

Kaufman v Gerakyan
2007 NY Slip Op 30347(U)
March 12, 2007
Supreme Court, New York County
Docket Number: 0104261
Judge: Deborah A. Kaplan
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DEBORAH KAPLAN

PART 22

Justice

LAUREN KAUFMAN and DONNA KAUFMAN

-v-

INDEX NO.: 104261/06
MOTION DATE: 3/07/07
MOTION SEQ. NO.: 004003
MOTION CAL. NO. : 53

**ROBERT GERAKYAN, AJAZ EHMED,
I.K. GRIVOGIANNIS and THUBTEN TSERING**

The following papers, numbered 1 to 4 were read on this motion and cross-motion to consolidate two pending actions for all purposes:

- Notice of Motion/ Order to Show Cause — Affidavits — Exhibits
- Notice of Cross-Motion — Affidavits -Exhibits
- Affirmation in Partial Support of the Motion
- Affirmation in Opposition to the Motion

PAPERS NUMBERED
FILED
3
4

MAR 27 2007

Cross-Motion: Yes No

**COUNTY CLERK'S OFFICE
NEW YORK**

On December 19, 2005, plaintiffs Lauren Kaufman and Donna Kaufman were passengers in a vehicle owned by defendant Robert Gerakyan and operated by defendant Ajaz Ehmedkel. At the intersection of 65th Transverse Road and 5th Avenue New York County, that vehicle collided with a vehicle owned by defendant I.K. Grivogiannis and operated by defendant Thubten Tsering, in which Michael Kenna was passenger.

On or about April 11, 2006, Michael Kenna commenced an action in the Supreme Court, Kings County, against Gerakyan, Ehmedkel, Grivogiannis, Tsering and B. Taxi Management Inc. seeking damages for injuries allegedly sustained by him in the accident (*Michael Kenna and Kuniko Kenna v B. Taxi Management, Inc. et al., Index No. 7871/2006*). On or about April 28, 2006, Lauren Kaufman and Donna Kaufman commenced the instant action against the same four individual defendants in the Supreme Court, New York County, seeking damages for their injuries. The plaintiffs in the New York County action filed a Note of Issue and Certificate of Readiness for Trial on November 22, 2006. The parties represent that discovery has not been completed in the Kings County action.

Defendants Grivogiannis and Tsering now move to consolidate the two actions for all purposes and place venue in New York County. Plaintiffs Michael Kenna and Kuniko Kenna cross-move to consolidate the action for joint trial and place venue in Kings County. Plaintiffs Lauren Kaufman and Donna Kaufman do not oppose consolidation but argue that proper venue for both actions lies in New York County, where they reside and where the accident occurred.

Inasmuch as the two actions arise out of the same motor vehicle accident, concerns of judicial economy, scarce juror resources and the risk of divergent verdicts on the same set of

facts warrant a joint trial. There is no indication that consolidation will prejudice any substantial right. See Amcan Holdings, Inc. v Torys LLP, 32 AD3d 337 (1st Dept. 2006). Indeed, the parties agree that consolidation should be granted, and disagree only as to the place of venue.

The general rule is that, barring "exceptional circumstances involving the convenience of material witnesses" (Teitelbaum v PTR Co., 6 AD3d 254, 255 [1st Dept. 2004]), venue in consolidated actions lies in the county in which the first action was commenced. See, Amcan Holdings, Inc. v Torys LLP, *supra*; Lopez v Chaliwjit, 268 AD2d 377 (1st Dept. 2000). Although the Kings County action was commenced first, the time difference was de minimus, only 17 days, and the New York County action thereafter surpassed the Kings County action in advancing toward trial. Moreover, the sole basis alleged by the Kenna plaintiffs for placing venue in Kings County is that one of the four individual defendants, Ehmed, resides there. The motion papers reveal no other tie to Kings County. The Kenna plaintiffs do not allege their own place of residence as a basis for venue and the complaint in that action alleges that defendant Gerakyan is resident of New York County, defendants Tsering and Grivogiannis are residents of Queens and defendant B. Taxi Management, Inc. is a domestic corporation authorized to do business in New York. The Kenna plaintiffs fail to allege in their moving papers how any particular party or witness in that action would be inconvenienced by placing venue in New York County.

Moreover, the accident occurred in New York County. While venue is generally based on the residence of one of the parties (see CPLR 503(a)), "upon a proper showing a transitory action may also be brought in the county where the cause of action arose when such promotes the convenience of witnesses." Oquendo v Nationwide Insurance Company, 270 AD2d 174, 176 (1st Dept. 2000), *quoting* Freeman v Suk Ho Chun, 179 AD2d 437). Thus, it is often been held that an action arising from a car accident ought to be tried in the county where the accident occurred. See Shetty v Volvo Cars, ---AD3d---, 2007WL610657 (1st Dept. March 1, 2007); Goercke v Kyun, 273 AD2d 110 (1st Dept. 2000); Ford v Servistar Corp., 133 AD2d 23 (1st Dept. 1987).

In addition to the fact that the action arose in New York County, as noted above, the two Kaufman plaintiffs, one defendant and two other individuals listed on the police report, who may or may not be called as witnesses, provided New York County addresses. Accordingly, "the convenience of witnesses and the ends of justice" (CPLR 510[3]) will be promoted by moving venue of the Kings County action to New York County upon consolidation.

For these reasons and upon the foregoing papers, it is

ORDERED that the motion and cross-motion are granted to the extent that the above-captioned action is consolidated, for purposes of joint trial only, with the action entitled *Michael Kenna and Kuniko Kenna v B. Taxi Management, Inc. et al.*, pending in the Supreme Court, Kings County, under *Index No. 7871/2006*, and it is further,

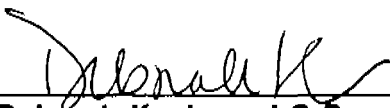
ORDERED that the Clerk of the Supreme Court, Kings County, shall transfer the papers on file in the action entitled *Michael Kenna and Kuniko Kenna v B. Taxi Management, Inc. et al.*, *Index No. 7871/2006*, to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; and it is further,

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry shall, without further fee, assign an index number to the file transferred pursuant to this order; and it is further,

ORDERED that upon payment of the appropriate calendar fees, the filing of notes of issue and statements of readiness in each of the above actions, and upon service of a copy of this order with notice of entry on the Clerk of the Trial Support Office, said Clerk shall place the aforesaid actions upon the trial calendar for a joint trial.

This constitutes the Decision and Order of the Court.

Dated: March 12, 2007


Deborah Kaplan, J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
 DO NOT POST REFERENCE

FILED

MAR 27 2007

COUNTY CLERK'S OFFICE
NEW YORK