

Richardson v Neighborhood Hous. Assoc., LLC

2010 NY Slip Op 33715(U)

November 1, 2010

Supreme Court, New York County

Docket Number: 100120/2010

Judge: Lucy Billings

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

PRESENT: LINDY BILLINGS
J.S.C.
Justice

PART 46

Index Number : 100120/2010

RICHARDSON, OLIVE

VS.

NEIGHBORHOOD HOUSING ASSOCIATES

SEQUENCE NUMBER : 001

CHANGE VENUE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

1

2

3

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~~:

The court denies defendant's motion to change the venue of this action, pursuant to the accompanying decision. C.P.L.R. §§ 503 (a) and (c), 510(1) and (3).

FILED

FEB 01 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/1/10

Lindy Billings

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: PART 46

-----x

OLIVE RICHARDSON,

Index No. 100120/2010

Plaintiff

- against -

DECISION AND ORDER

NEIGHBORHOOD HOUSING ASSOCIATES, LLC,

FILED

Defendant

-----x

FEB 01 2011

LUCY BILLINGS, J.S.C.:

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff brings this action for personal injuries due to defendant's negligence when she tripped over a spare tire on defendant's premises at 100 Riverside Avenue, Yonkers, in Westchester County. Defendants move to change the venue of this action from New York County to Westchester County. C.P.L.R. §§ 503, 510, 511. C.P.L.R. § 503(a) permits venue in the county where a party resides when the action is commenced. If plaintiff designates a county without adequate basis, § 510(1) permits a change of venue, and § 511(a) and (b) provide for a motion to change venue.

Although C.P.L.R. § 510(3) also permits a change of venue to promote the convenience of material witnesses and the ends of justice, defendant does not justify Westchester County with the evidentiary specifics required. Neither the parties' convenience nor the place of injury is a factor in changing venue. C.P.L.R. §§ 503, 510. An evidentiary basis for a more convenient venue must include the actual names, addresses, and occupations of each

expected nonparty witness; the detailed facts to which these witnesses will testify, to show they are necessary; and a showing that they are willing to testify, but will be inconvenienced significantly unless the court permits the requested venue. Rosen v. Uptown Gen. Contr., Inc., 72 A.D.3d 619, 620 (1st Dep't 2010); Krochta v. On Time Delivery Serv., Inc., 62 A.D.3d 579, 580 (1st Dep't 2009); Rodriguez-Lebron v. Sunoco, Inc., 18 A.D.3d 275, 276 (1st Dep't 2005). Defendant has not established witnesses' willingness to testify, nor their inconvenience were they called to testify in New York County. Merely listing witnesses' residence or business address in Westchester County, for example, does not establish such inconvenience, as the witnesses may work or live in New York County or regularly visit New York County for other reasons.

Unless plaintiff's choice of venue was in fact without adequate basis, defendant may not now choose an alternative to plaintiff's chosen venue. C.P.L.R. §§ 509, 510(1), 511(a); Johanson v. J.B. Hunt Transp., Inc., 15 A.D.3d 268, 270 (1st Dep't 2005); Rivera v. Jensen, 307 A.D.2d 229 (1st Dep't 2003); Clarke v. Ahearn Prod. Servs., 181 A.D.2d 514, 515 (1st Dep't 1992). See Castro v. New York Med. Ctr. Of Queens, 52 A.D. 3d 251, 252 (1st Dep't 2008); Hernandez v. Seminatore, 48 A.D.3d 260 (1st Dep't 2008); Montesano v. New York City Hous. Auth., 47 A.D.3d 215, 217 (1st Dep't 2007); Discolo v. River Gas & Wash Corp., 41 A.D.3d 126 (1st Dep't 2007). New York County, the venue chosen by plaintiff, is the residence of "one of the

parties," defendant, C.P.L.R. § 503(a), based on its principal place of business. C.P.L.R. § 503(c). While defendant's address on its certificate of incorporation, on which plaintiff relies, may not necessarily be its principal place of business, defendant fails to show that that address is not its principal place of business or even that defendant conducts business anywhere else. Discolo v. River Gas & Wash Corp., 41 A.D.3d 126. Thus, even if defendant's chosen venue, Westchester County, is an available alternative, plaintiff's choice of New York County was adequately premised in the first instance. C.P.L.R. §§ 503(a) and (c), 509. E.g., Krochta v. On Time Delivery Serv., Inc., 62 A.D.3d 579, 580-81 (1st Dep't 2009); Clarke v. Ahearn Prod. Servs., 181 A.D.2d at 515.

Consequently, defendant has not met its burden to show that no party resides in New York County or that plaintiff's chosen venue is otherwise unpemised. C.P.L.R. §§ 503(a), 510(1), 511(a); Castro v. New York Med. Ctr. Of Queens, 52 A.D. 3d at 252; Hernandez v. Seminatore, 48 A.D.3d 260; Rivera v. Jensen, 307 A.D.2d 229; Clarke v. Ahearn Prod. Servs., 181 A.D.2d at 515. Defendant thus has failed to overcome the presumption that venue is plaintiff's choice. Johanson v. J.B. Hunt Transp., Inc., 15 A.D.3d at 270.

In sum, based on defendant's failure to establish witnesses' inconvenience, C.P.L.R. § 510(3), and based on its principal place of business and thus its residence in New York County, C.P.L.R. §§ 503(a) and (c), 510(1), the court denies defendant's

motion to change the venue of this action to Westchester County. Because defendant's motion to change venue fails on its merits, the court need not address the motion's timeliness. C.P.L.R. § 511(a) and (b). This decision constitutes the court's order.

DATED: November 1, 2010

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED
FEB 01 2011
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COUNTY CLERK'S OFFICE