

Jong Tae Park v Lombardi & Silver, LLP
2021 NY Slip Op 30442(U)
February 16, 2021
Supreme Court, New York County
Docket Number: 805160/2020
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **IAS MOTION 56EFM**

Justice

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JONG TAE PARK and GINA Y. PARK,
Plaintiffs,

- v -

LOMBARDI AND SILVER, LLP. and CHARLES
M. LOMBARDI, D.P.M.,

Defendants.

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INDEX NO. 805160/2020

MOTION DATE 08/21/2020

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 (Motion 001)

were read on this motion to/for TRANSFER VENUE.

In this action to recover damages for medical malpractice, the defendants move pursuant to CPLR 510(1) and 511(b) to change venue from New York County to Queens County on the ground that New York County is an improper county or, in the alternative, pursuant to CPLR 510(3) on the ground that the convenience of witnesses warrants the transfer of venue. The plaintiffs do not oppose the motion. The motion is granted, and the action is transferred to the Supreme Court, Queens County, inasmuch as the defendants established that New York County is not a proper county for the place of trial, while Queens County is. The plaintiffs are residents of Queens County. The defendant Lombardi and Silver, LLP (hereinafter the LLP), is a domestic limited liability partnership that, in its registration filing with the Secretary of State, listed its principal office as an address in Bayside, Queens County. The defendant Charles M. Lombardi, D.P.M., resides and maintains an office in Queens County. The treatment that the defendants rendered to the plaintiff Jong Tae Park was rendered in Queens County. The plaintiffs nonetheless designated New York County as the place of trial, asserting on the summons in this action that the LLP "resided" in New York County within the meaning of CPLR 503(a). The defendants served, with their answer, a demand for change of

venue to Queens County on the grounds that (a) New York County was an improper county, while Queens was a proper county, and (b) the convenience of witnesses warranted the transfer. Hence, the demand to change venue was timely served (see CPLR 511[a]).

Inasmuch as the plaintiffs did not timely serve a response to the defendants' demand to change venue so as to rebut the defendants' assertion that New York County was not a proper county (see CPLR 511[b]), the defendants could have elected to make the instant motion in Queens County (see *id.*), but they instead elected to make the motion in New York County.

CPLR 503(a) provides that

“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.”

BCL 403(a) provides requires that, in its certificate of incorporation, a domestic business corporation designate a county within the State as its principal place of business. For purposes of CPLR 503(a), a domestic business corporation is deemed to be a resident of the county that it so designated in its certificate of incorporation, regardless of whether it actually maintains its principal office in another county (see *Martirano v Golden Wood Floors Inc.*, 137 AD3d 612, 613 [1st Dept 2016]; *Krochta v On Time Delivery Serv., Inc.*, 62 AD3d 579, 580 [1st Dept 2009]).

Unlike the BCL, however, the Partnership Law does not require a domestic registered limited liability partnership, such as the LLP here, to designate a specific county as its principal place of business in its registration with the Secretary of State. Partnership Law § 121-1500(a)(1)(2) requires only that the limited liability company provide the actual address of its principal office.

Thus, although the LLP here did not specifically designate any particular county as its principal place of business in its registration with the Secretary of State, but only a street address located in Bayside, Queens, this was sufficient to establish that the LLP resides in Queens County for the purposes of CPLR 503(a) (see generally *Witthoeft v Kessler*, 2020 NY

Misc LEXIS 5961 [Sup Ct, Queens County, May 6, 2020]). As such, the defendants established that none of the parties resides in New York County within the meaning of CPLR 503(a) and, hence, that New York County is not a proper county in which to lay venue. Venue of this action must thus be transferred to Queens County, which is the only proper county for the place of trial.

Inasmuch as the court is granting relief to the defendants pursuant to CPLR 510(1), it need not address the branch of their motion that sought a discretionary transfer of venue pursuant to CPLR 510(3) for the convenience of witnesses. Were it to do so, it would be constrained to deny the request for relief to the extent that it was made on that ground.

“A party moving for a discretionary change of venue pursuant to CPLR 510(3) has the burden of demonstrating that the convenience of material witnesses and the ends of justice will be promoted by the change. In so doing, the moving party must set forth (1) the names, addresses, and occupations of the prospective witnesses, (2) the facts to which the witnesses will testify at trial, so that the court may judge whether the proposed evidence is necessary and material, (3) a statement that the witnesses are willing to testify, and (4) a statement that the witnesses would be greatly inconvenienced if the venue of the action was not changed”

(*Ambrose v United Parcel Serv. of Am., Inc.*, 143 AD3d 927, 928 [2d Dept 2016] [citations omitted]; see *Cardona v Aggressive Heating, Inc.*, 180 AD2d 572, 572 [1st Dept 1992] [movant must show the manner in which the witnesses will be inconvenienced, that the witnesses have been contacted and are available to testify, and the manner in which the anticipated testimony is material to the issues raised in the case]; see also *Ryan-Avizienis v JBEW Bar Corp.*, 121 AD3d 579, 580 [1st Dept 2014] [enumerating several of the relevant factors that must be considered]; *Weisemann v Davison*, 162 AD2d 448 [2d Dept 1990]; *Stavredes v United Skates of America*, 87 AD2d 502 [1st Dept 1982]). It is well settled that “the convenience of ‘defendants themselves, or their employees, . . . is not a factor in considering a change of venue based on CPLR 510(3)’” (*McManmon v York Hill Hous., Inc.*, 73 AD3d 1137, 1138 [2d Dept 2010], quoting *Cilmi v Greenberg, Trager, Toplitz & Herbst*, 273 AD2d 266, 267 [2d Dept 2000]). The defendants did not provide any of the required information, let alone establish how any nonparty witness would be inconvenienced by having to travel from Queens to Manhattan for trial.

Accordingly, it is

ORDERED that the defendants' motion to transfer venue of this action from New York County to Queens County is granted, without opposition, and the matter is transferred to the Supreme Court, Queens County, for consideration and disposition; and it is further,

ORDERED that within 30 days after the entry of this order, the defendants shall file an EF-22 form and the statement required by CPLR 8019(c), and shall also serve them upon the New York County Clerk, as Clerk of the Supreme Court, New York County, along with a copy of this order and notice of entry of this order, and shall also serve a copy of this order and notice of entry of this order upon the Queens County Clerk, as Clerk of the Supreme Court, Queens County; and it is further,

ORDERED that upon service upon him of the EF-22 form, the statement required by CPLR 8019(c), and a copy of this order with notice of entry, the New York County Clerk, as Clerk of the Supreme Court, New York County, is directed to deliver to the Queens County Clerk, as Clerk of the Supreme Court, Queens County, all papers filed in the action entitled *Jong Tae Park v Lombardi and Silver, LLP*, under New York County Index No. 806160/2020, and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.

2/16/2021
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: