

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PETER J. MCNAMARA, ESQUIRE	:	
	:	March Term 2004
Plaintiff,	:	
v.	:	No.: 4598
	:	
TIMOTHY P. KEARNEY, WILLIAM M.	:	Commerce Program
BENDON, ESQUIRE, and LAW	:	
OFFICES OF KENNETH R. SCHUSTER	:	Control No.: 041088
& ASSOCIATES, P.C.	:	
Defendants	:	

ORDER

AND NOW, this 30th day of June, 2004, upon consideration of Defendants' Preliminary Objections to Plaintiff's Complaint and Plaintiff's Letter Response thereto, it is hereby **ORDERED** and **DECREED** that Defendants' Preliminary Objections are **SUSTAINED**.

This matter is hereby **TRANSFERRED** to Delaware County, with costs to be borne by plaintiff.

BY THE COURT,

C. DARNELL JONES, J.

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	:	March Term 2004
Plaintiff,	:	
v.	:	No.: 4598
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TIMOTHY P. KEARNEY, WILLIAM M. BENDON, ESQUIRE, and LAW OFFICES OF KENNETH R. SCHUSTER & ASSOCIATES, P.C.	:	Commerce Program
	:	Control No.: 041088
Defendants	:	

MEMORANDUM OPINION

JONES, J.

Presently before the court are the Preliminary Objections of Defendants William M. Bendon, Esquire (“Bendon”), and Law Offices of Kenneth R. Schuster & Associates, P.C. (“Law Offices”), to the Complaint of Plaintiff Peter J. McNamara, Esquire (“McNamara”). For the reasons that follow, the court sustains Defendants’ Preliminary Objections and transfers this matter to Delaware County.

According to the Complaint, Defendant Timothy P. Kearney (“Kearney”), not a party to this motion, was injured in a work-related accident and hired McNamara to represent him. McNamara incurred costs and expenses pursuant to the representation. Kearney terminated McNamara and retained Bendon and Law Offices in his stead. Bendon and Law Offices have made use of materials acquired and developed by McNamara during his representation of Kearney. McNamara seeks to recover his proper share of costs and fees from Bendon and Law Offices by bringing a single count for unjust enrichment against Bendon and Law Offices.¹

¹ No claim for relief is asserted against Kearney. The court cannot determine whether Kearney was misjoined in error or for purposes of creating venue.

Bendon and Law Offices move to dismiss the Complaint or, in the alternative, transfer this matter for improper venue. Plaintiff contends that his contract with Kearney serves as the necessary transaction to support venue because it was entered into in Philadelphia County.²

Pennsylvania courts look to the specific elements of the cause of action to determine the location of the “transaction or occurrence” for purposes of venue. See, e.g., Harris v. Brill, 844 A.2d 567, 571 (Pa. Super. 2004); Stein v. Crown Am. Realty Trust, 54 Pa. D. & C.4th 383, 2001 WL 1807954, *2 (Phila. C.P. 2001). To state a claim for unjust enrichment, a plaintiff must show (1) benefits conferred on defendant by plaintiff, (2) appreciation of such benefits by defendant, and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. 1999). The Complaint is silent as to any of the benefits, their appreciation, or retention having a connection to Philadelphia County. Since Bendon and Law Offices are located in Delaware County, it follows that the benefits were received, appreciated, and retained in that County. Therefore, for Bendon and Law Offices, venue is improper in Philadelphia County and proper in Delaware County.

BY THE COURT,

C. DARNELL JONES, J.

² No contract was attached to the Complaint and Plaintiff raises this assertion in his Letter Response, thus this contention is improperly alleged for purposes of resolving the Preliminary Objections.