

Granger v El-Waraky

2007 NY Slip Op 33977(U)

December 11, 2007

Supreme Court, Suffolk County

Docket Number: 0024534/2006

Judge: Melvyn Tanenbaum

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XIII SUFFOLK COUNTY**

PRESENT:

Hon. MELVYN TANENBAUM
Justice

MOTION #003-Mot D
R/D: 101807
S/D 111507

MATTHEW T GRANGER

PLTF'S/PET'S ATTY:
THOMAS G. NOLAN, ESQ.
One Union Square, POB 826
Aquebogue, New York 11931

Plaintiff,

- against -

SAYED KHALED EL-WARAKY, KHALED SAYED ABDEL
EL-WARA, CAB EAST LLC, LONGSTEM RESTAURANT, INC.
d/b/a SOUNDVIEW RESTAURANT, MANAGEMENT SOLUTION,
LTD., HERB HILL MANAGEMENT GROUP, INC., HERB HILL
HOLDINGS, LLC. and HERB HILL LEASING, LLC.,

DEFT'S/RESP'S ATTY:
(Atty for Management Solutions)
CONGDON FLAHERTY O'CALLAGHAN
333 Earle Ovington Blvd.
Uniondale, New York 11553

Defendants.

(Atty for Cab East LLC)
PHILLIPS, LYTLE, HITCHCOCK
3400 Marine Midland Center
Buffalo, New York 14203

SEAN BASDAVANOS

(Atty for Herb Hill Holdings)
QUADRINO & SCHWARTZ, P.C.
666 Old Country Road, Suite 207
Garden City, New York 11530

Plaintiff,

- against -

(Atty for El-WarakY and El-Wara)
KEVIN J. KEATING, ESQ.
666 Old Country Road, Suite 501
Garden City, New York 11530

SAYED KHALED EL-WARAKY, KHALED SAYED ABDEL
EL-WARA, CAB EAST LLC, LONGSTEM RESTAURANT, INC.
d/b/a SOUNDVIEW RESTAURANT, MANAGEMENT SOLUTION,
LTD., HERB HILL MANAGEMENT GROUP, INC., HERB HILL
HOLDINGS, LLC, HERB HILL LEASING, LLC., CITY OF GLEN
COVE, FRANK ABRUZZO and JOE ABRUZZO

FRANK ABRUZZO, Pro-se
9 Stoddart Court
Locust Valley, New York 11560

JOSEPH ABRUZZO, Pro-se
9 Stoddart Court
Locust Valley, New York 11560

Upon the following papers numbered 1 to 7 read on this motion for an order pursuant to CPLR §

_____ Notice of
Motion/Order to Show Cause and supporting papers 1-4 ; Notice of Cross Motion and supporting papers _____ Answering Affidavits
and supporting papers 5-7 _____ Replying Affidavits and supporting papers _____ Other _____ ; (and
after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by defendant in both action Management Solution, Ltd. seeking an order pursuant to CPLR §602 consolidating for joint trial two personal injury actions and transferring the second action from Nassau County to Suffolk County is defined as follows

One of the defendants in the Nassau County action is the City of Glen Cove. CPLR §504 mandates that the place of trial of an action against a city "shall be in the county in which such city is situated." Under such circumstances the party seeking a transfer of venue must show the existence of "compelling countervailing circumstances" (See Chavez v. School Construction Consultants, Inc., 284 AD2d 361 726 563 (2nd Dept., 2001)). Movants have failed to submit any evidence to justify a transfer of Action #2 . Defendant's motion to consolidate these actions in Suffolk County must therefore be denied. (See Woods v. County of Westchester, 112 AD2d 1037, 492 NYS2d (2nd Dept., 1985)).

As a general rule the county in which the first action was commenced will become the county for purposes of the consolidated or joint action (Nationwide Associates v. Targee, 286 AD2d 717, 730 NYS2d 349 (2d Dept., 2001)). However, the court retains discretionary authority to select the venue of the consolidated action or joint trial. Given the mandatory nature of the language of CPLR §504, venue in this instance should be Nassau County. Accordingly, defendants motion for an order of consolidation for joint trial must be granted to the extent that the actions are hereby joined for the purpose of conducting joint trials of the actions in the Supreme Court of Nassau County, and it is further

ORDERED, that Actions #1, and #2 will proceed under the joint caption as hereinabove set out, and it is further

ORDERED, that the parties shall file a separate Note of Issue and Certificate of Readiness and pay the appropriate calendar fees on each of these actions, and it is further

ORDERED, that all parties shall exchange any matter previously secured through pre-trial discovery with the party so demanding, and it is further

ORDERED, that all matters of trial practice, including the right to open and close, are reserved until trial, and it is further

ORDERED, that movant(s) shall serve a copy of this order upon all parties and the Clerks of Nassau and Suffolk Counties with a copy of this order with notice of entry within 20 days. Said Clerks shall thereupon arrange transfer of the file in the Supreme Court, Suffolk County action.

Dated: December 11, 2007

MELVYN TANENBAUM

J.S.C.