

**Enright v Hampton Inns Mgt. LLC**

2015 NY Slip Op 31196(U)

July 9, 2015

Supreme Court, New York County

Docket Number: 1152323/15

Judge: Cynthia S. Kern

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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: Part 55

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BRENDAN ENRIGHT,

Plaintiff,

-against-

Index No. 1152323/15

**DECISION/ORDER**

HAMPTON INNS MANAGEMENT LLC, 555  
STORAGE GROUP LLC, ALFRED WEISSMAN  
REAL ESTATE LLC and MONTESANO BROTHERS  
INC.,

Defendants.

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**HON. CYNTHIA KERN, J.S.C.**

**Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :**

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Brendan Enright commenced the instant action against defendants Hampton Inns Management LLC (“Hampton”), 555 Storage Group LLC (“555”), Alfred Weissman Real Estate LLC (“Weissman”) and Montesano Brothers Inc. (“Montesano”) to recover damages for personal injuries he allegedly sustained at a construction site located at 555 Tuckahoe Road, Yonkers, New York (the “subject premises”). Defendants Hampton, 555 and Weissman (the “moving defendants”) now move for an Order pursuant to CPLR §§ 510 and 511 changing the venue in this action from New York County to Westchester County. Although it does not move for such relief, defendant Montesano has provided an affirmation in support of the moving defendants’ motion and also requests that this court change the venue of this action from New

York County to Westchester County. For the reasons set forth below, the moving defendants' motion is granted.

The relevant facts are as follows. Plaintiff, a resident of Westchester County, commenced the instant action in Supreme Court, New York County in February 2015 alleging that he sustained injuries as a result of defendants' negligence when he tripped and fell at the subject premises as a result of dirt, snow and ice in the area in which he was working. On the face of the summons, plaintiff states that the basis for venue in New York County is "[d]efendant's residence" but no specific defendant or address is specified. The moving defendants answered the complaint and simultaneously demanded a change in venue of the action from New York County to Westchester County. In response, plaintiff failed to serve a written consent to change venue to Westchester County and failed to serve an affidavit establishing that the county specified by defendants is not proper or that the county specified by plaintiff is proper, within five days after service of the demand.

Pursuant to CPLR § 503(a), "the place of trial shall be in the county in which one of the parties resided when it was commenced...." Pursuant to CPLR § 510, "[t]he court, upon motion, may change the place of trial of an action where: 1. the county designated for that purpose is not a proper county...." Pursuant to CPLR § 511(a), "[a] demand...for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served." Additionally, "[t]he defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant." CPLR § 511(b).

In the instant action, the moving defendants' motion to change the venue of this action from New York County to Westchester County is granted on the ground that New York County is not the proper county. Plaintiff's summons states that the basis for venue in New York County is "[d]efendant's residence" but it fails to specify which defendant or an address which would establish residence in New York County. However, based on the instant motion, it is clear that plaintiff bases venue in New York County on his allegation that defendant Hampton resides in New York County. Pursuant to CPLR § 503(c), "a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located...." "A foreign corporation's designation of the location of its [principal] office in its statement filed with the Secretary of State constitutes a designation of its residence for venue purposes under CPLR 503(c)." *Kochany v. Chrysler Corp.*, 67 A.D.2d 637 (1<sup>st</sup> Dept 1979).

Here, New York County is not the proper venue for the action as plaintiff has not established that Hampton has designated the location of its principal office as New York County in its statement filed with the Secretary of State. The only evidence plaintiff provides is the printout from the New York State Department of State website for Hampton that lists "New York" next to where it reads "County." However, plaintiff has not established that such listing means that New York County is where Hampton has designated the location of its principal office.

Accordingly, as plaintiff has selected an improper venue in the first instance and the moving defendants have properly challenged plaintiff's choice of venue pursuant to CPLR §§ 510 and 511, the moving defendants' motion to change venue from New York County to

