

<b>Lamacchia v Bornschein</b>
2010 NY Slip Op 34073(U)
October 5, 2010
Supreme Court, Kings County
Docket Number: 9003/10
Judge: Leon Ruchelsman
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ATL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: PART 16

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MARISSA A. LAMACCHIA,

Plaintiff,

Decision and order

- against -

Index No. 9003/10

KYLE J. BORNSCHEIN, JOSEPH A. PORCILLO,  
BARBARA BORNSCHEIN AND HAROLD LEVINSON  
ASSOCIATES, INC.,

Defendants,

October 5, 2010

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PRESENT: HON. LEON RUCHELSMAN

Defendants move and cross move pursuant to CPLR §510(3) and §503(c) to change the venue of this action from Kings County to Suffolk County on the grounds that its principal place of business is located in Suffolk County and that Suffolk County is a more convenient forum. The plaintiff opposes this motion. Papers were submitted by all parties. After reviewing the arguments of both parties this court now makes the following determination.

This is a lawsuit that follows from an accident which occurred on July 24, 2008 near the intersection of Route 109 and Route 110 in Babylon in Suffolk County. The plaintiff filed a complaint in Kings County on the basis of defendant Levinson's office located in Brooklyn. However, the defendant contends that plaintiff's choice of venue is improper as defendant's principal place of business is in Suffolk County and all evidence and witnesses are found in Suffolk County and that without any other

ties to Kings County, the case must be heard there.

Conclusions of Law

CPLR §503(a) provides generally that, except where otherwise proscribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party who resides in more than one county shall be deemed a resident in each such county. Moreover, subsection(c) provides that a domestic corporation shall be deemed a resident of the county in which its principal office is located. The term "principal office" has been replaced by the phrase, "office of a corporation." The latter phrase is defined in McKinney's Business Corporation Law §102(10) as "the office the location of which is stated in the certificate of incorporation of a domestic corporation... or an amendment thereof. Such office need not be a place where business activities are conducted by such corporation."

Furthermore, the provisions of CPLR §503(a) dealing with a party who is a resident of more than one county do not apply to corporations (Hamilton v. Corona Ready Mix, Inc., 21 AD3d 448, 800 NYS2d 450 [2d Dept., 2005]). A domestic corporation is a resident of only one county: that county designated in its

certificate of authorization as the county where its office is located. Even though most of its activities are carried on in some other county, and indeed, even where no activities are carried on in the designated county, that county remains the residence of the corporation for venue purposes (Id).

The instant case is analogous to Graziuso v. 2060 Hylan Blvd. Rest. Corp., 300 AD2d 627, 753 NYS2d 103 [2d Dept 2002], in which the plaintiff laid venue in Kings County on the erroneous belief that defendant's principle place of business was located in Brooklyn. The defendant moved to transfer venue, alleging that its principal office was located in Richmond County, as evidenced by its articles of organization. The court held that county designated in a corporation's certificate of incorporation is its sole residence for venue purposes, despite maintenance of an office or facility in another county. Because the defendant's articles of organization, which are the equivalent of a certificate of incorporation for a limited liability company listed Richmond as the county of its principal office, venue was proper in only that county.

In the instant case, the plaintiff is not a resident of Kings County and the accident occurred in Suffolk County. However, the plaintiff laid venue in Kings County based upon defendant Levinson Associates certificate of authorization which

listed Brooklyn as its residence. Indeed, defendant concedes that venue in Kings County is not improper.


Concerning the request to change venue for the convenience of witnesses, it is well settled that the determination whether to change venue for the convenience of the witnesses is a matter addressed to the sound discretion of the trial court (CountryWide Insurance Company v. Quinn, 268 AD2d 381, 703 NYS2d 2 [1<sup>st</sup> Dept., 2000]). It is further well settled that pursuant to CPLR §510(3) the movant bears the burden of demonstrating that the convenience of material witnesses will be better served with a change of venue (Chimarios v. Duhl, 152 AD2d 508, 543 NYS2d 681 [1<sup>st</sup> Dept., 1989]). To succeed upon this showing the movant must establish the identity of the proposed witnesses, the manner in which they will be inconvenienced if the trial location is not changed, that the witnesses have been contacted and are available to testify, the nature of that testimony and how such testimony is material to a trial (Cardona v. Aggressive Heating, Inc., 180 AD2d 572, 580 NYS2d 285 [1<sup>st</sup> Dept., 1992]). Thus, discretionary change in venue may be granted based on the convenience of witnesses only after there has been a detailed evidentiary showing that the convenience of nonparty witnesses would in fact be served by granting such relief (O'Brien v. Vassar Brothers Hospital, 207 AD2d 169, 622 NYS2d 284, [2<sup>nd</sup> Dept., 1995]).

In this case the defendant has failed to submit any evidence at all demonstrating the affidavits of any witnesses satisfying the required criteria that Suffolk County would prove a better venue. Other than the assertions of counsel there is no independent evidence supporting the conclusions. The argument is made that "this case is a 'poster child' for the argument 'that the convenience of material witnesses and the ends of justice will be promoted by a change'" (see, Reply Affirmation, ¶ 7) might be true but there is no independent assertions from the witnesses supporting that contention. Equally deficient is the lack of any statement or affidavit why travel to Kings County would prove so difficult. Since those necessary preconditions are lacking, the defendant has failed to adequately demonstrate that the case should be transferred to Suffolk County. Thus, the motion seeking to change venue is denied.

So ordered.

ENTER:

DATED: October 5, 2010  
Brooklyn, N.Y.

  
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Hon. Leon Ruchelsman  
JSC