

**Mandeville Manor Health Serv. Inc. v Brook Valley
Kydah, Inc.**

2015 NY Slip Op 30501(U)

March 25, 2015

Sup Ct, New York County

Docket Number: 651073/13

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

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

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**MANDEVILLE MANOR HEALTH SERVICES
INC. D/B/A SYNERGY CLEANING SERVICE,**

Index No. 651073/13

Plaintiff,

-against-

**BROOK VALLEY KYDAHA, INC. and
NEW YORK CITY HOUSING AUTHORITY,**

Defendants.

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JOAN A. MADDEN, J.

Defendant Brook Valley Kydaha, Inc. (Brook Valley) moves to change venue from this court to the Supreme Court, Nassau County. Plaintiff opposes the motion, which is denied for the reasons below.

Background

In this action plaintiff seeks to recovery the sum of \$87,059.91, as due and owing for work it performed as a subcontractor at five properties owned by defendant New York City Housing Authority (NYCHA) in the aftermath of Hurricane Sandy. It is alleged that on or about November 7, 2012, NYCHA entered into a contract with Brook Valley to perform “Emergency Janitorial, Remediation & Restoration Services Related to the Response and Recovery from Hurricane Sandy. It is further alleged that on November 9, 2012, Brook Valley allegedly entered into a subcontract with plaintiff to perform this work and also made various oral agreements with plaintiff, that plaintiff performed all of the conditions of the agreements and change orders and that as of January 31, 2013 plaintiff became entitled to \$87,059.91, none of which has been paid.

This action was commenced on March 25, 2013, by filing of a summons with notice which designated venue in New York County as the “[s]ubject premises in dispute located in New York County.” On April 15, 2015, Brook Valley filed a demand to change venue to Nassau County as a matter of right pursuant to CPLR 511(b), on the grounds that “plaintiff only performed services in the county of Queens and therefore New York County is an improper county. Also pursuant to the agreement entered into between the parties, plaintiff...agreed to a choice of venue provision agreeing that any claims would be brought in the County of Nassau.” While not efiled, in connection with this motion, plaintiff submits its rejection of Brook Valley’s demand. The demand is in the form of a letter addressed to Brook Valley’s counsel, dated April 26, 2013, which states that the agreement on which Brook Valley relies “does not pertain to this proceeding;” that no party resides in Nassau County; and that the “principal events forming the basis for this action took place at buildings located in Manhattan¹.”

NYCHA efiled an affirmation from its counsel in opposition to Brook Valley’s demand for a change of venue, asserting, inter alia, that venue was proper in New York County, pursuant to CPLR 505(a) since NYCHA’s principal place of business is in New York County.

Subsequently, plaintiff filed a complaint which asserts seven causes of action against both Brook Valley and NYCHA, including, for foreclosure of plaintiff’s lien, breach of contract, unjust enrichment and quantum meruit, an account stated, and various claims under Article 3-A of the Lien Law. Brook Valley answered and asserted various defenses and counterclaims. NYCHA moved to dismiss the complaint and by decision and order dated September 16, 2014,

¹Brook Valley denies receiving the plaintiff’s rejection of its demand to change venue. However, as the issue of whether Brook Valley received the rejection is not material to the resolution of the motion, it need not be decided.

this court dismissed the action against NYCHA.

Brook Valley now moves to change venue of this action to the Supreme Court, Nassau County, asserting that since NYCHA is no longer a party there is longer a proper basis for venue in this court. Brook Valley further contends that venue is proper in Nassau County as that is the principal place of its business and, in its agreement, plaintiff consented to that county.

In opposition, plaintiff points out that Brook Valley fails to submit the purported agreement between the parties containing the venue provision. Plaintiff also argues that the registrations with the New York Secretary of State show that both it and Brook Valley have their principal place of business in Brooklyn. Plaintiff also argues that Nassau County would be an inconvenient venue as the work at issue was performed in New York County and Queens County.

In reply, Brook Valley points to evidence showing that it is a Nassau County corporation with its principal place of business there. While Brook Valley submits the affidavit of its president, David Reynoso, who states the work at issue was performed in Queens County, it again fails to submit the agreement in which plaintiff allegedly consented to venue in Nassau County, and appears to have abandoned this argument.

Discussion

Under CPLR 503(a) venue is based on the residence of one of the parties “when the action is commenced.” CPLR 505(a), provides that “the place of trial by or against a public authority constituted under the laws of this state shall be the county where the public authority has a principal office or where it has facilities involved in the matter.” Thus, venue in New York

County was proper when the action was commenced based on the location of NYCHA's principal office. See Jacbo v. New York City Housing Authority, 220 AD2d 300 (1st Dept 1995).

Moreover, the dismissal of the action against NYCHA does not warrant a change of venue under the circumstances here. While the court found that the claims against NYCHA were without merit, it cannot be said that NYCHA was merely "a nominal defendant [or that NYCHA's] relationship to plaintiff's cause of action [was] so tenuous as to defeat plaintiff's venue choice." Martinez v. Tsung, 14 AD3d 399, 400-401 (1st Dept 2005). Moreover, the cases cited by Brook Valley are not to the contrary as they involve circumstances in which the plaintiff either voluntarily discontinued the action against the party on whose residence venue was based (Crew v. St. Joseph's Medical Center, 19 AD3d 205 (1st Dept 2005) Clase v. Sidoti, 20 AD3d 330 [1st Dept 2005]) or it was found that the party on which venue was based "should not have been named as a party (Caplin v. Ranhofer, 167 AD2d 155, 158 [1st Dept 1990]).² The court notes that while the parties differ as to the location of the work, which plaintiff alleges was performed in New York County and Queens County and Brook Valley asserts was performed in Queens County only, this court need not resolve this dispute, as the location of the work is not the basis on which Brook Valley seeks to change venue, nor does it provide a legal basis for changing venue as a matter of right. Accordingly, the motion to change venue pursuant to CPLR 510(1) on the grounds that it is improper is denied.

²In Berger v. Shen, 2012 WL 1576430 (Sup Ct NY Co. 2012), on which Brook Valley also relies, the court denied the motion to change venue despite the discontinuance of the action against a doctor whose residence provided the sole basis for venue in New York County, explaining that "defendants failed to establish that [the doctor] was an improper party when the action was commenced."

Next, there is no basis for a discretionary change of venue pursuant to CPLR 510(3), as Brook Valley has failed to provide a “detailed justification for such relief in the form of the identity and availability of proposed witnesses, the nature and materiality of their anticipated testimony, and the manner in which they would be inconvenienced by the initial venue.” Parker v. Ferraro, 61 AD3d 470 (1st Dept 2009)(citation omitted). In this connection, Brook Valley has not submitted any affidavits or other proof to support such a motion, and therefore it must be denied. See Kurfis v. Shore Towers Condominium, 48 AD3d 300 (1st Dept 2008). In fact, while Brook Valley argues that this action has no relationship to New York County, it does not contend that there is any connection between Nassau County and the instant action beyond its residence there.

In view of the above, it is

ORDERED that the motion to change venue is denied.

DATED: March 25, 2015


HON. JOAN A. MADDEN
J.S.C.
J.S.C.