

Pa. Justices Affirm Judges' Discretion To Transfer Suits

By **Matt Fair**

Law360, Philadelphia (August 21, 2014, 5:18 PM ET) -- The Pennsylvania Supreme Court has ruled that trial judges have significant latitude to grant defense motions seeking venue transfers based on the burdens imposed on key witnesses by having to travel to a plaintiff's chosen jurisdiction.

In a unanimous decision, the justices overturned an en banc ruling by the state's Superior Court finding that a Philadelphia County judge had abused his discretion when he agreed to transfer a lawsuit accusing Keefer Wood Allen & Rahal LLP of wrongful use of civil process to the Dauphin County Court of Common Pleas based on the inconvenience it would place on defense witnesses.

"We find the trial court's proper consideration of the totality of the evidence justified the order to transfer the case," the court said in an Aug. 18 opinion by Justice J. Michael Eakin. "Trial courts are vested with considerable discretion when ruling on such a motion."

Plaintiffs Alexander Bratic and Joseph Proko filed suit against the firm and attorney Charles Rubendall in Philadelphia County in February 2009 claiming that they had been subject to a malicious lawsuit in Dauphin County.

Judge Mark Bernstein granted the defense's so-called forum non conveniens motion in July 2009 transferring the suit to Dauphin County after agreeing that litigating the case in Philadelphia would be vexatious for witnesses.

On appeal to the Superior Court, a three-judge panel initially affirmed the trial court's decision to transfer the case, concluding that continuing the case in Philadelphia would have been overly inconvenient to the defendants.

Bratic and Proko then applied for an en banc reargument, arguing that the defendants' allegations that their witnesses would be inconvenienced lacked necessary detail, according to the opinion. In response, the appellees contended that their eight key witnesses were all based in Dauphin County and would encounter significant hardships if they had to travel to Philadelphia — more than 100 miles away — to testify at a trial.

The Supreme Court's decision hinged on an interpretation of its 1997 ruling in *Cheeseman v. Lethal Extermination Inc.* which established standards allowing judges to transfer cases based on vexatious or oppressive circumstances.

The justices ruled that Superior Court cases decided post-Cheeseman had improperly increased the burden that defendants were required to meet to prove the difficulty in litigating a case in a plaintiff's chosen forum.

"We reaffirm the Cheeseman standard, but hold the showing of oppression needed for a judge to exercise discretion in favor of granting a forum non conveniens motion is not as severe as suggested by the Superior Court's post-Cheeseman cases," the opinion said. "Mere inconvenience remains insufficient, but there is no burden to show near-draconian consequences."

The plaintiffs had argued that the affidavits contained identical language that gave an inadequately detailed account of how potential witnesses would be burdened by traveling to Philadelphia. The Supreme Court, however, said that a more finely tuned accounting was not necessary to meet the burden under Cheeseman.

"We are unsure what extra detail must be enumerated — the interference with one's business and personal life caused by the participatory demands of a distant lawsuit is patent," the opinion said. "The witnesses need not detail what clients or tasks will be postponed or opportunities lost in order for the judge to exercise common sense in evaluating their work."

The court said that it was readily apparent that traveling between Harrisburg and Philadelphia in order to conduct litigation would prove vexatious and oppressive to witnesses in the case.

"As between Philadelphia and counties 100 miles away, simple inconvenience fades in the mirror and we near oppressiveness with every milepost of the [Pennsylvania] Turnpike and the Schuylkill Expressway," the opinion said.

An attorney for Bratic and Proko did not immediately return a message seeking comment on Thursday.

The appellants are represented by Jeffrey Lerman and Glenn Rosenblum of Montgomery McCracken Walker & Rhoads LLP and Stephen Kurens of Sirlin Lesser & Benson PC.

Bratic and Proko are represented by Joseph Podraza and Richard Sprague of Sprague & Sprague, and Lloyd Parry of Davis Parry & Tyler PC.

The case is Alexander Bratic et al. v. Charles Rubendall et al., case No. 21 EAP 2013, in the Supreme Court of Pennsylvania.

--Additional reporting by Dan Packel. Editing by Mark Lebetkin.