

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LACKAWANNA CASUALTY COMPANY,

Appellant

v.

KEARES ELECTRICAL CONTRACTING,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 681 MDA 2012

Appeal from the Order Entered March 13, 2012
In the Court of Common Pleas of Luzerne County
Civil Division at No(s): 2011-15917

BEFORE: BOWES, GANTMAN, and OLSON, JJ.

MEMORANDUM BY BOWES, J.:

FILED JUNE 06, 2013

Lackawanna Casualty Company ("Lackawanna") commenced this breach of contract action in Luzerne County to collect \$12,933.80 in unpaid premiums on an insurance policy it issued to Keares Electrical Contracting ("Keares"). Keares filed preliminary objections to the complaint in which it challenged venue in Luzerne County. The trial court sustained the preliminary objections pursuant to Pa.R.C.P. 2179, and ordered the action transferred to Chester County. After careful review, we reverse.

The facts as gleaned from the record are as follows. Lackawanna is a Pennsylvania corporation with its place of business in Luzerne County; Keares is a Pennsylvania corporation with its place of business in Chester County. Complaint ¶¶1, 2. Keares purchased workers' compensation and employers' liability policy insurance coverage from Lackawanna and made

estimated monthly premium payments. Lackawanna pled that it was agreed that an audit would be conducted at the end of the policy period to determine the final premium. The audit revealed a total annual premium of \$99,097, \$86,163.20 of which Keares had paid, leaving an unpaid balance of \$12,933.80. When Keares failed to pay the balance allegedly due, Lackawanna instituted the within collection action in Luzerne County.

Keares filed preliminary objections to the complaint, alleging that venue in Luzerne County was improper under Pa.R.C.P. 2179, and Lackawanna responded. The trial court sustained the objections and transferred the action to Chester County, and Lackawanna filed this appeal.

Lackawanna presents one issue for our review: "Whether the trial court abused its discretion by granting a change of venue from Luzerne County to Chester County when the record established that a cause of action arose in Luzerne County or a transaction or occurrence took place in Luzerne County out of which the cause of action arose." Appellant's brief at 4.

Our scope and standard of review are as follows:

It is well established that a trial court's decision to transfer venue will not be disturbed absent an abuse of discretion. A Plaintiff's choice of forum is to be given great weight, and the burden is on the party challenging the choice to show it was improper. However, a plaintiff's choice of venue is not absolute or unassailable. Indeed, if there exists any proper basis for the trial court's decision to grant a petition to transfer venue, the decision must stand.

Wimble v. Parx Casino & Greenwood Gaming & Entertainment, Inc.,
40 A.3d 174 (Pa.Super. 2012).

The instant case involves venue against a corporation, which is governed by Pa.R.C.P. 2179. Rule 2179 provides in relevant part as follows:

- (a) Except as otherwise provided by an Act of Assembly or by subdivision (b) of this rule, 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 the transaction or occurrence took place out of which the cause of action arose.
 - (5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa.R.C.P. 2179(a). “These prerequisites to venue are stated in the disjunctive and acts triggering any one of the subsections are sufficient to attach venue.” ***Deeter-Ritchey-Sippel Associates v. Westminster College***, 357 A.2d 608, 610 (Pa.Super. 1976) (*overruled on other grounds by Purcell v. Bryn Mawr Hospital*, 550 A.2d 1320 (Pa.Super. 1988)).

It is undisputed that Keares’s principal place of business and the county where it regularly conducts business is Chester County and that it does not conduct business in Luzerne County. Lackawanna contends, however, that venue is proper in Luzerne County based on subdivisions

(a)(3) and (a)(4) of the rule. It cites ***Pennsylvania Higher Education Assistance Agency v. Christon***, 400 A.2d 1329 (Pa.Cmwlt. 1979) for the proposition that venue is proper where the contract is accepted, as that is the place of contract formation. The insurer maintains that the insurance policy, *i.e.* the contract, became effective “[i]n return for the payment of the premium[.]” Insurance Policy at 1. That occurred, according to Lackawanna, at its office in Luzerne County and, furthermore, that is where all transactions concerning the policy occurred. Appellant’s brief at 10. Finally, Lackawanna contends that the cause of action for breach of contract arose in its office in Luzerne County where payment was due.

Keares counters that it accepted Lackawanna’s offer to provide insurance in Chester County and the claim arises from the audit conducted at its Keares’ place of business in Chester County. It disputes Lackawanna’s claim that receipt of the first premium payment at its office in Luzerne County was the situs of contract formation. Keares points to the insurer’s allegation in the complaint that the parties entered into an agreement on February 1, 2009, “whereby plaintiff agreed to provide workers’ compensation and employers’ liability insurance coverage to defendant and defendant agreed to pay plaintiff the appropriate premium[.]” Complaint ¶3. There is nothing in the record to indicate where that agreement was physically formed. Keares maintains that in a contract dispute, the “transaction or occurrence” in subsection (a)(4) cannot be just any act in the

formation of the contract, but must be “the ultimate formation of the contract itself.” **See Pennsylvania Higher Education Assistance Agency v. Devore**, 406 A.2d 343, 344 (Pa.Super. 1979).

The trial court found that the agreement was prepared by Lackawanna and that it did not contain a venue provision. Furthermore, there was no evidence of record that would support venue in Luzerne County under the first, second, or fifth prongs of the Rule. Moreover, the court found that the cause of action for breach of contract action arose in Chester County when Keares failed to make a payment from its business location, and that sending prior payments to Luzerne County was not sufficient to satisfy subsections (3) or (4). Finally, absent evidence that the contract was formed in Luzerne County, the court concluded that venue could not be sustained in Luzerne County.

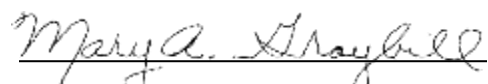
We agree with the trial court that there was insufficient evidence in the record to conclude that the contract was made, *i.e.*, the offer was accepted, in Luzerne County. **Craig v. W.J. Thiele & Sons, Inc.**, 149 A.2d 35, 36 (Pa. 1959); **Lovelace v. Pennsylvania Property and Casualty Insurance Guaranty Association**, 874 A.2d 661 (Pa.Super. 2005). However, the court erred in concluding that the cause of action for breach of contract arose in Chester County when Keares failed to make a payment from its business location. In **Lucas Enterprises, Inc. v. Paul C. Harman Company, Inc.**, 417 A.2d 720, 721 (Pa.Super. 1980), this Court adopted

what it termed “the universal rule” that, “in the absence of agreement to the contrary, 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, 272 (Pa.Super. 1985) (venue was proper in Philadelphia at plaintiff’s place of business to recover unpaid balance). We viewed that rule as consistent with our earlier decision in **Pennsylvania Higher Education Assistance Agency v. Devore**, 406 A.2d 343 (Pa.Super. 1979), that a suit alleging breach of an obligation to pay money may be brought in the county where the one to whom the obligation was originally owed is located. **Id.** at n.2. More recently, in **84 Lumber Company, L.P. v. Fish Hatchery, L.P.**, 934 A.2d 116 (Pa.Super. 2007), relying upon **Lucas**, this Court held that venue was proper in Northampton County in a breach of contract action for failure to pay because all prior payments were tendered to the Northampton County store location.

Thus, we conclude that venue is proper in Luzerne County pursuant to Rule 2179(a)(3), as it is the county where the cause of action arose.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.


Deputy Prothonotary

Date: 6/6/2013