

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

NORTH 4TH STREET, LLC,	:	
Plaintiff	:	NO. CV-18-0689
	:	
vs.	:	CIVIL ACTION
	:	
	:	
PETER L. STANISH,	:	
LAURA COOPER, and	:	
338 MADISON AVENUE, LLC,	:	
Defendants	:	

OPINION

I. Procedural and Factual History

This matter arises out of Defendants’ alleged breach by the way of default of an “Installment Sales Agreement for Sale of Real Estate” [hereinafter “Agreement”]. In the interest of clarity, the Court will summarize the relevant facts of this case in chronological order below:

On March 29, 2017, the parties entered into the Agreement. The property subject to the Agreement is located in Berks County, Pennsylvania. The Agreement includes a clause which states that “jurisdiction and venue for **any disputes** arising under the Agreement shall be in the Court of Common Pleas of Lycoming County, Pennsylvania.” *See Agreement at Page 2 (emphasis added).*

A Writ of Summons was filed in the Court of Common Pleas of Berks County, Pennsylvania on March 28, 2018 [hereinafter “Berks County action”]. That matter is captioned Peter Stanish v. North 4th Street, LLC [hereinafter “North 4th Street”]. Mr. Stanish was served with the Writ of Summons on April 24, 2018.

A Complaint was filed on April 23, 2019 alleging intentional and negligent misrepresentation by North 4th Street as it relates to the Agreement.

On May 15, 2018, the Complaint initiating the above-captioned matter was filed in Lycoming County pursuant to the previously quoted forum selection clause [hereinafter “Lycoming County action”]. Defendants’ filed their Answer with New Matter to Plaintiff’s Complaint on April 22, 2018 wherein they assert that that proper venue lies in Berks County.

The Berks County Court of Common Pleas assumed jurisdiction over the Berks County action when it ruled on preliminary objections regarding improper venue. The parties to the Lycoming County action proceeded with the case for over two years, conducted discovery, and Defendants even filed a motion summary judgment, which was ultimately denied. On September 16, 2020, Defendants filed a Motion to Transfer Venue Pursuant to Pa.R.C.P. 1006(d)(1) and a Motion to Coordinate Actions Pursuant to Pa.R.C.P. 213.1. Argument was held on October 2, 2020. A bench trial in the Lycoming County action is currently scheduled for November 3, 2020.

II. Motion to Transfer Venue Pursuant to Pa.R.C.P. 1006(d)(1)

Defendants first argue that the Lycoming County action should be transferred to Berks County. They base this argument on the doctrine of *forum non conveniens* pursuant to Pa.R.C.P. 1006(d)(1), which states: “For the convenience of parties and witnesses the court upon petition of any party **may** transfer an action to the appropriate court of any other county where the action could originally have been brought.” Pa.R.C.P. 1006(d)(1) (emphasis added).

Pursuant to this Rule, the Court has discretion in ruling on a petition to change venue. Pa.R.C.P. 1006(d)(1); see also *Dranzo v. Winterhalter*, 577 A.2d 1349, 1353 (Pa. Super. 1990). “A plaintiff’s choice of forum carries great weight, but it is not absolute or unassailable.” *Scarlett v. Mason*, 89 A.3d 1290, 1293 (Pa. Super. 2014). A Court cannot grant a change of venue lightly or without real necessity and the party asking the Court to transfer venue bears the burden of proving that the change of venue is necessary. *Dranzo*, 577 A.2d at 1353. When a Plaintiff chooses the venue pursuant to a forum selection clause, that clause is *prima facie* valid and should not be set aside unless the party challenging the clause can show that the enforcement of the clause would be unreasonable and unjust or that the clause was invalid due to fraud, for example. *BABN Techs. Corp. v. Bruno*, 25 F. Supp. 2d 593, 595 (E.D. Pa. 1998) (applying Pennsylvania contract law).

In support of their position, Defendants cite to the standard set forth in the *Cheeseman v. Lethal Exterminator, Inc.* case, which holds that “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.” *Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156, 162 (Pa. 1997). The Court gives examples of how a defendant can meet this burden including establishing that the plaintiff’s choice of forum was designed to harass the defendant or establishing that trial in the chosen forum is oppressive to the defendant. *Id.* As to the latter, the defendant could show that trial in another county would provide easier access to

witnesses or the ability to conduct a view of premises involved in the dispute. *Id.* The Court concludes its decision with stressing that the “defendant must show more than that the chosen forum is merely inconvenient to him.” *Id.*

The basis of Defendants’ argument lies on the fact that they are challenging the validity of the entire Agreement itself, which would include the forum selection clause. However, Counsel for Defendants stated during argument that the Defendants were not necessarily challenging the validity of the forum selection clause itself or that the clause itself was entered into due to fraud; rather, they are challenging the whole document and thereby assert that, but for the material misrepresentation by the Plaintiff regarding the building that is the subject of the document, Defendants would not have entered into this specific contract which contains a forum selection clause. Defendants also argue that they have met the oppressiveness standard as set forth in the *Cheeseman* case. Specifically, the subject property of these lawsuits is situated in Berks County – which is over 100 miles away from Lycoming County – and there may be a need for a premises inspection at the time of trial. Additionally, the bulk of both parties’ lay witnesses and experts are located in Berks County. In fact, Defendants argue, the only connection that this case has with Lycoming County is that Plaintiff is located here.

The Court is not persuaded by Defendants arguments. First, Defendants are not challenging the validity of the forum selection clause itself. The very nature of a forum selection clause anticipates that disputes will arise that relate to the contract or other writing. If the Court accepts Defendants’ argument on this

point, it would be essentially rendering all forum selection clauses moot. Additionally, the Agreement entered into by the parties is not a contract of adhesion. The Agreement was negotiated between two commercial entities and, in fact, one of the named Defendants is an attorney. While the Court understands that the location of the property and the witnesses is approximately two and one half hours away, Defendants have not met their burden in proving that venue in Lycoming County is anything but inconvenient to them. There is also no evidence that Plaintiff filed its action in Lycoming County for the purpose of inconveniencing the Defendants. Defendants have not shown that enforcement of the clause would be unreasonable and unjust or that the clause is invalid due to fraud. Therefore, the Court will honor the Plaintiff's venue choice, which is backed up by the forum selection clause in the Agreement. For these reasons, Defendants' Motion to Transfer is denied.

III. Motion to Coordinate Actions Pursuant to Pa.R.C.P. 213.1

Defendants next argue that the Lycoming County action should be coordinated with the Berks County action such that all proceedings take place in Berks County. Plaintiff concedes to the extent the actions be coordinated. Given the common questions of fact and law as well the risk of inconsistent results, the Court agrees that the actions should be coordinated. The question then becomes, between Berks and Lycoming, which county is more appropriate for the coordinated proceedings. Regarding coordination of actions, the Pennsylvania Rules of Civil Procedure state the following:

- (a) In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or

occurrence, any party, with notice to all other parties, may file a motion requesting **the court in which a complaint was first filed** to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

- (b) **The court in which the complaint was first filed** may stay the proceedings in any action which is the subject of the motion.
- (c) In determining whether to order coordination and which location is appropriate for the coordinated proceedings, the court shall consider, among other matters:
 - (1) whether the common question of fact or law is predominating and significant to the litigation;
 - (2) the convenience of the parties, witnesses and counsel;
 - (3) whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;
 - (4) the efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;
 - (5) the disadvantages of duplicative and inconsistent rulings, orders or judgments;
 - (6) the likelihood of settlement of the actions without further litigation should coordination be denied.
- (d) If the court orders that actions shall be coordinated, it may
 - (1) stay any or all of the proceedings in any action subject to the order, or
 - (2) transfer any or all further proceedings in the actions to the court or courts in which any of the actions is pending, or
 - (3) make any other appropriate order.
- (e) In the order of coordination, the court shall include the manner of giving notice of the order to all parties in all actions subject thereto and direct that specified parties pay the costs, if any, of coordination. The court shall also order that a certified copy of the order of coordination be sent to the courts in which the actions subject to the order are pending, whereupon those courts shall take such action as may be appropriate to carry out the coordination order.

Pa.R.C.P. 213.1(a)-(e).

Here, a Writ of Summons was filed in the Berks County action on March 28, 2018. The Complaint in the Lycoming County action was filed on May 15,

2018. The Complaint in the Berks County action was not filed until April 23, 2019. Thus, the Complaint in the two actions was filed first in Lycoming County.

In evaluating the factors set forth in Pa.R.C.P. 213.1(c), the Court finds that these actions should be consolidated in Lycoming County. The Court has already determined, and the parties agree, that coordination is appropriate and therefore, the first, fifth, and sixth factors are inapplicable. As to the second factor, the Court recognizes that most parties and witnesses are located in Berks County. Defendants also state that a site visit would be necessary at the time of trial and, since the property is located in Berks County, the traveling distance would be inconvenient and expensive for the Court and the parties. However, Plaintiff asserts, and the Court agrees, that a site visit is unlikely because the structural issues complained of by the Defendants will be introduced through expert testimony and photographic evidence. It is not unusual for expert witnesses to be from areas other than where a dispute occurs. To the contrary, it is quite common for expert witnesses to travel to testify. The Court also notes Plaintiff's suggestion that the testimony of witnesses, particularly expert witnesses, could be introduced via deposition.

Third, coordination will prevent delay from occurring in these cases. The parties conducted and completed discovery in the Lycoming County action, filed and argued a Summary Judgment Motion, and the case is now ready for trial. Trial is scheduled for November 3, 2020 in Lycoming County. It is this Court's understanding that trial in Berks County has not been scheduled yet. Further, coordination will likely result in less expense to the parties since they will not be

forced to try the matters separately. Finally, the Lycoming County Court is familiar with this action as it has already ruled on a Motion for Summary Judgment as well in the instant matter.

Lycoming County was Plaintiff's chosen forum because of the forum selection clause clearly written in the Agreement. The Court finds no compelling reason to coordinate the actions in Berks County and will give deference to Plaintiff's choice of venue. This Court does not intend any disrespect to its brethren in Berks County and notes for its sake that the Defendants in this matter have been dilatory in the handling of the cases, in what appears to be attempts to delay the overall litigation of the claims. The Plaintiff had to file a Motion to Compel Discovery to receive responses from Defendants. Additionally, Defendants waited over two years after the Complaint was filed and just a month and a half before trial to file a Motion to Transfer this case to Berks County. Therefore, for the reasons set forth above, the Berks County action and the Lycoming County action are coordinated and shall be heard in Lycoming County.¹

¹ The Court has the authority to transfer the Berks County action from Berks County to Lycoming County. In the case of *Richardson Brands, Inc. v. Pennsylvania Dutch Co., Inc.*, 592 A.2d 77 (Pa. Super. 1991), Philadelphia County ordered the transfer of a case from Cumberland County to Philadelphia County, stayed the proceedings in Cumberland County, and coordinated the two actions to be heard in Philadelphia County pursuant to Pa.R.C.P. 213.1. The Superior Court affirmed the trial court's order.

ORDER

AND NOW, this 13th day of **October, 2020**, upon consideration of Defendants' Motion to Transfer Venue and Motion to Coordinate Actions, for the reasons set forth above, the Motion to Transfer Venue to Berks County is **DENIED**. The Motion to Coordinate Actions is **GRANTED** to the extent the Berks County action and the Lycoming County action are coordinated and **DENIED** to the extent that the proceedings will be transferred to Berks County. Rather, the Berks County action will be transferred to Lycoming County and all proceedings in the Berks County action are stayed.

A copy of this Order shall be forwarded via U.S. First Class mail to counsel for all parties, as listed below. The parties are directed to equally pay the costs of coordination, if any. Finally, a certified copy of this Order shall be sent to the Berks County Court of Common Pleas.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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