

14-0059

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
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CATHY S. LITSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

GEORGE A. ROBERTS,

Plaintiff,

v.

CIVIL ACTION NO.: 13-C-280

Honorable Charles E. King, Jr.

THORNHILL GROUP, INC.,
a West Virginia corporation;
WALLY L. THORNHILL,
individually and as president
of THORNHILL GROUP, INC.,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS FOR IMPROPER VENUE**

Before the Court is the Defendants' Motion to Dismiss for Improper Venue. The Motion was heard by the Court on June 3, 2013. The Court, having considered the pleadings and the oral arguments of counsel, denies the Defendants' Motion to Dismiss.

FINDINGS OF FACT

1. Defendant Thornhill Group, inc. is a West Virginia corporation with its principal place of business located in Logan County, West Virginia;
2. Defendant Wally L. Thornhill is a resident of Logan County, West Virginia;
3. Plaintiff Roberts has asserted claims against the Defendants for breach of contract and for age discrimination and unlawful retaliation pursuant to the West Virginia Human Rights Act, W.Va. Code § 5-11-1, et seq.;
4. At the time that the contract in question, Plaintiff's employment

agreement with Defendant Thornhill Group was allegedly breached, Plaintiff was a resident of Kanawha County, West Virginia, and all wages owed to the Plaintiff were owed in Kanawha County;

5. Although some discussions regarding Plaintiff's employment agreement were conducted in Logan County, Plaintiff negotiated and accepted employment in Kanawha County;

6. This very Court has been the venue for civil actions involving various entities associated with the Defendants, including Patricia Jarrell, et al. v. Thornhill Superstore, et al., Civil Action No. 03-C-1762; and Matthew Burton v. Thornhill Group, et al., Civil Action No. 08-C-726;

7. Defendants conduct extensive business with citizens of Kanawha County, West Virginia, and operate a dealership in Kanawha County, West Virginia;

8. Additionally, Plaintiff, upon information and belief represents that Defendant Thornhill Group targets Kanawha County residents with various direct mail campaigns;

9. Further, the Court takes judicial notice of the fact that Thornhill Group advertises extensively in Kanawha County via both print and broadcast media;

10. Finally, the Court notes that based upon their actions in prior cases involving various Thornhill entities, the Honorable Eric H. O'Briant and the Honorable Roger L. Perry, judges of the Circuit Court of Logan County, West Virginia, are likely to recuse themselves should this matter be transferred to Logan County.

CONCLUSIONS OF LAW

1. West Virginia's general venue statute, W.Va. Code § 56-1-1 provides that a civil action may be brought "wherein any of the defendants may reside or the

cause of action arose[.]” W.Va. Code § 56-1-1(a)(1);

2. Venue in a civil action where a West Virginia corporation is a defendant also is appropriate “wherein its principal office is or wherein its mayor, president or other chief officer resides[.]” W.Va. Code 56-1-1(a)(2);

3. The West Virginia Supreme Court of Appeals has ruled that in contract cases, venue is appropriate in the county where the contract was made, where the contract is breached or where “the manifestation of the breach – substantial damage occurs.” Syllabus, Russell v. Pineview Realty, 165 W.Va. 822, 272 S.E.2d 241 (1980); Syl. Pt. 3, Wetzel County Savings & Loan v. Stern Bros., Inc., 156 W.Va. 693, 195 S.E.2d 732 (1973);

4. It has long been the rule in West Virginia that “the place of the acceptance of a proposal is the place of contract.” Syl. Pt. 2, Galloway v. Standard Fire Ins. Co., 45 W.Va. 237, 31 S.E. 969 (1898);

5. Although there has been some question that the aforementioned principles set forth in the Russell and Wetzel County Savings & Loan cases are no longer applicable given the repeal in 1986 of W.Va. Code § 56-1-2, which provided for venue in any county where “the cause of action, or any part thereof, arose, although none of the defendants reside therein, when the defendant is a corporation[.]” this Court notes that the West Virginia Supreme Court has applied the same reasoning subsequent to repeal of that statute, recognizing that the divisible and transitory nature of contracts means that venue may be appropriate in more than one county. McGuire v. Fitzsimmons, 197 W.Va. 132, 136-137, 475 S.E.2d 132, 136-137 (1996);

6. Further, the McGuire court observed that “[t]he plain language of W.Va.

Code, 56-1-1(a)(1) [1986] does not limit the venue to one county, but provides at least two possible justifications for proper venue, either the residence of the defendants or where the 'cause of action arose.'" *Id.* at 136, 136;

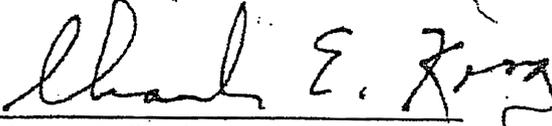
7. In this matter, venue is appropriate in Kanawha County given (1) Plaintiff's acceptance in Kanawha County of Defendant Thornhill Group's offered employment agreement and (2) that Plaintiff was a resident of Kanawha County at the time that the employment agreement was allegedly breached and his damages would be most acutely felt there;

8. With respect to Plaintiff's claims under the West Virginia Human Rights Act, venue in Kanawha County is appropriate for reasons of judicial economy and in the interest of avoiding piecemeal litigation.

ORDER

For the foregoing reasons, the Court ORDERS that the Defendants' Motion is DENIED. The Defendants' objections are noted. The Clerk of this Court shall send certified copies of this Order to all counsel and parties of record.

ENTERED this 16TH day of October, 2013.


Honorable Charles E. King, Jr.

PREPARED BY:


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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND BY SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF December 2013
CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Date: 10-16-13
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 parties
 other
By: H. Bell
J. Brown
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Deputy Clerk

Copies provided pursuant to W.Va. Trial Court Rule 24.01(c) to:

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