

Verizon N.Y. Inc. v Harrison
2021 NY Slip Op 30533(U)
February 25, 2021
Supreme Court, New York County
Docket Number: 155807/2020
Judge: David Benjamin Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN **PART** **IAS MOTION 58EFM**

Justice

-----X

INDEX NO. 155807/2020

VERIZON NEW YORK INC.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

JAY HARRISON and ANGIE HARRISON,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14 were read on this motion to/for CHANGE VENUE.

In this property damage action commenced by plaintiff Verizon New York Inc., defendants Jay Harrison (“Mr. Harrison”) and Angie Harrison (“Ms. Harrison”) move, pursuant to CPLR 510 and 511, to change the venue of this action from New York County to Steuben County. Plaintiff opposes the motion and cross-moves, pursuant to CPLR 1002, 1003, and 3025(b), to amend the complaint to name Anthony Fisher as a defendant.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from an incident on September 16, 2017 in which defendants and/or their employees or agents are claimed to have caused damage to certain property owned by plaintiff and located near defendants’ home at 11299 River Road, Corning, New York. Plaintiff commenced this action by filing a summons and complaint on July 28, 2020 in which they alleged, inter alia, that the property damage was caused by defendants’ negligence during construction and excavation they performed. Doc.1. The case was venued in New York County

based on plaintiff's residence there. Doc. 1. Defendants joined issue by their answer filed September 17, 2020. Doc. 5.

Plaintiff filed an amended complaint on September 24, 2020, in which it asserted a claim that defendants were negligent in hiring the agents and/or employees who performed the work which caused the property damage. Doc. 8. Defendants filed an answer to the amended complaint on October 6, 2020. Doc. 9.

Defendants now move, pursuant to CPLR 510 and 511, for the relief set forth above. Doc. 10. In support of the motion, defendants' attorney admits that "a 'Verizon pole' was removed from [d]efendants' home in Steuben County, causing an interruption in Verizon services" (Doc. 10 at par. 4); that Mr. Harrison "hired Anthony Fisher ["Fisher"] to remove the pole in question" (Id. at par. 5); and that Fisher "used a mini-excavator to remove the pole." Id. at par. 5(b). Counsel represents that several witnesses, other than the defendants, will need to testify in order to defend this matter, and that those individuals all live in Steuben County. Doc. 10. Counsel further asserts that, since Steuben County is located 231 miles from New York County, the designated place of trial, the venue of this matter must be transferred to Steuben County for the convenience of said material witnesses. Id.

Plaintiff opposes the motion arguing, inter alia, that defendants fail to establish that their proffered witnesses have been contacted and are willing and available to testify. Doc. 12. Additionally, plaintiff cross-moves to amend the complaint to name Fisher as a defendant on the ground that his negligent acts caused the property damage alleged. Doc. 12. In support of the motion, plaintiff submits a proposed amended complaint filed October 21, 2020. Doc. 13.¹

¹ Since the complaint has already been amended (Doc. 8), the proposed amended complaint should have been referred to as a "Second Amended Complaint."

LEGAL CONCLUSIONS

Defendants' Motion To Change Venue

CPLR 510 (3) provides that “[t]he court, upon motion, may change the place of trial of an action where . . . the convenience of material witnesses and the ends of justice will be promoted by the change.” “In order to obtain relief pursuant to CPLR 510 (3), the movant must assert all of the following information: the names and addresses of the witnesses, the substance and materiality of their testimony relative to the issues in the case, that the witnesses have been contacted and are willing to testify on behalf of the movant, and the manner in which they will be inconvenienced by a trial in the county where the action was commenced” (*Gissen v Boy Scouts of America*, 26 AD3d 289, 290-291 [1st Dept 2006] [citations omitted]).

Defendants clearly fail to meet the foregoing test. Initially, they do not represent that they have contacted their proffered witnesses and that those individuals are willing to testify in this matter. This alone warrants denial of their motion. However, defendants fail to provide other necessary information as well. Although they state that Fisher lives at “66 Tuxill Ave., New York”, they do not state the city or town in which he lives. Nor do they provide the addresses of James Brooks and Tammy Seymour. Further, defendants’ representation that “Chris & Wendy Vanzile and Kathy Rose will testify as to facts and conditions regarding having no knowledge of having Verizon trucks servicing the area and other related matters” is not only unartfully phrased, but is also devoid of any meaningful explanation of the relevance of the potential testimony by these individuals. Thus, the motion is denied.

Plaintiff's Cross Motion To Amend The Complaint

Pursuant to CPLR 3025(b), leave to amend a pleading is freely given unless it would result in prejudice or surprise (*McGhee v Odell*, 96 AD3d 449 [1st Dept 2012]). "The movant need not establish the merit of her proposed new allegations, but only that 'the proffered amendment is not palpably insufficient or clearly devoid of merit'" (*Fairpoint Cos., LLC v Vella*, 134 A.D.3d 645 [1st Dept 2015] quoting *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]). This Court has the discretion to determine whether to grant such leave to amend (*Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 959 [1983]).

Here, plaintiff seeks to amend the complaint to add Fisher as a defendant since he is the individual who allegedly performed the excavation which damaged its property. Indeed, defendants' counsel admits that Mr. Harrison hired Fisher to remove the pole in question and that Fisher "used a mini-excavator to remove the pole." Doc. 10. Since plaintiff's claim against Fisher is clearly not devoid of merit, this Court, in its discretion, grants the cross motion.

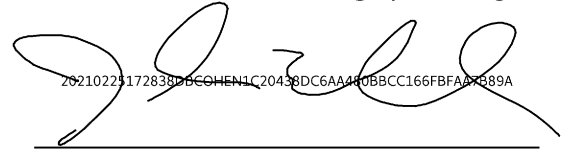
Accordingly, it is hereby:

ORDERED that defendants' motion to change venue is denied; and it is further

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a preliminary conference on April 19, 2021 at 2:30 p.m. unless, prior to that date, the parties complete and submit a bar coded preliminary conference form (to be provided by the Part 58 Clerk) and email it to SFC-Part58@nycourts.gov.



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2/25/2021

DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE