

Mendoza v Raveh Realty, LLC
2016 NY Slip Op 31552(U)
August 10, 2016
Supreme Court, New York County
Docket Number: 150031/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 2**

JAIRO MENDOZA,

Plaintiff,

-against-

RAVEH REALTY, LLC,

Defendant.

DECISION/ORDER
Index No. 150031/2016
Motion Sequence 001

KATHRYN E. FREED, J.S.C.

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-D)
ATTY. AFF IN OPP AND EXHIBITS ANNEXED.....	3 (Exs. A-B)
REPLY AFF.AND EXHIBITS ANNEXED.....	4 (Exs. A-C)

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

In this personal injury action under the Labor Law, defendant moves to change the venue from New York County to Nassau County, as of right. Plaintiff submits written opposition. After oral argument, and a review of the parties’ papers and the relevant statutes and case law, the motion is **granted**.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff alleges that, on October 1, 2015, he was injured while performing construction work on a premises owned by defendant at 2139-41 Third Avenue, New York, NY, when a metal jack fell from a floor above him and struck him on the head. (Ex. A to Aff. in Supp.) In January 2016, he

commenced this action in New York County. The basis for venue in New York County was, according to the summons, plaintiff's address. However, the address given was that of plaintiff's counsel, namely "c/o Jaroslawicz & Jaros PLLC, 225 Broadway, 24th Floor, New York, NY." Following joinder of issue (Ex. B to Aff. in Supp.), defendant served a demand to change venue to Nassau County, on the ground that New York County was an improper venue, since none of the parties reside there. (Ex. C to Aff. in Supp.) After plaintiff failed to respond, defendant made the instant motion.

POSITIONS OF THE PARTIES

Defendant contends that it was improper for plaintiff to use his counsel's address as the basis for venue. It further asserts that, since neither party resides in New York County, it is entitled to an order changing venue as of right.

Plaintiff argues in response that the incident occurred in New York County, plaintiff is "seeking political asylum and is not yet a permanent resident of the United States," and that he sought medical care in New York County. He further contends that the convenience of witnesses would be served by trial of the action in New York County.

CONCLUSIONS OF LAW

While plaintiff has the initial right to select the county where an action will be tried (*see* CPLR 509), such selection must be proper in the first instance. *See* CPLR 510. In that regard, CPLR 503 (a) provides, in pertinent part, that, "[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; or, if none of the parties then resided in the state, in any county designated by plaintiff." Thus, in a transitory

action (i.e. one not involving real estate), venue is not proper in a particular county merely because it is the place where the alleged incident causing personal injury occurred. *See generally O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 173-174 (2d Dept 1995). Finally, on a motion to change venue as of right, a defendant bears the initial burden to show that a selected venue was improper, after which the burden shifts to the plaintiff to submit proof of residence in the initial county selected. *See Rivera v Jensen*, 307 AD2d 229, 229-230 (1st Dept 2003).

Here, defendant met its initial burden by pointing out that plaintiff took what this Court finds to be a rather alarming liberty, basing the venue of this action not on his own residence, but on that of his attorney. David Jaroslawicz, an attorney with plaintiff's firm, Jaroslawicz & Jaros PLLC, submitted an affidavit in opposition to the motion. Jaroslawicz's statement, in a single line, that plaintiff "is seeking political asylum and therefore not yet a permanent resident of the United States," is supported by absolutely nothing in the record. Indeed, Jaroslawicz made no attempt to justify selecting New York County as the basis for venue on the ground that plaintiff, in fact, resided there. Even more egregiously, the bill of particulars states that plaintiff's address is 3139, Route 112, Medford, NY 11763 – a Suffolk County address – thus dispelling any notion that plaintiff had a reasonable basis for selecting New York County based on his place of residence.

To the extent that plaintiff now argues that venue was proper in New York County based on defendant's residence, the fact that defendant selected Nassau County as its principal place of business in its filings with the Secretary of State belies that position. (Ex. D to Aff. in Supp.) Contrary to plaintiff's arguments, 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 Golden Wood Floors Inc.*, 137 AD3d 612, 613 (1st Dept 2016). Thus,

defendant's motion is granted.

It is obvious on the face of the papers that plaintiff had no basis whatsoever to select New York County as the place of trial of this action. Rather than admit this glaring error, plaintiff refused to cede to defendant's eminently reasonable demand to change venue to Nassau County. Plaintiff's opposition papers posit nothing resembling a plausible argument based in either law or fact that venue was proper in New York County in the first instance. Thus, plaintiff's initial choice of venue and opposition to the instant motion can only be described as "completely without merit in law and [incapable of being] supported by a reasonable argument for an extension, modification or reversal of existing law." Rules of Chief Admin of Cts [22 NYCRR] § 130-1.1 (c) (1). Furthermore, plaintiff's assertion on the summons that he resided in New York County at his counsel's office, with the knowledge that he, in fact, resided in Suffolk County, can arguably be construed as a "material factual statement[] that [is] false." Rules of Chief Admin of Cts [22 NYCRR] § 130-1.1 (c) (3).

Trial courts are "accorded wide latitude to determine the appropriate sanctions for dilatory and improper attorney conduct." *Pickens v Castro*, 55 AD3d 443, 444 (1st Dept 2008). This Court, of its own motion, finds grounds to award defendant the costs and attorney's fees involved in bringing the instant motion, pursuant to part 130 of the Rules of the Chief Administrator of the Courts. See Rules of Chief Admin of Cts [22 NYCRR] § 130-1.1 (d); *Cecora v De La Hoya*, 106 AD3d 565, 565 (1st Dept 2013); *Cangro v Cangro*, 272 AD2d 286, 286 (2d Dept 2000).

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

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

ORDERED that the venue of the above captioned action is changed from this Court to the

Supreme Court, County of Nassau, and upon service by movant of a copy of this order with notice of entry and payment of appropriate fees, if any, the costs of which shall be borne by plaintiff, the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Nassau; and it is further

ORDERED that this action and said transfer are both stayed until resolution of the issues of costs and fees, and no transfer shall be effectuated until further order of this Court; and it is further

ORDERED that counsel for defendant is directed to file and serve an affidavit detailing the costs and fees incurred in bringing the instant motion, within 20 days following entry of this order into NYSCEF; and it is further

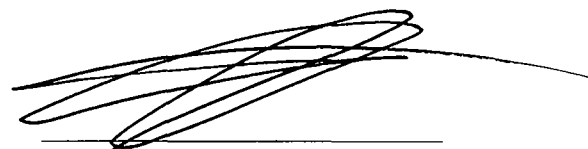
ORDERED that counsel for defendant shall submit to the Court, in hard copy, for *in camera* inspection, any client invoices documenting same, within 20 days following entry of this order into NYSCEF; and it is further

ORDERED that counsel for plaintiff may file and submit any opposition to defendant's requested costs and fees within 20 days after service of the affidavit; and it is further

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

DATED: August 10, 2016

ENTER:



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