Country-Wide Ins. Co. v Tyson
2015 NY Slip Op 31219(U)
July 13, 2015
Supreme Court, New York County
Docket Number: 161513/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

-against-

Index No. 161513/14

DECISION/ORDER

DARNELL TYSON, as Eligible Injured Party Defendant,

And

THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS d/b/a BOOTH MEMORIAL MEDICAL CENTER, FDNY/EMS, NORTH SHORE UNIVERSITY HOSPITAL, RADIOLOGY ASSOCIATES OF MAIN ST P.C., RM PHYSICAL THERAPY P.C., ORIENTAL POINTS ACUPUNCTURE P.C., LS MEDICAL P.C., DUNAMIS REHAB PT P.C., DR. BRUCE JACOBSON DC P.C. and MASTER CHENG ACUPUNCTURE P.C., As the Medical Provider Defendants,

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.....	1
Notice of Cross-Motion and Affidavits Annexed.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff Country-Wide Insurance Company commenced the instant action seeking a declaratory judgment regarding its obligation to provide no-fault benefits to defendants arising out of a motor vehicle accident which occurred in Queens, New York. Defendant FDNY/EMS (hereinafter referred to as the "City defendant") now moves for an Order pursuant to (1) CPLR

§§ 510, 511 and 504(3) changing the venue in this action from New York County to Queens County; and (2) CPLR § 8106 granting it costs of bringing the motion. Plaintiff opposes the City defendant's motion and cross-moves for an Order retaining venue in New York County and for costs of bringing the cross-motion. For the reasons set forth below, the City defendant's motion is denied and plaintiff's cross-motion is granted in part and denied in part.

The relevant facts are as follows. On or about February 2, 2014, defendant Darnell Tyson ("Tyson") was allegedly involved in a motor vehicle accident in Queens County (the "accident"). Thereafter, Tyson made claims to plaintiff as an alleged eligible injured party of the plaintiff's insurance policy with its insured, the driver or passenger of the other vehicle involved in the accident. Additionally, Tyson allegedly sought medical treatment from the medical provider defendants in connection with the accident. On or about July 11, 2014, plaintiff mailed Tyson a letter requesting that he attend an Independent Medical Examination ("IME") on July 24, 2014. Tyson allegedly failed to attend the IME. On or about July 31, 2014, plaintiff mailed Tyson a second letter requesting that he attend an IME on August 14, 2014. Tyson allegedly failed to attend that IME as well. Thus, on or about August 15, 2014, plaintiff denied Tyson's claim based upon his failure to attend the duly scheduled IMEs.

Thereafter, in or around November 2014, plaintiff commenced the instant action in Supreme Court, New York County seeking a declaratory judgment that plaintiff has no obligation to pay the defendants' claims for no-fault benefits because of defendant Tyson's failure to appear for the scheduled IMEs, an alleged breach of the condition precedent to coverage pursuant to the insurance policy. On the face of the summons, plaintiff states that the basis for venue in New York County is "the residence of the Plaintiff, which is 40 Wall Street, New York, New York 10005." In or around February 2015, the City defendant served an

answer along with a demand to change venue to Queens County. The City defendant now moves to change the venue of this action from New York County to Queens County.

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...." In the instant action, the City defendant's motion to change the venue of this action from New York County to Queens County is denied on the ground that New York County is the proper county. Plaintiff commenced the instant action for a declaratory judgment in New York County based on its residence in New York County, in compliance with CPLR § 503(a) and thus, venue is proper.

The City defendant's assertion that venue is improper in New York County pursuant to CPLR § 504(3) is without merit. Pursuant to CPLR § 504(3), "...the place of trial of all actions against counties, cities, towns, villages, school districts and district corporations or any of their officers, boards or departments shall be, for...the city of New York, in the county within the city in which the cause of action arose, or if it arose outside of the city, in the county of New York." Here, the instant action did not arise in Queens County but rather it arose in New York County. Although the underlying motor vehicle accident occurred in Queens County, the instant action is for a declaratory judgment that plaintiff is not obligated to provide no-fault benefits to defendants based on Tyson's breach of the insurance policy by failing to appear for IMEs scheduled in New York County and such action arose in the county in which plaintiff resides, New York County. To the extent the City defendant asserts that this court should follow the holding in *Nestle USA, Inc. v. Charles Butler*, Index No. 153633/14 (Sup. Ct. N.Y. County 2014)

that an action for a declaratory judgment that an insurance company is not obligated to pay no-fault benefits should be brought in the county in which the underlying motor vehicle accident occurred, such assertion is without merit as said decision is not binding on this court and thus, this court declines to follow it.

Accordingly, as plaintiff has selected a proper venue for this action in the first instance, the City defendant's motion to change venue from New York County to Queens County is denied and plaintiff's cross-motion to retain venue in New York County is granted. However, neither plaintiff nor the City defendant is entitled to the costs incurred in bringing the motions as they have failed to put forth a basis for such relief. It is hereby

ORDERED that venue in this action is retained in New York County. This constitutes the decision and order of the court.

Dated: 7/13/15

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.