

Jolli Farms LLC v Stackow

2008 NY Slip Op 31348(U)

May 8, 2008

Supreme Court, New York County

Docket Number: 0114321/2007

Judge: Doris Ling-Cohan

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

PRESENT: HON. DORIS LING-COHAN
Justice

PART 36

Jolli Farms LLC d/b/a
Rose Hill Farm,

INDEX NO. 114321/07

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

Lisa Marie Stackow et al.

The following papers, numbered 1 to 4 were read on this motion to/for change venue

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

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits _____

3

Replying Affidavits _____

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to change venue is granted
in accordance with the attached memorandum decision.

FILED

MAY 13 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/8/08

HON. DORIS LING-COHAN

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

ANY OTHER STATE OR FEDERAL COURT REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 36

-----x
JOLLI FARMS LLC d/b/a ROSE HILL FARM,

Plaintiff,

Index No. 114321/07

-against-

Motion Seq. No.: 001

LISA MARIE STACKOW, DEBORAH SIEGEL,
LM STACKOW, INC., and GROUSE RIDGE
FARMS, LTD.,

Defendants.

FILED

MAY 13 2008

COUNTY CLERK'S OFFICE
NEW YORK

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DORIS LING-COHAN, J.:

Defendants Deborah Siegel and Grouse Ridge Farms., Ltd.'s motion for an order changing the venue of this action from New York County to Suffolk County pursuant to CPLR §§503(c) and 511, is granted.

Plaintiff commenced this action on or about October 24, 2007. The basis for a New York County venue is alleged in the complaint to be that plaintiff has its principal corporate headquarters in New York County.

In seeking to change the venue of this action to Suffolk County, moving defendants maintain that the New York State Department of Corporations database designates plaintiff as a Suffolk County Corporation. [See Exh. E & F, Notice of Motion]. In addition, plaintiff has supplied a copy of plaintiff's Articles of Organization filed on February 25, 2004, which lists the county within which the office is to be located as, Suffolk County. [Exh. A, Affirmation in Reply].

CPLR §503(a) provides, with respect to venue, as follows:

"the place of trial shall be in the county in which one of the parties resided when it was commenced..."

(emphasis supplied).

In addition, CPLR §503(c) provides that

"A domestic corporation...shall be deemed a resident of the county in which its principal office is located".

"It is well settled that the sole residence of a domestic corporation for venue purposes is the county designated in its certificate of incorporation, despite its maintenance of an office or facility in another county..."

Graziuso v. 2060 Hylan Blvd. Restaurant Corp., 300 AD2d 627 (2nd Dept 2002) (citations omitted).

Here, the proof supplied indicates that plaintiff's principal office as being located in Suffolk County at the time this action was commenced. Specifically, the Articles of Organization (the equivalent of a certificate of incorporation for a limited liability corporation [*id.*]), lists Suffolk, as the county in which plaintiff's office is to be located. [Exh. A, Reply Affirmation]. Thus, the designation by plaintiff of New York County based upon plaintiff's alleged residence was improper.

Moreover, the fact that in opposition to the within motion plaintiff has a submitted a "Certificate of Assumed Name", which lists plaintiff's principal place of business as being located in New York County, is of no significance. Such certificate was

filed with the State of New York Department of State on October 30, 2007, several days after this action was commenced.

Accordingly, it is

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Suffolk, and the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Suffolk upon service of a copy of this order with notice of entry and payment of appropriate fees, if any; and it is further

ORDERED that within 30 days of entry of this order, movant shall serve a copy with notice of entry, upon all parties, as well as the Clerk of the Supreme Court.

FILED

MAY 13 2008

Dated:



COUNTY CLERK'S OFFICE
NEW YORK



Hon. Doris Ling-Cohan, J.S.C.