

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

MICHAEL J. DANKANICH	:	CIVIL TRIAL DIVISION
	:	
Appellant/Plaintiff,	:	FEBRUARY TERM, 2006
	:	No. 1807
	:	
v.	:	Superior Court Docket No.
	:	2793 EDA 2006
SCONE, INC. a/k/a GOLD’S GYM LIMERICK,	:	
GOLD’S GYM FRANCHISING, LLC a/k/a	:	
GOLD’S GYM a/k/a GOLD’S GYM	:	
FRANCHISING AND	:	
FRANCIS T. QUIGLEY, III	:	
	:	
Appellees/Defendants	:	

OPINION

PROCEDURAL HISTORY

Plaintiff appeals from the Order dated August 15, 2006, wherein the lower Court granted defendants Motion to Transfer Venue to Montgomery County.

FACTUAL BACKGROUND

Michael Dankanich (hereinafter plaintiff), was a member of Gold’s Gym Limerick (hereinafter Gold’s Limerick), which is a health club called “Gold’s Gym” located at 70 Buckwalter Road in Limerick Montgomery County, Pennsylvania. (Complaint, ¶7). Scone, Inc. (hereinafter Scone) and Gold’s Limerick owned and

operated the health club pursuant to a franchise agreement with Gold's Gym.¹
(Complaint, ¶7). At all relevant times hereto, plaintiff was a member of Gold's Limerick.

Defendants Scone and Gold's Limerick owned a "squat rack" and a "pulley machine," which were allegedly situated in close proximity to one another for use by its members. (Complaint, ¶9). On March 1, 2004, plaintiff was exercising with the pulley machine. Plaintiff was in a bent-over position with his back roughly parallel with the floor and his face facing the floor. (Complaint, ¶11). While, plaintiff exercised with the pulley machine, defendant Quigley, who was also a member of the Gold's Limerick, attempted to utilize the squat rack, by putting a barbell with heavy steel weights on his shoulders and then squatting down by bending his knees at a ninety degree angle. (Complaint, ¶12). As Defendant Quigley began entering into the squatting position, the end of the barbell descended and purportedly contacted plaintiff on the back of his neck, back and shoulder as he was using the pulley machine. (Complaint, ¶13). Plaintiff contends that as a result of this incident he sustained injuries to his neck, back, right shoulder and arm. (Complaint, ¶17).

On February 6, 2006, plaintiff instituted this action asserting that Scone, Gold's Gym and Gold's Limerick were negligent in their installation, maintenance and inspection of their equipment. (Complaint, ¶22-33). Plaintiff also brought a claim against Defendant Quigley for his failure to safely operate the squat rack. (Complaint, ¶35-37).

On April 24, 2006, Defendant Quigley filed his Answer with New Matter, denying that any incident occurred between him and plaintiff, and pleading that venue in Philadelphia should be transferred to Montgomery County based on the doctrine of *forum*

¹ Gold's Gym Franchising, LLC d/b/a Gold's Gym Franchising is an affiliate business entity of Gold's Gym, Gold's Gym Limerick and Scone, Inc.

non conveniens. (Answer of Defendant Quigley to Complaint With New Matter).

Plaintiff responded to the New Matter on May 12, 2006. (See Docket, pg. 3).

Gold Gym Defendants filed their Preliminary Objections to the Complaint on March 24, 2006 and subsequently filed their Answer and New Matter on July 26, 2006. (See Docket, pg. 3).

On July 13, 2006 Defendant Quigley filed his Motion To Transfer Venue. Plaintiff replied to this motion and the Gold Gym Defendants joined in Quigley's motion on August 3, 2006. (See Docket, pg.6).

By Order dated August 15, 2006, this Court granted defendants' Motion to Transfer Venue and removed the case to Montgomery County. (See Docket). Plaintiff filed their Notice of Appeal to this Order on September 12, 2006 and issued their 1925(b) statement accordingly.

The sole issue to be addressed by this Court is whether the lower Court committed an abuse of discretion or error of law in granting defendants Motion to Transfer Venue to Montgomery County.

LEGAL ANALYSIS

The standard of review in cases of *forum non conveniens* is abuse of discretion. *Johnson v. Henkels & McCoy, Inc.*, 707 A.2d 237 (Pa.Super. 1997)(citing *Keuther v. Snyder*, 444 Pa. Super. 468, 664 A.2d 168 (1995)). A trial court's ruling on venue will not be disturbed if the decision is reasonable in light of the facts. *Borger v. Murphy*, 797 A.2d 309, 312; 797 A.2d 309 (2002).

Pa.R.C.P. 1006(d) "vests considerable discretion in the trial judge to determine whether to grant a petition for a change of venue. *Id.* On appeal from such an order, the

only issue is whether the trial judge abused his discretion.” *Fox v. Pennsylvania Power & Light Co.*, 315 Pa.Super. 79, 81, 461 A.2d 805, 806 (1983), (citing *Plum v. Tampax, Inc.*, 399 Pa. 553, 560, 160 A.2d 549, 553 (1960)).

The Supreme Court has described the heavy burden facing an appellant from a discretionary trial court determination: “[I]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power.” *Id.* (citing *Mackarus's Estate*, 431 Pa. 585, 596, 246 A.2d 661, 666-67 (1968)). If there is any basis for the trial court's decision, the decision must stand. *Brown v. Delaware Valley Transplant Program*, 371 Pa. Super. 583, 587, 538 A.2d 889, 891 (1988).

An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused. *Brown*, 538 A.2d at 891.

The factors which should be considered in addressing a *forum non conveniens* claim by the trial court fall into three categories. *Id.* First, the plaintiff's choice of forum should be given significant weight. *Id.* Second, the interests of the parties should be considered, including relative ease of access to sources of proof, availability of compulsory process for the attendance of unwilling witnesses, cost of obtaining attendance of willing witnesses, possibility of a view of premises, if appropriate, enforceability of a judgment, and any other problem which affects the ease, celerity or expense of the litigation. *Id.* The third category is the public interest; litigation should

not be piled up in congested centers rather than being handled at its origin; jury duty should not be imposed on the people of a community which has no relation to the litigation. *Id.* (citing *Plum v. Tampax, Inc., supra.*).

In *Brown*, our Superior Court granted the defendants' petition to transfer venue to the Court of Common Pleas of Chester County on the ground that Philadelphia was a *forum non conveniens*. *Id.* In so holding the Superior Court noted:

that the decedent's body was found in Chester County, appellee hospital was located in Chester County, the judge who signed the decree that allowed appellee hospital to proceed with the transplant was in Chester County, and the vast majority of witnesses were located in Chester County. Therefore, the public interest and the interests of the parties and witnesses were served by transferring the case to Chester County. Further, appellants were not inconvenienced by the transfer. *Id.*

A petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff's chosen forum is oppressive or vexatious to the defendant." *Wood v. E.I. du Pont de Nemours & Co.*, 2003 PA Super 268, 829 A.2d 707, 711-712 (2003).

A defendant may meet its burden of showing that the plaintiff's choice of forum is vexatious to him by establishing with facts on the record that the plaintiff's choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff. *Cheeseman v. Lethal Exterminator*, 549 Pa. 200, 213; 701 A.2d 156, 162 (1997) (citing *Hoose v. Jefferson Home Health Care, Inc.*, 2000 PA Super 143, 754 A.2d 1 (Pa. Super. 2000)). Alternatively, the defendant may meet his burden by establishing on the record that trial in the chosen forum is oppressive to him; for instance, that trial in another county would provide easier access to witnesses or other sources of proof, or to the

ability to conduct a view of premises involved in the dispute. *Id.* However, a defendant is required to show something more than inconvenience to meet this burden. *Id.* *Wood* and *Cheeseman* create the standard by which the test for *forum non conveniens* is measured, while Pa.R.C.P. 1006 vest authority in the trial court to make such a determination.

Pa.R.C.P. 1006(d)(1), provides:

(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

Pa.R.C.P. 1006(a)(1) provides that an action against an individual may be brought in a county in which the cause of action arose. Pa.R.C.P. 2179(a)(3)(4) states that an action against a corporation may be brought in the county where the cause of action arose; or the county where a transaction or occurrence took place out of which the cause of action arose. Since, the alleged incident in this case occurred at Gold's Gym Limerick, Montgomery County, the venue would be proper in Montgomery County.

Defendants set out several reasons in their motion to support the oppressive nature of using Philadelphia as a forum.

First, the location and addresses of both the parties to the case or the events that led to the cause of action occurred in the Philadelphia County. Defendant Scone Inc. has a location in King of Prussia, Montgomery County. (See Complaint, pg.1). Defendant Gold's Limerick has a location of Limerick, Montgomery County. *Id.* Francis Quigley, resides in Reading, Berks County. *Id.* Plaintiff is a resident of Limerick, Montgomery County and Gold's Gym and Gold's Gym Franchising, LLC is located in California. *Id.*

Thus, three out of the five parties have a residence or location in Montgomery County with none having locations in Philadelphia County.

Secondly, according to the facts of the case, the site of the alleged injury occurred at Gold's Limerick, which is located at 70 Buckwalter Road in Limerick Montgomery County. No other injuries are alleged than those that occurred at Gold's Limerick. Therefore the entire occurrence of events that led up to the cause of action occurred in Montgomery County and not Philadelphia County. In addition, the physical location of the weight equipment that caused the injury would be an issue in determining negligence in this case.

Since the alleged incident occurred at the Gold's Gym in Montgomery County and one of plaintiff's claims is that the equipment used by plaintiff and defendant Quigley was situated too close together, a jury view would be appropriate to assess the standard of care in designing the layout of the gym and its equipment, as well as depiction of how the injury occurred. It would be much more convenient and economical, in the event that a jury view is needed in this case, to take the jury from the Montgomery County Courthouse in Norristown to the Gold's Gym in Limerick than from Philadelphia Court of Common Pleas to Limerick.

It would also be oppressive and burdensome to have Defendant Quigley have to travel to Philadelphia County to be deposed and, ultimately give trial testimony in this case for the following reasons set forth in his affidavit submitted to the Court:

1. He is a physician employed as the Medical Director of the Hospitalist Program at St. Joseph's Hospital in Reading, Berks, County, Pennsylvania and

resides at 35 Pickwick Place, Reading, PA 19606. (Affidavit of Francis T. Quigley In Support Of Motion To Transfer Venue, ¶2).

2. Dr. Quigley works approximately 70 hours a week, including on-call time, in addition to working weekends once a month. (Id., ¶3).
3. He is in the process of developing a Hospitalist Program at St. Joseph's Medical Center, which involves scheduling and recruiting personnel. (Id., ¶4).
4. Dr. Quigley is also Medical Director of the Hospitalist Program and is also involved in a number of committees, including the Pharmacy and Therapeutics Committee, the Utilization Management Committee, the Patient Education Committee, and the chairperson of Medical Records Committee. (Id., ¶5).
5. At the time of the Affidavit, Dr. Quigley, alone, covered the hospital for emergency calls over a period of the last ten (10) months, with some help and assistance from area physicians. (Id., ¶10).
6. At the time of the Affidavit, Dr. Quigley stated that he would not be able to find sufficient coverage during the weekday to allow him to travel to Philadelphia for depositions or a trial scheduled to last 3-5 days. (Id., ¶11).
7. Dr. Quigley resides approximately fifty (50) miles from Philadelphia County Courthouse.

Lastly, the addresses of all fact witnesses in this case were also relevant, as none of either parties' witnesses reside in Philadelphia County.

1. Dr. Quigley's wife, Monica Quigley resided at 35 Pickwick Place, Reading PA 19606. Ms. Quigley was a member of the Gold's Gym and knew plaintiff.

2. Jonathan Ranieri, resided at 228 Callery Drive, Blandon, PA 19510.
3. Anthony Mastroangelo resided at 625 Heckel Avenue, Spring City, PA 19475.
4. Ryan Fitzpatrick resided at 2306 Carriage Lane, Limerick, PA 19468.
5. Seema Kapadia Steel resided at 138 Winged Foot Court, Royersford, PA 19468.
6. Nick Freitage resided at 3233 Forest Lane, Schwenksville, PA 19473. Mr. Freitage was a witness identified by Dr. Quigley.
7. Phil and Sharon Scisson, who resided in King of Prussia, Montgomery County PA, were generally identified by Gold's Gym. (Motion To Transfer, Exhibit H).
8. Frank Reilley, who was the former Manager of Gold's Gym was also identified by Gold's Gym and they listed his location as Royersford, Montgomery County, PA. (Motion To Transfer, Exhibit H).

Appellant also cannot cite to any inconvenience that they would suffer as a result of having their case transferred to Montgomery County. Especially, due to the fact that appellant resides in Montgomery County and appellant's counsel has an office in close proximity to the Montgomery County Courthouse.

For all the aforementioned reasons, this Court believes that the forum of Philadelphia County is overly burdensome and oppressive and the public interest and the interest of the parties are best served by transferring the case pursuant to the caselaw of *Cheeseman* and *Wood*. Therefore, the Court was acting within its discretion in removing the case to Montgomery County.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Motion for Transfer of Venue to Montgomery County was properly granted, and respectfully requests that it be affirmed by the Court above.

BY THE COURT:

2-8-2007

Date

ALLAN L. TERESHKO, J.