

**Sheffield Fin., a Div. of Branch Banking and Trust
Co. v Mahmood**

2017 NY Slip Op 31854(U)

August 28, 2017

Supreme Court, New York County

Docket Number: 150794/2017

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, J.S.C.
Justice

PART 2

-----X

SHEFFIELD FINANCIAL, A DIVISION OF BRANCH BANKING
AND TRUST COMPANY

INDEX NO. 150794/2017

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

ABID MAHMOOD a/k/a ABID MAMOOD,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19

were read on this application to/for Change of Venue

Upon the foregoing documents, it is
ordered that the motion is **denied**.

In this action seeking damages for breach of contract as well as attorneys' fees, plaintiff Sheffield Financial, a Division of Branch Banking and Trust Company, moves, pursuant to CPLR 503(a) and 510(1), to change the venue of this action to Kings County. Defendant Abid Mahmood a/k/a Abid Mamood opposes the motion. After a review of the motion papers, as well as the relevant statutes and case law, the motion is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff commenced the captioned action in Supreme Court, New York County by filing a summons and verified complaint on January 25, 2017. NYSCEF Doc. 1.¹ The summons reflected that “[t]he basis of the venue designated is: [t]he defendant resides in the County of New York.” Id. Plaintiff also alleged in the complaint that defendant was a resident of New York County. Id., at par. 2.

The substantive claim against defendant was that, in September of 2015, he entered into a note and security agreement with plaintiff to provide financing for the purchase of a piece of equipment known as a Bobcat. Id., at pars. 4, 7. Plaintiff was the owner and holder of the agreement and defendant granted a security interest in the Bobcat to plaintiff pursuant to the terms of the agreement. Id., at pars. 5-6. When defendant defaulted under the terms of the agreement, plaintiff commenced the captioned action. Id., at pars. 8-10.

On February 14, 2017, plaintiff filed the instant motion seeking to change venue of this matter to Kings County, pursuant to CPLR 503(a) and 510(1), based on defendant’s residence there. In support of the motion, plaintiff asserts that, since

¹ Unless otherwise noted all references are to the documents filed in NYSCEF in connection with this matter.

none of the parties reside in New York County, venue there is improper and that, since defendant lives in Kings County, venue should be transferred there.

In opposition to the motion, defendant argues that the motion must be denied as premature and that, with its answer, filed February 22, 2017 (Doc. 13), it served a demand to change the venue of the captioned action to Supreme Court, Jefferson County.²

LEGAL CONCLUSIONS:

CPLR 503(a) provides that the “place of trial shall be in the county in which one of the parties resided when [the action] was commenced.” Here, the motion papers reflect that neither party resided in New York County at the time the action was commenced, and thus plaintiff’s choice of New York County as the place of venue for this action was improper. However, “[i]t is settled that a plaintiff will forfeit the right to select the place of venue by choosing an improper venue in the first instance (see Siegel, NY Prac, sec. 123; 2 Weinstein-Korn-Miller, NY Civ Prac, par 511.04; *Papadakis v Command Bus Co.*, 91 AD2d 657).” *Roman v Brereton*, 182 AD2d 556 (1st Dept 1992), quoting *Kelson v Nedicks Stores*, 104 AD2d 315, 316 (1st Dept 1984); see also *Montilla v River Park Assocs.*, 282 AD2d 389 (1st Dept

² This Court notes that no such demand was provided to chambers or filed with NYSCEF.

2001); *Bailon v Avis Rent a Car, Inc.*, 270 AD2d 439 (2d Dept 2000); *Llorca v Manzo*, 254 AD2d 396 (2d Dept 1998). Since plaintiff chose to commence the captioned action in New York County, an improper venue for this case, this Court is thus constrained to deny its motion.

In light of the foregoing, it is hereby:


ORDERED that the motion by plaintiff Sheffield Financial, a Division of Branch Banking and Trust Company, is denied; and it is further

ORDERED that the parties are to appear for a preliminary conference in this matter on October 3, 2017 at 2:15 p.m. at 80 Centre Street, Room 280; and it is further

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

8/28/2017

DATE


HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: