

Armstrong v City of New York
2022 NY Slip Op 30304(U)
January 31, 2022
Supreme Court, New York County
Docket Number: Index No. 154262/2020
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 5

Justice

-----X

LEONARD ARMSTRONG,

Plaintiff,

- v -

THE CITY OF NEW YORK, MALOBE SOBETTI SAMPSON,
DOMINIQUE BROOKSHIRE,

Defendants.

-----X

INDEX NO. 154262/2020
MOTION DATE 01/12/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to CONSOLIDATE AND CHANGE VENUE.

Plaintiff Leonard Armstrong filed the summons and complaint in this action (the “New York Action”) on June 12, 2020, alleging that on or about January 3, 2020 he was operating a motor vehicle owned by defendant the City of New York when a car owned by co-defendant Dominique Brookshire (“Brookshire”) and negligently operated by co-defendant Malobe Sobetti Sampson (“M. Sampson”) collided with him at or near the intersection of Barnes Avenue and East 228th Street in Bronx, New York (NYSCEF Doc. No. 31 [Complaint at ¶¶13-16]).

On April 1, 2021, Brookshire and Ardelpaschal Sampson – both passengers in the car driven by M. Sampson at the time of the automobile accident – filed a complaint in Bronx County Supreme Court under index number 804530/2021E (the “Bronx Action”), asserting negligence claims against the co-defendants herein, the City of New York and M. Sampson, as well as against plaintiff herein Armstrong based on the same automobile accident at issue in the New York Action (NYSCEF Doc. No. 33 [Bronx Action Complaint]).

The individual co-defendants herein, M. Sampson and Brookshire, each move, pursuant to CPLR §602(a), for an order consolidating the Bronx Action and the New York Action. Co-defendant M. Sampson seeks consolidation in New York County Supreme Court while co-defendant Brookshire cross-moves for an order consolidating these actions in Bronx County Supreme Court.

DISCUSSION

“Consolidation is generally favored in the interest of judicial economy ...where cases present common questions of law and fact, unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right” (Raboy v McCrory Corp, 210 AD2d 145 [1st Dept 1994] quoting Amtorg Trading Corp v Broadway & 56th St Assoc, 191 AD2d 212, 213 [1st Dept 1993]). Here, the Bronx Action and New York Action arise from the same incident and present common questions of law and fact. In addition, no party to either action opposes consolidation. Accordingly, the defendants’ motions are granted to the extent that the New York Action and Bronx Action are hereby consolidated (CPLR §602).

The co-defendants disagree, however as to the proper venue for this consolidated action. M. Sampson relies on the well-settled rule that “[w]here two actions involving identical issues are pending in separate counties, the actions should be consolidated pursuant to CPLR §602 in the county where the first action was commenced absent special circumstances” (Laureano v Rand, 2019 N.Y. Slip Op. 33440[U] [Sup Ct, New York County 2019] quoting Harrison v Harrison, 16 AD3d 206, 207 [1st Dept 2005]). However, this rule is inapplicable here because the New York Action, while commenced first, was improperly filed in New York County.

Pursuant to CPLR §503, “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” (CPLR §503). Here, as plaintiff Armstrong resides in the Bronx (See NYSCEF Doc No. 1 [Compl. at ¶13]), and Brookshire and M. Sampson do not reside in New York County (they live together in Mount Vernon, New York) (NYSCEF Doc. No. 29 [Letta Affirm., ¶10]), the New York Action should have been commenced in the Bronx¹.

In light of the foregoing, this Court finds that Bronx County – where the underlying accident occurred and where two parties to the consolidated actions, to wit, Armstrong and Ardelpaschal Sampson, reside – is the appropriate venue for these consolidated actions² (See e.g., Simon v Usher, 93 AD3d 401 [1st Dept 2012] [motion to change venue properly granted where all plaintiffs and defendants either resided or had principal offices in Westchester County and plaintiff forfeited right to select venue by initiating action in improper venue]; see also Harrison v Harrison, 16 AD3d 206, 207-08 [1st Dept 2005] [“the presence of evidence and the convenience of witnesses, warrant placing venue in New York County”] and Lopez v Chaliwit, 268 AD2d 377, 377 [1st Dept 2000] [transfer of venue proper where site of plaintiff’s accident and ensuing medical treatment as well as nearly all prospective nonparty witnesses occurred in Westchester]).

Accordingly, this Court exercises its discretion pursuant to CPLR §510(1) to change the venue of the New York Action to Supreme Court, Bronx County where it is to be consolidated with the Bronx Action.

¹ The Court further notes that Armstrong’s complaint asserts that the basis for New York County’s jurisdiction is ““place of occurrence”” (NYSCEF Doc No. 1 [Complaint]) but it is undisputed that the place of occurrence was in the Bronx and, in any event, “[the] place of accident ... is not a basis to initially determine venue” (Rodriguez v Metro. Transp Auth., 2013 N.Y. Slip Op. 30775[U] [Sup Ct, NY County 2013] [internal citations omitted]).

² In support of her cross-motion herein, Brookshire notes that the proper venue for an action brought against the City of New York is the county in which the cause of action arose (CPLR §504[3]), which would, in this case, be the Bronx. However, only the City may invoke this statutory provision and, since it elected not to do so, the Court has not considered this argument in reaching its decision (See Arduino v Molina-Ovando, 141 AD3d 622, 623 [2d Dept 2016] citing Yasgour v City of New York, 169 AD2d 673 [1st Dept 1991]).

Accordingly, it is

ORDERED that Malobe Sobetti Sampson’s motion is granted to the extent that the New York Action and Bronx Action are consolidated and is otherwise **DENIED**; and it is further

ORDERED that Dominique Brookshire’s cross-motion is **GRANTED** in its entirety; and it is further

ORDERED that the New York Action, i.e., Leonard E. Armstrong v The City Of New York, Malobe Sobetti Sampson, and Dominique Brookshire, currently pending in Supreme Court, New York County under Index No. 154262/2020 shall be consolidated with the Bronx Action, i.e., Dominique Brookshire and Ardelpaschal Sampson v City of New York, Leonard E. Armstrong, and Malobe Sobetti Sampson, currently pending in the Supreme Court, Bronx County under Index No. 804530/2021E (the “Consolidated Action”); and it is further

ORDERED that the venue of this Consolidated Action shall be the Supreme Court, Bronx County; and it is further

ORDERED that the New York Action and the Bronx Action shall each retain its own index number and shall file separate RJs, Notes of Issue and separate judgments; and it is further

ORDERED that the Consolidated Action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

-----X
DOMINIQUE BROOKSHIRE and ARDELPASCHAL
SAMPSON,

Plaintiffs,

- against -

Index No 804530/2012E

THE CITY OF NEW YORK, LEONARD E. ARMSTRONG
and MALOBE SOBETTI SAMPSON

Defendants.

-----X
LEONARD ARMSTRONG,

Plaintiff,

- against -

Index No. 154262/2020

THE CITY OF NEW YORK, MALOBE SOBETTI
SAMPSON and DOMINIQUE L. BROOKSHIRE

Defendants.
-----X

and it is further,

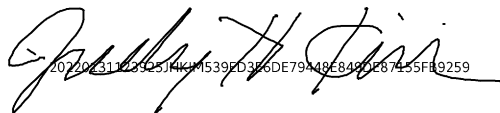
ORDERED that within thirty days from entry of this order, Brookshire shall serve a copy of this order with notice of entry upon the New York County Supreme Court’s General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Court (60 Centre Street, Room 141B), who are hereby directed to transfer the file in this action (Index No. 154262/2020) to the Clerk of the Supreme Court, Bronx County and mark this Court’s records to reflect such transfer; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efilings” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that within thirty days from entry of this order, counsel for Brookshire shall serve a certified copy of this order on the Clerk of the Supreme Court, Bronx County and shall pay the appropriate transfer fee, if any, and shall also contact the staff of said Clerk as well as the Clerk of the Court of Supreme Court, New York County, and cooperate in arranging the transfer of the file in the instant action (Index No. 154262/2020); and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in the instant action (Index No. 154262/2020) with the Clerk of the Supreme Court, Bronx County, to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including any documents that may be in digital format.

This constitutes the Decision and Order of the court.



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1/31/2022

DATE

JUDY H. KIM, 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