

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRIS K. CLARKE : CIVIL ACTION
 :
 v. :
 :
 BELL ATLANTIC OF PENNSYLVANIA, :
 JOHN IRWIN, :
 RICHARD WEILEBINSKI, and :
 LARRY PRELL : No. 97-CV-2071

MEMORANDUM

Shapiro, Norma L., J.

August 1, 2003

Plaintiff is employed at Defendant Bell Atlantic's facility in Stroudsburg, located in the Middle District of Pennsylvania. Plaintiff, filing a complaint in the Eastern District of Pennsylvania, alleged racial discrimination and unfair treatment by defendants. In addition to Bell Atlantic plaintiff's complaint named three employees of Bell Atlantic at the Stroudsburg facility: John Irwin, a New Jersey resident,¹ Richard Wielebinski, a Pennsylvania resident, and Larry Prell, a Pennsylvania resident. After answering Plaintiff's complaint, defendants Bell Atlantic - Pennsylvania, Inc. and Richard Wielebinski made a motion to transfer venue, or alternatively for reassignment.²

¹Defendant John Irwin, having filed an amended answer to the complaint, does not contest service or in personam jurisdiction. By an undocketed letter to the court and all parties, defendant John Irwin "joins in on the Motion to Transfer Venue." (Letter of John Irwin 9/16/97).

²In their motion, they assert that the motion is under 28 U.S.C. §§ 1391(b) and 1404(a). Technically, this is incorrect. Section 1391 governs the standards under which venue
(continued...)

Venue is governed by 28 U.S.C. § 1391. Since jurisdiction is based on the existence of a federal question, the applicable provision is §1391(b). Section 1391(b) provides:

A civil action . . . may . . . be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.
28 U.S.C. § 1391(b) (1997).

In the case at hand, the defendants do not all reside in the same state. Therefore, § 1391(b)(1) does not apply.

Under § 1391(b)(2) venue lies in the district where a substantial part of the events or omissions occurred. Plaintiff's place of employment is in Stroudsburg, in the Middle District of Pennsylvania. As this action alleges work related racial discrimination, a substantial part of the events or omissions giving rise to the complaint occurred in the Middle District of Pennsylvania. Only a few insubstantial events (a fax, a phone call, and the receipt of an EEO complaint) occurred in the Eastern District. Under §1392(b)(2), venue lies in the Middle District.

²(...continued)
is determined. A defense motion to transfer for improper venue is under 28 U.S.C. § 1406(a), based on the standards in § 1391. (Section 1404 provides the court with the discretion to transfer "[f]or the convenience of the parties and witnesses, [and if such transfer is] in the interest of justice." 28 U.S.C. § 1404(a) (1997). A motion under 28 U.S.C. § 1404 would have been denied on the merits.)

If a defendant interposes a timely and sufficient objection to the venue, the court is required to dismiss the action, or transfer it to a district in which the action could have been brought. 28 U.S.C. § 1406(a). The motion to transfer to the Middle District of Pennsylvania will be granted, and the motion to reassign denied as moot. An appropriate order follows.

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ORDER

AND NOW, this 19th Day of November, 1997, upon consideration of defendants' Bell Atlantic - Pennsylvania, Inc. and Richard Wielebinski Motion to Transfer Venue or Alternatively for Reassignment, plaintiff's Memorandum of Law in Opposition thereto, and defendant Larry Prell's Memorandum of Law in Support of Defendants' Bell Atlantic and Richard Wielebinski Motion to Transfer Venue, and plaintiff's Memorandum of Law in Opposition thereto, it is **ORDERED** that:

1. Defendants' Bell Atlantic - Pennsylvania, Inc. and Richard Wielebinski Motion to Transfer is **GRANTED**. The action is hereby transferred **FORTHWITH** to the Middle District of Pennsylvania, where it could have been brought.

2. Defendants' Bell Atlantic - Pennsylvania, Inc. and Richard Wielebinski Motion for Reassignment is **DENIED** as moot.

J.