

Ryan v BMR-Landmark at Eastview LLC

2015 NY Slip Op 32250(U)

November 25, 2015

Supreme Court, New York County

Docket Number: 150878/15

Judge: Barbara Jaffe

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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 : IAS PART 12

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JOSEPH A. RYAN, JR.,

Plaintiff,

-against-

Index No. 150878/15

Motion seq. no. 001

DECISION AND ORDER

BMR-LANDMARK AT EASTVIEW LLC, BIOMED
REALTY TRUST, INC., BIOMED REALTY, L.P.,
THE PIKE COMPANY, INC., MORIARTY
CONTRACTING SERVICES, INC., PIKE/
MORIARITY, A JOINT VENTURE, and JOHN
MORIARITY & ASSOCIATES, INC.,

Defendants.

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BARBARA JAFFE, J.

For plaintiff:

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By notice of motion, defendants BMR-Landmark at Eastview LLC, BioMed Realty Trust, Inc., and BioMed Realty, L.P. (defendants) move pursuant to CPLR 503(a), 510, and 511(b) for an order changing the place of trial of this action from New York County to Westchester County on the ground that none of the parties resides in this county or is otherwise connected with it. (NYSCEF 41). Plaintiff opposes.

I. PERTINENT FACTS

On January 28, 2015, plaintiff commenced this action under Labor Law §§ 200, 240 and 241(6), alleging that he sustained personal injuries as a result of an accident at defendants' construction site in Westchester County. He designated New York County as the place of trial,

the basis being “Defendant’s Principal Place of Business.” (NYSCEF 1).

On April 27, 2015, defendants served and efiled their answer to plaintiff’s amended verified complaint and demand to change venue pursuant to CPLR 511(a) and (b) on the ground that New York County is not the proper venue as no party is a resident of New York County and as plaintiff is a resident of Westchester County. (NYSCEF 47). On May 12, 2015, they filed this motion. (NYSCEF 40).

II. CONTENTIONS

Defendants contend that New York County is not the proper venue, as no party resides here, it is not the principal place of business of any defendant, they have no connection to New York County, and the alleged accident occurred in Westchester County. In support, defendants rely solely on the DOS website to establish that Pike’s principal place of business is in Rochester and that Moriarity’s principal place of business is in Syracuse, and offer the affidavit of defendant BioMed Realty’s senior vice-president, who attests that the foreign defendants’ principal places of business are in California. They maintain that Westchester County, where the alleged accident occurred, is the proper venue. (NYSCEF 41, 48-50).

In opposition, plaintiff contends that defendants fail to articulate grounds for changing venue pursuant to CPLR 510(2) and (3), and thus are limited to seeking relief under CPLR 510(1), and that having failed to move within 15 days after serving the demand, the motion is untimely. He also argues that defendants’ motion is procedurally defective as they did not move pursuant to CPLR 503©. In any event, he maintains that the DOS website on which defendants rely, along with his own exhibits, establish that New York County is the designated location for their principal offices, which defendants fail to refute absent contrary documentation, and thus

the selected venue is proper. (NYSCEF 57).

In reply, defendants deny that their motion was untimely or that they must set forth a basis for changing venue pursuant to CPLR 510(2) or (3). They also argue that the designation of a registered agent to accept service in New York County does not constitute a basis for venue, that they have satisfied their burden with the affidavit of BioMed Realty's vice-president, and that the authority on which plaintiff relies is inapposite. (NYSCEF 62).

III. ANALYSIS

Pursuant to CPLR 503(a) and ©, the place of trial of an action “shall be in the county in which one of the parties resided when [the action] was commenced,” and if a party is a domestic or foreign corporation, then the party will be “deemed a resident of the county in which its principal office is located.” A domestic corporation’s principal place of business, “as specified in its certificate of incorporation as filed with the New York Secretary of State,” or “[i]n the case of a foreign corporation, . . . its certificate of authority to do business,” is “uniformly interpreted as a corporation’s principal office.” (Vincent C. Alexander, Practice Commentaries, McKinney’s Consol Laws of New York, C503:3; *Krochta v Time Delivery Serv., Inc.*, 62 AD3d 579, 580 [1st Dept 2009]; *Job v Subaru Leasing Corp.*, 30 AD3d 159, 159 [1st Dept 2006]; *Johanson v J.B. Hunt Transp., Inc.*, 15 AD3d 268, 269 [1st Dept 2005]).

To prevail on a motion pursuant to CPLR 510(1), the defendant bears the burden of establishing that the plaintiff’s choice of venue is improper and that the defendant’s choice of venue is proper. (*Young Sun Chung v Kwah*, 122 AD3d 729, 730 [2d Dept 2014]; *Fiallos v New York Univ. Hosp.*, 85 AD3d 678, 678 [1st Dept 2011]). If the defendant satisfies this burden, the plaintiff must establish that the selected venue is proper. (*Chehab v Roitman*, 120 AD3d 736, 737

[1st Dept 2014]).

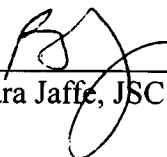
Having failed to offer the pertinent certificates of incorporation filed with the New York Secretary of State for the domestic entities, and the pertinent applications for authority to do business in New York for the foreign entities, defendants fail to satisfy their initial burden of establishing that plaintiff's choice of venue is improper. I thus need not address plaintiff's opposition, except to the extent of observing that defendants' motion was timely filed within 15 days after service of the demand, and that defendants' failure to offer a basis for a change of venue pursuant to CPLR 510(2) or (3) is inconsequential as they argue only that plaintiff's designation of venue is improper.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants BMR-Landmark at Eastview LLC, BioMed Realty Trust, Inc., and BioMed Realty, L.P.'s motion to change venue is denied.

ENTER:



Barbara Jaffe, JSC

DATED: November 25, 2015
New York, New York