

Prechtl v Trane U.S. Inc.

2023 NY Slip Op 32078(U)

June 23, 2023

Supreme Court, New York County

Docket Number: Index No. 159325/2021

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

-----X

THOMAS PRECHTL,

Plaintiff,

- v -

TRANE U.S. INC.,

Defendant.

-----X

TRANE U.S. INC.

Plaintiff,

-against-

OTSEGO NORTHERN CATSKILLS BOARD OF
COOPERATIVE EDUCATION SERVICES

Defendant.

-----X

INDEX NO. 159325/2021

MOTION DATE 05/18/2023,
05/18/2023

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595809/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, 69, 70, 71, 95, 96, 97, 98, 100

were read on this motion to/for CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 99, 101, 102

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, it is hereby ORDERED that the movant third-party defendant Otsego Northern Catskills Board of Cooperative Education Services’ (“BOCES”) motion for a change of venue from New York County to Delaware County, pursuant to *CPLR* §§503(a), 504(2), 510(3), and 511, is granted for the reasons stated herein. Plaintiff Thomas Precht (“plaintiff”) filed opposition. BOCES also filed a reply.

The plaintiff’s motion to amend is respectfully transferred to Supreme Court, Delaware County for a determination.

Background

This action stems from an alleged incident that occurred on July 29, 2021, at the Otsego Northern Catskills BOCES Occupational Center in a welding shop located at 2020 Jump Brook Road, Grand Gorge, New York, which located in Delaware County. In the complaint, plaintiff alleges, *inter alia*, that the safety bar at the balcony level of the BOCES facility where plaintiff was working as a general contractor for Trane, U.S. Inc., gave away causing him to fall down. Plaintiff contends as result of the fall, he sustained serious injuries and he was subsequently transported to Albany Medical Center for medical treatment.

BOCES' Motion to Change Venue to Delaware County

In the motion, BOCES argues that New York County is not the proper venue, pursuant to *CPLR §503*, because neither party resided in New York County, and the accident occurred in Delaware County. *See, NYSCEF Doc. No. 3*. BOCES contends that the incident occurred at 2020 Jump Brook Road, Grand George, New York 12434, which is located in Delaware County. BOCES also argues that if the case was held in New York County it would be inconvenient for its witnesses to travel and appear for deposition and for trial in New York County.

In support of the motion, defendant submits, *inter alia*, the summons and complaint, the third-party summons and complaint, the demand for change of venue, consent to change venue signed by third-party plaintiff Trane US. Inc., the affidavits of Jennifer Avery, James Snyder and Vincent Wojciechowski, as well as the Department of State, Division of Corporations Entity Information for Trane U.S. Inc. (*See, NYSCEF Doc Nos. 51-62*).

Jennifer Avery, who is the Deputy Superintendent of BOCES, attests that there were multiple employees of BOCES who were present on the date of the accident, and states it would be a great inconvenience for the witnesses, who are her employees, to be forced to appear in New York County for this case. (*See, NYCEF Doc No. 59*).

James Snyder is the Building Maintenance Supervisor and employed by BOCES. In his affidavit, Mr. Snyder attests that he arrived at the scene shortly after the plaintiff's accident, and it is expected that he be called as a witness. Mr. Snyder contends that it would be a great inconvenience for him to appear in New York County, which is 154 miles away from Delaware County. (*See, NYCEF Doc No. 60*).

Vincent Wojciechowski is employed by BOCES and resides in Delaware County in New York. Mr. Wojciechowski attests that he works as the Director of Facilities at BOCES, and he is familiar with the Emergency Ventilation Project, which took place at the location and time of the subject incident. He states that he is expected to be called as a deposition and trial witness and it would be a great hardship to travel to New York for this case. (*See, NYCEF Doc No. 61*).

Plaintiff's Opposition to the Motion

In opposition, plaintiff asserts that New York is the proper venue, rather than Delaware County because the defendant failed to demonstrate that its witnesses are material to the cause of action. Plaintiff argues that Judge David B. Cohen's May 16, 2022, decision already denied a

similar motion to change venue filed by defendant Trane, on the basis that *CPLR §510(3)* does not apply because the movant failed to show that their witness testimony would be material or necessary. Here, plaintiff argues that a vast majority of civil cases settle, therefore it would be unlikely for BOCES' witnesses to travel for trial. In addition, plaintiff claims that affidavits of Ms. Avery, Mr. Snyder and Mr. Wojciechowski submitted in support of BOCES' motion fail to meet the standard under *CPLR §510(3)*. In addition, plaintiff argues that the defendant is not considered a municipality covered under *CPLR § 504(2)*.

Plaintiff contends that Mr. Pohl, who was plaintiff's foreman and boss at the time of the subject accident, is an actual material witness. Plaintiff submits that plaintiff and Mr. Pohl do not reside in Delaware county, and both live in Saratoga County. Plaintiff argues that they are the only witnesses who can offer material and relevant testimony, and willing to travel to New York County to testify and appear for any defense independent medical examination. Plaintiff further claims he did not receive any medical treatment in Delaware County.

BOCES Reply

In reply, BOCES argues, *inter alia*, that at the time of Judge Cohen's May 26, 2022, decision, which denied Trane's motion to change venue, BOCES was not a party to the action. BOCES was subsequently impleaded on October 13, 2022, when defendant Trane filed a third-party complaint against BOCES. BOCES argues and distinguishes the instant motion from Trane's motion in that Trane failed to submit witness affidavits that established that they would be inconvenienced if the case was held in New York County. However, BOCES submits that the affidavits filed in support of the instant motion state the affiants would be extremely inconvenienced to be compelled to travel to New York County, which is 154 miles away. Further, BOCES contends that it is a distinct municipal entity, and not a school district, and maintains its principal place of business in Delaware County. Therefore, this Court should transfer this matter from New York County to Delaware County.

Discussion

Under *CPLR § 503(a)*, "[e]xcept where otherwise prescribed by law, the place of trial shall be 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[.]" In a motion for change of venue, the general preference is to allow the case to be heard where the cause of action originated, subject to the convenience of a material witness. *See, Montero v. Elrac, Inc.*, 300 A.D.2d 9, 9 (2002). *See also, Moghazeh v. Valdes-Rodriguez*, 151 A.D.2d 428 (1989).

CPLR § 504(2) states in pertinent part that: "[n]otwithstanding the provisions of any charter heretofore granted by the state...the place of trial of all actions against counties, cities, towns, villages, school districts and district corporations or any of their officers, boards or departments shall be, for...a city, except the city of New York, town, village, school district or district

corporation, in the county in which such city, town, village, school district or district corporation is situated[.]” *CPLR § 504(2)*.

Pursuant to *CPLR § 510(3)*, “the 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.” Failure of the movant to establish the requisite contact with witnesses is a failure of the movant to satisfy its burden. *See, Montero v. Elrac, Inc.* 300 A.D.2d 9, 10 (2002). *See also, Iassinski v. Vassiliev*, 220 A.D.2d 372 (1995) [the court held that while defendants are correct that, in general, the venue of a transitory action lies in the county where the cause of action arose, that rule is predicated upon the concept of convenience for witnesses who are to be present at trial]. Furthermore, the proponent of a change of venue must comply with *CPLR §510(3)* and provide for the following: (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. *See, Leopold v. Goldstein*, 283 A.D.2d 319, 320 (2001).

The Court finds that BOCES has demonstrated, pursuant to *CPLR §503(a)*, that venue in Delaware County is proper because there is no dispute that the accident occurred at the Otsego Northern Catskills BOCES Occupational Center located at 2020 Jump Brook Road, Grand Gorge, New York, which in Delaware County. Here, BOCES asserts that they are entitled to change venue to Delaware County, as opposed to New York County, because most of the events occurred in Delaware County, including the subject accident. Thus, change of venue is proper under *CPLR § 503(a)*.

This Court also finds that the BOCES is a municipality covered under *CPLR §504(2)*, since previous proceedings have recognized BOCES as a municipal entity. *See, NYSCEF Doc. No. 63*. Here, BOCES submits the affidavits of Jennifer Avery, James Snyder and Vincent Wojciechowski, who state that BOCES has a principal place of business located in Grand George, New York in Delaware County, thereby giving BOCES preference for venue to be transferred to Delaware County.

The Court further finds that the supporting witnesses BOCES are material and necessary to this case, and BOCES has demonstrated, pursuant to *CPLR §510(3)*, that these witnesses would be inconvenienced if the case remained in New York County. The supporting affidavits of BOCES’ employees indicate that they were either present at or after the subject accident or familiar with the location of the subject accident. Specifically, the affidavits of Jennifer Avery, James Snyder and Vincent Wojciechowski all state their identity, and explain how the transfer of venue to Delaware County would be convenient for them because the distance to travel to New York County is 154 miles away. “The general rule [which] is that a transitory action, such as this...should be tried in the County in which the cause of action arose.” (citations omitted). This rule is predicated upon and requires a showing as to the convenience of material non-party witnesses. *Moghazeh v. Valdes-Rodriguez*, 151 A.D.2d 428 (1st Dep’t 1989); *see also, The Gameologist Group, LLC v New York State Div. of Lottery*, 2010 N.Y. Slip Op. 30500[U] (N.Y.

Sup Ct, New York County, 2010). Therefore, BOCES’ motion to change venue is granted under CPLR §510(3) because their witnesses have demonstrated to be necessary and material, and it would be convenient for the witnesses to testify at deposition and trial in Delaware County.

Accordingly, it is hereby

ORDERED that Third-Party Defendant Otsego Northern Catskills Board of Cooperative Education Services’ motion, sequence no. 002, to change venue from New York County to Delaware County is hereby GRANTED; and it is further

ORDERED that, within 30 days from entry of this Order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court; and it is further

ORDERED that, upon receipt of this order with Notice of Entry, the Clerk of the Supreme Court of the State of New York, New York County is directed to transfer this Court file to the Clerk of the Delaware County Supreme Court; 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 Delaware County Supreme Court 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); and it is further


ORDERED that plaintiff’s motion to amend the caption (motion sequence no. 003) is respectfully transferred to Supreme Court, Delaware County; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

This constitutes the Decision/Order of the Court.

6/23/2023

DATE



LISA S. HEADLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: