

Anderson v Singh

2016 NY Slip Op 33141(U)

March 29, 2016

Supreme Court, New York County

Docket Number: 154579/2015

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: DONNA M. MILLS, J.S.C.

PART 58

Index Number : 154579/2015
BENT ANDERSON, MAXINE
vs
SINGH, GURMEET
Sequence Number : 001
CHANGE VENUE

INDEX NO. 154579/15
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/29/16

Donna M. Mills, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE:MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

----- X
MAXINE BENT ANDERSON and
HEATHER BENT-TAMIR,

Plaintiffs,

Index No. 154579/15

- against-

GURMEET SINGH, NISHAN SINGH,
BERNARD MORCHELES, and
JOHN DOES 1-5 (hereinafter "JOHN DOE" a
fictitious name for the individuals or entities which
hired, employed or otherwise contracted with
Defendant(s) at the time of the subject incident and is
responsible by way of vicarious liability, respondeat
superior or otherwise for the acts and omissions alleged
herein and/or negligently repaired, managed, maintained,
controlled, entrusted, and/or owned the subject vehicles
described below and involved in the subject incident
and whose identity is presently unknown only to the
Defendant(s),

Defendants.

----- X
DONNA MILLS, J.:

Motion sequence numbers 001 and 002 are consolidated for disposition.

Bernard Morcheles moves, pursuant to CPLR 509, 510, and 511, for an order changing the venue of this action to Westchester County. Maxine Bent-Anderson and Heather Bent-Tamir (plaintiffs) cross-move, pursuant to CPLR 510 (3), for an order retaining venue in New York County, or, in the alternative, placing venue in Queens County (motion sequence no. 1).

Gurmeet Singh and Nishan Singh (together with Bernard Morcheles, defendants) move, pursuant to CPLR 510, for an order changing venue to Westchester County. Plaintiffs cross-move, pursuant to CPLR 510 (3), for an order retaining venue in New York County, or, in the alternative,

placing venue in Queens County (motion sequence no. 2).

This is an action to recover damages for personal injuries suffered by plaintiffs in an automobile collision in New York County. In support of their motions to change venue, defendants argue that no party to this lawsuit resides in New York County, and that plaintiff Heather Bent-Tamir resides in Westchester. In opposition, plaintiffs argue that the convenience of multiple material nonparty witnesses supports retention of venue in New York, and, in the alternative, that venue should be placed in Queens County where two of the defendants reside.

CPLR 503 (a), provides 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 the plaintiff."

Inasmuch as none of the original parties had its residence in New York County, venue was not properly originally placed in New York County (*Kearns v Johnson*, 238 AD2d 121 [1st Dept 1997]), and could be transferred, in accordance with defendants request, to Westchester County, where a defendant resides. Defendants met the filing requirements of CPLR 511, which provides for a motion for transfer of venue as of right, where they served their demand contemporaneously with their answer and moved for transfer of venue within the 15-day period imposed by CPLR 511 (b).

Turning to the cross motion to retain venue for the convenience of material witnesses, plaintiffs argue that by transferring venue from this County to Westchester County, significant hardship and inconvenience would be caused to their treating physician witnesses.

"[A] plaintiff will forfeit the right to select the place of venue by choosing an improper venue in the first instance" (*Kelson v Nedicks Stores*, 104 AD2d 315, 316 [1st Dept 1984]), but is not precluded from making an application to change venue as a matter of discretion (*Berberich v*

* 4]
York Scaffold Equip. Corp., 177 AD2d 451 [1st Dept 1991]).

Plaintiffs' medical experts are damages witnesses. Although their convenience is a factor to be weighed, it is subordinate to the convenience of the liability witnesses (*Stonestreet v General Motors Corp.*, 201 AD2d 350 [1st Dept 1994]; *Chung v Kivell*, 57 AD2d 790 [1st Dept 1977]).

The liability witnesses in this case are the occupants of the two vehicles. Therefore, there is an offsetting circumstance to plaintiffs' showing on damage witnesses. This is a transitory lawsuit arising in the County of New York, and Westchester County is the residence of a party who is also a liability witness.

Under the circumstances, the facts before the court warrant changing discretionary venue to Westchester County.

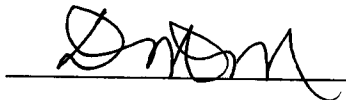
Accordingly, it is

ORDERED that the motions by defendants to change venue (sequence 001 and 002) are granted, and the cross motions to retain venue are denied; and it is further

ORDERED that the venue of this action is changed from this court to the Supreme Court, County of Westchester, and upon service by movants of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of the Supreme Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Westchester.

Dated: 3/29/16

ENTER:



J.S.C.