

Kundell v Bloomingdales Inc.

2023 NY Slip Op 32854(U)

August 18, 2023

Supreme Court, New York County

Docket Number: Index No. 151723/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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ALAN KUNDELL,

Plaintiff,

- v -

BLOOMINGDALES INC. DBA BLOOMINGDALES, RALPH
LAUREN RETAIL INC DBA RALPH LAUREN

Defendant.

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INDEX NO. 151723/2023

MOTION DATE 04/12/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for CHANGE VENUE.

Upon the foregoing documents, Defendant Ralph Lauren Retail Inc.'s ("Ralph Lauren") motion to change the venue in this matter from New York County to Westchester County is granted.

I. Factual Background and Procedural History

Plaintiff Alan Kundell ("Plaintiff") commenced this action on February 22, 2023, by filing a Summons and Verified Complaint (NYSCEF Doc. 1). The Complaint alleges that on October 31, 2021, Plaintiff sustained personal injuries while at premises located at 175 Bloomingdale Road, White Plains, New York (the "Premises"), when a clothing fixture fell on him (NYSCEF Doc 1 at 9). On March 28, 2023, Ralph Lauren served and filed an Answer (NYSCEF Doc. 5) and a demand to change the venue of this action from New York County to Westchester County (NYSCEF Doc. 6). To date, Plaintiff has not responded to Ralph Lauren's demand (NYSCEF Doc. 11 at 2). On April 12, 2023, Ralph Lauren filed the instant motion for an order requesting a change of venue in this matter from New York County to Westchester

County (NYSCEF Doc. 10). In support of its motion, Defendant argues that New York County is an improper venue because Ralph Lauren's principal place of business is not located in New York County, Plaintiff is a resident of Westchester County, and the incident giving rise to the claims occurred in Westchester County (NYSCEF Doc. 15 at 4). Defendant further argues that, pursuant to CPLR 511(b), Plaintiff forfeited the right to change venue by inappropriately designating venue in the first instance, and then failing to submit an affidavit in response to Ralph Lauren's demand (NYSCEF Doc. 23 at 3-4). Lastly, Ralph Lauren contends that the interest of justice supports this matter being venued in Westchester because it would materially inconvenience a New York County jury to have to travel to Westchester County to visit the subject premises, and because any witnesses to the alleged occurrence that were employed at the subject premises are located in Westchester County (NYSCEF Doc. 23 at 4). In opposition, Plaintiff argues that Ralph Lauren's motion must be denied because (1) New York County is the location of Ralph Lauren's global corporate headquarters; and (2) the instant motion is devoid of any evidentiary or legal basis (NYSCEF Doc. 17 at 1).

II. Discussion

Preliminarily, "on a motion to change venue, pursuant to CPLR 510(1), 'defendant's burden...is limited to establishing that the designated county is improper'" *IME Watchdog, Inc. v Baker, McEvoy, Morrissey & Moskovits, P.C.*, 145 AD3d 464, 465 [1st Dept 2016], quoting *Garced v Clinton Arms Assoc.*, 58 AD3d 506, 509 [1st Dept 2009]). CPLR 503(a) provides for venue based on residence and states that "[e]xcept where otherwise prescribed by law, 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 resided in the state, in any county designated by the plaintiff."

CPLR 503(b) addresses venue based on residence for corporations and states that “[a] domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located.” The Appellate Division, First Department, has held that “[f]or venue purposes a foreign corporation’s designation of the location of its office in its statement filed with the Secretary of State constitutes a designation of its residence for venue purposes under CPLR 503” *Kochany v Chrysler Corp.* 67 AD2d 637 [1st Dept 1979]).

In this case, Ralph Lauren contends that its principal place of business is not located in New York County (NYSCEF Doc. 15 at 4), as Nutley, New Jersey is listed as their “Corporate and Retail administrative office and showrooms” on “Ralph Lauren Corporation’s Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (United States Securities and Exchange Commission, Form 10-K) <https://investor.ralphlauren.com/node/19591/html>” (NYSCEF Doc. 23 at 3).

Plaintiff asserts that, according to the New York State Department of State, Division of Corporations, Ralph Lauren’s Executive Office is located at 650 Madison Avenue, New York, New York, 10022 (NYSCEF Doc. 17 at ¶6). However, the New York State Department of State, Division of Corporations does not list 650 Madison Avenue as Ralph Lauren’s Executive Office Address, but rather as the address for its Chief Executive Officer (NYSCEF Doc. 18). In fact, that same page on the New York State Department of State, Division of Corporations website shows that Ralph Lauren’s Principal Executive Office Address is “C/O Tax Dept, 9 Polito Ave, Lyndhurst, NJ, United States, 07071” (NYSCEF Doc. 18). Accordingly, for CPLR 503 purposes, Ralph Lauren is deemed a resident of Bergen County, New Jersey.

Here, Plaintiff is a resident of Westchester County (“NYSCEF Doc. 1), the alleged accident occurred in Westchester County (NYSCEF Doc. 1), and Defendant was a resident of New Jersey. Therefore, New York County was neither a county in which one of the parties resided when the action was commenced nor the county where a substantial part of the events or omissions giving rise to the claim occurred. As such, Ralph Lauren has met its burden of establishing that Plaintiff’s designation of New York County as the venue of this action was improper. Further, because Westchester County is both the county where the subject incident allegedly occurred and the county in which the Plaintiff resides, it is a proper venue selection in this action. In light of the foregoing, Ralph Lauren’s motion to transfer venue in this action from New York County to Westchester County is granted.

Accordingly, it is hereby

ORDERED that Defendant Ralph Lauren Retail Inc.’s motion for a change of venue is granted and venue of this action is transferred from New York County to Westchester County; 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 Westchester 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 movant 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 contract 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, Westchester 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.

This constitutes the Decision and Order of the Court.

8/18/2023
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, 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