

**Arjune v City of New York**

2008 NY Slip Op 31581(U)

June 6, 2008

Supreme Court, New York County

Docket Number: 0114247/2007

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN

PART 52

Index Number : 114247/2007

ARJUNE, FRANK

vs

CITY OF NEW YORK

Sequence Number : 001

CHANGE VENUE

INDEX NO. 114247/2007  
MOTION DATE 3/20/08  
MOTION SEQ. NO. 001  
MOTION CAL. NO. 6

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

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

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

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

PAPERS NUMBERED	
1	_____
2	_____
	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH THE ABOVE. MOTION AND ORDER.**

**FILED**  
JUN 10 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/6/08

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X  
FRANK ARJUNE,

Plaintiff,

against

THE CITY OF NEW YORK, NEW YORK CITY  
FIRE DEPARTMENT and LAWRENCE  
PONTRELLI,

Defendants.  
-----X

Index Number 114247/2007  
Mot. Submit Date Mar. 28, 2008  
Mot. Seq. No. 001  
Cal. No. 6

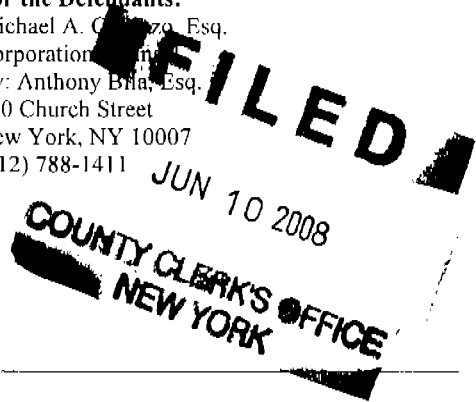
**DECISION AND ORDER**

**For the Plaintiff:**

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Papers considered in review of this motion to :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	2

**PAUL G. FEINMAN, J.:**

The City of New York ("the City") moves for an order changing the venue of this action from the County of New York to the County of Queens pursuant to CPLR 504(3) and CPLR 510(1). Plaintiff Frank Arjune opposed this motion as untimely. For the reasons stated below the motion is granted.

Plaintiff brings this action to recover damages for personal injury and property damage resulting from an automobile accident. Plaintiff alleges that a New York City Fire Department vehicle driven by Lawrence Pontrelli struck plaintiff's vehicle on October 23, 2006. The alleged accident occurred on Merrick Boulevard at or near Ridge Street, in Queens County,

New York. Plaintiff commenced this action by filing a Summons and Complaint with the New York County Clerk's office on October 23, 2007 and the City answered on December 17, 2007. The City now moves for an order changing the venue of this action from the County of New York to the County of Queens pursuant to CPLR 504(3) and CPLR 510(1).

Actions against the City are to be brought "in the county within the city in which the cause of action arose." CPLR 504(3); *see Bustillo v City of New York*, 201 AD2d 395 (1st Dept. 1994). "The purpose of the venue requirement is to protect governmental entities from inconvenience." *Powers v E. Hudson Power Auth.*, 75 AD2d 776, 777 (1st Dept. 1980). Although demands for change of venue based on "the ground that the county designated . . . is not a proper county shall be served with the answer or before the answer is served . . . [a] motion for change of place of trial on any other ground shall be made within a reasonable time after commencement of the action." CPLR 511(a). The court has discretionary powers under CPLR 510(3) to decide motions on venue. *Powers*, 75 AD2d at 777. Courts will weigh the interests of the parties when deciding whether to change venue. *Brunner v Joubert*, 118 AD2d 424, 425–26 (1st Dept. 1986) (holding that a change of venue motion should be granted because the only connection to the county where the action was originally brought was that the corporate defendant had a place of business there, and "the county with the preponderance of witnesses is the county in which the cause of action arose"); *Messenger v Festa*, 94 AD2d 792, 792–93 (2d Dept. 1983) (holding that the inconvenience to disabled parties outweighed any governmental interference); *Ortiz v Broadway Mgt., Co.*, 188 AD2d 401 (1st Dept. 1992) (holding that where plaintiff venued action in the county of her residence, "the City failed to make a timely statutory demand for change of venue" and further that the City failed to demonstrate the necessity for a

change of venue).

The purpose of CPLR 504(3) “is to protect [the City] and its officials from inconvenience” and to prevent the waste of public resources. *Babylon Assoc. v County of Suffolk*, 89 AD2d 57, 58–59 (1st Dept. 1982). This action arose in Queens County. Plaintiff and Pontrelli are residents of Nassau County. This action has no apparent connection to New York County whatsoever. Plaintiff only argues that the City’s motion was untimely. Although plaintiff is correct that defendants failed to “timely demand a change of venue as of right upon the ground that venue was improperly laid in New York County,” plaintiff does not attempt to establish that he would be prejudiced by transferring this action to Queens County. *Pub. Serv. Mut. Ins. Co. v ITT Hartford Group*, 249 AD2d 78, 78 (1st Dept. 1998).

Here, unlike in *Ortiz*, 188 AD2d at 402, the initial venue appears improper, and as in *Brunner*, the preponderance of witnesses reside or are employed either in Queens County or Nassau County. 118 AD2d at 425. Further, plaintiff will not be prejudiced “because there is outstanding discovery and the note of issue has not been filed.” *Soufan v Argo Pneumatic Co.*, 170 AD2d 289, 291 (1st Dept. 1991). Thus, “the ends of justice . . . will be promoted by transferring this action to [Queens] County.” *ITT Hartford Group*, 249 AD2d at 78. Accordingly, the City’s motion for an order to change venue to Queens County is hereby granted. It is

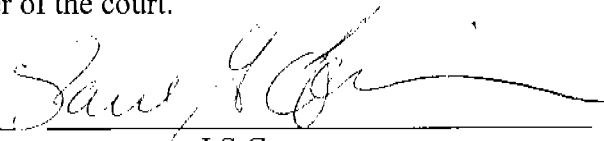
ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Queens; and it is further

ORDERED that upon service on the Clerk of this Court of a copy of this order with notice of its entry, the Clerk of this Court shall transfer papers on file in this action to the Clerk

of the Supreme Court, County of Queens

This constitutes the decision and order of the court.

Dated: June 6, 2008  
New York, New York

  
\_\_\_\_\_  
J.S.C.

2008 Pt 52\_114247\_2007\_001\_KB

**FILED**  
JUN 10 2008  
COUNTY CLERK'S OFFICE  
NEW YORK