

Stein v Town Sports Intl., LLC

2010 NY Slip Op 33420(U)

December 15, 2010

Supreme Court, New York County

Docket Number: 103910/10

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

Michelle Skow

Plaintiff,

- v -

Town Sports Interchange
Defendant.

INDEX NO.: 103910/10

MOTION DATE: 9-30-10

MOTION SEQ. NO. 001

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: [] Yes No

Upon the foregoing papers, it is ordered that this motion to change venue is decided in accordance with the annexed memorandum Decision Order.

FILED

DEC 13 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: December 6, 2010

[Signature]
J.S.C.

Check one: [] FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
MICHELLE STEIN,

Plaintiff,

Index No. 103910/10

-against-

FILED

TOWN SPORTS INTERNATIONAL, LLC,
PLAZA TOWER, LLC and TOWER PLAZA
ASSOCIATES, L.P.,

Defendants.

DEC 13 2010

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Joan A. Madden, J:

Defendant Town Sports International, LLC ("Town") moves to change venue from this court to the Supreme Court, Westchester County as a matter of right. Plaintiff Michelle Stein ("Stein") opposes the motion, which is denied for the reasons below.

This action arises out of personal injuries sustained by Stein on January 16, 2010, after she was allegedly struck in the face by a revolving door while exiting New York Sports Club located at 885 Second Avenue, New York, NY. The complaint alleges that Town owns, maintains, operates and controls New York Sports Club.¹

Stein venued this action in New York County based on the location of Town's principal place of business. On April 20, 2010, Town answered the complaint and served a demand to change venue from this court to Westchester County. Stein did not consent to change venue, and on April 28, 2010, Town made this motion.

Town argues that it is entitled to change venue to the Supreme Court, Westchester County

¹Defendant Tower Plaza Associates, L.P. owns the building where New York Sports Club is located.

* 3].
based on provision in the contract signed by Stein when she became a member of New York Sports Club. In particular, Town relies on the following provision:

4.5 Governing Law: Jurisdiction. These terms and conditions shall be governed in all respects by the substantive laws of the state in which the cause of action arises, without regard for conflict of law principles of such state. With respect to personal jurisdiction, you hereby irrevocable submit to personal jurisdiction in any action brought in any court, federal or state having subject matter jurisdiction arising under this contract within the location set forth below, and you hereby waive, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction, inconvenient forum, and improper venue to the maintenance of any action. You hereby waive your right to a trial by jury.

State Where Cause of Action Arises . Venue/Jurisdiction

New York

County of Westchester, NY

Stein opposes the motion, arguing that the provision contained in the membership agreement does not pertain to this action since Stein was injured while exiting the premises and not while using the New York Sports Club facility. Stein also argues that the wording of the provision relied on by Town implies that it applies in an action brought by Town against a club member, but not in an action by a member against the sports club.

In reply, Town argues that Stein was lawfully on the premises only due to her membership at New York Sports and therefore terms of the agreement were invoked based on her use of the club.

Under New York law, forum selection clauses are treated as "prima facie valid." British West Indies Guaranty Trust Co., Ltd. v. Banque Internationale a Luxembourg, 172 A.D.2d 234,

* 4]

234 (1st Dept. 1991). See CPLR 501 (“... a written agreement fixing the place of trial shall be enforced upon a motion to change of the place of trial”); Shah v. Shah, 215 A.D.2d 287 (1st Dept. 1995)(noting that “[i]t is the policy of the courts of [New York] to enforce contractual provisions for . . . selection of a forum for litigation . . . according to their terms”). That being said, however, when a forum selection clause does not include unambiguous language designating a certain forum “as the sole proper venue of the underlying action” such language must be construed against the drafter. Majer v. Schmidt, 169 AD2d 501, 505 (1st Dept 1991).

In this case, Stein agreed to “submit to personal jurisdiction in any action brought in any court, federal or state having subject matter jurisdiction arising under [the membership agreement] within the location below...[i.e. Westchester County, New York.]... [and to waive] to the fullest extent permitted by law, the defense[] of ... improper venue.” A fair reading of the provision indicates that while for the purposes of any action brought against her arising under the membership agreement, Stein consented to jurisdiction in the locations identified in the agreement and agreed to waive any defenses related to venue in connection with such actions, the same cannot be said of actions, like the instant one, brought by Stein. In particular, the provision suggests it applies only to action in which Stein is a defendant since it contains language stating that she agrees to submit to personal jurisdiction and waive various defenses, including venue. Furthermore, to the extent the provision is ambiguous in this regard it must be construed against its drafter, Town, and in favor of Stein’s selected forum in New York County. Majer v. Schmidt, 169 AD2d at 505.

Thus, as the provision relied on by Town does not apply to this action brought by Stein,

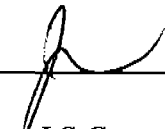
[* 5],
the motion to change venue must be denied, and the court need not reach Stein's argument that the underlying action did not arise out of the membership agreement.

Accordingly, it is

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

ORDERED that the parties shall appear for a preliminary conference on December 16, 2010 at 9:30 am in Part 11, room 351, 60 Centre Street, New York, NY.

DATED: *December 6, 2010*
~~November~~, 2010



J.S.C.

FILED

DEC 13 2010

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