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| Iorio v Syracuse Univ. |
| 2017 NY Slip Op 32917(U) |
| April 7, 2017 |
| Supreme Court, Rockland County |
| Docket Number: 033374/2015 |
| Judge: Thomas E. Walsh II |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
NICHOLAS IORIO,

Plaintiff,

-against-

SYRACUSE UNIVERSITY,

Defendant(s).
-----X

DECISION & ORDER

Index No. 033374/2015

(Motion #1)

Hon. Thomas E. Walsh, II, J.S.C.

The following papers numbered 1- 3 read on this motion by Defendant, pursuant to Civil Practice Law and Rules §510(3), for an Order transferring the venue of this matter to Onondaga County Supreme Court, New York and granting Defendant any additional relief deemed just and proper:

PAPERS

NUMBERED

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|---|---|
| Notice of Motion/Affirmation of J.P. Wright, Esq./Affidavit of Matthew Sessler/Affidavit of Robert E. Kick, Jr./Affidavit of Carl Hawley/Memorandum of Law/Exhibits (A-Z) | 1 |
| Affirmation of Daniel S. Szalkiewicz, Esq. in Opposition/Exhibit (A-E) | 2 |
| Reply Affirmation of J.P. Wright, Esq./Defendant's Reply Memorandum of Law in Further Support of its Motion to Change Venue | 3 |

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

On July 22, 2015 and in the County of Rockland, Plaintiff commenced the instant action, sounding in negligence, and seeking damages. The Complaint alleges that on February 12, 2014 Plaintiff slipped and/or tripped and fell on the sidewalk/parking lot outside 210 Lambreth Lane, Syracuse, New York and sustained a fracture ankle. Defendant joined issue with the filing of an Answer on September 11, 2015. Plaintiff and Defendant engaged in the early stages of discovery including bill of particulars, discovery demands and medical authorizations. On

December 15, 2016 at a preliminary conference Defendant's counsel informed the Court that the Defendant intended on making a motion to change venue to Onondaga County. The Court directed the Plaintiffs to provide outstanding medical authorizations, which occurred on December 19, 2016. Plaintiffs also provided Supplemental Combined Responses which identified two additional medical providers in Rockland County and a new witness, the Plaintiff's mother, Janet Iorio, who is residing in Rockland County.

Defendant argues that pursuant to Civil Practice Law and Rules § 510(3) the Court may change the place of the trial in an action where "the convenience of material witnesses and the ends of justice will be promoted by the change." According to Defendant the majority of material witnesses reside closer to Onondaga County than Rockland County. In support of Defendant's application counsel indicates that he spoke with the witnesses and articulated in his Affirmation that both Julian Staiano and James Starker reside near Onondaga County Courthouse and traveling to Rockland County for a trial would be inconvenient. Neither witness provided an affidavit indicating the scope of their testimony or the inconvenience they will suffer if the venue is transferred "upstate."

Defendant also indicates that there are three witnesses, who are employed by the Defendant University in varying capacities and each of them indicate travel to Rockland County would be extensive, take time away from their employment and inconvenient for all of them.

In the absence of compelling circumstances, those witnesses whose convenience is required to be considered in an application for change of venue are those witnesses other than the parties, their employees and members of their families. [Slavin v. Whispell, 1 Dept 1958); Martinez v. Dutchess Landaq Inc., 301 AD2d 424 (1st Dept 2003); Leake v. Constellation Brands, Inc., 112 AD3d 792 (2d Dept 2013)]. The convenience of the defendant's witnesses (who are employees of Defendant) shouldn't be considered above the inconveniences of the Plaintiff's eyewitnesses and treating physician when determining whether to change the place of trial. [Marzello v. Kiamesha Concord, Inc., 26 AD2d 986 (3d Dept 1966)].

Of the approximately ten (10) witnesses, two (2), who are not Defendant's employees, reside in Onondaga County and indicate that travel would be inconvenient for them. However, the Court notes that one witness indicates that he is not sure he will testify at all. Further, Defendant was unable to speak with any of the medical providers in Onondaga County to determine the scope of their testimony, where they currently reside and any inconvenience having

to testify in Rockland County. One of Plaintiff's treating physicians has moved to Florida and the others have failed to return his call. Moreover, neither of the two witnesses with whom Defendant has spoken provided Defendant an Affidavit delineating the scope of their testimony, a determination of whether they will testify and an explanation of any inconvenience that would be the result of a transfer. However, Defendant did provide Affidavits of three witnesses, who are all employed by Defendant. Without an affirmative statement from the witnesses indicating that the Rockland County venue is inconvenient and a hardship, the Court will not solely consider Affidavits of Defendants witnesses who are also employees of Defendant. Therefore, Defendant has failed to demonstrate that the convenience of the witnesses and the ends of justice would promote a change of venue from Rockland County to Onandaga County.

In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by these motion papers and the failure of the Court to specifically mention any particular issue in this Decision and Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

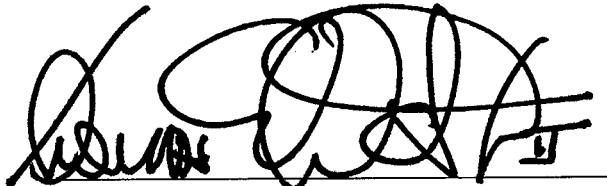
Based on the foregoing, the Defendant's motion to change the venue and transfer this matter to Onondaga Supreme Court should be denied.

Accordingly it is hereby,

ORDERED that defendant's motion is denied and the venue of this action remains in Rockland County Supreme Court, and it is further

ORDERED that the parties are to appear for a previously scheduled conference date on **THURSDAY APRIL 13, 2017 at 9:30 am.**

Dated: New City, New York
April 7 2017



Hon. Thomas E. Walsh II, J.S.C.

To:

DANIEL S. SZALKIEWICZ, ESQ.
DANIEL S. SZALKIEWICZ & ASSOCATES, P.C.
Attorney for Plaintiff
(via e-file)

J.P. WRIGHT
BOND SCHOENECK & KING
Attorney for Defendant
(via e-file)