

**Country-Wide Ins. Co. v Blenman**

2015 NY Slip Op 31781(U)

September 21, 2015

Supreme Court, New York County

Docket Number: 161529/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

- v -

Index No.  
161529/2014

**DECISION  
and ORDER**

Mot. Seq. 001

IGENIE F HARRIS BLENMAN  
("Eligible Injured Party Defendant"),

And

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION  
KINGS COUNTY HOSPITAL CENTER, DOSHI DIAGNOSTIC  
IMAGING SERVICES PC, STAND UP MRI OF BROOKLYN PC,  
MIDDLE VILLAGE DIAGNOSTIC IMAGING PC, MAXIM TYORKIN  
MD, HILLSIDE DIAGNOSTIC AND TREATMENT CENTER LLC D/B/A  
HILLSIDE SURGICARE, NEW BEGINNING CHIROPRACTIC PC, M & M  
MEDICAL PC, INTEGRAL ASSIST MEDICAL PC, ARCADIA MEDICAL  
BILLING INC, VISION REHAB PT PC, XVV INC., JYOTI SHAH MD,  
MEDCO TECH INC., YEVGENTY MARGULIS PHD CSW, TONG LI MD,  
PROMPT MEDICAL SUPPLY INC., GRAIG GRANOVSKY CHIROPRACTIC  
PC, NATASHA KELLY, DUNAMIS REHAB PT PC, JOA CHIROPRACTIC PC,  
AOM MEDICALSUPPLY INC., STATE CHIROPRACTIC PC, PROFESSIONAL  
CHIROPRACTIC CARE, PC  
("Medical Provider Defendants")

Defendants.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Country-Wide Insurance Company ("Plaintiff" or "Country-Wide"),  
brings this action for a declaration that Plaintiff is not obligated to pay claims for no-

fault benefits submitted to Plaintiff in connection with an alleged motor vehicle accident (the “Accident”) in which defendant, Igenie F. Blenman (“the Eligible Insured Party Defendant” or “Blenman”), allegedly sustained personal injuries. The Accident took place on May 1, 2014.

Plaintiff alleges that, in connection with the Accident, Blenman made claims to Plaintiff as Plaintiff’s eligible injured under the personal auto policy of insurance issued to Blenman under New York policy of insurance number DS 352782813 (the “Policy”). Plaintiff also alleges that Blenman received medical treatment from the Medical Provider Defendants, including New York City Health and Hospitals Corporation Kings County Hospital Center (the “City Defendant”), and that Blenman assigned the right to collect no-fault insurance benefits to those providers. Plaintiff claims that Plaintiff has no obligation to pay no-fault claims to Blenman or to any of the Medical Provider Defendants because Blenman failed to comply with a condition precedent to coverage under the Policy. In addition, Plaintiff seeks to permanently stay all No-Fault lawsuits and arbitrations arising from the No-Fault claims submitted to Plaintiff in connection with the Accident.

Plaintiff commenced this action on November 19, 2014, by Summons and Complaint.

The City Defendant now moves for an Order, pursuant to CPLR §§ 510, 511, 504(3), and New York City Health and Hospitals Corporations Act (“NYCHHA”) § 20(3), § 7401(3) of McKinney’s Unconsolidated Laws of New York State; § 7405 of McKinney’s Unconsolidated Laws of New York State, changing the venue of this action from the New York County to King’s County; and, pursuant to CPLR § 8106, awarding costs for this motion.

Plaintiff opposes. Plaintiff cross-moves for an Order, pursuant to CPLR §§ 510 and 511, denying the City Defendant’s motion and retaining venue in New York County.

CPLR § 510(1) permits a court, upon motion, to change the place of trial of an action where “the county designated for that purpose is not a proper county.” (CPLR § 510[1]). Pursuant to CPLR § 511, a defendant seeking to change the place of trial upon the ground of improper venue, “shall serve a written demand that the action be tried in a county he specifies as proper.” (CPLR § 511[b]). This statute further provides:

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. Defendant may notice such motion to be heard as if the action were pending in the county he specified, unless plaintiff within five days after service of the demand serves an affidavit showing either that the county specified by the defendant is not proper or that the county designated by him is proper.

*(Id.)*.

Various provisions establish what is “a proper county” for purposes of a motion to change venue under CPLR § 510(1). Where venue is based on residence of a party, CPLR § 503(a) provides, in relevant part, “[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced.” (CPLR § 503[a]). For actions against the City of New York, CPLR § 504(3) directs that 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”. (CPLR § 504[3]).

Additionally, the New York City Health and Hospitals Corporation Act requires all actions against the New York City Health and Hospitals Corporation to be brought, “in the city of New York, in the county within the city in which the cause of action arose”. (CLS Uncons Laws of NY ch 214-A § 20 [New York City Health and Hospitals Corporations (the “HHC”) § 20 [3], as added by L 1969, ch 1016, as amended]). This act further provides: “Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.” (HHC § 24).

As an initial matter, although the City Defendant’s demand to change venue does not appear on e-filing, Plaintiff does not dispute that such a demand was timely made pursuant to CPLR § 511. Nor does there appear to be any dispute as to whether

the City Defendant timely filed the instant motion within fifteen days of the City Defendant's demand to change venue, as required under CPLR § 511.

Turning now to the merits of the City Defendant's motion to change venue, the City Defendant argues that New York County is not a proper county for Plaintiff's action under CPLR § 504(3) and HHC § 20(3) because these statutes require Plaintiff's action to be venued in the county within the city in which Plaintiff's cause of action against the City Defendant arose. The City Defendant argues that Plaintiff's complaint against the City Defendant arose in Kings County, as the services for which Plaintiff now seeks a declaration of non-coverage were provided at Kings County Hospital, which is located in Kings County. The City Defendant argues that CPLR § 504(3) and HHC § 20(3) therefore require Plaintiff's action to be venued in Kings County, where the incidents forming the basis of Plaintiff's complaint against the City Defendant took place.

Plaintiff, on the other hand, argues that CPLR § 504(3) and HHC § 20(3) establish that Plaintiff's action is properly venued in New York County. Plaintiff argues that Plaintiff's declaratory judgment action arises from Blenman's failure to comply with a condition precedent to coverage under the Policy, and that Blenman's breach of the Policy took place in New York County, where Plaintiff is headquartered and where the insurance contract between Plaintiff and Blenman exists.

Here, Plaintiff's complaint seeks a declaration of non-coverage based on Blenman's alleged failure to comply with a contractual condition precedent to coverage under the Policy. Plaintiff's complaint therefore arises out of Blenman's alleged breach of the Policy. Accordingly, the City Defendant fails to demonstrate that Plaintiff's action is not properly venued in New York County for purposes of CPLR §§ 510(1), 504(3), and HHC § 20(3).

Wherefore, it is hereby,

ORDERED that the City Defendants' motion for a change of venue is denied; and it is further

ORDERED that Plaintiff's cross motion is granted only to the extent that venue is retained in New York County.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: September 21 2015

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EILEEN A. RAKOWER, J.S.C.