

Watson v Tower Club 40, LLC
2018 NY Slip Op 31407(U)
June 27, 2018
Supreme Court, New York County
Docket Number: 161311/2017
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X

INDEX NO. 161311/2017

JAMES WATSON,

MOTION DATE 08/07/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

TOWER CLUB 40, LLC, THE TOWER CLUB CONDOMINIUM AT WESTCHESTER, BOARD OF MANAGERS OF THE TOWER CLUB CONDOMINIUM AT WESTCHESTER, AS AGENT FOR AND ON BEHALF OF ALL UNIT OWNERS, PROPERTY MARKETS GROUP, INC.

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for

CHANGE VENUE

Defendants The Tower Club Condominium at Westchester and Board of Directors of the Tower Club Condominium at Westchester, i/s/h/a Board of Managers of the Tower Club Condominium at Westchester, as agent for and on behalf of all unit owners, move, pursuant to CPLR 509, 510 and 511 for an order changing the venue of this personal injury action, from New York County to Westchester County.

Plaintiff was allegedly injured on April 13, 2016 at the premises located at 50 Columbus Avenue, Tuckahoe, New York in Westchester County. Plaintiff commenced the original action by service of the summons and complaint on or about January 18, 2018. Doc. 1.¹ Plaintiff chose to place venue in New York County, based on the principal place of business of then defendant,

¹ All references are to the documents filed with NYSCEF in this matter.

Property Markets Group, Inc. Plaintiff subsequently discontinued his action against Property Markets Group, Inc. with prejudice, in a Stipulation of Dismissal with Prejudice filed on April 12, 2018. Doc. 19.

In the instant motion, defendants through their attorney, Peter D. Lechleitner, an associate of the Law Office of Margaret G. Klein & Associates, avers that plaintiff's injuries occurred in Westchester County, and that plaintiff is a resident of Suffolk County and all remaining defendants declare their residences as the Village of Tuckahoe, Town of Eastchester, County of Westchester. Doc 29. Further plaintiff notes that CPLR 503 (d) specifically holds that when a president or treasurer of an unincorporated association is sued on behalf of that organization he "shall be deemed a resident of the county in which that association has its principal office, as well as the county in which he actually resides." Id. ¶10.

The Court notes that no remaining party has any relation to New York County.² Further, the within motion is timely, defendants' having served on plaintiff a demand for change of venue along with defendants' Answer and discovery demands, on May 2, 2018. (See Doc. 30). Finally, defendants note that plaintiff, having designated the wrong venue, cannot now oppose the demand for a change of venue.

It is well settled that a plaintiff "forfeit[s] [his or her] right to select the place of venue" upon a failure to designate a proper county in the first instance. (*Llorca v Manzo*, 254 AD2d 396 [2d Dept 1998]; see *Fisher v Finnegan-Curtis*, 8 AD3d 527, 528 [2d Dept 2004].) Generally

² Defendant Tower Club 40, LLC, has never appeared in this matter, although the court notes, the address served with notice, is in Kew Gardens, Queens, New York.

speaking, after the initial designation of venue, a plaintiff is only entitled to cross-move to retain venue, or move to change venue, based on the discretionary grounds in CPLR 510 – namely that an impartial trial cannot be had in the designated county or that the convenience of material witnesses and the ends of justice will be promoted by the change – neither of which is applicable here. (*See generally Goercke v Kim Yong Kyun*, 273 AD2d 110, 110 [1st Dept 2000].) The Court also notes that although plaintiff may have validly designated venue, that New York County is no longer a valid venue, additionally, plaintiff has not opposed this motion.

Accordingly, it is hereby:

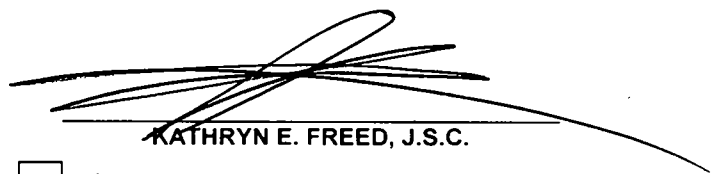
ORDERED that the motion is granted; and it is further

ORDERED that counsel for defendants is directed to e-file a completed Notice to County Clerk (Form EF-22), with a copy of this order attached thereto, within 20 days after this order is entered, and the Clerk is directed to transfer this action to Supreme Court, Westchester County; and it is further

ORDERED that counsel for defendants is directed to e-mail a copy of this order with notice of entry to the General Clerk's Office, at genclerk-ords-non-mot@nycourts.gov, within 20 days after this order is entered, and the Clerk is directed to transfer this action to Supreme Court, Westchester County.

ORDERED that this constitutes the decision of the court.

6/27/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE