

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JOHN RANLETT,

Appellant

v.

KURT WEISS GREENHOUSES, INC., ET  
AL.,

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2523 EDA 2012

Appeal from the Order of August 9, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Civil Division at No. 3405, December Term 2011

BEFORE: STEVENS, P.J., WECHT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

**FILED MAY 22, 2013**

This is an appeal from an order that sustained Appellees' preliminary objection and that transferred the case from Philadelphia County to Northumberland County. We affirm.

The background underlying this matter can be summarized in the following manner. Appellant John Ranlett ("Appellant") filed a complaint, and later an amended complaint, against Appellees Kurt Weiss Greenhouses, Inc., Kurt Weiss-Danville, Kurt Weiss of NJ, Inc., Mt. Carmel Greenhouses, LLC., and Kurt Weiss of Pennsylvania, Inc. ("Appellees"). Appellant commenced the action in Philadelphia County.

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\* Retired Senior Judge assigned to the Superior Court.

[In his amended complaint, Appellant] alleges that on August 25, 2011, he suffered serious and permanent injuries due to a fall at a property located at Routes 54 and 61 in Mt. Carmel, PA, which is the location of Mt. Carmel Greenhouses, LLC, and the registered office of Kurt Weiss Greenhouses of Pennsylvania, Inc. Said location is within Northumberland County, Pennsylvania. [Appellant's] Complaint asserts five counts of negligence, individually, against [Appellees]. [Appellant] alleges that an unsafe and dangerous condition on the premises caused his fall and injury.

Trial Court Opinion, 10/26/12, at 2.

Appellees filed preliminary objections to Appellant's amended complaint. Appellees argued, *inter alia*, that venue was improper in Philadelphia County but proper in Northumberland County. The trial court explained the parties' positions and the court's reasons for sustaining the preliminary objection to venue in the following manner.

In the instant case, none of [Appellees] are located in Philadelphia County and the cause of action did not arise in Philadelphia County. Appellant therefore argues that venue in Philadelphia is proper because [Appellees] regularly conduct business in Philadelphia County. [Appellant] averred in his Amended Complaint that [Appellees] regularly conduct business in Philadelphia County and therefore that pursuant to Pa.R.C.P. 2179(a)(c) venue in Philadelphia County is proper.<sup>[1]</sup>

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<sup>1</sup> Rule 2179(a)(2) provides as follows:

Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in . . . a county where it regularly conducts business[.]

Pa.R.C.P. 2179(a)(2).

In [Appellees'] Preliminary Objection to the Amended Complaint, Sal Silvestri, Chief Financial Officer of Kurt Weiss Greenhouses (KWG), executed an affidavit attesting that its total sales in Philadelphia County from 2007-2011 amounted to less than .2% of its total sales. This represented the sales within Philadelphia County of every entity affiliated with [KWG]. ([KWG] is the sales arm of [Appellees]. All other [Appellees] produce stock for [KWG]).

[Appellant] requested discovery limited to the issue of venue and his request was granted by the [c]ourt. [Appellant] deposed Mr. Silvestri on August 1, 2012. He reviewed sales information for a five-year period of sales within the Philadelphia market. Over the past five years, KWG's sales to Philadelphia customers ranged from 0.08% to 0.17% of total sales. Mr. Silvestri testified that the Mt. Carmel sales forces (6-8 people) does not regularly visit Philadelphia because the only customers KWG has in Philadelphia are corporate customers. Mr. Silvestri testified that KWG merely enters into contracts with the head corporate entities and the head offices determine where KWG should deliver the product. KWG does not make the deliveries themselves with their own trucks but relies on outside companies to do so.

While [Appellant] relies at length in his Supplemental Memorandum on the number of "customers" KWG has in Philadelphia County to prove the contacts of KWG are of sufficient quality and quantity for proper venue, [Appellant] counts each store of a corporation with whom [Appellees] have a contract as a separate consumer. Courts have consistently decided issues of venue based on the proportional amount of business done in a county. The percentage of income that Appellees generate from all contacts with the Philadelphia County market is extremely minimal. The necessary quantity of acts is not present to render Philadelphia County a proper venue. Furthermore, the quality of those acts are not sufficiently "continuous and efficient", as they are driven not by acts of [Appellees] at all but by the whims and demands of their corporate customers. These customers may decide tomorrow that [Appellees] should deliver no goods to Philadelphia County at all. [Appellees] do not even enter Philadelphia County to complete deliveries. Any contact that [Appellees] have with Philadelphia is too attenuated and incidental to render venue in Philadelphia County proper.

***Id.*** at 3-5 (citation omitted).

Appellant timely filed a notice of appeal from the order sustaining Appellees' preliminary objection.<sup>2</sup> In his brief to this Court, Appellant asks us to consider one question, namely:

Whether the Lower Court erred when it sustained Appellees' Preliminary Objections and transferred this case from Philadelphia County to Northumberland County where they failed to sustain their burden of establishing that none of them regularly conducted business in Philadelphia at the time in question.

Appellant's Brief at 4.

The following principles of law guide the manner in which we consider such an issue.

The trial court is accorded considerable discretion in determining whether or not to grant a petition for change of venue, and the standard of review is one of abuse of discretion. The plaintiff's choice of forum is given great weight. Thus, the party seeking a change of venue bears the burden of proving that a change of venue is necessary, while a plaintiff generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied.

In determining whether a corporation or partnership regularly conducts business in a county, we employ a quality-quantity analysis. A business entity must perform acts in a county of sufficient quality and quantity before venue in that county will be established. Quality of acts will be found if an entity performs acts in a county that directly further or are essential to the entity's business objective; incidental acts in the county are not sufficient to meet the quality aspect of the test. Acts that aid a

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<sup>2</sup> Such orders are immediately appealable as of right. Pa.R.A.P. 311(c).

main purpose are collateral and incidental while those necessary to an entity's existence are direct. Quantity of acts means those that are sufficiently continuous so as to be considered habitual. Each case must be based upon its own individual facts.

***Zampana-Barry v. Donaghue***, 921 A.2d 500, 503-04 (Pa. Super. 2007) (citations and quotation marks omitted).

Here, the trial court concluded, *inter alia*, that the quantity of Appellees' acts in Philadelphia County were insufficient to establish venue in that county. The court's conclusion in this regard was based upon the undisputed fact that the percentage of income Appellees generated from sales in Philadelphia County amounted to less than one percent of their annual sales from the years 2007-2011. Appellants concede that Pennsylvania's appellate courts "have historically used the proportional amount of revenue from the forum as a reference point" in determining whether a corporation's acts are of a sufficient quantity to establish venue. Appellant's Brief at 15. Appellant, however, asserts that "the only bright-line rule is that a single contact with a jurisdiction is insufficient." ***Id.*** According to Appellant, Appellees' acts "of delivering plants and related items to Philadelphia retail outlets was 'continuous and sufficient' so as to be 'general or habitual[.]'" ***Id.*** at 14. Thus, in Appellant's view, Appellees' acts in Philadelphia County were of a quantity to establish venue in Philadelphia County.

Generally speaking, the parties do not dispute the pertinent facts of this case. These facts indicate the following. Appellees' sales division, KWG, typically negotiates contracts with corporate entities, such as K-Mart, to

provide what could be described as gardening supplies to these corporations. The corporate entities direct Appellees where they want Appellees' products delivered, such as stores in Philadelphia County. Appellees usually hire independent truckers to deliver their products to the corporate entities' individual stores. In terms of Appellant's position, at best, from 2007-2011, Appellees' sales in Philadelphia accounted for 0.10% to 0.17% of their total sales.

The trial court determined that this quantity of acts on Appellees' part in Philadelphia were insufficient to establish venue in that county. As we noted above, we must review the trial court's conclusion for an abuse of discretion. "Abuse of discretion occurs if the trial court renders a judgment that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias or ill-will." ***Hutchinson v. Penske Truck Leasing Co.***, 876 A.2d 978, 984 (Pa. Super. 2005) (citation omitted).

While Appellees' acts in Philadelphia constitute far more than a single contact, Appellant has failed to convince us that the court abused its discretion by sustaining Appellees' preliminary objection. The court's conclusions that "[t]he percentage of income that Appellees generate from all contacts with the Philadelphia County market is extremely minimal," Trial Court Opinion, 10/26/12, at 5, and that these minimal acts fail to establish venue in Philadelphia are not manifestly unreasonable, arbitrary, capricious, or unsupported by the law. Moreover, nothing about the court's decision indicates that the court was motivated by partiality, prejudice, bias, or ill-

will. We, therefore, find that the court did not abuse its discretion by sustaining Appellees' preliminary objection and transferring the case from Philadelphia County to Northumberland County.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambitt", written over a horizontal line.

Prothonotary

Date: 5/22/2013