

Philadelphia Indem. Ins. Co. v Procraft NY, Inc.
2019 NY Slip Op 32291(U)
July 30, 2019
Supreme Court, New York County
Docket Number: 152054/2019
Judge: Kathryn E. Freed
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PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

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MOTION SEQ. NO. 001

- v -

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11
were read on this motion to/for **CHANGE VENUE**

Defendant Procraft NY, Inc., d/b/a Mertec Plumbing Heating & Electric (defendant), moves, pursuant to CPLR 503, 510 and 511 for an order changing the venue of this property damage action from New York County to Schuyler County.

Plaintiff's subrogor, Gates Community Chapel d/b/a Freedom Village USA, allegedly suffered severe water damage due to defendant's negligence at the insured premises located at 127 East 4th Street, Watkins Glen, New York in Schuyler County. Plaintiff commenced the original action by service of the summons and complaint on or about February 26, 2019. Doc.

1.¹ Plaintiff chose to place venue in New York County however, the summons fails to identify its reasons for filing in New York County.

Defendant joined issue on June 20, 2019. Its answer contained an affirmative defense that plaintiff selected an improper venue for this action. Doc. No. 4. Simultaneous with its Answer, defendant filed a Demand to Change Venue. Doc. No. 5. Defendant further notes that more than five days have passed since service of the Demand to Change Venue, and plaintiff has neither contested or admitted that the venue was incorrect. Doc. No. 7, ¶ 7.

Defendants move, pursuant to CPLR 503 (a), 510 (1), and 510 (3), to change venue to Schuyler County. CPLR 510 (1) authorizes a court to change venue where “the county designated for that purpose is not a proper county.” *Id.*, ¶14.

The Court notes that no party to this action has any relation to New York County. Further, the within motion is timely, defendants having served on plaintiff a demand for change of venue along with their Answer on June 20, 2019, and plaintiff has not opposed the 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 speaking, after the initial designation of venue, a plaintiff is only entitled to cross-move to retain

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

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].)

Accordingly, it is hereby:

ORDERED that the motion is granted and venue of this action is changed from this Court to the Supreme Court, County of Schuyler; 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 Schuyler 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, Schuyler 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); and it is further

ORDERED that this constitutes the decision of the court.

7/30/2019

DATE

CHECK ONE:

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CASE DISPOSED

☒

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

KATHRYN E. FREED, J.S.C.