Lundy v RDH Crystal Gardens, LLC

2015 NY Slip Op 31230(U)

July 14, 2015

Supreme Court, New York County

Docket Number: 159219/2014

Judge: Kelly O'Neill Levy

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YOR K
COUNTY OF NEW YORK: PART 19

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MARIE LUNDY,

Plaintiff,

-against-

RDH CRYSTAL GARDENS, LLC, CA GROUP, INC., HGH MAINTENANCE & MANAGEMENT CORP., and CRYSTAL APARTMENTS LLC,

Defendants.

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Index No. 159219/2014

Motion Sequence #001

DECISION & ORDER

KELLY O'NEILL LEVY, J.:

In this personal injury action, defendants RDH Crystal Gardens, LLC ("RDH"), CA Group, Inc. ("CA Group"), HGH Maintenance & Management Corp. ("HGH"), and Crystal Apartments, LLC ("Crystal") (collectively "Defendants") move pursuant to CPLR §§ 510(1) and 511 to change the venue of this proceeding from New York County to Queens County on the ground that New York County is an improper venue. For the reasons stated herein, the motion is denied.

Plaintiff Marie Lundy ("Plaintiff") alleges that on January 29, 2012, a portion of a cabinet in the kitchen of her apartment, located at 91-20 191st Street, Queens, New York, fell upon her, causing her permanent injuries. The Defendants allegedly owned, operated, maintained, managed, controlled, and were responsible for repairing her building. Plaintiff commenced this action on September 10, 2014 by filing a summons and complaint with the New York County Clerk. The complaint indicates that New York County was chosen as the venue for this action based on the residence of two defendant corporations, CA Group and Crystal, both of which have their principal place of business here.

CPLR 510(1) provides that upon motion, a court may change the place of trial where "the county designated for that purpose is not a proper county." CPLR 503(a) provides that "except where otherwise provided by law, the place of trial shall be in the county in which one of the parties resided when it was commenced." Further, CPLR 503(c) indicates that a corporation "shall be deemed a resident of the county in which its principal office is located." It is well established that the principal office listed on a corporation's certificate of incorporation is determinative of its principal place of business for residence purposes. *See Krochta v On Time Delivery Serv., Inc.*, 62 AD3d 579, 580 (1st Dept 2009); *Velasquez v Del. River Valley Lease Corp.*, 18 AD3d 359, 360 (1st Dept 2005); *Conway v Gateway Assocs.*, 166 AD2d 388, 389 (1st Dept 1990).

Defendants claim that CA Group and Crystal are "inactive" corporations, and that since plaintiff resides in Queens, her injury occurred in Queens, and the other two "active" defendant corporations have their principal place of business in Queens, this action can only be venued in Queens. In support of their motion, Defendants submit an affidavit from Ronald D. Heath ("Heath"), sworn on December 10, 2014, in which he avers that both CA Group and Crystal "ceased being active in May of 2013." (Affirmation of Olympia Rubino, Esq., dated Dec. 9, 2014, [¶ 8, submitted as Ex. D]). While Heath attests that he is the owner of RDH and HGH, he provides no information about his connection to CA Group and Crystal. In any event, Plaintiff's opposition contains recent printouts from the New York State Secretary of State website documenting the "active" status of both CA Group and Crystal. This information is current through February 6, 2015.

Moreover, Defendants provide no compelling authority for the proposition that the inactive status of a corporation affects residency for venue purposes. Rather, defendants rely on two Second Department cases, which are not applicable here. In *Collins v Dart Transit Co.*, 265 AD2d

368 (2d Dept 1999), commenced in Bronx County, it was undisputed that none of the parties resided in Bronx County at the start of the action, rendering plaintiff's choice of venue improper. In *Cottone v Real Estate Indus., Inc.*, 246 AD2d 572 (2d Dept 1998), the plaintiffs selected Kings County based upon defendant's place of business, but it was later determined that the county designated on its certificate of incorporation was Westchester County. Neither decision addressed the active/inactive status of a corporation for venue purposes.

Although Defendants' motion does not explicitly seek a change of venue pursuant to CPLR 510(3), they suggest that change of venue should be had pursuant thereto. The party moving to change venue pursuant to CPLR 510(3) "bears the burden of demonstrating that the convenience of material witnesses would be better served by the change." *Cardona v Aggressive Heating, Inc.*, 180 AD2d 572, 572 (1st Dept 1992). The movant must include the names and addresses of the witnesses, the manner they would be inconvenienced, that they are willing and able to testify, and the facts to which these witnesses will testify at the trial. *See Jacobs v Banks Shapiro Gettinger Waldinger & Brennan, LLP*, 9 AD3d 299, 299 (1st Dept 2004); *Heinemann v Grunfeld*, 224 AD2d 204, 204 (1st Dept 1996). Without a detailed showing of specific witnesses and how they would be inconvenienced by the initial venue, a court cannot exercise discretion in granting a change of venue "that has been properly laid by statute." *Rodriguez v Port Auth. of N.Y. & N.J.*, 293 AD2d 325, 326 (1st Dept 2002).

Here, Defendants do not provide the identity or address of any witness, the nature of his or her testimony or the manner in which he or she would be inconvenienced by having to appear in New York County. Instead, Defendants only suggest that Queens County would be more convenient for the parties. This does not satisfy their heavy burden. Therefore, to the extent

Defendants further move for a change of venue pursuant to CPLR 510(3), such application is denied.

Accordingly, it is hereby

ORDERED that defendants' motion to change venue is denied; it is further

ORDERED that the parties are directed to appear for a preliminary conference in Part 19 on August 5, 2015 at 9:30 AM.

This constitutes the decision and order of the court.

Dated: July 14, 2015
New York, New York

Kelly O'Neill Levy

KELLY O'NEILL LEVY, A.J.S.C.

HON. KELLY O'NEILL LEVY