[J-108-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

MICHELLE ZAPPALA	:	No. 12 EAP 2005
	:	
v.	:	Order of the Superior Court entered April
	:	16, 2004, at 3807 EDA 2002, reversing,
BRANDOLINI PROPERTY	:	vacating, and remanding the Order of the
MANAGEMENT, INC.; PAOLI SHOPPING	:	Court of Common Pleas of Philadelphia
CENTER LIMITED PARTNERSHIP;	:	County entered on October 25, 2002, at
PAOLI SHOPPING CENTER LIMITED	:	No. 2000-3857
PARTNERSHIP II; PAOLI SHOPPING	:	
CENTER LIMITED PARTNERSHIP	:	849 A.2d 1211 (Pa. Super. 2004)
PHASE II; UNITED BUILDERS &	:	
CONSTRUCTORS, LTD.; KORTAN	:	ARGUED : October 17, 2005
GENERAL MAINTENANCE, INC.; THE	:	
JAMES LEWIS GROUP T/A BRANDOLINI	:	
COMPANIES; JAMES LEWIS	:	
CORPORATION; PROGRESS BANK;	:	
THE PEP BOYS -- MANNY, MOE & JACK	:	
T/A PEP BOYS; BRUBACHER	:	
EXCAVATING, INC.; GREEN DESIGN,	:	
INC.; CARROLL CONTRACTORS, INC.;	:	
PICKERING VALLEY LANDSCAPE, INC.;	:	
BALA ELECTRIC; and HEYSER	:	
LANDSCAPING, INC.	:	
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MICHELLE ZAPPALA	:	
	:	
v.	:	
	:	
THE JAMES LEWIS GROUP T/A	:	
BRANDOLINI COMPANIES; JAMES	:	
LEWIS CORPORATION; PROGRESS	:	
BANK; and THE PEP-BOYS--MANNY,	:	
MOE & JACK T/A PEP BOYS	:	
	:	
APPEAL OF: BRANDOLINI PROPERTY	:	

MANAGEMENT, INC.; PAOLI SHOPPING :
CENTER LIMITED PARTNERSHIP; :
PAOLI SHOPPING CENTER LIMITED
PARTNERSHIP II; UNITED BUILDERS &
CONSTRUCTORS, LTD.; THE JAMES
LEWIS GROUP T/A BRANDOLINI
COMPANIES; JAMES LEWIS
CORPORATION

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: November 27, 2006**

The majority holds an objection to venue can only be raised by preliminary objections, pursuant to the plain language of Pa.R.C.P. 1006(e); any later objection is deemed waived. Majority Slip Op., at 19-20. For the following reasons, I respectfully dissent.

As the majority notes, Rule 1006(e) clearly states that an improper venue objection must be raised in preliminary objections. Preliminary objections, in turn, must be raised within 20 days after the filing of the complaint. See Pa.R.C.P. 1026, 1028(a)(1). The dilemma is that venue, assessed under the circumstances at the time for preliminary objections, was proper; venue, assessed under the changed circumstances, was not proper. The change in circumstances occurred only after the time for preliminary objections was past. That is, the language of our Rules would not give a party the opportunity to raise a legitimate objection to venue in this situation. Put another way, our Rules seem to allow a party to manipulate venue by naming and preserving parties in a case until the time of preliminary objections is past.

We interpret our Rules generally according to their plain language. Id., 127(b). However, we do not interpret our Rules in a manner that would lead to a "result that is

absurd, impossible of execution or unreasonable[.]" Id., 128(a). "The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable." Id., 126. The majority's result forces a party to raise an invalid objection to venue -- the defense here had no basis for an objection to venue within 20 days of the Complaint -- then it disallows the objection when it becomes legitimate. This is a Catch-22 that would make Joseph Heller proud.

Despite the deference afforded the plaintiff's choice of forum when multiple defendants in different venues are named, this plaintiff "admitted that she had no information to support her claims against the Philadelphia County [d]efendants; and therefore never should have named [them]." Majority Slip Op., at 6. However, by making those claims, she created venue in Philadelphia and precluded any objection to venue within the time for filing preliminary objections. Once her unwarrantedly broad choice of parties was resolved, the venue she chose had no ties to the case -- venue was not only gone, it clearly had not been there in the first place. Thus, the plaintiff's wrongdoing, whether intentional or not, allowed her to choose an inappropriate venue, and under the majority's decision, precluded anyone from doing anything about it.

I find no logic or purpose in this result, which defeats our venue rules, forces the other party to make a prompt but frivolous objection to venue, precludes its legitimate objection when venue is shown not to exist, and forces a county with no ties to the case to expend the resources to try it. This, in my judgment, is a truly absurd result that cannot be within the contemplation of our Rules.

I find the majority's decision to be an approval of a forum-shopping technique that future unscrupulous parties may use to subvert the requirements of venue. I would

hold that where a plaintiff is determined to have no original claim against the defendants on which plaintiff's choice of venue is based, upon dismissal of such defendants,[1] the remaining parties would be allowed 20 days from the dismissal to raise issues of improper venue under Rule 1006(e).

Accordingly, I would reverse the Superior Court order and reinstate the trial court's order transferring venue to Chester County.

Mr. Justice Castille joins this dissenting opinion.

[1] This would not apply to settlements with named defendants, but only to cases where the venue-producing defendants should not have been in the case to start with.