

<b>Catania v John C. Goodfellow Enters., Ltd.</b>
2019 NY Slip Op 34220(U)
August 6, 2019
Supreme Court, Queens County
Docket Number: 701235/2018
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS  
**Justice**

IAS PART 30

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ELISE CATANIA,

Index No.: 701235/2018

Plaintiff,

Motion

Date: July 10, 2019

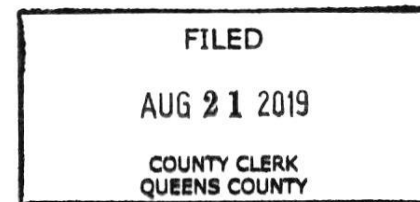
-against-

Motion Cal. No.: 9

JOHN C. GOODFELLOW ENTERPRISES, LTD  
d/b/a FOURS SEASONS GOLF AND SKI  
CENTER and JOHN C. GOODFELLOW, d/b/a  
FOUR SEASONS RECREATION GOLF &  
SKI AREA,

Motion Sequence No.: 1

Defendants.



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The following e-file papers numbered 10-14, 32-47 submitted and considered on this motion by defendants John C. Goodfellow Enterprises, LTD., d/b/a Four Seasons Golf and Ski Center and John C. Goodfellow, d/b/a Four Seasons Recreation Golf & Ski Area seeking an Order pursuant to Civil Practice Law and Rules (“CPLR”) 510 and Rule 511 of the CPLR granting a change of venue of this action from Queens County to Onondaga County; and the cross-motion of plaintiff Elise Catania seeking an Order pursuant to CPLR 3216 striking defendants’ answer or alternatively extending plaintiff’s time to file a Note of Issue.

Papers  
Numbered

Notice of Motion-Affidavits-Exhibits.....	EF 10-14
Cross-Motion-Affidavits-Exhibits.....	EF 32-46
Affirmation in Opposition-Affidavits-Exhibits.....	EF 47

Plaintiff Elise Catania (hereinafter “Catania”) commenced this action against defendants John C. Goodfellow Enterprises, LTD., d/b/a Four Seasons Golf and Ski Center and John C. Goodfellow, d/b/a Four Seasons Recreation Golf & Ski Area to recover damages for serious personal injuries which she alleged that she sustained in a skiing accident when she was a minor which occurred on February 20, 2007 at a resort owned and operated by the defendants. Catania filed her summons and

verified complaint on January 25, 2018. According to the summons and verified complaint, Catania based venue of this case upon her residence in Bayside, New York.

Defendants make this application seeking an Order pursuant to CPLR 510 and Rule 511 of the CPLR granting a change of venue of this action from Queens County to Onondaga County. Defendants maintain that Catania recently gave testimony in this matter on January 4, 2019 which demonstrated that at the time she commenced this action she was residing in Onondaga County. Defendants annexed a copy Catania's deposition transcript to their papers. They claim that Catania testified that at the time that she commenced the action and at the time that the deposition was held, Catania was living in Onondaga County. She gave testimony related to her college registration in Fayetteville, New York, her driver's license, absentee voter registration and credit card bills and 2018 tax returns, which contains the same Fayetteville, New York address. Defendants claimed that Catania's counsel initiated this action in Queens County for his convenience only, and that there is no nexus between Queens County and this lawsuit when it was commenced. They claim that most of the medical treatment of Catania took place in Onondaga County. Thus, Catania willfully omitted and misled the Court regarding her residence and under the CPLR this is a basis to change venue (*see Resciniti v Fair Fax Partners*, 309 AD2d 627 [1st Dept 2003]; *Roman v Brereton*, 182 AD2d 556 [1st Dept 1992]).

Catania cross-moved and opposed the defendants' motion. Catania contended in relevant part that at the time that this matter was commenced she resided with her mother in Queens, and that she resides with her mother in Queens presently. When she sustained injury in the accident she was a minor and the accident occurred when she was on a break from school visiting her father. Although some of her medical treatment was performed in Onondaga County, she received subsequent medical treatment by medical providers located in Queens, Manhattan and Suffolk County. Catania's counsel explained that he originally filed a lawsuit on Catania's behalf against Poolsbrooke Development, Inc. (hereinafter "Poolsbrooke") when Catania was a minor in Supreme Court, Queens County under Index number 28762/08. Catania's counsel stated that he filed the instant action after Catania reached the age of majority and upon discovering that Poolbrooke was not the operator of the ski hill where Catania had her accident. Upon inquiry by the Court, the prior matter is still pending. Catania annexed an affidavit of Dr. Scott N. Surasky, Board Certified in Chiropractic Neurology, who is expected to be called at the time of trial. The doctor stated that he could not travel to Onondaga County if the venue of this matter were changed. Catania also argued that venue may lie in more than one County, however, it is proper here in Queens County because Catania although now a college student still resides in Queens County in a cooperative apartment owned by her parents. Catania also seeks an Order pursuant to CPLR 3216 striking defendants' answer for failure to respond to discovery demands and failing to appear for depositions.

## **DISCUSSION**

Civil Practice Law and Rules §503(a):

“Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.”

CPLR §510, which states the grounds for the change of place of trial, upon motion the Court may change the place of trial in an action where the county designated for is not a proper County.

Defendants met their initial burden of establishing that the venue in this matter was improper, which was not rebutted by the plaintiff (*see Simon v Usher*, 93 AD3d 401 [1st Dept 2012]; *Weiss v Wal-Mart Stores East, L.P.*, 83 AD3d 461 [1st Dept 2011]; *Resciniti v Fair Fax Partners*, 309 AD2d 627 [1st Dept 2003]; *Llorca v Manzo*, 254 AD2d 396 [2d Dept 1998]). Defendants presented proof including Catania’s recent testimony, information related to plaintiff’s college registration, driver’s license, absentee voter registration and tax return filing. In the case *Roman v Brereton*, (182 AD2d 556 [1st Dept 1992]) the First Department reversed the lower courts denial of defendant’s motion to change venue pursuant to CPLR 510 (1) and (3) from Bronx County to Chenango County and granting of plaintiff’s cross-motion to change venue. Although plaintiff lived in Bronx County at the time of the accident, for purposes of deciding whether venue was properly placed in Bronx County, “the controlling date is the date of commencement of the action” (*Id*; *see* CPLR 503[a]).

Based upon defendants’ submission, the Court finds that this case, initiated by Catania in 2019, has no nexus to the County of Queens. None of the parties resided in Queens County when this action was commenced, and defendants moved promptly to change venue upon ascertaining plaintiff’s true residence (*see* CPLR 503; *Saint-Louis v Esposito*, 171 AD3d 824 [2d Dept 2019]; *Accardi v Kaufmann*, 82 AD3d 803 [2d Dept 2011]; *Gordillo v Hill*, 157 AD3d 470 [1st Dept 2018]). By selecting an improper venue in the first instance, the plaintiff forfeited the right to choose venue (*see Nunez v Yonkers Racing Corp.*, 153 AD3d 1355 [2d Dept 2017]). The Court finds that a hearing related to venue in this matter is not required (*see Demirovic v Performance Food Group, Inc.*, 170 AD3d 656 [2d Dept 2019]). The plaintiff’s cross-motion is denied without prejudice to renew before the Justice assigned to this matter in Onondaga County. Therefore it is:

**ORDERED**, that the defendants’ motion to change venue in this action from the County of Queens to the County of Onondaga is granted; and it is further

**ORDERED**, that a copy of this Order with Notice of Entry be served on all parties to the action, the Clerk of the Supreme County, Queens County, and the Clerk of the Supreme Court, Onondaga County; and it is further

**ORDERED**, that the Clerk of the Supreme Court, Queens County, upon being served with a copy of this Order with Notice of Entry and payment of any required fees, if any, is directed to


transfer all papers filed in their office in the above entitled action to the Clerk of the Supreme County, Onondaga County; and it is further

**ORDERED**, that plaintiff's cross-motion is denied without prejudice to renew before the Supreme Court Justice to be assigned to the matter in Onondaga County.

Therefore, the defendants' motion is granted and the cross-motion is denied without prejudice to renew as aforementioned.

This constitutes the decision and Order of the Court.

Dated: August 6, 2019

  
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**Hon. Chereé A. Buggs, JSC**

FILED  
AUG 21 2019  
COUNTY CLERK  
QUEENS COUNTY