

**Blackburn v Lloyd-Williams**

2008 NY Slip Op 33296(U)

December 8, 2008

Supreme Court, New York County

Docket Number: 109753/08

Judge: Walter B. Tolub

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

PRESENT: WALTER B. TOLUB  
Justice

PART 15

Index Number : 109753/2008  
**BLACKBURN, BROWNELL**  
vs.  
**LLOYD-WILLIAMS, RODRICK**  
SEQUENCE NUMBER : 001  
CHANGE VENUE

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

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

IS DECIDE

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISIO.**

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

Dated: 12/8/08

WALTER B. TOLUB 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: IAS PART 15

-----x  
BROWNELL BLACKBURN

Plaintiff,

-against-

RODRICK LLYOD-WILLIAMS, APEX HOMES, INC.,  
MARK FAHEY and JOSEF CARDUCCI, INC.,

Defendants.  
-----x

Index No.109753/08  
Mtn Seq.001

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

-----x  
**WALTER B. TOLUB, J.:**

This is Defendant Apex Homes, Inc's. (Apex) a motion to change venue from New York County to Westchester County pursuant to CPLR §§ 510 and 511.

Facts

The underlying action was commenced by the Plaintiff for personal injuries he claims were sustained because of Defendants' negligence and Labor Law violations. Plaintiff claims he was injured while working at a job site in Westchester County.

Defendant Apex is the manufacturer of the modular home that Plaintiff was constructing at the job site. Apex is a Pennsylvania corporation, authorized to do business in New York. In Apex's filing with the New York Department of State, Division of Corporations, New York County, is listed as the county of Apex's residence.

It is undisputed that Plaintiff and all Defendants reside in Westchester County and that the incident happened in Westchester

County.

Apex seeks to change venue to Westchester County arguing that all parties reside there, the incident occurred there and all material witnesses (who are the named parties in this matter) reside there. Apex further argues that based on all matters and witnesses having close ties to Westchester County, it would be a great hardship to have each of the Defendants make a 30 mile trip each day to New York County to attend proceedings in this matter.

Plaintiff argues that Apex ignores the evidentiary requirements permitting a change of venue and that therefore the motion should be denied.

In its Reply papers, Apex argues that, Mr. Hein, the architect that worked with Apex, a non-party witness, works in Westchester County and that appearing in New York County would be a hardship on Mr. Hein. None of the Defendants oppose Apex's motion for a change of venue.

#### Discussion

CPLR 510(3) provides that the court, upon motion, may change the place of trial of an action where the convenience of material witnesses and the ends of justice will be promoted by the change (CPLR 510[3]).

The Appellate Division has established a rigorous set of requirements for a motion to change venue pursuant to CPLR 510(3) (McKinney's Consolidated Laws of New York (Annotated) [2006],

*Practice Commentaries*, Vincent C. Alexander, C510:3).

The movant must establish four criteria: (1) the affidavit in support of the application must contain the names, addresses and occupation of prospective witnesses. The parties themselves are not witnesses for the purpose of deciding a motion pursuant to CPLR 510(3); (2) the movant must disclose the facts to which the proposed witnesses will testify; (3) the movant must demonstrate that the witnesses for whose convenience a change of venue is sought are in fact willing to testify; and (4) the movant must demonstrate how the witnesses in question would be in fact inconvenienced (Jacobs v. Banks Shapiro Gettinger Waldinger & Brennan, LLP, 9 AD3d 299 [1<sup>st</sup> Dept 2004]).

Apex has failed to meet the criteria for a change of venue. The only relevant witness that Defendant claims will be inconvenienced is the architect. Although Mr. Hein's name and work address are provided, there is no indication as to whether Mr. Hein is willing to testify. Furthermore, there is no clear indication of how Mr. Hein, the only non-party witness listed by Apex, would suffer great hardship by coming to New York County to testify.


Accordingly, it is

ORDERED that Apex's motion for a change of venue is denied.

Counsel for the parties are to appear for a conference on  
January 16, 2009 at 11:00AM in room 335

This memorandum opinion constitutes the decision and order  
of the Court.

Dated: 12/8/08

  
\_\_\_\_\_  
HON. WALTER B. TOLUB, J.S.C.

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