

**Morocho v Sunwood Dev. Corp.**

2007 NY Slip Op 30464(U)

March 21, 2007

Supreme Court, New York County

Docket Number: 0109540/2006

Judge: Barbara R. Kapnick

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

**BARBARA R. KARNICK**

Index Number: 109540/2006

**MOROCHO, ALCIVAR A.**

vs.

**SUNWOOD DEVELOPMENT CORP.**

SEQUENCE NUMBER: 001

CHANGE VENUE

PART 12

INDEX NO. 109540/06

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read at the motion to/for \_\_\_\_\_

**FILED**

APR 2 2007

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

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MOTION SUPPORT  
OFFICE

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 3/21/07



**BARBARA R. KARNICK**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

  
MDA

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 12

-----X  
ALCIVAR A. MOROCHO,

Plaintiff,

- against -

SUNWOOD DEVELOPMENT CORP., MONIR  
K.S. FARMANFARMAIAN and NICHOLAS  
MASEM CONSTRUCTION & CONTRACTING,  
INC.,

Defendants.  
-----X

DECISION/ORDER

Index No. 109540/06

Motion Seq. No. 001

BARBARA R. KAPNICK, J.:

In this action, plaintiff seeks to recover damages for personal injuries he sustained in a construction accident which occurred at premises located at East 336 Ruggs Path, Noyac, New York in Suffolk County.

Defendant Sunwood Development Corp. ("Sunwood") now moves for an order pursuant to CPLR §§ 510 and 511 changing the venue of this action to Suffolk County, on the ground that the venue designated by plaintiff - i.e., New York County - is not a proper county.

Pursuant to CPLR § 503(a), the place of trial shall generally be "in the county in which one of the parties resided when it was commenced."

There is no dispute that plaintiff is a resident of Suffolk County. In addition, defendant Sunwood's principal place of business as well as defendant Nicholas Masem Construction & Contracting, Inc. were both located in Suffolk County at the time the action was commenced and thus must be deemed "residents" of Suffolk County for venue purposes. See, CPLR § 503(c).

Although defendant Monir K. S. Farmanfarmaian was a resident of New York County, plaintiff discontinued his claims against said defendant pursuant to "Stipulation of Discontinuance Against Defendant Farmanfarmaian and Change of Caption" dated November 2006.

[P]laintiff's voluntary discontinuance of the action against [the defendant] demonstrates that he was an improper party from the beginning (see, *Caplin v Ranhofer*, 167 AD2d 155, 157 [1990]). Where venue is placed on the basis of naming an improper party, a motion to change venue should be granted upon the dismissal of that party (*Chow v Long Is. R.R.*, 202 AD2d 154 [1994]); *Caplin*, 167 AD2d at 157).

Crew v. St. Joseph's Medical Center, 19 A.D.3d 205, 206 (1st Dep't 2005).

Accordingly, this Court finds that venue was improperly placed in New York County. Defendant Sunwood's motion is, therefore,

granted and the venue of the this action is changed to Suffolk County.

The Clerk of this Court is directed to transfer the papers on file in this action (Index No. 109540/06), to the Clerk of the Supreme Court, Suffolk County, upon service of a copy of this order with notice of entry and payment of appropriate fees, if any.

This constitutes the decision and order of this Court.

Dated: March 21, 2007



BARBARA R. KAPNICK  
J.S.C.

**BARBARA R. KAPNICK**  
**J.S.C.**

**FILED**  
APR 02 2007  
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NEW YORK