

Gassler v Piaggio Group
2022 NY Slip Op 33529(U)
September 13, 2022
Supreme Court, New York County
Docket Number: Index No. 151260/2022
Judge: James G. Clynnes
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

INDEX NO. 151260/2022
MOTION DATE 06/20/2022, 06/21/2022, 08/10/2022
MOTION SEQ. NO. 002 003 004

VALRY GASSLER, as Limited Administrator of the Estate of
TERYN K. GASSLER, Deceased,

Plaintiff,

- v -

PIAGGIO GROUP, PIAGGIO GROUP AMERICAS, INC.,
PIAGGIO & C. SPA, ROYAL CARTING OF DUTCHESS
COUNTY, INC., ROYAL CARTING SERVICES, LLC,
PANICHI HOLDING CORP., PANICHA HOLDING CORP.
D/B/A ROYAL CARTING SERVICE, JOHN G. O'CONNOR,
MACK TRUCKS, INC., MID-HUDSON MACK, INC., AFR
ENTERPRISES, INC. AND, AFR ENTERPRISES, INC.,
JAMES G. OCONNOR, JAMES G. O'CONNOR

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 46, 47, 48, 49, 50, 51, 62, 63, 64

were read on this motion to/for CHANGE VENUE

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 52, 53, 54, 55, 56, 57, 65

were read on this motion to/for CHANGE VENUE

The following e-filed documents, listed by NYSCEF document number (Motion 004) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for CHANGE VENUE

Upon the foregoing documents, the motions to change venue by defendants Piaggio Group Americas, Inc. (Motion Sequence #2), by defendants Panichi Holding Corp. and John G. O'Connor ("Panichi") (Motion Sequence #3), and by defendant Mack Trucks, Inc. ("Mack") (Motion Sequence #4) are consolidated for decision and decided as follows:

This action arises out of a motor vehicle accident that occurred in Dutchess County. There is no dispute that at the time this action was commenced, defendant Piaggio Group Americas, Inc. (movant in Motion Sequence #2) had its principal office in New York County and was therefore a

New York County resident (see CPLR 503 [a], [c]) and none of the other parties was a New York County resident.

Motion to Change Venue pursuant to CPLR 510 (1) (Motion Sequence Number 1)

On a motion to change improper venue, pursuant to CPLR 510 (1), movant defendant bears the burden of establishing that the designated county is improper (*Garced v Clinton Arms Assoc.*, 58 AD3d 506, 509 [1st Dept 2009]). To prevail in this motion, movant must demonstrate that, on the date of commencement, none of the parties resided in New York County (*Deas v Ahmed*, 120 Ad3d 750, 751 [2d Dept 2014]). Since there is no dispute that defendant Piaggio Group Americas, Inc. was a resident of New York County at the time of commencement, plaintiff properly placed venue in New York County. Movant failed to establish that venue was improperly placed in New York County and the motion to change venue by defendant Piaggio Group Americas, Inc. (Motion Sequence Number 2) is denied.

Motions to Change Venue pursuant to CPLR 510 (3) (Motion Sequence Numbers 3 and 4)

However, even where an action has been properly commenced based solely on the principal place of business premise, venue may be transferred pursuant to CPLR 510 (3) based on promoting the convenience of witnesses and the ends of justice. (*Aguanno v Kostopoulos*, 2 AD3d 177 [1st Dept 2003]). A party seeking to change venue based upon the convenience of material witnesses and the ends of justice must show (1) the identity of the proposed witnesses, (2) the manner in which they will be inconvenienced by a trial in the county in which the action was commenced, (3) that the witnesses have been contacted and are available and willing to testify for the movant, (4) the nature of the anticipated testimony, and (5) the manner in which the anticipated testimony is material to the issues raised in the case (*Cardona v Aggressive Heating Inc.*, 180 AD2d 572 [1st Dept 1992]).

The motions to change venue by Panichi (Motion Sequence Number 3) and Mack (Motion Sequence Number 4) contend that the court should exercise its discretion and order a change of venue pursuant to CPLR 510 (3) because most of the non-party witnesses who would be called to testify at trial, such as the two eyewitnesses to the accident, Chief Medical Examiner of Dutchess County, the responding and investigating police officers, emergency medical personnel are all residents of Dutchess County who would be inconvenienced by testifying at trial in New York County. Both submissions identify and provide the county of residence of the witnesses who will be inconvenienced, including the two eyewitnesses to the accident, the Chief Medical Examiner

of Dutchess County, and responding and investigating police officers and emergency medical personnel. The submissions do not indicate whether the two eyewitnesses and the police and medical personnel witnesses have been contacted and are willing to testify, but the Mack submission includes the affidavit of the Chief Medical Examiner of Dutchess County, in which he avers that he would be inconvenienced if required to testify at trial in New York County.

Based upon this showing, the court exercises its discretion pursuant to CPLR 510 (3) to change the venue of this action from New York County to Dutchess County because the convenience of material witnesses and the ends of justice will be promoted by the change (*See, Sendrow v Quality Ruskin Fee Corp.*, 139 AD2d 455 (1st Dept. 1988); *Avery v Williams*, 244 AD2d 271 [1st Dept 1997]; *Toro v Gracin*, 148 AD2d 364 [1st Dept 1989]). Here, a discretionary change of venue to Dutchess County is proper because it is the county where the motor vehicle accident occurred, where the witnesses and plaintiff reside, where many of the defendants work and/or have an office, and where medical treatment took place, which factors outweigh any to the contrary pertaining to New York County (*Toro*, 148 AD2d 364). Motion Sequence Numbers 3 and 4 are granted.

Accordingly, it is

ORDERED that the motion for a change of venue by Piaggio Group Americas, Inc. (Motion Sequence Number 2) is denied; and it is further

ORDERED the motions for change of venue by defendants Panichi (Motion Sequence Number 3) and Mack (Motion Sequence Number 4) for a change of venue pursuant to CPLR 510 (3) are granted and venue of this action is changed from this Court to the Supreme Court, County of Dutchess; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Dutchess and shall mark their records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Dutchess County, so as to ensure an efficient transfer and

minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this 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 "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the Court.

James L. Cleves

9/13/2022

DATE

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