

Stamford v Rubinoff
2018 NY Slip Op 33002(U)
November 26, 2018
Supreme Court, New York County
Docket Number: 158765/2017
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA

PART

IAS MOTION 22

Justice

X

INDEX NO.

158765/2017

SCOTT STAMFORD,

MOTION DATE

10/24/2018

Plaintiff,

MOTION SEQ. NO.

003

- v -

SAUL RUBINOFF, YOUNSHAN SHENG

Defendant.

DECISION AND ORDER

X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 48, 49, 51

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is ~~ordered~~ that defendant Saul Rubinoff's motion and defendant Younshan Sheng's cross-motion, both to reargue, are granted. Here, defendants seek to reargue a prior motion which sought to change the venue of this action. In a prior decision dated March 5, 2018 (hereinafter referred to as the "Prior Decision"), the Court denied the motion on the grounds that the motor vehicle accident occurred in New York County. Defendants now move to reargue the Prior Decision, arguing that the Court misapprehended the law and the facts. Plaintiff opposes, and defendant Rubinoff replies.

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v*

Kassis, 182 AD2d 22, 27 (1st Dep't 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

Defendants argue that this Court misapprehended both the law and the facts, as the CPLR §503(a) was not amended until after plaintiff commenced this action. In opposition, plaintiff argues that the Court did not misapprehend the law or facts in the Prior Decision. Further, plaintiff argues that there is no prejudice to defendants by permitting venue in New York County and that venue should remain here for the convenience of the witnesses.

Despite, plaintiff's arguments, defendants are correct in arguing that this Court misapprehended the facts. Upon review of the original motion, as well as the instant motion, the Court finds that the date the instant action was commenced was overlooked. The Court notes that CPLR §503(a) was amended to add that "the place of trial shall be in the county in which...a substantial part of the events...giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff". Here, it is undisputed that none of the parties resided in New York County at the time this action was commenced. Thus, this action was venued in New York County based upon the location of the accident. However, defendants are correct that the amendment to CPLR §503(a) did not occur until after the commencement of this action. In the Prior Decision, the Court overlooked the fact that the instant action was commenced on October 2, 2017. The amendment to CPLR §503(a), which permits venue to be based upon the location of the accident, did not go into effect until October 23, 2017. As such, at the time the instant action was commenced, venue was not properly based upon the location of the accident. As venue was not proper, the motion and cross-motion are granted.

The Court notes that plaintiff also argues that venue should remain in New York County based upon the convenience of the witnesses. Such argument fails. "Upon a motion made

pursuant to CPLR §510(3), the movant bears the burden of demonstrating that the convenience of material witnesses would be better served by the change. This showing must include (1) the identity of the proposed witnesses, (2) the manner in which they will be inconvenienced by a trial in the county in which the action was commenced, (3) that the witnesses have been contacted and are available and willing to testify for the movant, (4) the nature of the anticipated testimony, and (5) the manner in which the anticipated testimony is material to the issues raised in the case". *Cardona v Aggressive Heating, Inc.*, 180 AD2d 572, 572 (1st Dep't 1992). Here, plaintiff speaks generally that police officers would testify and that it would be difficult to get the officers to testify in Rockland County. However, such general statements fail to meet plaintiff's burden. Additionally, the Court notes that plaintiff argues that ambulance personnel would testify and references an Exhibit 1. See Epstein Affirmation in Opposition, ¶14. Such Exhibit 1 was not filed with the Court and was not attached to plaintiff's opposition papers. As plaintiff failed to demonstrate that the convenience of material witnesses would be better served in New York County, defendant Rubinoff's motion and defendant Sheng's cross-motion, to reargue, are granted and venue is changed to Rockland County.

Accordingly, it is

ORDERED that defendant Saul Rubinoff's motion to reargue is granted and, upon reargument, the Court vacates its prior order, dated March 5, 2018; and it is further

ORDERED that defendant Younshan Sheng's cross-motion to reargue is granted; and it is further

ORDERED that, within thirty days of entry, defendant Saul Rubinoff shall serve a copy of this order upon all parties, together with notice of entry; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court,

County of Rockland; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Rockland and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Rockland County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision/Order of the Court.

11/26/2018

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

☒

CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE