

Forum Non Conveniens is Now More Difficult to Assert in Pennsylvania

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In an October 11, 2023 decision, the Superior Court of Pennsylvania announced a stricter standard to be applied to requests for transfer of venue for forum non-conveniens. Considering this decision, and prior similar decisions, it is difficult to obtain a venue transfer for forum non-conveniens in Pennsylvania, making it more likely that Pennsylvania disputes will be adjudicated in Philadelphia County and Allegheny County.

In *Tranter v. Z&D Tour, Inc.*, 2023 PA Super 200 (Oct. 11, 2023), the Superior Court of Pennsylvania vacated several trial court orders granting petitions to transfer venue from Philadelphia County to Westmoreland County based on *forum non conveniens*. The ruling reflects a continuation of the recent trend of Pennsylvania courts denying defendants' requests for venue change.

The consolidated appeal consisted of five lawsuits, each arising from a 2020 multi-vehicle crash in Westmoreland County. In support of their petitions to transfer venue, Appellees submitted affidavits of potential witnesses who reside in or around Westmoreland County and argued that requiring these potential witnesses to testify hundreds of miles away would be overly burdensome and sufficiently oppressive, warranting a transfer of venue.

Judge Dubow, writing on behalf of a three-judge panel, rejected this argument and emphasized that the party seeking a venue change bears a heavy burden of showing—“with detailed information on the record”—that the plaintiff's chosen forum is “oppressive and vexatious” and noted that “[t]here is a vast difference between a finding of inconvenience and one of oppressiveness.” The Superior Court found that “the eleven affidavits and thirty-two unnotarized statements submitted in support of Appellees' motions” failed to show that the individuals were “key witnesses” for the defense. The Court emphasized that none of the affidavits contained “information indicating how these potential witnesses' testimonies would be relevant or necessary to Appellees' respective defenses.”

The *Tranter* decision marks the continuation of the recent trend of Pennsylvania courts denying requests to transfer venue based on *forum non conveniens*. In October of 2022, in *Ritchey v. Rutter's Inc.*, 286 A.3d 248 (Pa. Super. 2022), the Superior Court also upheld a lower court's denial of a request to transfer venue, holding that the defendants had not satisfied their heavy burden of showing oppressiveness. Similarly, in *Ehmer v. Maxim Crane Works*, 296 A.3d 1202 (Pa. Super. 2023), the Superior Court reversed a lower court order that permitted a venue transfer.

Tranter emphasizes that the plaintiff's choice of forum is entitled to great deference. For individuals or practitioners seeking a venue transfer based on witness hardship, *Tranter* made clear that a party seeking transfer must first provide evidence that the potential witness is “key” to the defense—that is, that the potential witness possesses information “relevant and necessary” to the defense. After doing so, a party seeking a venue transfer must also provide evidence that plaintiff's chosen forum is “oppressive and vexatious.”

Considering this standard, it may be difficult to assert forum non-conveniens, and Pennsylvania businesses should thus be prepared to litigate more matters in Philadelphia and Allegheny Counties, where many actions are likely to be first filed.