

Soto-Marroquin v Mellet
2008 NY Slip Op 30173(U)
January 18, 2008
Supreme Court, New York County
Docket Number: 0108798/2007
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

*Common
1-23-08*

PRESENT: HON. JANE S. SOLOMON
Justice

PART 55

ADAN SOTO-MAROQUIN

INDEX NO. 108798/2007

MOTION DATE 11 - 13 - 2007

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

**MAUREEN MELLET and
GUIDING EYES FOR THE BLIND, INC.**

The following papers, numbered 1 to 5 were read on this motion to/for change venue

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

PAPERS NUMBERED

1 - 3

Answering Affidavits — Exhibits _____

4 - 5

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion **is denied in accordance with the annexed memorandum decision and order, which also directs a transfer to the Motor Vehicle Part and the setting of a preliminary conference in said Part.**

*MOTION/CASE IS RESPECIFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):
Motor Vehicle Part per de assen
-> set a p.c.*

FILED

JAN 23 2008

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/18/08

[Signature]
JANE S. SOLOMON
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: IAS PART 55

-----X
ADAN SOTO-MAROQUIN,

Plaintiffs,

-against-

INDEX NO. 108798/07

DECISION and ORDER

MAUREEN MELLET and GUIDING EYES FOR
THE BLIND, INC.,

Defendants.

-----X
JANE S. SOLOMON, J.

In this personal injury action, defendants Maureen Mellet and Guiding Eyes for the Blind, Inc. ("Guiding Eyes") move for a change of venue from this court to Supreme Court, Westchester County. Plaintiff Adan Soto-Marouquin opposes the motion, which is denied as follows.

This action arises from an automobile collision which took place on or about June 26, 2005, on the public thoroughfare known as the Triborough Bridge, which is located in the County of Queens. Plaintiff, who resides in New Jersey, brought this action in New York County relying on Guiding Eyes' corporate filings with the New York Secretary of State. Defendants contend that they both reside in Yorktown Heights, Westchester County. They now move under CPLR §§ 510(1) and 511, arguing that New York County is an improper venue because no party resides in New York

County, and, since residence is a controlling factor for venue purposes, the only proper county is Westchester.

Under CPLR § 510(1), a defendant may change venue as a matter of right if the plaintiff failed to designate a proper county. A plaintiff can defeat such a motion if her choice of venue was proper. Agway, Inc. v. Kervin, 188 A.D.2d 1076 (4th Dep't 1992). Under CPLR § 503(a), venue is proper in any county in which one of the parties resides at the time the lawsuit is commenced, and a "corporation's designation of a county as its principal place of business in its application for authority to do business filed with the Secretary of State" is sufficient "for choosing that county as the venue of an action." Job v. Subaru Leasing Corp., 30 A.D.3d 159 (1st Dep't 2006).

Based on a recent printout from the Secretary of State's website, Guiding Eyes is a "Domestic Not-For-Profit Corporation," with a "County" and "Jurisdiction" of "New York." A plaintiff is entitled to rely on documents filed with the Secretary of State when commencing a lawsuit, and Guiding Eyes has not presented any evidence to support its attorney's affirmation that it resides in Westchester County. Thus, Guiding Eyes is a New York County resident for venue purposes, and New York County is a proper venue for trial.

Finally, because this action arises from a motor vehicle accident, the case will be transferred to the appropriate part.

Accordingly, it hereby is

ORDERED that the motion to change venue from this court to Supreme Court, Westchester County is denied; and it further is

ORDERED that the Office of Trial Support shall set a conference in the part of this court handling claims arising from automobile accidents and my staff shall implement the order

FILED

JAN 23 2008

Dated: January 18, 2008

ENTER:

[Handwritten Signature]

J.S.C
NEW YORK COUNTY CLERKS OFFICE
JAMES S. GILSON