

Golfo v Tooker

2020 NY Slip Op 32534(U)

June 24, 2013

Supreme Court, Bronx County

Docket Number: 22457/2012E

Judge: Lizbeth Gonzalez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10E

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Mariacarla Golfo,

Plaintiff,

DECISION and ORDER
Index No 22457/2012E

-against-

Stephanie M. Tooker, Tropical Tan, Gandy Dancer,
Inc. d/b/a The Alley, Today's Lounge of Oneonta,
Inc. d/b/a Today's Lounge and S&S Taverns of
Oneonta, Inc. d/b/a The Sip and Sail Tavern,

Defendants.

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Recitation of the papers considered in reviewing the underlying motion for summary judgment as required by CPLR § 2219(a):

Notice of Motion and annexed Exhibits and Affidavits.....	1
Affirmation in Opposition and annexed Exhibits.....	2
Reply Affirmation.....	3

Plaintiff Golfo claims that she sustained serious injuries as a result of the defendants' negligence. On 10/14/11, the plaintiff's complaint alleges that she was in a tanning salon owned by defendant Tropical Tan when defendant Tooker pushed her through the salon's storefront window. The plaintiff claims that Ms. Tooker consumed alcoholic beverages prior to the incident and became intoxicated at facilities owned and operated by defendants Gandy Dancer, Inc. d/b/a The Alley, Today's Lounge of Oneonta, Inc. d/b/a Today's Lounge and S&S Taverns of Oneonta, Inc. d/b/a The Sip and Sail Tavern. The plaintiff commenced this action in Bronx County. Defendant S&S Taverns of Oneonta, Inc. ("S&S Taverns") moves to change venue from Bronx County to Otsego County pursuant to CPLR §§ 510 and 511 because the defendant resides and the alleged incident occurred in Otsego County. Plaintiff Golfo opposes the defendant's motion on timeliness grounds.

DISCUSSION

Timeliness

Plaintiff Golfo opposes the defendant's motion on timeliness grounds. CPLR 511(a) governs when a party must move to change venue.

A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. A motion for change of place of trial on any other ground shall be made within a reasonable time after commencement of the action.

Here, the parties stipulated on 2/28/13 to extend the defendant's time to answer to 3/21/13. While the defendant made no mention of change of venue in its 3/7/13 answer, it included a demand for change of venue with its 3/21/13 amended answer. Plaintiff Golfo did not consent to change venue. The defendant accordingly commenced the underlying action to change venue on 4/2/13 which is within the requisite 15 day time period. (CPLR 511[b].) Based on the sequence of events, the defendant's motion to change venue is timely.

Motion to Change Venue

Defendant S&S Taverns moves on the ground that the action is improperly venued in Bronx County because the plaintiff is not a Bronx County resident.

CPLR § 510 vests the Court with the authority to change venue on the grounds that "the county designated for that purpose is not a proper county; or there is reason to believe that an impartial trial cannot be had in the proper county; or the convenience of material witnesses and the ends of justice will be promoted by the change." CPLR 511 delineates the requisite criteria to change venue.

CPLR § 503[a] provides that venue is based on the parties' residence rather than the place

in which the cause of action arose:

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; 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 § 503[c] states that a corporation is deemed a resident of the county in which its principal office is located. The county designated in a corporation's certificate of incorporation is controlling in determining corporate residence for the purposes of venue (CPLR 503[c]; *Conway v Gateway Associates*, 166 AD2d 388 [1st Dept 1990]) regardless of the principal office's actual location. (Siegel, NY Prac §119, at 220 [5th ed].)

In support of its motion, defendant S&S Taverns submits an affidavit of Adrian Origoni, its president, which lacks an original signature and incomplete date. The defendant also submits its certificate from the New York State Department of State Division of Corporations and its Lexis-Nexis search results for the plaintiff's address.

The NYS Department of State Division of Corporations certificate indicates that S&S Taverns of Oneonta, Inc. is incorporated in Delaware County.

The plaintiff's address on the summons is 1725 Victor Street, Bronx, New York 10462. The defendant's Lexis-Nexis search indicates that the plaintiff's current address is 22 Market Street, Apt. A1, Oneonta, New York 13820 in Otsego County. The search also shows seven previous addresses for Ms. Golfo: one in New York County, two in Suffolk County; and three addresses and a post office box in Otsego County. According to Lexis-Nexis, Francesco J. Golfo owns and Franco Golfo and Jacqueline Golfo reside at the subject premises.

In opposition to the defendant's motion, plaintiff Golfo maintains that she permanently

resides with her father in the Bronx at 1725 Victor Street. By affidavit dated 4/17/13, Ms. Golfo states that she has resided at several address while attending SUNY Oneonta but always returned to her father's Bronx home including after graduation. Ms. Golfo states that she maintained a temporary apartment in Manhattan for less than a year. She intends to return to the subject premises in the Bronx where she keeps her personal belongings.

CONCLUSION

CPLR § 503[a] provides that venue is based on the parties' residence rather than the place in which the cause of action arose. Ms. Golfo's claim is unsupported by documentation probative of her alleged Bronx residence. (*Furlow v Braeubrum*, 259 AD2d 417 [1st Dept 1999] *citing* (*Martinez v Semicevic*, 178 AD2d 228 [1st Dept 1991].) Her affidavit is conclusory. Significantly, she proffers no evidence such as a driver's license or voter's registration card to establish some degree of permanence. (*Martinez v Semicevic*, 178 AD2d 228, *supra*.)

The Court finds that the defendant met its burden of proof in establishing that Ms. Golfo resided in Otsego County at the time the action arose. Pursuant to CPLR § 503(a), the defendant's motion is granted. Venue is changed to Otsego County. Defendant S&S Taverns shall serve a copy of this Decision and Order with notice of entry upon all parties to this action and upon the Record Room Clerk of the Supreme Court, Bronx County within 20 days.

This is the Decision and Order of the Court.

Dated: June 24, 2013

So ordered,



Hon. Lizbeth González, JSC