

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

EDYTHE BOHART,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,978
	:	
KEYSTONE CENTRAL SCHOOL	:	
DISTRICT,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The plaintiff, Edythe Bohart, has appealed this court's order of 6 April 2000, granting the defendant's preliminary objection to improper venue and transferring the case to Clinton County, where it belongs. This decision was based on the fact that the only allegations in the complaint implicating Lycoming County are: (1) the phone call in which the breach occurred was initiated from Lycoming County, and (2) the statements constituting the breach were made to a listener located in Lycoming County. Those facts, however, are not sufficient to make venue proper in this county.

Factual Background

On 15 December 1999 Ms. Bohart filed a complaint alleging that she and the Keystone Central School District, located in Clinton County, entered into an employment separation agreement in which Ms. Bohart agreed to resign her teaching position and the School District agreed that when contacted by a prospective employer, it would respond only with a neutral letter indicating the dates of Ms. Bohart's employment. The complaint goes on to state that on or about 19 October

1999, a representative of Robert M. Sides Family Music Center telephoned Steven Walk, an agent of the School District, stating that she was a potential employer of Ms. Bohart's and requesting a reference. Mr. Walk allegedly breached the contract by making the following statements: "I am not at liberty to discuss that situation at this time," and "I am sure you understand that I can't."

DISCUSSION

Venue in this case is proper in the county where the School District is located, in which the cause of action arose, or where the transaction or occurrence took place out of which the cause of action arose. 42 P.S. § 20043; Pa. R.Civ. P. No. 2103(b); Ward v. Lower South Hampton Township, 614 A.2d 235 (Pa. 1992). Pennsylvania courts have interpreted the phrase "transaction or occurrence" narrowly. See Craig v. W.J. Thiele & Sons, Inc., 395 Pa. 129, 149 A.2d 35 (1959); Deeter-Ritchey-Sippel Associates v. Estemminster College, 238 Pa. Super 194, 357 A.2d 608 (1976).

Ms. Bohart claims venue is proper in Lycoming County because the call during which the allegedly inappropriate statements were made was initiated in Lycoming County and because the statements were made to a person located in Lycoming County. We fail to see, however, how those two facts make Lycoming County a place where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.

In this contract action, venue must lie where the breach occurred.¹

¹ Or possibly where the contract was formed; however, since plaintiff has not alleged a place of formation, we cannot establish venue on that basis. See Lucus

According to the complaint, the breach took place when Mr. Walk made improper statements to the caller. He made those statements while he was in Clinton County. Therefore, the breach occurred in Clinton County. The fact that the statements were heard in Lycoming County is irrelevant, for it is the *speaking*, and not the *hearing*, that constitutes the breach. The issue of whether the caller heard the statements is relevant only to damages.

Although we could find no appellate case on point, several of our judicial colleagues in other jurisdictions have reached similar conclusions regarding a distinction between breach and damages for venue purposes. In Brough v. Carl Cook Auto Sales, Inc., 75 D. & C. 2d 132 (Cumberland County 1976), the court held that a plaintiff who purchased a car in York County could not sue in Cumberland County, where a fire occurred as a result of a faulty electrical system. The plaintiff had argued the fire constituted a transaction or occurrence, but the court concluded that the fact the damage arose in Cumberland County was not sufficient to establish venue there. Similarly, in Shoemaker v. Fuhrer, 6 D. & C.3d 7 (Centre County 1978), the court held that a plaintiff whose car was defectively repaired in Erie County could not sue in Centre County simply because the defective work was discovered and corrected in Centre County.

The plaintiff cleverly attempts to argue that this case is similar to a defamation case, where venue lies in a county where the allegedly defamatory statement was circulated, as well as where it was originally published. Flaxman v. Burnett, 574 A.2d 1061 (Pa. Super. 1990). However, the plaintiff apparently fails to

Enterprises, Inc. v. Paul C. Harman Co., Inc., 273 Pa. Super. 422, 417 A.2d 720 (1980).

understand that in the tort of defamation, a “publication” of a defamatory statement is defined as the communication of that statement. Restatement (Second) of Torts § 577(1); Flaxman, supra at 1066. A “re-publication” of a libelous statement occurs each time the statement is repeated and each time a printed statement is circulated. Therefore, usually in defamation cases the communication of the statement and the reception of the statement are considered to occur at the same location. Only a slander case involving a telephone communication would constitute a fair analogy to the case before this court, and neither we nor the plaintiff have found such a case.²

Our decision in this case supports a practical and logical interpretation of the true meaning of venue. The purpose of the venue provision in our law is not only to give a plaintiff the opportunity to select a county that is convenient for him or her, but also to ensure that the county of choice bears a substantial relationship to the controversy. County Construction Co. v. Livengood Construction Corp., 393 Pa. 39, 142 A.2d 9 (1958). This is no doubt to make certain it is fair to force the defendant travel to another county to defend the case. When a county has a substantial relationship to a cause of action, the defendant should foresee the possibility of being sued in that county, and therefore it is perfectly just to permit the plaintiff to file the suit there. Conversely, when a county has little or no relationship to the controversy, it is unfair to allow a plaintiff to sue in that county, merely because it is more convenient for the plaintiff.

Permitting Ms. Bohart to sue the School District in Lycoming County would

² And even if such a case materialized, it may well be inapplicable here because defamation is an entirely different cause of action than contract, with a multitude of different public policy considerations.

broaden the venue provisions in a way certainly never intended by the legislature or the Supreme Court. It would inject a level of uncertainty into our civil law that is entirely unacceptable, and would permit absurd and unjust results. For instance, suppose Ms. Bohart had moved to Alaska, and the telephone call at issue had come from a potential employer located in Alaska. Would the School District be required to travel to Alaska to defend this suit? Certainly not, and the same principle must apply even though Lycoming County is a bit nearer to Clinton County than Alaska.

Conclusion

This court sustained the defendant's preliminary objection relating to improper venue because the alleged breach occurred in Clinton County, at the moment the allegedly improper statements were made. The fact that the call was made from Lycoming County, and that the statements were heard by an individual in Lycoming County, are insufficient to give this county a substantial relationship to the matter, and it would be unfair to make the School District come to this county to litigate the case based upon such a tangential and tenuous connection.

BY THE COURT,

Clinton W. Smith, P.J.

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