

Danziger v Elias

2016 NY Slip Op 33132(U)

April 10, 2016

Supreme Court, Rockland County

Docket Number: 035171/2015

Judge: Jr., Victor J. Alfieri

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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SAMUEL DANZIGER, Limited Administrator of the
Last Goods, Chattels and Credits of infant JUDY
DANZIGER, Deceased

DECISION & ORDER
(Motion #1)

Plaintiff,

-against-

Index No.: 035171/2015

LEAH BREINDEL ELIAS and MIRIAM D. ELIAS,

Defendants.

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Victor J. Alfieri, Jr., A.J.S.C.

The following documents, were considered in connection with the Notice of Motion filed by counsel for Defendants LEAH BREINDEL ELIAS and MIRIAM D. ELIAS for an Order, pursuant to Civil Practice Law and Rules §§ 510 and 511, changing the place of trial of this action from the County of Kings to the County of Rockland upon the ground that the County designated by the Plaintiff is not a proper county, and for such other and further relief as this Court deems just, proper and equitable:

1. Notice of Motion/Affirmation of Richard G. Corde, Esq./ Exhibits (A-E)
2. Affirmation of Brooke Lombardi, Esq. in opposition/ Exhibits (A-E)
3. Affirmation in Reply/ Exhibits (A-B)

After a careful and detailed review of the foregoing papers, the Court now rules as follows:

This is personal injury action arising from an incident that occurred on September 19, 2014 at or near the intersection of Beckett Court and Allan Drive in the Village of Chestnut

Ridge, New York in the County of Rockland. The action was commenced by Plaintiff on October 22, 2015 with the filing of a Summons and Verified Complaint in Kings County. Issue was joined with the filing of a Verified Answer and Amended Verified Answer. Simultaneously with the filing of the Amended Verified Answer, the Defendants served a Demand for Change of Venue seeking transfer from Kings County to Rockland County.

Defendants now move for an Order changing venue to Rockland County, arguing that the venue chosen by Plaintiff is improper because both parties resided in Rockland County at the time of the commencement of the action, the accident occurred in Rockland County, the infant decedent resided in Rockland County and the case was investigated by the Ramapo Police Department which is located in Rockland County.

In opposition, Plaintiff's counsel argues that the Defendants have failed to offer sufficient proof for the motion to be granted. A defendant moving for a change of venue based on improper venue must show that the plaintiff's choice of venue is improper and that its choice of venue is proper. [*Gonzalez v. Sun Moon Enterprises Corp.*, 53 A.D.3d 526 (2d Dept. 2008)]. Where a plaintiff's initial choice of venue is improper, the plaintiff forfeits its right to select the venue in an action. [*Agostino Antiques, Ltd. v. CGU-American Employers' Ins. Co.*, 6 A.D.3d 469 (2d Dept. 2004); *Galan v. Delacruz*, 4 A.D.3d 449 (2d Dept. 2004)].

When the venue chosen by a plaintiff is improper, and the defendant properly serves with its answer a demand for change of venue pursuant to *Civil Practice Law and Rules* § 511(b) followed by a motion to change venue to a proper county pursuant to *Civil Practice Law and Rules* § 503(a), 510, and 511, the defendant is entitled as of right to a change of venue. [*Thomas v. Guttikonda*, 68 A.D.3d 853 (2d Dept. 2009); *Obas v. Grappell*, 43 A.D.3d 431 (2d Dept.

2007); Agostino Antiques, Ltd. v. CGU-American Employers' Ins. Co., 6 A.D.3d 469 (2d Dept. 2004)]. Such a motion made by a defendant should be granted particularly where the plaintiff fails to show that the county specified by the defendant is improper, or the county specified by plaintiff is proper. [Agostino Antiques, Ltd. v. CGU-American Employers' Ins. Co., 6 A.D.3d 469 (2d Dept. 2004)].

In this matter, Plaintiff's Summons alleges that the basis of venue is the plaintiff's residence and that Plaintiff currently resides at 3715 15th Ave., Brooklyn, New York. In Plaintiff's Verified Complaint, he alleges that the cause of action arose in Rockland, and that the named defendants reside in Rockland County. Defendants timely served a Demand for Change of Venue upon Plaintiff on the grounds that Kings County is not the proper venue. In opposition, Plaintiff argues that he has more than one residence with one residence being in Kings County. Plaintiff does not deny his residence in Rockland County. Further, Exhibit B of Plaintiff's papers from the Board of Election, Kings County dated February 1, 2016 states that he is no longer qualified to be a registered voter in the City of New York as he has registered in another county for the State of New York although his affidavit states that such letter shows that he is a registered voter in Kings County. He further indicates that he spends at least three (3) days a week in Kings County for business and personal purposes and that he lives with his brother at the Brooklyn address. The proper venue for the action must be based upon the residence of the parties, i.e. where Plaintiff resided at the time of commencement and Plaintiff has not refuted the fact that he maintained a residence in Rockland County at the time of commencement of this action.

Accordingly, it is hereby

ORDERED that the Notice of Motion filed by Defendants LEAH BREINDEL ELIAS

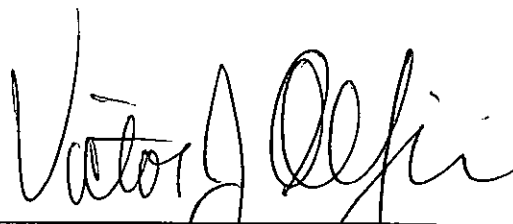
and MIRIAM D. ELIAS is granted in its entirety; and it is further

ORDERED that the place of trial of this action is changed from Kings County to Rockland County, the proper county; and it is further

ORDERED that counsel for Defendants shall take whatever steps necessary to arrange for the transmittal/transfer of the entire file maintained in the NYSCEF system in Kings County to Rockland.

The foregoing constitutes the Decision and Order of this Court on Motion # 1.

Dated: New City, New York
April 10, 2016



HON. VICTOR J. ALFIERI, JR.
Acting Justice of the Supreme Court

TO: Counsel of Record via e-filing