

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

146 MONTGOMERY INVESTORS, L.P.,	:	June Term 2005
Plaintiff,	:	
v.	:	No. 3446
PARKE REHABILITATION & SPORTS	:	
MEDICINE, INC.,	:	COMMERCE PROGRAM
Defendant.	:	
	:	Control Number 082892
	:	

ORDER

AND NOW, this 5th day of October, 2005, upon consideration of Defendant's Preliminary Objections for Improper Venue, Plaintiff's response in opposition, Memoranda, all matters of record and in accord with the Memorandum Opinion to be filed herewith, it hereby is **ORDERED** and **DECREED** that Defendant's Motion is **Sustained** and this case is transferred to Montgomery County Court of Common Pleas. Plaintiff shall pay the costs and fees for transfer and removal of the record.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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OPINION

ABRAMSON, J.

Presently before the court is Defendant Parke Rehabilitation & Sports Medicine, Inc.'s ("Defendant") preliminary objection for improper venue. For the reasons discussed below, defendant's objection is sustained and this matter is transferred to Montgomery County.

BACKGROUND

On June 30, 2005 Plaintiff 146 Montgomery Investors, L.P. ("Plaintiff") filed this action in Philadelphia County alleging damages arising from a breach of lease with respect to a certain piece of commercial property located at 146 Montgomery Avenue. Plaintiff is a Delaware Limited Partnership and the current owner of the premises located at 146 Montgomery Avenue, Bala Cynwyd, Pa. Plaintiff purchased the property from Kirsch Enterprises Inc. on November 23, 2004.

Allegedly on July 29, 1998, Kirsch Enterprises, Inc. entered into a lease and rider with respect to the rental of certain commercial space on the first floor of 146 Montgomery Avenue, Bala Cynwyd. The lease was subsequently amended on two occasions. Thereafter, plaintiff alleges that by letter dated October 13, 2004, defendant in

accordance with the terms of paragraph 35 of the rider exercised its option for renewal for an additional five year period commencing April 18, 2005 through April 17, 2010. On or about April 15, 2005, Defendant allegedly vacated the premises and refused to honor its commitment pursuant to the lease. Plaintiff has now instituted this suit seeking damages arising from defendant's alleged default.

DISCUSSION

A trial court has "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." Singley v. Flier, 851 A.2d 200 (Pa. Super. 2004)(*quoting Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 579 A.2d 1282, 1284 (Pa. 1990)). "If there exists any proper basis for the trial court's decision to grant the petition to transfer venue, the decision must stand." Id (*quoting Estate of Werner ex. rel. Werner v. Werner*, 781 A.2d 188, 190 (Pa. Super. 2001)). The moving party has the burden of proving that the original forum is improper. Goodman v. Fonslick, 844 A.2d 1252 (Pa. Super. 2004).

Pennsylvania Rule of Civil Procedure 2179 provides that a personal action may be brought against a corporation or similar entity, 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 a transaction or occurrence took place out of which the cause of action arose. Pa. R.C.P. 2179(a).

Here, the only basis for venue in Philadelphia county is the allegation that defendant "regularly conducts business" in Philadelphia. To determine whether a corporate entity regularly conducts business in a particular county, the court considers

whether the corporate entity's contacts with that county are sufficient to compel it to defend itself there. Krosnowski v. Ward, 836 A.2d 143, 147 (Pa. Super. 2003). Such business contacts must be evaluated based on their quality and quantity. Quality of acts means those directly, furthering or essential to, corporate objects; they do not include incidental acts. Quantity means those acts which are so continuous and sufficient to be general or habitual. For corporate acts, those in aid of a main purpose are collateral and incidental, while those necessary to its existence are direct. Id. Each case must rest on its own facts. Singley v. Flier, 851 A.2d 200 (Pa. Super. 2004).

In the case *sub judice*, the evidence presented demonstrates that although defendant conducted business in Philadelphia for approximately five years on a part time basis, at the time this action was instituted defendant did not transact any business in this county. Pa. R. Civ. P. 2179 (a)(2) plainly provides that personal actions against a corporation or similar entity may be brought in and only in a county where it regularly conducts business. This action was commenced on June 30, 2005. Defendant ceased doing business in Philadelphia on June 28, 2005. (Exhibit "A" attached to Dfts. Memo. in support of Preliminary Objections). Since the defendant no longer conducts any business in Philadelphia, this matter should be dismissed for improper venue and transferred to Montgomery County.

CONCLUSION

For the foregoing reasons, Defendant's Preliminary Objections based on Improper Venue is Sustained and this matter is transferred to Montgomery County Court of Common Pleas. Plaintiff is directed to pay the costs and fees for transfer and removal of the record.

An order consistent with this Opinion will follow.

BY THE COURT,

HOWLAND W. ABRAMSON, J.