SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 2

KATAYOUN POURKANAN,

Plaintiff,

-against-

COSTCO WHOLESALE CORPORATION et al.,

Defendants.

DECISION/ORDER
Index No. 161085/2015
Motion Sequence 001

KATHRYN E. FREED, J.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION, ATTY. AFF. IN SUPP. AND EXHIBITS ANNEXED	1, 2 (Exs. A-F)
ATTY. AFF IN OPP	3
REPLY AFF	4

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this action, plaintiff seeks damages for an alleged personal injury at Costco Wholesale on 1250 Old Country Road in the Village of Westbury, Nassau County, owned and operated by defendants Costco Wholesale Corporation and Costco Wholesale Membership, Inc. (hereinafter collectively referred to as "defendants"). Defendants move to change venue to Nassau County. After oral argument, and a review of the parties' papers and the relevant statutes and case law, the motion is **denied.**

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff alleges that, on September 26, 2014, she was struck on the head by an object carried

by defendant John Doe, an employee at the Costco Wholesale in Westbury, New York. (Ex. A.)[1] In October 2015, she commenced the instant action in New York County. The basis for venue in New York County was defendants' selection of New York County as their principal place of business on their applications for authority to do business filed with the Secretary of State. (*Id.*) Following joinder of issue (Ex. B), defendants now move to change the venue of the action to Nassau County.

POSITIONS OF THE PARTIES

Defendants contend that, notwithstanding that New York County was designated as their principal place of business, they are entitled to have the action tried in Nassau County. They argue that the pertinent facts militate in favor of having the case tried in Nassau County, namely that the accident occurred there, plaintiff resides there, all material witnesses are there and that plaintiff's medical treatment on the date of the incident was received there. In response, plaintiff argues that defendants have failed to establish their entitlement to a discretionary change of venue because they have not shown that a material nonparty witness will be inconvenienced by trial of the action in New York County.

CONCLUSIONS OF LAW

It is well settled that a corporation's designation of a particular county as its principal place of business in its filings with the Secretary of State "is controlling for venue purposes." *Crucen v Pepsi-Cola Bottling Co. of New York, Inc.*, 139 AD3d 538, 538 (1st Dept 2016); *see Martirano v*

[1] Unless otherwise indicated, all references to exhibits refer to those annexed to the moving papers.

Golden Wood Floors Inc., 137 AD3d 612, 613 (1st Dept 2016). There is no dispute that both defendants designated New York County as their principal place of business (Exs. C and D) and, thus, New York County is a proper venue. *See* CPLR 503 (c); *Crucen v Pepsi-Cola Bottling Co. of New York, Inc.*, 139 AD3d at 538. In order to establish entitlement to a discretionary change of venue, a defendant must submit a "detailed justification for such relief in the form of the identity and availability of proposed witnesses, the nature and materiality of their anticipated testimony, and the manner in which they would be inconvenienced by the initial venue." *Moumouni v Tappen Park Assoc., Inc.*, 118 AD3d 427, 427-428 (1st Dept 2014) (internal quotation marks and citation omitted); *see* CPLR 510 (3); *Manzari v Burrows*, 89 AD3d 440, 440 (1st Dept 2011). Only the convenience of "material nonparty witnesses" may be considered on such an application. *Margolis v United Parcel Serv. Inc.*, 57 AD3d 371, 372 (1st Dept 2008); *see Bakiriddin v Idi Constr. Co., Inc.*, 45 AD3d 300, 301 (1st Dept 2007). The convenience of "parties and their employees or agents carries little if any weight." *Healthcare Professionals Ins. Co. v Parentis*, 132 AD3d 1138, 1139 (3d Dept 2015); *see Gissen v Boy Scouts of Am.*, 26 AD3d 289, 291 (1st Dept 2006).

Here, in support of the motion, defendants submitted the affidavit of Karla Martinez, a Costco employee. (Ex. F.) Martinez averred that she personally attended to and had discussions with plaintiff immediately after the incident. She stated that it would take her 42 minutes, without traffic, to reach the New York County courthouse by car from her home in Carle Place, Nassau County. According to her affidavit, Martinez is "uncomfortable driving amongst the heavy and offensive traffic in New York City" as well as "concerned with driving at night in unfamiliar areas." Martinez further averred that she cares for her elderly mother, and having to commute to New York County would be "inconvenient as [she] would have to arrange care for [her] elderly mother to account for the additional time away from home." Defendants do not contend that any other

individual, nonparty or otherwise, would be inconvenienced by trial of this matter in New York County.

Martinez's inconvenience cannot be considered by this Court for purposes of a discretionary change of venue, as she is undisputedly an employee of a party. *See Healthcare Professionals Ins. Co. v Parentis*, 132 AD3d at 1139; *Margolis v United Parcel Serv. Inc.*, 57 AD3d at 372; *Bakiriddin v Idi Constr. Co., Inc.*, 45 AD3d at 301; *Gissen v Boy Scouts of Am.*, 26 AD3d at 291. Moreover, a commute of under an hour is not facially onerous, and notably absent from the affidavit is any discussion of the possibility of utilizing public transportation. In short, even if this Court were permitted to consider Martinez's convenience for purposes of determining this motion, it would not be persuaded that trial of this action in New York County would seriously inconvenience her. *See Dlugaski v Port Auth. of N.Y. & N.J.*, 107 AD3d 536, 537 (1st Dept 2013); *Atlantic Mut. Ins. Co. v M.H. Kane Constr. Corp.*, 100 AD3d 564, 564 (1st Dept 2012).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion to change venue is denied; and it is further

ORDERED that this constitutes the decision and order of the court.

DATED: June 16, 2016

ENTER:

KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT