

AmTrust N. Am. Inc v American Dance Inst., Inc

2019 NY Slip Op 30050(U)

January 2, 2019

Supreme Court, New York County

Docket Number: 653846/2018

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45

Justice

-----X

INDEX NO. 653846/2018

AMTRUST NORTH AMERICA INC D/B/A AMTRUST
INTERNATIONAL UNDERWRITERS LIMITED,

MOTION DATE 12/06/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

AMERICAN DANCE INSTITUTE, INC, HOME INSPECTRITE, INC,
JAMES QUINN

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to CHANGE VENUE.

Upon the foregoing documents:

Defendants American Dance Institute, Inc., Home Inspectrite, Inc. and James Quinn seek an Order transferring this action to Greene County pursuant to CPLR §510. Plaintiff opposes.

For the following reasons, Defendants’ motion is Granted and this action is transferred to Greene County.

Background

This lawsuit involves a dispute over insurance coverage for a claim previously asserted by American Dance Institute, Inc. (“ADI”) against Home Inspectrite, Inc. (“HII”). Plaintiff AmTrust North American (“AmTrust”) issued an insurance policy to HII with effective dates of coverage from May 21, 2016 to May 21, 2017.

On or about May 24, 2017 ADI placed HII on notice of a claim for damages due to HII’s alleged negligence in performing a building inspection for property ADI was to, and ultimately

AmTrust v. American Dance Institute, Inc., et al.
653846/2018

2

did, purchase. ADI thereafter commenced an action against HII in Supreme Court, Greene County, seeking \$1.8 million in damages. (*Stockwell Affirmation*, NYSCEF 25, ¶¶6-7). AmTrust was made aware of this claim and issued a denial letter. *Id.* at ¶10.

The action between ADI and HII is currently pending in Greene County and is captioned *American Dance Institute v. Home Inspectrite, Inc.*, Greene County Index No 474/2017 (the “Greene County Litigation”). In that case, under the auspices of Justice Raymond J. Elliott III, an agreement was entered whereby HII assigned to ADI any claim HII had against AmTrust for its declination of coverage, including defense and litigation costs in the Greene County Litigation. Subsequently, ADI notified AmTrust of the claims assignment and asserted that there was coverage for the claim asserted by ADI against HII. *Id.* at ¶¶12, 13.

Defendants assert (and AmTrust does not deny) that Justice Elliott directed a representative from AmTrust to appear in Greene County Supreme Court for a conference scheduled for May 15, 2018. At the conference, counsel for ADI and Counsel for AmTrust advised Justice Elliott that they would explore the possibility of settlement. Justice Elliott directed ADI to update him no later than June 29, 2018, as to whether ADI would file a declaratory judgment complaint against AmTrust and indicated that he would schedule another conference at a later date. *Id.* at ¶13-16.

In the interim, after receiving a settlement demand from ADI’s counsel, and perhaps to beat ADI to the punch (it was aware that ADI likely would add such a claim if settlement discussions broke down), AmTrust commenced the instant action in New York County seeking a declaratory judgment of non-coverage on August 3, 2018 against ADI, HII and James Quinn, president of HII. *Id.* ¶17-18, NYSCEF 1.

AmTrust v. American Dance Institute, Inc., et al.
653846/2018

3

Shortly thereafter, ADI amended its Summons and Complaint in the Greene County case to add AmTrust as a named Defendant and to add a separate cause of action seeking declaratory relief with respect to AmTrust's duty to defend and indemnify. The parties, including AmTrust, were directed to appear for a conference before Justice Elliott on September 11, 2018 and, from there, were directed to submit a scheduling order that would be "so ordered." *Stockwell Aff.*, ¶¶20-21.

Analysis

CPLR §510(3) permits a Court to change the place of trial of an action where the convenience of material witnesses and the ends of justice will be promoted. While the Court recognizes that AmTrust is authorized to do business in New York County, and therefore has full access to these courts, permitting two actions – such as these – to continue on parallel tracks when they are closely related and involve the same underlying set of facts and coverage issues, is not the best use of the two courts' (or the parties') resources.

The witnesses to the underlying dispute reside either in Greene County (Mr. Quinn of HII) or in neighboring Columbia County (ADI's witnesses). *Stockwell Aff.*, ¶23. AmTrust, an international company (by contrast to the Defendants who operate local businesses), has not voiced any difficulty traveling to Greene County (as it has already twice appeared in Greene County before Judge Elliott), and indeed makes the argument that the 2-hour travel time between Greene County and New York County is of no consequence (as applied to Defendants). The Court also notes that the underlying cause of action arose in Greene County. *Wickman v Pyramid Crossgates Co.*, 127 A.D.3d 530, 531 (1st Dep't 2015) (despite the designation of New York County as the venue for trial of this action being proper, trial court properly granted a

AmTrust v. American Dance Institute, Inc., et al.
653846/2018

4

motion to change venue to a county where both the cause of action arose and the witnesses reside.)

Finally, the fact that Justice Elliott has already dealt with the parties and the underlying issues in the pending litigation and settlement efforts provides another compelling reason for having these cases in Greene County, where they can (if Justice Elliott deems appropriate) be most easily and efficiently coordinated.

Therefore, after due consideration, it is:

ORDERED that Defendants motion for a change of venue is Granted and venue of this action is changed from this Court to the Supreme Court, County of Greene; 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 Greene 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 Defendants 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, Greene 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*

AmTrust v. American Dance Institute, Inc., et al.
653846/2018

5

Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

1/2/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: