

Prechtl v Trane U.S. Inc.
2022 NY Slip Op 31602(U)
May 16, 2022
Supreme Court, New York County
Docket Number: Index No. 159325/2021
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 159325/2021

THOMAS PRECHTL

Plaintiff,

MOTION SEQ. NO. 001

- v -

TRANE U.S. INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32

were read on this motion to/for

CHANGE VENUE

In this negligence and Labor Law action commenced by plaintiff Thomas Precht, defendant Trane U.S. Inc. moves, pursuant to CPLR 503, 504, 510 and 511, to change the venue of this action to Delaware County. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, a resident of Saratoga County, was allegedly injured on July 29, 2021 while performing construction work at the Northern Catskills Occupational Center, located at 2020 Jump Brook Road, Roxbury, New York ("the premises"), which were owned by Otsego Northern Catskills BOCES ("BOCES"),¹ which was located in Otsego, Delaware, Schoharie and Greene Counties. Doc. 11 at 1. Prior to that date, BOCES entered into a contract with defendant to act as general contractor during certain construction to be performed at the premises. Doc. 1. Defendant

¹ BOCES is an acronym for Board of Cooperative Educational Services.

in turn hired plaintiff's employer, Colonie Mechanical Contractors, Inc. ("CMC"), to perform work at the premises, and plaintiff was allegedly injured during the course of the said work. Doc. 1.

Plaintiff commenced the captioned action by filing a summons and complaint against defendant on October 12, 2021, alleging negligence and violations of Labor Law §§ 200, 241(6), and 240(1). Doc. 1. On November 9, 2021, defendant simultaneously filed its answer and a demand to change venue to Delaware County pursuant to CPLR 503, 504, 510, and 511. Docs. 2 and 3. In its demand to change venue, defendant asserted that New York County was an improper venue because neither party resided there and the facts giving rise to the claim "arose in Delaware County on the premises of a school district corporation located in Delaware County." Doc. 3.

Defendant now moves for the relief set forth above. Docs. 5-14. In support of the motion, defendant argues that venue must be changed to Delaware County because that is where the alleged incident occurred. Doc. 11 at 2. It further asserts that plaintiff's co-worker, John Pohl, a resident of Saratoga County, and an employee of Colonie, which is located in Albany County, will be a witness, and it will be more convenient for him to testify in Delaware County. Doc. 11 at 2. Defendant also argues that BOCES employees will need to testify at trial and that it would be more convenient for them to do so in Delaware County. Doc. 11 at 2. It also maintains that plaintiff was treated for his injuries in Albany County and that it would be more convenient for his providers to testify in Delaware County. Doc. 11 at 1-2. In addition, defendant asserts that, since BOCES must be joined as a necessary party, and it can only be sued in the county where it is located, one of which is Delaware County, venue must be changed to that county. Doc. 11 at 5.

In support of the motion, defendant submits the affidavit of Jessie Christine Basner, Esq., Asscoate General Counsel for Commercial Litigation in the Americas for Trane Technologies

Company LLC. Doc. 8. Basner represents that, although defendant is a foreign corporation authorized to do business in New York, it does not have a principal place of business, or any place of business, in New York County, as evidenced by its biennial statement filed with the New York Secretary of State on January 11, 2021, and its registered agent for service of process is in Albany County. Doc. 8 at par. 4, Doc. 9.

Defendant also submits the affidavit of Jeffrey Vick, defendant's project manager at BOCES. Doc. 10. Vick, a resident of Orleans County, admits that he was not at the site when plaintiff was injured, but says that "[i]t is [his] understanding" that several individuals whom he names have knowledge of the incident and live in the Albany area or in Delaware County. Doc. 10 at 1-2.

In opposition to the motion, plaintiff argues that this action was properly venued in New York County since that is the county designated as defendant's county of incorporation in its application to do business in New York State. Doc. 16 at 4-6. Plaintiff also asserts that defendant failed to establish its entitlement to a change of venue based on the convenience of witnesses. Doc. 16 at 8. Further, plaintiff argues that BOCES is not a necessary party to this action and that, in any event, defendant fails to cite any authority that BOCES had to be sued in the county in which it was located. Doc. 16 at 13-14.

LEGAL CONCLUSIONS

It is well settled that an action against a foreign corporation is properly venued in the county designated by the corporation as the location of its corporate office in this state, even if it does not actually have a physical office in that county (CPLR 503 [c]; *see, Villalba v Brady*, 162 AD3d 533 [1st Dept 2018]; *Janis v Janson Supermarkets LLC*, 161 AD3d 480 [1st Dept 2018]; *Crucen v Pepsi-Cola Bottling Co. of N.Y., Inc.*, 139 AD3d 538 [1st Dept 2016]).

In *Villalba*, defendant DT Carpentry's certificate of incorporation, filed in 2011, designated New York County as the location of its corporate office. Although DT Carpentry's codefendants submitted a 2017 printout of information from the Department of State ("DOS") showing that DT Carpentry's initial filing date was 2011 and that its principal executive offices were in Suffolk County, the Appellate Division, First Department held that, absent any indication that the 2011 certificate of incorporation was ever amended, the county designated as DT Carpentry's residence controlled for venue purposes.

Here, plaintiff submits a printout from the DOS, dated December 30, 2021, reflecting that defendant, a Delaware Corporation, initially filed to do business in this state in 1939 and designated New York County as its corporate residence. Doc. 21. Indeed, defendant admits that it did so. Doc. 11 at 4. Since defendant does not submit any proof that its certificate of incorporation was amended, this Court concludes that plaintiff properly venued this action in New York County (*See* CPLR 503[c]; *Villalba v Brady, supra*; *Janis v Janson Supermarkets LLC, supra*; *Crucen v Pepsi-Cola Bottling Co. of N.Y., Inc., supra*).

In support of its motion, defendant submits a biennial statement filed with the DOS for the year 2021 (Doc. 9) reflecting that it has an address for service of process in Albany and a principal executive office in North Carolina which, it claims, establishes that venue in New York County is improper. Plaintiff, relying on *Sultana v St. Elizabeth Med. Ctr.*, 187 AD3d 590, 591 (1st Dept 2020), correctly responds that this argument is without merit since "[t]he 'principal executive office' noted in a corporation's biennial statement does not determine corporate residence for venue purposes, since it is not contained in either a certificate of incorporation or an amended certificate (187 AD3d at 591, *citing Villalba v Brady*, 162 AD3d 533, 533 [1st Dept 2018]).

Defendant, citing *Cruz v Kodis*, 241 AD2d 338 (1st Dept 1997), further contends that its designation of New York County as its principal place of business in the application it submitted to the DOS for authority to do business in this state is insufficient, in and of itself, to render venue in the said county proper. Although *Cruz*, decided 25 years ago, indeed supports defendant's position, defendant overlooks that "recent precedent of [the Appellate Division, First Department] squarely rejects [it]" (*Job v Subaru Leasing Corp.*, 30 AD3d 159, 159 [1st Dept 2006]). As noted above, the Appellate Division has since held, on several occasions, that the designation of a corporation's principal place of business in a particular county may be the sole basis for venue in that county (*See, Villalba v Brady, supra; Janis v Janson Supermarkets LLC, supra; Cruzen v Pepsi-Cola Bottling Co. of N.Y., Inc., supra*).

Nor is defendant entitled to a change of venue pursuant to CPLR 510(3) based on the "convenience of material witnesses" and/or the "ends of justice."

Where venue has properly been designated by the plaintiff based on the residence of either party, a defendant seeking a change of venue under CPLR 510(3) must make a detailed evidentiary showing that the nonparty witnesses will, in fact, be inconvenienced absent such relief. The affidavit of the moving party under CPLR 510(3) must (1) contain the names, addresses, and occupations of witnesses expected to be called; (2) disclose the facts upon which such witnesses are expected to testify, in order that the court may determine whether such witnesses are material and necessary; (3) demonstrate that such witnesses are willing to testify; and (4) show that the witnesses would be inconvenienced absent a change in venue.

(*10 Two Trees Lane LLC v Mahoney*, 192 AD3d 468, 469 [1st Dept 2021]).

Defendant seeks to change the venue of this action to Delaware County because

"coworkers of Plaintiff from Colonie will be witnesses. Colonie is located in Albany County and its employee, John Pohl, who was present at the time of the accident, resides in Saratoga County. The accident occurred at a BOCES location in Delaware County. Employees from that BOCES location will also be witnesses. Plaintiff was also treated Upstate at a hospital in Albany County and by doctors with offices in Albany County for the injuries he sustained."

(Doc. 24).

This is insufficient to meet the burden imposed by CPLR 510(3). As plaintiff asserts, defendant only obtained an affidavit from one person affiliated with the project, Vick, his project manager, who did not witness the accident. Doc. 24. Although Vick listed 5 other people associated with this project, none of them submitted affidavits. Doc. 24. Of those 5 people, only one, Pohl, told Vick that he was present at the time of the accident. Doc. 24. However, as can be seen from Pohl's affidavit, he did not witness the accident and did not believe anyone had. Doc. 23. Thus, it is unclear how the testimony of any of these witnesses is material or necessary. Additionally, neither Vick nor Pohl represented in their respective affidavits that they were willing to testify or that, if they did, they would be inconvenienced if the venue were not changed to Delaware County. Docs. 23-24. Nor did they state what facts they would testify about if called as witnesses at trial. Docs. 23-24. Thus, the branch of the motion seeking a change of venue pursuant to CPLR 510(3) is denied (*See Pollack v St. Francis Hosp.*, 202 AD3d 453 [1st Dept 2022]; *Poyodi v Go N.Y. Tours, Inc.*, 193 AD3d 518 [1st Dept 2021]).²

Defendant's argument that this case must be venued in Delaware County because BOCES, a necessary party, is located there, is without merit. In support of this contention, defendant maintains that BOCES consists of school districts in four counties, including Delaware County, and that since CPLR 504 (2) requires an action against a school district to be commenced in any county in which the district is located, venue is proper in Delaware County, where the incident occurred. Doc. 6 at pars. 6-7. However, according to BOCES' website,³ "the New York State

² This Court further notes that, although defendant asserts that the venue of this matter should be changed due for the convenience of plaintiff's medical providers, it submits no affidavits from any of these individuals or entities.

³ www.boces.org/about-boces/

