

Allstate Ins. Co. v Westchester Med. Ctr.

2019 NY Slip Op 30545(U)

February 28, 2019

Supreme Court, New York County

Docket Number: 657150/2017

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 PART IAS MOTION 4

Justice

-----X INDEX NO. 657150/2017

ALLSTATE INSURANCE COMPANY

Plaintiff,

MOTION SEQ. NO. 001

- v -

WESTCHESTER MEDICAL CENTER, A/A/O VYACHESLAV
KRAVCHENKO,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 19, 20, 21

were read on this motion to/for CHANGE VENUE

Upon the foregoing documents, it is ordered that the motion is granted.

Defendant Westchester Medical Center moves, pursuant to CPLR 510 (3), to transfer the venue of the captioned action, a no-fault benefits dispute, from the Supreme Court, New York County to the Supreme Court, Nassau County.

FACTUAL AND PROCEDURAL BACKGROUND

This matter was initiated following Arbitration, at which an award was rendered in favor of defendant on July 10, 2017. Plaintiff, Allstate Insurance Company, appealed the arbitration, and, on November 4, 2017, the award was confirmed, but for a lesser sum. On November 30, 2017, plaintiff commenced this action in the Supreme Court, New York County. On December 18, 2017, defendant filed its verified answer and asserted, *inter alia*, that venue was improper. Doc. No. 5, ¶59. This motion was then filed on or about January 22, 2018. Doc. No. 10.

Defendant moves for a change of venue based on the “convenience of material witnesses” pursuant to CPLR 510 (3). Defendant provides affidavits from three alleged material witnesses, all of whom indicate their willingness to testify, and all of whom reside and work near the Nassau County Court House. The amount of time that it would take the witnesses so identified to travel to the Nassau County Court house is significantly less than the time it would take them to travel to the New York County Supreme Court. The difference in all cases is at least one hour of additional travel time per one-way trip. The Court also notes that, in his affidavit (Doc. No. 12), non-party witness Dr. Michael Katz states that it would be a great inconvenience for him to travel to New York County, and that it would also inconvenience his patients since he is a practicing physician and it would probably require him to cancel a full day of seeing patients.

The affidavits of the other two witnesses, Peter Kattis and Susan Weinstein (Docs. No. 13 and 14), similarly cite the inconvenience of traveling to New York County versus Nassau County. Kattis also cites the added inconvenience of the long travel time insofar as he resides with his elderly mother, who is in poor health, and he is responsible for her general care, including her meals and medical appointments. He notes that his employer provides him with flexible hours to care for his mother and that having to spend a full day away from her would be a major inconvenience for both of them.

Plaintiff, through its attorney, Matthew T. Sledzinski of the Law Offices of Peter C. Merani, argues that defendant has failed to meet the requirements of CPLR 510(3), wherein defendant would have the burden of demonstrating that the convenience of material witnesses

would be better served by the change of venue. Doc. No. 19, ¶¶ 5-14. Plaintiff argues, *inter alia*, that the difference in travel times does not rise to the level of inconvenience to the witnesses and further argues that Kattis' and Weinstein's convenience does not matter. Plaintiffs also argue that the fact that plaintiff has a Nassau County office and would therefore not be prejudiced by the change in venue is irrelevant.

LEGAL CONCLUSIONS

Pursuant to CPLR 510(3), “[A] change of venue based on the convenience of witnesses may only be granted after there has been a detailed evidentiary showing that the convenience of nonparty witnesses would in fact be served by the granting of such relief. *O'Brien v Vassar Bros. Hosp.*, 207 A.D.2d 169 (2d Dept 1995); *Kraft v Kamalian*, 290 A.D.2d 264 (1st Dept 2002). The affidavit in support of such motion must contain the names, addresses and occupations of the prospective witnesses, must disclose the facts to which the proposed witnesses will testify at the trial, must show that the proposed witnesses are, in fact, willing to testify and must show how the proposed witnesses would be inconvenienced in the event that a change of venue is not granted.” *Jacobs v Banks Shapiro Gettinger Waldinger & Brennan, LLP*, 9 AD3d 299, 299 (1st Dept 2004). The Court finds that movant has satisfied these requirements.

The names and facts to be testified to by at least three witnesses have been provided, and there is no dispute that Dr. Katz is a non-party witness. Although plaintiffs argue that Kattis and Weinstein should be considered party witnesses under the control of defendant, they fail to substantiate this claim.¹

¹ The Court notes that both Kattis and Weinstein represent that they are employed by Hospital Receivables Systems Inc., and handle defendant's no-fault accounts. There is no indication in the motion papers that these

Additionally, the Court recognizes the need for Kattis to be in close proximity to his elderly mother and, if this case remains venued in New York County, he would not be able to easily reach her in the event of an emergency. Finally, the Court notes that both arbitrations were held in Nassau County and that plaintiff Allstate has an office in Nassau County. Thus, although not controlling, these facts further establish that plaintiff will not be prejudiced by the requested change of venue.

Accordingly, it is hereby:

ORDERED that the motion is granted; and it is further

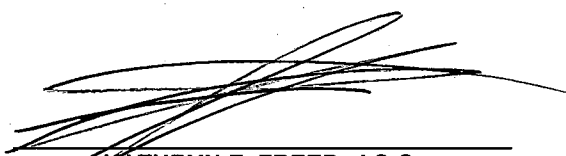
ORDERED that counsel for defendants is directed to e-file a completed Notice to County Clerk (Form EF-22), with a copy of this order attached thereto, within 20 days after this order is entered, and the Clerk is directed to transfer this action to Supreme Court, Nassau County; and it is further

individuals were employed by defendant or were under its control, in which case their convenience would be accorded only little weight. *See Said v Strong Mem. Hosp.*, 255 AD2d 953 (4th Dept 1998).

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, Nassau County.

ORDERED that this constitutes the decision of the court.

2/28/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE