

Diaz v Silver Bell Co. Limited Partnership

2002 NY Slip Op 30107(U)

October 30, 2002

Supreme Court, New York County

Docket Number: 112459/02

Judge: Paula J. Omansky

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: PAULA J. OMANSKY

PART 47

0112459/2002

DIAZ, JAMES
vs
SILVER BELL COMPANY

SEQ 1

CHANGE VENUE

INDEX NO.

112459/02

MOTION DATE

10/2/02

MOTION SEQ. NO.

001

MOTION CAL. NO.

10

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

SCANNED
NOV 22 2002

Dated: 10/30/02

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

MOTION/CASE IS REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 47

-----X
JAMES DIAZ and BEATRIZ DIAZ Index No. 112459/02

Plaintiff,

DECISION AND ORDER

-against-

SILVER BELL COMPANY LIMITED PARTNERSHIP, THE
GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., AND
TROLAND, INC.

Defendant.

-----X
PAULA J. OMANSKY, J. :

In this action for personal injury, defendant Troland, Inc. ("Troland") moves, pursuant to CPLR 510 and 511 , to change the venue and place of trial of this action from the Supreme Court, County of New York, to the Supreme Court, County of Westchester.

FACTS

Troland maintains that New York County is not a proper venue since none of the parties reside in or maintain a place of business within the County of New York. Plaintiff James Diaz alleges that on March 5, 2002, he sustained personal injuries when he slipped and fell on 1233 Nepperhan Avenue, Yonkers New York, County of Westchester. According to plaintiff, Troland, Inc. is a New York State corporation and maintains its principal place of business at 425 Locust Avenue, Mount Vernon, New York 10522.

The remaining parties do not reside in New York County. Silver Bell Company Limited partnership, is allegedly a New York-based corporation with its principle place of business at 8 Ardmore Road, Scarsdale, New York 10583. Defendant Great Atlantic &

Pacific Tea Company , Inc. is a Maryland corporation. Plaintiffs do not reside in New York County.

The remaining defendants do not oppose Troland's change of venue application. ,However, plaintiffs oppose this motion arguing that Troland's Certificate of Incorporation states that its principal location is New York County.

DISCUSSION

"Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced..." (CPLR 503[a]). A domestic corporation is deemed a resident of the county in which its principal office is located (CPLR 503[c]).

The designation of a county as the location of a corporation's principal office in a certificate of incorporation is generally controlling in determining corporate residence for the purpose of venue (Conway v Gateway Assocs., 166 AD2d 388, 389 [1st Dept 1990; see, Lombardi Assocs. Ltd. v Champion Ambulette Serv. Inc., 270 AD2d 775 [3d Dept 2003]). Here, defendant Troland's certificate of corporation designates New York county as the principle place of business but lists its principle "executive office" as the Locust Street address in Mount Vernon. However, references to the presence of officers or corporate offices in other counties are immaterial; moreover, it is not dispositive that the corporation may not actually carry out business activities in the designated

county (United Credit Corp. v Le Roy Adventures, Inc., 61 AD2d 742 [1st Dept 1978]). Hence, New York county is the designated county for purposes of venue (Kluaman v Food Emporium, 226 AD2d 321 [1st Dept 1996]).

However, the law still permits venue to be changed despite the fact that action is properly placed in the county designated as the corporation's principal place of business, in order to accommodate the convenience of witnesses (see, Cruz v Kodis, 241 AD2d 338, 339 [1st Dept 1997]). The party seeking a change of venue under CPLR 510(3) has the burden of showing that the convenience of material witness would be better served by such a change (Chimarios v Duhl, 152 AD2d 508, 509 [1st Dept 1989]). In order to succeed on its motion to change venue, Troland must demonstrate that a preponderance of the material witnesses reside in the county in which venue is sought (Chimarios v Duhl, supra). The attorney's affidavit must set forth the identity of the witnesses to be called, the nature of the testimony and its materiality, and/or the fact that the witness will be inconvenienced by having to go to New York County for trial (Weiss v Saks Fifth Avenue, 157 AD2d 475, 476 [1st Dept 1990]; Stavredes v United Skates of America, 87 AD2d 502 [1st Dept 1982]).

Defendant Troland has failed to supply any of the necessary information concerning the witnesses that they intend to call (Kluaman v Food Emporium, supra, 226 AD2d, at 322). Troland's

motion to change venue is denied.


Accordingly, it is

ORDERED that defendant Troland's motion to change venue to Westchester County is denied for the reasons stated herein and it is further

ORDERED that the parties are directed to appear for a preliminary conference on Dec. 6, 2002, at 11 a.m. at 71 Thomas Street, Room 205, New York, N.Y.

DATED: October 30, 2002

ENTER:



PAULA J. OMANSKY
J.S.C.