

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

LINDA SHECTER	:	
	:	CIVIL TRIAL DIVISION
	:	
Appellant	:	JULY TERM, 2010
v.	:	No. 1685
	:	
TOWN SPORTS INTERNATIONAL RADNOR, LLC d/b/a PHILADELPHIA SPORTS CLUB; TOWN SPORTS INTERNATIONAL, LLC a/k/a PHILADELPHIA SPORTS CLUB and PHILADELPHIA SPORTS CLUB and UNISEN, Inc., a/k/a STAR TRAC AND STAR TRAC	:	SUPERIOR COURT #7DA2011
	:	
Appellees	:	
	:	

OPINION

PROCEDURAL HISTORY

Plaintiff appeals from this Court’s Order of December 10, 2010, granting the Preliminary Objections to Venue filed by Defendants Town Sports International Radnor, LLC d/b/a Philadelphia Sports Club’s¹, Town Sports International, LLC d/b/a Philadelphia Sports Club, and Philadelphia Sports Club (hereinafter PSC Defendants).

FACTUAL BACKGROUND

On March 22, 2009, Plaintiff, Linda Shecker (hereinafter Plaintiff), was in the PSC Defendants’ health club facility when she was allegedly injured when she attempted

¹ Town Sports International Radnor, LLC d/b/a Philadelphia Sports Club was incorrectly designated as Town Sports International, Inc. d/b/a Philadelphia Sports Club.

to get onto a treadmill. (Complaint, ¶ 16.) Plaintiff claims that the treadmill was “not off” when she attempted to get on it and fell as a result. *Id.*

Plaintiff brought an action in the Philadelphia Court of Common Pleas on July 16, 2010 against PSC Defendants, Unisen, Inc. t/a and d/b/a Star Trac, and Star Trac, alleging that the Defendants were negligent in maintaining, repairing and inspecting the treadmill that purportedly caused Plaintiff’s injuries. (Complaint, ¶ 23).

Plaintiff was a member of the PSC Defendants’ gym located at 555 East Lancaster Avenue in St. Davids, PA. (PSC Defendants’ Preliminary Objections, ¶ 2). As part of her membership, the Plaintiff signed a Membership Agreement on or about January 5, 2009. (PSC Defendants’ Preliminary Objections, ¶¶ 6, 7). Pursuant to Section 4.5 of the signed Membership Agreement, Plaintiff agreed that any action arising within the state of Pennsylvania would be heard in Bucks County, Pennsylvania. Section 4.5 of the Agreement specifically states:

Governing Law: Jurisdiction. These terms and conditions shall be governed in all respects by the substantive laws of the state in which the cause of action arises, without regard for conflict of law principals of such state. With respect to personal jurisdiction, you hereby irrevocably submit to personal jurisdiction in any action brought in any court, federal or state and subject matter jurisdiction arising under the contract within the locations set forth below, and you hereby waive, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction, inconvenient forum and improper venue to the maintenance of any action. You hereby waive the right to trial by jury.

The contract further provides in pertinent part:

State Where Cause of Action Arises

Venue/Jurisdiction

Pennsylvania

Bucks County, PA

(PSC Defendants’ Preliminary Objections, Exhibit B, Membership Agreement §4.5)

The executed Membership Agreement also includes Section 3.2, which states “members shall be responsible for any property damage or personal injury caused by them, their family, or their guests.” (PSC Defendants’ Preliminary Objections, Exhibit B, Membership Agreement §3.2). Lastly, Section 3.5 provides that by signing the agreement, “you represent that you understand and you acknowledge that there are certain risks associated with the use of a health club [...]. We cannot guarantee that any facility or equipment is free of risk.” (PSC Defendants’ Preliminary Objections, Exhibit B, Membership Agreement §3.5).

Plaintiff is currently, and was at the time of the accident, a resident at 7 Norwood Avenue, Bryn Mawr, Pennsylvania 19010, located in Delaware County. (PSC Defendants’ Preliminary Objections, ¶ 2). The premises in which the Plaintiff alleges the accident occurred is located at 555 East Lancaster Avenue, Radnor, Pennsylvania 19087, which is also situated in Delaware County. (PSC Defendants’ Preliminary Objections, ¶ 3). The premises of the alleged injury, operated by the Defendant TSI Radnor LLC and each of the gyms/facilities d/b/a Philadelphia Sports Clubs are separate legal entities. (PSC Defendants’ Preliminary Objections, ¶¶ 4, 5).

PSC Defendants filed Preliminary Objections to Venue on November 2, 2010; The Preliminary Objections contend that Bucks County, Pennsylvania is the proper venue for the action since the Plaintiff had signed the Membership Agreement requiring all actions to be heard there. On November 5, 2010, the Plaintiff filed her Response to the Preliminary Objections, arguing that the jurisdictional provision within the Membership Agreement only governs the terms and conditions of the contract and has no applicability

to her personal injury suit establishing claims of negligence and strict liability. (Plaintiff's Reply to Preliminary Objections, ¶ 15).

By Order dated December 10, 2010, this Court granted PSC Defendants' Preliminary Objections, transferring venue to Bucks County, Pennsylvania. Plaintiff appealed this Court's Order on December 20, 2010 and issued her 1925(b) Statement of Errors on January 28, 2011.

The sole issue to be addressed on appeal is whether this Court abused its discretion when it sustained Defendant's Preliminary Objections to Venue and transferred this case to Bucks County, Pennsylvania where an executed contract between the parties contains a forum selection clause requiring all actions against the Defendants to be brought in Bucks County, Pennsylvania.

LEGAL ANALYSIS

In Pennsylvania, the trial court is vested with the broad discretion to determine whether or not to grant a petition to transfer venue. *Purcell v. Bryn Mawr Hospital*, 525 Pa. 237, 242, 579 A.2d 1282, 1284 (1990). In such a case, the standard of review is abuse of discretion. *Id.* A trial court's determination that transfer of venue is appropriate will not be overturned when such conclusion is reasonable in light of the record. *Monaco v. Montgomery Cab Co.*, 417 Pa. 135, 143, 208 A.2d 252, 256 (1965). It is not enough for an appellant to persuade an appellate court it might have come to a different result. *McCrorry v. Abraham* 441 Pa. Super. 258, 261, 657 A.2d 499, 501 (1995). Furthermore, the appellant has the burden of demonstrating that the Trial Court misapplied or overrode

the law, the decision was manifestly unreasonable, or resulted from partiality, prejudice, bias or ill will. *Id.*

Pennsylvania Rule of Civil Procedure 1006(e)(1) provides in relevant part:

Improper venue shall be raised by preliminary objection and if not raised shall be waived. If a preliminary objection to venue is sustained and there is a county of proper venue within the state the action shall not be dismissed but shall be transferred to the appropriate court of that county. The costs and fees for transfer and removal of the record shall be paid by the plaintiff.

Moreover, Pennsylvania Courts recognize that “forum selection clauses are presumed to be valid” and enforcement is permitted “when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.” *Patriot Leasing Company Inc. v. Kramer Enterprises LLC*, 2006 Pa. Super. 371, 915 A.2d. 647, 650 (2006), (citing *Central Contracting Co. v. C.E. Youngdahl & Co.*, 418 Pa. 122, 209 A.2d 810, 816 (1965)). In determining whether a forum selection clause is reasonable and, as a result, enforceable this Court has noted in previous decisions that an agreement is only unreasonable when a plaintiff’s ability to pursue his or her cause of action is seriously impaired under all circumstances. *Judy Kelly v. Bear Stearns & Co. Inc.*, 2001 Phila Ct. Com. Pl. LEXIS 45 (2001), (citing *Central Contracting Co. v. C.E. Youngdahl & Co.*, 418 Pa. 122, 133, 209 A.2d 810, 816 (1965)). “Mere inconvenience or additional expense is not the test of unreasonableness [...]” and “[i]f the agreed upon forum is available to plaintiff and said forum can do substantial justice to the cause of action then plaintiff should be bound by the agreement.” *Id.*

In the present case, Plaintiff read and signed the Membership Agreement, which explicitly provided under Section 4.5 entitled “Governing Law; Jurisdiction” for jurisdiction and venue of any action to be Bucks County Court of Common Pleas. The Agreement was reasonable and the Plaintiff entered into it freely. Bringing the action in Bucks County Court of Common Pleas cannot be said to seriously impair the Plaintiff’s ability to bring her cause of action. The Plaintiff has failed to present any evidence the forum selection clause of the Membership Agreement seriously impairs her ability to pursue her cause of action

The Plaintiff attempts to argue that Section 4.5 of the Membership Agreement, which establishes that all actions must be brought in Bucks County, Pennsylvania, does not apply to her personal injury action. (Plaintiff’s Response to Preliminary Objections, ¶¶ 8-10). She alleges her action does not fall under any of the terms and conditions of the Agreement and, therefore, the forum selection clause does not apply. The Plaintiff’s contention is clearly erroneous. It has been well established that a party is bound by the clear and unambiguous language of a contract. *Nevyas v. Morgan*, 2007 Pa.Super 66, 921 A.2d 8, 15 (2007). Furthermore, it was noted in *Currid v. Meeting House Restaurant Inc.*, 584 Pa. 694, 882 A.2d 478 (2005):

In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties’ understanding. This court must construe the contract only as written and may not modify the meaning under the guise of interpretation.

In determining whether the language of a contract is unambiguous *City of Philadelphia v. Delaware County Board of Appeals* provides useful guidance. It states that when establishing whether a term or phrase is ambiguous, “a court must not rely upon a strained contrivance to establish [ambiguity]; scarcely an agreement could be conceived that might not be unreasonably contrived into the appearance of ambiguity.” 1997 Pa. Commw. LEXIS 96, 691 A.2d 992, 995 (1997). In other words, the language within a contract cannot be skewed in a manner that would attempt to forcefully render it ambiguous. *Id.*

It is evident through examining the plain language of the Membership Agreement that Section 4.5 unambiguously states that Bucks County is the proper venue for bringing an action against the Defendants. This section states the jurisdiction in “any action” taking place in Pennsylvania will be heard in Buck County. The term “any action” clearly brings Plaintiff’s personal injury action with the purview of Section 4.5. Moreover, Section 4.5 makes no distinction as to the form of action pursued by the party in order to trigger the forum selection clause. Therefore, when the Agreement is read with respect to its plain and unambiguous language it is unequivocally clear that Bucks County, Pennsylvania is the appropriate venue for the Plaintiff to bring her action.

Additionally, Section 3.2: “Member Conduct” and Section 3.5: “Activity Risk” apply to the Plaintiff’s personal injury action, rendering Bucks County Court of Common Pleas the proper venue. Section 3.2 provides that members are responsible for any property damage or personal injury caused by them and Section 3.5 states “by signing this agreement you represent that you understand and acknowledge that there are risks associated with the use of a health club and the use of fitness equipment [...]. We cannot

guarantee that any facility or equipment is free of risk.” (PSC Defendants’ Preliminary Objections, Exhibit B, Membership Agreement §§ 3.2, 3.5). By the Plaintiff signing this Agreement, which contains the aforementioned venue clause, she acknowledged the risks of using the treadmill she claims to have been injured from and that any claim arising therefrom should be litigated in Bucks County, Pennsylvania.

Although Pennsylvania Rule of Civil Procedure 2179(a) states that venue against a corporation is proper where the corporation regularly conducts business, an agreement to commence an action in a specific venue preempts this rule. The fact that the Plaintiff signed the Membership Agreement containing the forum selection clause establishing Buck County, Pennsylvania as the proper venue for all actions makes moot the issue of whether Philadelphia County could be a proper venue for her action. In *Central Contracting Co. v. C.E. Youngdahl & Co.*, 418 Pa. 122, 133, 209 A.2d 810, 816 (1965), the Court sets forth that:

The modern and correct rule is that, while private parties may not by contract prevent a court from asserting its jurisdiction or change the rules of venue, nevertheless, a court in which venue is proper and which has jurisdiction should decline to proceed with the cause of action when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of the litigation.

Here, the Plaintiff has made no contention that the Agreement was unreasonable or that she did not enter into it freely. It has already been established that the forum selection clause contained in the Agreement is reasonable because it in no way impedes the Plaintiff’s ability to pursue her cause of action. The Plaintiff has signed and

effectuated the Agreement and, therefore, the plain and unambiguous language of the forum selection clause should be honored.

Bucks County, Pennsylvania is the proper venue for the Plaintiff's cause of action because the plain language of the forum selection clause contained within the Membership Agreement is clear and unambiguous. The Plaintiff freely entered into the Agreement and has failed to demonstrate that it was unreasonable or that it would seriously impair her ability to pursue her cause of action. Therefore, the transfer of the action to Bucks County Court of Common Pleas should be affirmed.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that the December 10, 2010 Order granting the Defendants' Preliminary Objections and transferring the case to the Bucks County Court of Common Pleas be affirmed.

BY THE COURT:

6-29-2011

Date

ALLAN L. TERESHKO, J.

cc:
Christopher Todd Moyer, Esq for Plaintiff
Daniel Seth Altschuler, Esq for Defendant Unisen, Inc, a/k/a Star Trac & Star Trac
Erin Marie Siciliano, Esq for Town Sports Int., etc & Phila Sports Club