

PENNSYLVANIA

APPEALS COURT: PRIVATE-SECTOR CO-DEFENDANTS MAY SEEK VENUE CHANGE UNDER STATE PROTECTION PROVISION



A Pennsylvania court has ruled that a pair of private sector defendants in a personal injury suit may seek a new venue under a section of the Sovereign Immunity Act despite their state agency co-defendant's objections to the move.

The Commonwealth Court's Wednesday decision centered on the scope of Section 8523(a) of the Judicial Code, which establishes that state entities may only be sued in the county where either the incident at issue arose or where that entity is located. The court examined whether, in a suit against both state and nonstate defendants, the right to object to a venue under that section lay solely with the state entity.

In a case of first impression, the court ruled that the private sector defendants could rely on the section as well. The opinion, authored by Judge Michael Wojcik, reverses a trial court ruling that dismissed preliminary objections from defendants Allan Myers and Alfred Salvitti (represented by Fowler Hirtzel McNulty & Spaulding and

Connor, Weber & Oberlies, respectively) seeking to move a suit from the Philadelphia Court of Common Pleas to the Delaware County Court of Common Pleas.

Also a defendant in the case is the Pennsylvania Department of Transportation, which earlier in the proceedings had waived its right to venue protections as part of a settlement with the plaintiffs. PennDOT joined the plaintiffs in arguing that Myers and Salvitti could not utilize Section 8523(a) to change venue.

The plaintiffs in the case, husband and wife Mary and John Kim, sued the defendants after Mary Kim was injured in a single-vehicle car accident in Delaware County. Represented by Stephen Devine of the Law Office of Jared S. Zafran and David Senoff of First Law Strategy Group, the Kims sued PennDOT, which maintained the area of road where the crash occurred.

Myers is a Montgomery County-based contractor who did



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construction on the road where the accident occurred, and Salvitti is a Delaware County resident who owned the property where Mary Kim crashed.

Myers, who filed the appeal, said that Section 8523(a) allows for venue objections in “actions for claims against a commonwealth party,” but does not specify who may raise those objections. Myers argued that ambiguity left space for the co-defendant to request the change independently of PennDOT.

Since the Mary Kim’s accident occurred in Delaware County and not Philadelphia, Myers and Salvitti argued that the section allowed them to move the case.

PennDOT, however, said that Myers and Salvitti could not utilize Section 8523(a) because it was “meant for the benefit of government entities.”

The plaintiffs and PennDOT said that under Pennsylvania Rules of Civil Procedure’s Rule 1006, which governs nonstate venue objections, Myers and Salvitti could not raise objections to the venue. Rule 1006 dictates that, so long as one of the defendants

does business in the selected forum, the plaintiff may select that court.

In this case, a co-defendant that was later enjoined in the suit did business in Philadelphia.

But the court determined that, although Myers and Salvitti could not have raised objections under Rule 1006, they could still raise objections under Section 8523(a).

“The commonwealth’s decision to agree to Philadelphia County as the proper venue did not preclude any of the other defendants from contesting improper venue by filing an appropriate PO,” Wojcik wrote.

The decision remanded the case back to the trial court, where Myers and Salvitti will be able to argue for a change in venue.

The case is captioned
Kim v. PennDOT

Fowler Hirtzel’s Matthew Vodzak declined to comment on the case. Attorneys for Salvitti and the Kims did not respond to requests for comment.