

Canterino v Anderocci
2020 NY Slip Op 34207(U)
December 16, 2020
Supreme Court, Kings County
Docket Number: 528016/2019
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 528016/2019
Motion Date: 11-23-20
Mot. Seq. No.: 1, 2

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FRANK CANTERINO,

Plaintiff,

-against-

DECISION/ORDER

WALTER ANDEROCCHI

Defendant.

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The following papers, which were e-filed on NYSEF as items Nos. 4-6. 8-52, were read on these motions:

The defendant moves by order to show cause for an order pursuant to CPLR §503(a), § 511 (b) and §510(1) and (3) changing the place of trial of this action from Kings County to Richmond County on the grounds that Kings County is not the proper venue and Richmond County is the proper venue for this action; (b) For an Order directing the immediate transfer of this action from the County of Kings to the County of Richmond and that a Richmond County index number be assigned to this action; (c) And for such other and different relief as to this Court may be just, proper and equitable (**Mot. Seq. No. 1**). By separate order to show, the defendant moves for an order pursuant to CPLR §3211(a)(1) dismissing all causes of action contained in the plaintiff's complaint against defendant on the grounds that defenses exist founded on documentary evidence as submitted herewith; or in the alternative, (b) an order transferring this motion and all documents filed herein to Supreme Court, Richmond County in the event this Court grants defendant's pending motion to change the venue; and (c) for such other and different relief as to this Court may be just, proper and equitable (**Mot. Seq. No. 2**).

Plaintiff commenced his action in this Kings County alleging, inter alia, causes of action for legal malpractice and breach of contract. This action involves alleged legal malpractice

committed by the defendant in representing the plaintiff in a divorce case in Richmond County, Supreme Court, Index Number 50508/2013. In the summons, plaintiff states that he venued this action in Kings County based on “Plaintiff’s office”.

In support of the motion to change venue, the defendant submitted his own affidavit in which he states that plaintiff does not have an office in Kings County and that by his own admission, plaintiff is a resident of Florida. Defendant further averred that all the events and alleged omissions occurred in Richmond County during the pendency of the divorce action.

In opposition to the motion, the plaintiff did not dispute that he was a resident of Florida when this action was commenced and that he remains a resident of Florida. He also stated that the defendant is a resident of New Jersey, as reflected by the affidavit of service showing that defendant was personally served in New Jersey. He goes on to state that he commenced the action in Kings County because defendant’s website indicates that he has a law office at 32 Court Street, Brooklyn, New York. This was not the basis of venue stated in the summons. Plaintiff submitted as copy of a portion of defendant’s website which indicated that defendants has two offices, one at 32 Court Street Brooklyn NY and another at 900 South Avenue, Exec Suites 3rd Floor Staten Island NY, 10314.

In his affirmation in support of the motion, defendant states that:

[D]efendant has an office in Richmond County at 900 South Avenue, Staten Island, New York 10314. All work, all meetings, all conferences and all legal services were provided to the Plaintiff by the Defendant from his Staten Island office with the exception of some clerical services.

He further stated that:

[N]o legal services were provided to the Plaintiff by Defendant in the county of Kings. All conferences, court dates, deposition

sessions, the filing of documents, and motion argument all occurred in the County of Richmond throughout, especially and including Supreme Court, Richmond County.

Discussion:

CPLR §503(a) provides as follows:

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.

“In order to prevail on a motion pursuant to CPLR 510(1) to change venue, a defendant must show that the plaintiff's choice of venue is improper, and also that the defendant's choice of venue is proper” (*Deas v. Ahmed*, 120 A.D.3d 750, 750, 991 N.Y.S.2d 661; *see* CPLR 511[b]; *Pomerantsev v. Kodinsky*, 156 A.D.3d 655, 656, 64 N.Y.S.3d 571). “Only if a defendant meets this burden is the plaintiff required to establish, in opposition, that the venue selected was proper” (*Young Sun Chung v. Kwah*, 122 A.D.3d 729, 730, 996 N.Y.S.2d 153). Here, the unrefuted proof established that neither the plaintiff nor the defendant resided in Kings County.

Defendant’s submissions further established that a substantial part of the events or omissions giving rise to the claim did not occur in Kings County but did occur in Richmond County. Accordingly, defendant established that plaintiff's choice of venue was both improper and that Richmond County, defendant's choice of venue, is proper. The fact that the defendant maintains an office in Kings County and that some of defendant’s clerical work was performed at that location was insufficient to raise a triable issue of fact.

Inasmuch as defendant’s submissions also established that defendant complied with the conditions precedent entitling him to make a motion to transfer the venue of this action to Richmond County, defendant’s motion to change venue is **GRANTED**.

Accordingly, it is hereby

ORDERED those branches of defendants' motion to change the venue this action to Richmond County and to refer the remaining branches of defendants' motion, including the motion to dismiss based on documentary evidence, to a Part of the Supreme Court in Richmond County is **GRANTED**; it is further

ORDERED that the Clerk of this court is directed to transfer the entire file in this action, including the motions referred to herein, to Richmond County.

This constitutes the decision and order of the Court.

Dated: December 16, 2020



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020