IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| VMB ENTERPRISES, INC., MATTHEW J. BARONE, and BENJAMIN A. BARONE, Plaintiffs | : | NO. 03-00,665 |
| | : | CIVIL ACTION - LAW |
| vs. | : | |
| BEROC, INC., Defendant | : | |

OPINION IN SUPPORT OF ORDER OF FEBRUARY 17, 2005,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court's Order of February 17, 2005, which granted Plaintiffs' motion to coordinate the instant action with an action filed in Luzerne County, to Number 3334C of 2003, and directed that all proceedings in both actions be held in Lycoming County. Defendant agreed that the actions should be coordinated but contends that they should be heard in Luzerne County.

First, Defendant objects to the Court having relied on the "facts" that the bakery equipment that is the subject of the controversy "was delivered to, installed in, and repaired in Lycoming County." Defendant contends there are "absolutely no facts of record which support the Court's conclusion in this regard." Defendant attached a copy of the Complaint it filed in Luzerne County to its Preliminary Objections to Plaintiffs' Amended Complaint in Lycoming County, however, and that Complaint states that Beroc delivered the equipment at issue to VMB's facility, which is located, according to all the pleadings, in Lycoming County. The Court believes it is further only a matter of common sense that once the equipment was delivered to a bakery in Lycoming County, the installation of the equipment must have been in Lycoming County, and further, that once installed, its repair was also in Lycoming County.[1]

[1] The Court notes Defendant does not contend any of the "facts" upon which the Court relied are not accurate.

Second, Defendant contends the Court incorrectly interpreted an Agreement of Sale between the parties dated October 14, 2002, which document was offered by Defendant as evidence of Plaintiffs' irrevocable consent to have all disputes arising thereunder decided in Luzerne County. The Court pointed out in its Order of February 17, 2005, that the consent referred to by Defendant was actually given by Defendant, not Plaintiffs. Defendant argues that such is a "distinction without a difference". Had the Agreement of Sale indicated "the parties" agree to Luzerne County venue, the Court would agree. The Agreement did not so indicate, however, and the Court could not find Plaintiffs to be bound by consent given by Defendant alone.

Third, and finally, Defendant contends the Court should not have found Plaintiffs' action to have been filed first,[2] arguing that although it was filed first, the original Complaint, which was amended after Defendant filed its Complaint in Luzerne County, should be disregarded as having been "fraudulently filed". The Court refused to look beyond the filing, however, believing the rules do not contemplate a fact-finding hearing at which the truth of the allegations of a complaint and the basis for such allegations, if untrue, must first be proven before the court could rely on such to determine the sequence of filings. Defendant was not able to provide the Court any authority for its argument, and indeed, such an interpretation could turn a relatively simple procedure into a quagmire of pre-litigation litigation.

The Court wishes to note that in addition to those factors complained of by Defendant, also considered in choosing Lycoming County as the more appropriate venue for litigating this matter was the fact more of the parties and witnesses reside in Lycoming County than in Luzerne County. Further, the Court held a telephone conference with the Honorable Mark A. Ciavarella, Jr., of the Luzerne County Court of Common Pleas, prior to rendering a decision. While Judge Ciavarella indicated he was not as familiar with the case as was this Court, he agreed that between the two counties, Lycoming County appeared to have closer ties to the litigation.

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[2] This Court has authority to order coordination as "the court in which a complaint was first filed". Pa.R.C.P. Rule 213.1(a).

In conclusion, the Court believes the correct choice was made, and that Defendant's appeal is without merit.

RESPECTFULLY SUBMITTED,

Dudley N. Anderson, Judge

DATED: April 26, 2005

cc: Joseph F. Orso, III, Esq.
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Gary Weber, Esq.
Hon. Dudley N. Anderson