff alleges in the complaint that its principal place of business is in Lycoming County and that the parties entered an agreement for work to be performed in exchange for payment. The agreement attached does not specify the place of payment, thus invoking the rule that payment is due at

the plaintiff's place of business. While Defendant seeks to limit the holding of Lucas to those cases "dealing exclusively with the payment of money", the Court does not believe Lucas or Triffin dealt exclusively with the payment of money. In Lucas, the plaintiff had contracted to perform a service, namely to locate a buyer for the defendant's coal leases. In Triffin, the plaintiff's assignor had contracted to furnish uniforms to the defendant. In both cases, the action was brought for failure to make payment under the contract and in both cases, venue in the county wherein was located the plaintiff's place of business was found proper, as the county in which payment was due. The Court sees no difference in those cases and the instant case, where Plaintiff contracted to perform a service, the placing and finishing of concrete floors, and the action has been brought for failure to make payment under the contract.

ORDER

AND NOW, this 5th day of March, 2004, for the foregoing reasons, Defendant's Preliminary Objections are hereby OVERRULED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Thomas Waffenschmidt, Esq.
John Mihalik, Esq., 3 East Fifth Street, Bloomsburg, PA 17815
Gary Weber, Esq.
Hon. Dudley Anderson