

Spencer v Sabeno

2011 NY Slip Op 31628(U)

June 8, 2011

Supreme Court, Nassau Coutny

Docket Number: 141/11

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

DEBORAH SPENCER, by her mother and natural guardian,
ROBIN SPENCER, and ROBIN SPENCER, Individually,

TRIAL/IAS PART 32
NASSAU COUNTY

Plaintiffs,

Index No.: 141/11
Motion Seq. Nos.: 01, 02
Motion Dates: 02/16/11
02/16/11

- against -

MICHAEL SABENO, KIDD KAB PLUS, INC.,
MEAGHAN C. O'BRIEN, EDWARD S. CLARK,
JEAN S. CLARK, AHMAD SYED REYAZ,
ACS SYSTEM ASSOCIATES, INC., PIERRE L. CHARLES
and HENDRICKSON BUS CORP.,

Defendants.

The following papers have been read on these motions:

	Papers Numbered
<u>Notice of Motion (Seq. No. 01), Affidavit and Exhibits</u>	<u>1</u>
<u>Affirmation in Support of Motion Seq. No. 01 and Exhibits</u>	<u>2</u>
<u>Notice of Cross-Motion (Seq. No. 02), Affirmation and Exhibits</u>	<u>3</u>
<u>Plaintiffs' Affirmation in Opposition to Motion Seq. Nos. 1 and 2 and Exhibit</u>	<u>4</u>
<u>Reply Affidavit</u>	<u>5</u>
<u>Reply Affirmation</u>	<u>6</u>

Upon the foregoing papers, it is ordered that the motions are decided as follows:

This is an action to recover damages for personal injuries allegedly sustained by the infant plaintiff on November 5, 2010, as a result of a motor vehicle accident involving a motor vehicle (in which the infant plaintiff was a passenger) owned by defendant Kidd Kab Plus Inc. ("Kidd Kab") and operated by defendant Michael Sabeno ("Sabeno") with a vehicle owned

and operated by defendant Meaghan C. O'Brien, as well as a motor vehicle owned by defendant ACS System Associates, Inc. ("ACS") and operated by defendant Ahmad Syed Reyaz ("Reyaz") with a vehicle owned by defendant Jean S. Clark and operated by defendant Edward S. Clark and a vehicle owned by defendant Hendrickson Bus Corp. ("Hendrickson") and operated by defendant Pierre Charles ("Charles"). Defendants Sabeno and Kidd Kab move (Motion Sequence No.01), pursuant to CPLR §§ 510(1) or (3), for an order changing the venue of this action from the County of Bronx to the County of Nassau. Defendants Hendrickson and Charles filed an affirmation in support of defendants Sabeno and Kidd Kab's motion to change venue. Defendants ACS and Reyaz cross-move (Motion Sequence No. 02), pursuant to CPLR § 3212, for an order granting them summary judgment as to liability or, in the alternative, move pursuant to §§ 510(1) or (3), for an order changing the venue of this action from the County of Bronx to the County of Nassau. Plaintiffs oppose both motions.

Plaintiffs placed the venue of this action in Bronx County based upon the purported county of residence of defendant ACS in its Secretary of State filing. Defendants Sabeno and Kidd Kab move to transfer the venue of this action to Nassau County alleging "[u]ndoubtedly, plaintiffs believe that venue is proper in Bronx County, on the ground that the corporate filings by the defendant ACS System Associates, Inc. may indicate that the place of incorporation for that party may be Bronx County. Such is the indication set forth in the unofficial database information available from the web site of the NYS Department of State, Division of Corporations,...Nevertheless, under the circumstances presented in this case, the designation of venue in Bronx County is clearly improper even should there be such a designation....where a defendant bears no liability for the injury giving rise to the cause of action, designating venue on

the basis of that defendant's residence would be manifestly improper....In this action, the vehicle owned by ACS Systems Associates played no role whatsoever in the collision allegedly giving rise to the injuries forming the basis of this lawsuit. The infant plaintiff was a passenger in a vehicle which was struck by another vehicle; the ACS-owned vehicle did not collide with the vehicle occupied by the infant plaintiff, nor did it collide with any other object or vehicle which was then thrust into collision with that vehicle."

Defendants Sabeno and Kidd Kab also argue that the change of venue to Nassau County would promote the convenience of witnesses. Defendants Reyaz, Charles and Hendrickson reside in Nassau County. Defendants Sabeno, Kidd, OBrien and Clark, as well as plaintiffs, reside in Suffolk County. In additional support of this argument, they submit a correspondence from the Old Brookville Police Department which indicates the inconvenience to which the investigating police officers and their Department would be put should venue be retained in Bronx County. "As established in the foregoing documentation, it was necessary for five police officers to investigate this multiple-vehicle and multiple-victim accident. Their investigation is material to the liability issues presented in this case, particularly as it relates to the varying degrees of involvement (or non-involvement) of the respective drivers. Should this case be tried in Bronx County, virtually one-fourth of the patrol force of the Old Brookville Police Department would be called away from their duties, if all five investigating officers were required to await their turn to testify in Bronx County Supreme Court. Even if only one or two officers were called upon to describe the details of their investigation, the loss of their assistance to this small but hardy force of officers would be significant."

Defendants Sabeno and Kidd Kab conclude that "Nassau County is a proper venue based

on the fact that several of the parties reside in that county, and the accident occurred there. Moreover, since all of the individual parties are Long Island residents, Mineola is far more accessible to *all* of the witnesses, be they party or non-party, including (for what it might be worth) the infant plaintiff's own treating health care providers."

As previously stated, defendants Hendrickson and Charles join in the change of venue application. They state, "[t]he parties and their witnesses should not have to travel to the Bronx simply because of the technicality that one of the corporate defendants, ACS System Associates, designated Bronx County as its principal place of business. Even ACS's employee, Ahmad Syed Reyaz, who was operating the ACS vehicle when the accident occurred, resides in Nassau County."

Furthermore, defendant ACS, upon which the Bronx venue was based, joins in the application to change venue to Nassau County. In defendants ACS and Reyaz's cross-motion, they state, "[t]he only connection this matter has to the Bronx County venue is that when ACS System Associates, Inc., originally filed for incorporation in the State of New York they had a Bronx County address. According to the Affidavit of Ahmad Syed Reyaz, the President and owner of ACS System Associates, Inc., this company has not had an address in the Bronx for nearly 25 years. On November 5, 2010, ACS System Associates, Inc.'s place of business is located at 160 West Lincoln Avenue, Mt. Vernon, New York 10550. Prior to that ACS System Associates, Inc.'s business address was 329 Miller Place, Mt. Vernon, New York 10550. Though ACS System Associates, Inc. would like to have this matter venued in Westchester County, we will waive our right for the convenience of the Brookville Police Department and because the parties mostly involved in this matter reside in Nassau County or somewhere nearby. Ahmad Syed Reyaz and ACS System Associates, Inc. is only the tail and should not wag

the whole dog of this case.”

In opposition to the change of venue motion, plaintiffs argue that defendants Sabeno and Kidd Kab’s motion should be denied because the venue is proper in Bronx County and that said motion is, in effect, an unsupported motion for summary judgment on behalf of its co-defendants. Plaintiffs add that defendants Sabeno and Kidd Kab have utterly failed, under settled law, to support their contention that the convenience of material witnesses would be served by the removal of the action to Nassau County. Plaintiffs states that defendants Sabeno and Kidd Kab’s motion should be denied because plaintiff properly laid venue in Bronx County where defendant ACS designated its residence in its certificate of incorporation.

Based upon the arguments and case law before it, the Court finds that it is in the interest of justice that venue of the instant action be changed from Bronx County to Nassau County pursuant to CPLR §510(3). The Court additionally finds that the convenience of material witnesses will be served with said change in venue. *See id.*

With respect defendants ACS and Reyaz’s cross-motion (Seq. No. 02), pursuant to CPLR § 3212, for an order granting them summary judgment as to liability, the Court finds that, given the facts and argument before it, said motion was premature in that no depositions of any of the parties have yet to take place, with said depositions perhaps shedding light on the events surrounding the accident in issue. Clearly, the motion papers on their own fail to provide the Court with a full recitation of the events of the date in question from which to make a fully informed legal decision. *See* CPLR § 3212 (f); *Dietrich v. Grandsire*, 83 A.D.3d 994, 921 N.Y.S.2d 555 (2d Dept. 2011); *Amico v. Melville Volunteer Fire Company, Inc.*, 39 A.D.3d 784, 832 N.Y.S.2d 813 (2d Dept. 2007).

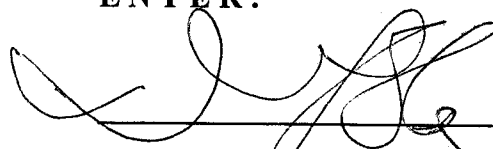
Therefore, defendants Sabeno and Kidd Kab’s motion (Seq. No. 01) is hereby

GRANTED. Defendants ACS and Reyaz's cross-motion (Seq. No. 02) is hereby **DENIED** with leave to renew upon completion of discovery.

Accordingly, it is hereby directed that the venue of this proceeding is changed from Supreme Court, Bronx County to Supreme Court, Nassau County and the Clerk of the Supreme Court, Bronx County is to transfer the file in the instant action to the Clerk of the Supreme Court, Nassau County upon service of a copy of this Order with Notice of Entry and payment of any applicable fees, if any, and this proceeding is stayed until venue is so transferred.

This constitutes the Decision and Order of this Court.

ENTER:


DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
June 8, 2011

ENTERED
JUN 13 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE