

Ross v Syms Clothing Inc.

2007 NY Slip Op 31155(U)

May 2, 2007

Supreme Court, New York County

Docket Number: 0115989/2006

Judge: Barbara R. Kapnick

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

BARBARA R. KAPNICK

PRESENT: _____

PART 12

Index Number : 115986/2006

115986/06

ROSS, LEONARD

INDEX NO. _____

vs

SUMS CLOTHING INC.

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. 001

CHANGE VENUE

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
MAY 11 2007
NEW YORK COUNTY CLERK'S OFFICE

Dated: 5/3/07

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

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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

-----X
LEONARD ROSS,

Plaintiff,

-against-

SYMS CLOTHING INC. d/b/a SYMS and
SYMS CORP. d/b/a SYMS,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER.
Index No. 115986/06
Motion Seq. No. 001

FILED
MAY 11 2007
NEW YORK
COUNTY CLERK'S OFFICE

In this action, plaintiff Leonard Ross seeks to recover damages for personal injuries he allegedly sustained when he tripped and fell on August 5, 2006 at a retail clothing store operated by defendants Syms Clothing Inc. d/b/a Syms and Syms Corp. d/b/a Syms in Nassau County.

Defendants now move for an order pursuant to CPLR §§ 503, 510 and 511 changing the place of trial of this action to Nassau County, or, in the alternative, transferring this matter to Nassau County pursuant to CPLR §§ 325(a) and 327(a) on the grounds on "forum non conveniens".

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 was a resident of Nassau County when this action was commenced.

Although defendants contend that neither corporation maintains a principal place of business in New York County, plaintiff has annexed a copy of the "Application for Authority of Syms Corp. Under Section 1304 of the Business Corporation Law" which designates that "[t]he office of the corporation within the State of New York is to be located in the County of New York."

"A domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located," (CPLR § 503[c]).

Thus, defendant Syms Corp. is deemed a "resident" of New York County pursuant to CPLR § 503(c). Since one of the parties resided in New York County when this action was commenced, plaintiff's designation of New York County as the place of trial of this action is proper.

Defendants alternatively argue that venue should be changed to Nassau County for the convenience of witnesses.

However,

[a] change of venue based on the convenience of witnesses may only be granted after there has been a detailed evidentiary showing that the convenience of nonparty witnesses would in fact be served by granting of such relief (*O'Brien v. Vassar Bros. Hosp.*, 207 A.D.2d 169, 622 N.Y.S.2d 284; *Kraft v. Kamalian*, 290 A.D.2d 264, 735 N.Y.S.2d 540).

Jacobs v. Banks Shapiro Gettinger Waldinger & Brennan, LLP, 9 A.D.3d 299 (1st Dep't 2004).

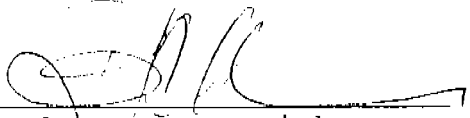
Defendants have wholly failed to make this evidentiary showing. See, Rodriguez-Lebron v. Sunoco, Inc., 18 A.D.3d 275 (1st Dep't 2005).

Accordingly, defendants' motion to change venue to Nassau County is denied.

A preliminary conference shall be held in IA Part 12, 60 Centre Street, Room 341 on May 30, 2007 at 9:30 a.m.

This constitutes the decision and order of this Court.

Date: May 2, 2007


Barbara R. Kapnick
BARBARA R. KAPNICK
J.S.C.

FILED
MAY 11 2007
NEW YORK
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