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| Pember v Citigroup, Inc. |
| 2005 NY Slip Op 30584(U) |
| November 17, 2005 |
| Supreme Court, New York County |
| Docket Number: 102748/04 |
| Judge: Joan A. Madden |
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5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

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KATHERINE PEMBER,

Plaintiff,

Index No. 102748/04

-against-

CITIGROUP, INC. a/k/a CITIBANK, N.A.,
and ONESOURCE FACILITY SERVICES, INC.,
Defendants.

-----X
Joan A. Madden, J.

Defendant Citigroup, Inc. a/k/a Citibank, N.A. ("Citibank")
moves to change venue of this action from this court to the
Supreme Court, Westchester County pursuant to CPLR 510(3).
Plaintiff opposes the motion, which is denied for the reasons
below.

Background

In this action, plaintiff seeks to recover for personal
injuries she sustained on December 28, 2002, when she allegedly
slipped and fell on ice near the back entrance of Citibank in
Armonk, New York, which is located in Westchester County.
Plaintiff resides in Armonk. Citibank's principal place of
business is in New York County.

Citibank argues that venue should be changed since New York
County is "an inconvenient forum" since plaintiff is a resident
of Westchester County, the accident occurred in Westchester
County, and plaintiff received medical treatment there. Notably,
aside from plaintiff's deposition testimony indicating where she

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received medical treatment, Citibank submits no evidence in support of its motion.

Plaintiff counters that New York County is a proper venue based on Citibank's designation of New York County as its principal place of business. Plaintiff further asserts that Citibank has failed to make the kind of evidentiary showing required to justify a discretionary change of venue.

Discussion

It is well-established that "for venue purposes the sole residence of a foreign corporation is the county in which its principal office is located as designated in its application for authority to conduct business filed with the State of New York." Bailon v Avis Rent A Car Inc., 270 AD2d 439 (2d Dept 2000) (citing CPLR 503(c)) See, also, Nadle v L.O. Realty Corp., 286 AD2d 130 (1st Dept 2001); Marko v Culinary Institute of America, 245 AD2d 212 (1st Dept 1997). Here, venue is proper in New York County, since Citibank had designated New York County as its principal place of business in New York State, and has not notified the Secretary of State of any address change. See BCL § 306.

Where, as here, the venue chosen by a plaintiff is proper, a defendant may seek a discretionary change of venue pursuant to CPLR 510(3)¹ based on the convenience of material witnesses. To

¹ CPLR 510(3) provides that "[t]he court, upon motion, may change the place of an action if the convenience of material witnesses and the ends of justice will be promoted by the

demonstrate entitlement to a change of venue under 510(3), a defendant must submit affidavits from material witnesses which satisfy a four-part test. O'Brien v. Vassar Brothers Hospital, 207 A.D.2d 169 (2nd Dept. 1995). The affidavits in support of the motion to change venue must contain (1) the names, addresses, and occupations of prospective witnesses, (2) the facts to which proposed witness will testify at trial, (3) a statement that the witnesses are in fact willing to testify, and (4) a statement indicating how the witnesses would be inconvenienced if a change of venue were not granted. Id.; Compare, Kraft v. Kamalian, 290 A.D.2d 264 (1st Dept. 2002) (denying defendant's motion to change venue where, inter alia, defendant did not satisfy the four criteria).

Here, Citibank submits no affidavits from witnesses, but instead, relies wholly on the statements in his attorney's affirmation. And, with respect to the treating physicians identified by defendant, counsel's affirmation does not include a statement that any of these witnesses were contacted, or adequately specify how they would be inconvenienced by the venue in New York County. See Prado v Walsh-Atkinson Co, Inc., 212 AD2d 489 (1st Dept 1995). The court also notes that given the proximity of the courthouses in Westchester County and New York

change."

County, there is no basis for finding that the interest of justice would be served by a change of venue.

Finally, Citibank's argument that venue should be changed based on the doctrine of forum non conveniens is without merit as that doctrine is irrelevant when, as here, the movant is seeking to change the venue of an action within the State. See generally, Kastendieck v. Kastendieck, 191 AD2d 328 (1st Dept 1993).

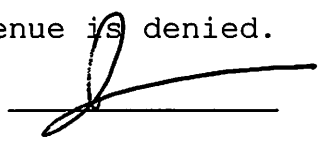
Accordingly, there is no ground for the changing the venue of this action.

Conclusion

In view of the above, it is

ORDERED that the motion to change venue is denied.

DATED: November 17, 2005



J.S.C.

JOAN A. MADDEN

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