

Rodriquez v Metropolitan Transp. Auth.

2013 NY Slip Op 30775(U)

April 11, 2013

Supreme Court, New York County

Docket Number: 114377/2011

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ARLENE P. BLUTH

PRESENT: _____
Justice

PART 22

Index Number : 114377/2011

RODRIGUEZ, VICTOR

vs

METROPOLITAN TRANSPORTATION

Sequence Number : 001

CONSOLIDATION/JOINT TRIAL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 2, were read on this motion to/for jt trial / consolidation

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

No(s) 1

Answering Affidavits — Exhibits _____

No(s) 2

Replying Affidavits _____

No(s) _____

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
APR 16 2013
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4.11.13

ArBluth, J.S.C.

HON. ARLENE P. BLUTH

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NY
COUNTY OF NEW YORK: PART 22

Index No.: 114377/11
Motion Seq. 001

Victor Rodriguez,

Plaintiff,

-against-

Metropolitan Transportation Authority,
MTA Bus Company and Alex A. Brown,

Defendant

DECISION/ORDER

HON. ARLENE P. BLUTH, JSC

FILED
APR 16 2013
COUNTY CLERK'S OFFICE
NEW YORK

Defendants'¹ motion for an order pursuant to CRK §602(a) "consolidating for joint trial and discovery the above-captioned action with another action pending in Supreme Court, Bronx County entitled *Mario Acevedo, et. Al., v Metropolitan Transit Authority, et. al.* [which involves the same motor vehicle]" is granted to the extent that the two cases are consolidated for all purposes and shall be tried in Bronx County.

Although the notice of motion does not indicate where defendants desire the consolidated action be tried²; both the notice of motion and the "wherefore" clause in the supporting affirmation do, however, seek "such other and further and different relief as to this Court may seem just and proper" and thus authorizes this Court to do what it determines is appropriate even if the movant did not specifically ask for it.

¹ Although the answer annexed to the motion is on behalf of only MTA, this motion is specifically made on behalf of all defendants (MTA, MTA Bus and defendant driver Alex A. Brown). Therefore, "defendants" as set forth in this decision on the motion refers to all moving defendants, which are all defendants in the caption.

²Buried in paragraph 12 of defendants' attorney's affirmation in support, counsel indicates that venue of the two cases should be placed in New York County.

Plaintiff in the New York County action has not submitted any papers on this motion, but plaintiff in the Bronx County action has submitted papers indicating that Bronx County is the proper venue for the consolidated action.

On the summons in this New York County action, plaintiff's counsel based venue upon "place of accident"; this, of course, was in error. While place of accident might be an argument to *change* venue to due to a more convenient forum (see CPLR 510(3)), it is not a basis to initially determine venue. Initially, venue should be where a party resides (CPLR 503); here, right on the face of the summons, plaintiff Rodriguez lists his address as in the Bronx. As he initially chose the venue, even improperly, he cannot now oppose any request to stay here. Whether for that reason or another, Rodriguez, the plaintiff in the instant New York County action, did not submit any opposition to this consolidation motion.

However, plaintiffs in the Bronx County action (Mario and Idell Acevedo) have submitted partial opposition to the motion. While these plaintiffs concede that the two cases involve the same motor vehicle accident and should be consolidated (opp., para. 6), they assert that because all plaintiffs and even defendant bus driver live in Bronx County, all treatment was rendered in Bronx County, and the three eyewitnesses reside in Bronx County, the venue of the consolidated action should be placed in Bronx County. Significantly, movant fails to submit any reply to this powerful partial opposition.

This Court agrees that the consolidated action belongs in Bronx County. Even

though this New York County action was commenced shortly (four weeks) before the Bronx County case, the fact is that the initial basis of venue in the New York County case was in error, and besides, in the exercise of discretion, the Court finds that the special circumstances exist (plaintiffs and eyewitnesses and defendant bus driver all reside in Bronx County, all medical treatment rendered in Bronx County) to warrant deviation from the general rule placing venue in the county where the first action was commenced. Therefore, the Court directs that venue be placed in Bronx County. *See Glynn v United House of Prayer for All People*, 242 AD2d 494, 663 NYS2d 819 (1st Dept 1997), citing *TT Enterprises v Gralnick*, 127 AD2d 651, 511 NYS2d 878 (2d Dept 1987). This, in addition to movant giving this Court authority to order “such other and further and different relief as to this Court may seem just and proper” in both the notice of motion and the “wherefore” clause of the moving papers, the Court finds that venue of the consolidated action is properly placed in Bronx County.

Accordingly, it is hereby

ORDERED that defendants’ motion is granted to the extent that the cases are consolidated and the Clerk of this Court shall transfer the papers on file under Index No. 114377/11 to the Clerk of the Court, Bronx County upon service of a certified copy of this order and payment of the appropriate fee, if any, so that it shall be consolidated with *Mario Acevedo, et. al., v Metropolitan Transit Authority, et. al.*, Supreme Court, Bronx County, Index No. 300645/12, and it is further

ORDERED that within 30 days from entry of this order, counsel for the movants or counsel for any of the plaintiffs shall serve a copy of this order with notice of entry upon the appropriate court clerk to effectuate said transfer to Bronx County, and it is further

ORDERED that the consolidated action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

Mario Acevedo, Idell Acevedo and Victor Rodriguez,

Plaintiffs,

Index No. 300645/12

-against-

**Metropolitan Transit Authority, New York City
Transit Authority, MTA Bus Company and Alex A. Brown,**

Defendants.

-----X

and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that within 30 days from entry of this order, counsel for the movants or counsel for any of the plaintiffs shall serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B), who shall mark their records accordingly and it is further

This is the Decision and Order of the Court.

Dated: April 11, 2013
New York, New York



HON. ARLENE P. BLUTH, JSC

FILED
APR 16 2013
COUNTY CLERKS OFFICE
NEW YORK