

VERMONT SUPERIOR COURT, CIVIL DIVISION, WASHINGTON UNIT

Matthais Boehm et al. v. Phillip Mulligan et al.

Boehm v. Mulligan · No. 25-CV-02495 · Decided February 5, 2026

SUMMARY

The Vermont Superior Court, Washington Unit, denied Defendants’ motion to dismiss for improper venue. The court held that venue was proper in Washington under 12 V.S.A. § 402 and Bergeron v. Boyle because the parties resided outside Vermont and the action sought monetary relief without requiring the court to determine title to real estate. The court also noted that the motion’s reference to personal jurisdiction did not present a separately developed issue.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Washington Unit
WRITING FOR THE COURT	Daniel Richardson
JURISDICTION	Vermont Superior Court, Civil Division, Washington Unit
DECIDED	February 5, 2026
DOCKET	25-CV-02495
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Vermont Rule of Civil Procedure 12(b)(3) to dismiss for improper venue. The court denied the motion.
PRECEDENTIAL VALUE	Unknown; Vermont Superior Court trial-court entry

TOPICS

- motions to dismiss
- venue
- landlord tenant
- real estate
- civil procedure

PRACTICE AREAS

- civil procedure
- real estate
- landlord tenant
- consumer protection

QUESTIONS PRESENTED

- Whether an action involving a residential tenancy, alleged illegal eviction, and an alleged agreement to sell property, but seeking only money damages and not adjudicating title, is an action concerning real estate that must be brought in the unit where the property is located under 12 V.S.A. § 402(a).
- Whether venue was proper in the Washington Unit when none of the parties resided in Vermont.

HOLDINGS

1. An action seeking only monetary relief, in which no party disputes title and the court is not asked to establish, quiet, attach, transfer, or bestow title to real property, is not an action concerning real estate under 12 V.S.A. § 402(a) for venue purposes.
2. Venue was proper in the Washington Unit because none of the parties resided in Vermont and the action was not one concerning real estate; therefore, plaintiffs could file in any unit of the civil division.

KEY QUOTATIONS

“Therefore, unless an action requires the court to directly establish, quiet, attach, transfer or bestow title to real property, the “concerning real estate” language of § 402(a) does not apply.” (¶ 11)

“Plaintiffs, based on their and Defendants’ out-of-state residence were free to file in any unit.” (Order)

FACTUAL BACKGROUND

Plaintiffs Matthais Boehm and Ulrike Von Loeper alleged that they rented a residential property in Chelsea, Vermont, from defendants Phillip Mulligan and Susan Morse. They alleged that defendants illegally evicted them while plaintiffs were traveling in Germany and reneged on an agreement to sell the home, causing the destruction of personal property. Plaintiffs sought monetary relief only and did not seek to establish, settle, transfer, or otherwise adjudicate title to the property.

PROCEDURAL HISTORY

Plaintiffs filed suit in the Washington Unit concerning a residential tenancy and an alleged agreement to sell the property. After the court denied plaintiffs' request for an interlocutory transfer to the Orange Unit, defendants moved to dismiss on the ground that the action had to be filed where the property was located. The court concluded that venue was proper in Washington and denied the motion.

DISPOSITION

dismissed

CASES CITED

- Bergeron v. Boyle, 2003 VT 89, 176 Vt. 78
- Craddock v. Heffermehl, No. 2018-126, 2018 WL 5785456 (Vt. Nov. 2, 2018)
- Birchwood Land Co., Inc. v. Krizan, No. 61-10-13 Gicv, 2014 WL 4162881 (Vt. Super. Ct. Feb. 13, 2014)
- 14D Wright & Miller, Federal Practice and Procedure § 3801 (4th ed.)

OPINION

Boehm v. Mulligan

PER CURIAM.

VERMONT SUPERIOR COURT CIVIL DIVISION

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 5) Filer: Elizabeth A. Willhite Filed Date: December 04, 2025
The motion is DENIED. Decision on Defendants' Motion to Dismiss Plaintiffs Matthais Boehm and Ulrike Von Loeper claim that they rented a residential property in Chelsea, Vermont from Defendants Phillip Mulligan and Susan Morse. They claim that when they traveled to Germany during the tenancy, Defendants illegally evicted them in violation of 9 V.S.A. § 4463 and reneged on an agreement to sell the home to them in violation of the Consumer Protection Act, 9 V.S.A. §§ 2451–2494z, somehow resulting in the destruction of their personal property. They seek monetary relief only. Defendants seek dismissal, arguing that venue is improper in the Washington Unit because the rented property is located within the Orange Unit. The venue issue has a somewhat odd history in this case. After filing suit in this unit, Plaintiffs filed a motion requesting that the court “transfer” venue to the Orange Unit on an interlocutory basis. The court noted the lack of statutory authority to do so in these circumstances and asked whether there was any reason that the case should not be dismissed— obviously, though implicitly, in service of Plaintiffs' expressed desire to pursue the case in the Orange, rather than Washington, Unit. Plaintiffs, in response, filed a memorandum objecting to dismissal on improper venue grounds and arguing in support of the appropriateness of venue in Washington under 12 V.S.A. § 402 and *Bergeron v. Boyle*, 2003 VT 89, 176 Vt. 78. In response to that filing, the Court said in a July 10, 2025, entry: “The Court is unsure of the purpose of the filing. The instant matter is docketed and remains pending in this County [Unit]. The only action taken by the Court was to deny [an interlocutory transfer] of venue.” With the venue issue ostensibly resolved, one might have thought that would have been the last of it. Instead, Defendants then filed a Rule 12(b)(3) motion to dismiss for lack of venue, arguing that the only appropriate venue is Orange because that is where the subject property is.¹ This prompted Plaintiffs to again argue that venue is appropriate in Washington under 12 V.S.A. § 402 and *Bergeron v. Boyle*, 2003 VT 89, 176 Vt. 78. To put this matter to rest, Venue is appropriate in this court under *Bergeron*, as Plaintiffs now have briefed twice. It is unclear why this issue has become the *raison d'être* for the parties or the focus of the present litigation, and Defendants offer no new basis to support or justify a different outcome. The general venue statute states that: “An action before a Superior Court shall be brought in the unit in which one of the parties resides, if either resides in the State; otherwise, on motion, the complaint shall be dismissed. If neither party resides in the State, the action may be brought in any unit. Actions concerning real estate shall be brought in the unit in which the lands, or some part thereof, lie.” 12 V.S.A. § 402(a). At the time suit was filed (and now so far as the court is aware), none of the parties resided in Vermont. Plaintiffs reside in Germany; Defendants reside in New Hampshire. Plaintiffs thus could have filed suit in any unit of the civil division unless this was an action “concerning real estate,” in which case it would have to have been filed in the Orange Unit. But

under *Bergeron*, this case, which seeks only money and not title, is not one “concerning real estate.” As the *Bergeron* Court explained: [W]e have construed § 402(a) narrowly to place venue in the county where the land is located only in actions to “establish or to settle title to real estate.” Where no party disputes title, real property actions—including those for ejectment—may properly be brought in the county where either party resides. Therefore, unless an action requires the court to directly establish, quiet, attach, transfer or bestow title to real property, the “concerning real estate” language of § 402(a) does not apply. *Bergeron*, 2003 VT 89, ¶ 11; see also *Craddock v. Heffermehl*, No. 2018-126, 2018 WL 5785456, *4 n.2 (Vt. Nov. 2, 2018) (unpublished mem.) (“We have construed the restrictive 1 The motion also mentions a lack of personal jurisdiction but says nothing more about the matter. This appears to be an oblique reference to Defendants’ argument that they have not yet been properly served. Otherwise, venue and personal jurisdiction are separate concepts. See 14D Wright & Miller, *Fed. Prac. & Proc. Juris.* § 3801 (4th ed.). The court does not understand Defendants’ motion to raise any issue of personal jurisdiction. venue requirement concerning real property in § 402(a) to apply only to actions establishing or settling title in the subject property.”); *Birchwood Land Co., Inc. v. Krizan*, No. 61-10-13 Gicv, 2014 WL 4162881, *1 (Feb. 13, 2014 Vt. Super. Ct.) (“when ‘no party disputes title,’ then the normal [venue provision] applies”). There is no title dispute in this case. Plaintiffs, based on their and Defendants’ out-of- state residence were free to file in any unit. Order For the foregoing reasons, Defendants’ motion to dismiss is Denied. Electronically signed on 1/28/2026 11:49 AM pursuant to V.R.E.F. 9(d) _____ Daniel Richardson Superior Court Judge