

Wolf v Signature Flight Support Corp.

2017 NY Slip Op 31713(U)

August 15, 2017

Supreme Court, New York County

Docket Number: 154964/2016

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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ALEXANDER P. WOLF,

Plaintiff,

-against-

Index no. 154964/2016

Motion seq. no. 002

DECISION AND ORDER

SIGNATURE FLIGHT SUPPORT CORPORATION
and LANDMARK AVIATION and LANDMARK U.S.
CORP. and LM U.S. MEMBER LLC,

Defendants.
-----X

BARBARA JAFFE, J.:

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By notice of motion, Signature and Landmark defendants move pursuant to CPLR 510 and 511 for an order changing the place of trial of this action from New York County to Westchester County on the ground that neither the material witnesses nor the parties reside in this county or are otherwise connected with it. (NYSCEF 41). Plaintiff opposes.

I. RELEVANT BACKGROUND

Signature, which operates airport bases, is a corporation formed under Delaware law and is thus a foreign corporation. In its application for authority to conduct business in New York, it designated New York County as its office's location. (NYSCEF 28, 32, 37, 39).

On March 16, 2015, plaintiff allegedly fell on ice in the parking lot of Westchester County Airport. On or about June 13, 2016, he commenced this action for negligence. (NYSCEF 28).

Defendants' prior motion for a change of venue was denied on their failure to appear for oral argument. (NYSCEF 26). At oral argument on this motion, the parties consented to construe this motion as one seeking reargument. (NYSCEF 45).

II. CONTENTIONS

Defendants argue that Westchester County is the appropriate venue for this action as, *inter alia*, all material witnesses are there, including "the person who Plaintiff testified saw him fall and then helped him to the hospital" and the "doctors who treated plaintiff." Moreover, they assert, apart from Signature, none of the parties is a resident of, or has any significant connection to, New York County. Although Signature admits, through its Secretary and General Counsel, that New York County is designated as its office because its agent for service of process is located here (NYSCEF 32), defendants argue that this marginal connection is insufficient to support plaintiff's choice of venue. (NYSCEF 28).

In opposition, plaintiff contends that as New York County is designated as Signature's office, it is a resident of New York County and venue is proper here. Moreover, he argues, defendants' assertion that the forum is inconvenient is premised on general statements that doctors and other potential witnesses would be inconvenienced by traveling here. Absent identified material witnesses who would be inconvenienced, and an indication of the nature of their proposed testimony, plaintiff argues that defendants' motion must be denied. (NYSCEF 45).

In reply, defendants reiterate their arguments. (NYSCEF 41).

III. ANALYSIS

Pursuant to CPLR 510, "[t]he court, upon motion, may change the place of trial of an action where: 1. the county designated for that purpose is not a proper county; or . . . 3. the convenience of material witnesses and the ends of justice will be promoted by the change."

A. Choice of venue

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]).

Pursuant to CPLR 503(a), 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." In the case of a foreign corporation, the "county in which its office is to be located," as designated in its application for authority to do business in New York, is "uniformly interpreted as a corporation's principal office." (*Job v Subaru Leasing Corp.*, 30 AD3d 159, 159 [1st Dept 2006]; *Johanson v J.B. Hunt Tramp., Inc.*, 15 AD3d 268, 269 [1st Dept 2005]; *Colarusso v Insignia Residential Group*, 2017 WL 3011492, *1 [Sup Ct, New York County 2017]; *Sindo v Nat. Wholesale Liquidators, Inc.*, 2015 WL 1777233, *1 [Sup Ct, New York County 2015]).

Here, as Signature designated New York County as the location of its office in its application for authority, that location is deemed the location of its principal office. Thus, New York County is a proper venue. (*See Job*, 30 AD3d at 159 [New York County proper venue based on application for authority, even where foreign corporation maintained no office there]; *Johanson*, 15 AD3d at 270 [New York County proper venue where foreign companies did not maintain offices in New York County, but designated New York County as location of offices in application for authority]; *Colarusso*, 2017 WL 3011492 at *1 [foreign corporation deemed resident of New York County, as that was county registered with Secretary of State]; *Sindo*, 2015

WL 1777233 at *1 [Nassau County proper venue for foreign corporation registered in Nassau County with jurisdiction in Delaware and process address in New York County]).

B. Change of venue

On a motion pursuant to CPLR 510(3) seeking a change of venue to promote the convenience of material witnesses and the ends of justice, the defendant must, *inter alia*, identify the names and addresses of the witnesses, demonstrate that it contacted the witnesses to ascertain the materiality of their testimony and whether they are willing to testify, and explain how the witnesses would be inconvenienced if the venue went unchanged. (*Job*, 30 AD3d at 159; *Carrozza v Galleria Mall at White Plains*, 292 AD2d 279, 279 [1st Dept 2002]; *Fernandes v FN Projects, Inc.*, 214 AD2d 525, 525–26 [1st Dept 1995]).

Here, defendants neither identify the names or addresses of any witnesses nor indicate whether their testimony is material or how they would be inconvenienced. (*See Job*, 30 AD3d [moving papers “deficient in not setting forth, *inter alia*, the names of witnesses who would be willing to testify, the nature and materiality of their anticipated testimony and the manner in which they would be inconvenienced”]). They thus fail to demonstrate that the proposed change would promote the convenience of material witnesses and the ends of justice, and thereby fail to sustain their burden. (*See Peoples v Vohra*, 113 AD3d 664, 665-66 [2d Dept 2014] [denied as, *inter alia*, defendants failed to show that material witnesses would be inconvenienced]). It is thus unnecessary to consider plaintiff’s opposition or whether defendants satisfied the requirements of CPLR 2221.

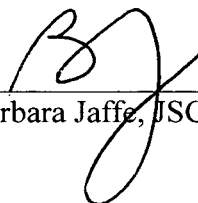
IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants’ motion is denied; and it is further

ORDERED, that the parties are directed to appear for a preliminary conference on
October 18, 2017, at 2:15 pm, at 60 Centre Street, Room 341, New York, New York 10007.

ENTER:



Barbara Jaffe, JSC

DATED: August 15, 2017
New York, New York