

Pena v JP Morgan Chase & Co.

2023 NY Slip Op 34390(U)

December 15, 2023

Supreme Court, New York County

Docket Number: Index No. 153187/2023

Judge: Lisa S. Headley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

VICTOR PENA,

Plaintiff,

- v -

JP MORGAN CHASE & CO., NORTH BROOK REALTY ASSOCIATES LLC

Defendant.

-----X

INDEX NO. 153187/2023

MOTION DATE 10/26/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 29

were read on this motion to/for CHANGE VENUE.

In this personal injury action, defendant JP Morgan Chase & Co. (hereinafter "Chase") moves to change venue from New York County to Westchester County, pursuant to CPLR §§ 510 and 511. Plaintiff opposed the motion. Defendant submitted a reply. After oral argument, and a review of the parties' papers and the relevant statutes and case law, the motion is decided accordingly.

In the complaint, the plaintiff alleges that on December 9, 2021, he suffered personal injuries as a result of traversing a sidewalk when his wheelchair was caused to flip due to alleged unsafe conditions of the public sidewalk, as a result of the defendants' negligence. (NYSCEF Doc No 1),

Defendant's Motion

Defendant Chase argues that pursuant to CPLR §510, Westchester County is the proper venue for this matter. Specifically, defendant Chase argues that 1) the plaintiff resides in Westchester County; 2) the action arose in Westchester County; 3) the site of plaintiff's accident - the sidewalk at issue in the case - is in Westchester County; 4) upon information and belief, plaintiff's medical treatment and medical records are all present in Westchester County; 5) all nonparty material witnesses reside or work in or near Westchester County; 6) co-defendant North Brook is located in Westchester County; and 7) all potential necessary parties that may be responsible for inspecting and maintaining the sidewalks, such as security companies and outside contractors, are located in Westchester County. In addition, defendant Chase argues that it intends to retain, Scott A. Cameron, R.A., AIA, as an expert witness to inspect the sidewalk at issue, and, this company, LGI Forensic Engineering, P.C., is located in North White Plains, Westchester County. Further, defendant Chase argues that the only connection this lawsuit has to New York County is that defendant Chase's global headquarters is in Manhattan, New York and plaintiff would not be prejudiced by moving the venue to Westchester County.

In support of the motion, defendant Chase submits an affidavit of Ramon Romero, the Branch Manager of JPMorgan Chase Bank, N.A. Mr. Romero states that 1) Chase's Facilities

Manager, Jones Lang LaSalle Americas, Inc., maintains all documentation related to inspections, maintenance and repairs of sidewalks at its offices in Westchester County; 2) JLL's Facilities Manager, Domenick Margotta, was responsible for inspecting the Chase branch for potential hazards and arranging any necessary repairs, upon information and belief, and he resides in Westchester County; 3) Chase's material witnesses and non-party witnesses reside in or near Westchester County, and will be inconvenienced by a trial located in New York County, such witnesses being, bank tellers, relationship bankers, JLL employees and outside contractors who work and reside in or near Westchester County. If a third-party contractor were involved, that contractor could be brought into the lawsuit as a party and inconvenienced by a New York County trial; 4) co-defendant, North Brook Realty Associates LLC ("North Brook"), owns the Premises, and its administrative staff, maintenance staff, and security are located in Westchester County; 5) Mr. Romero's testimony will include a discussion of Chase's retail operations, including the descriptions of the responsibilities of Chase employees at the premises, the responsibilities of the Facilities Manager JLL, and interactions with property owner North Brook. Defendant Chase's staff include the individuals, David Zamora, Davone Branch, Gloria Carter, and Lead Teller, Stephanie Vega, and JLL personnel, who would be necessary material witnesses to testify regarding their day-to-day responsibilities at the Premises; 6) the aforementioned Chase witnesses will testify about their knowledge of how sidewalk conditions are addressed, and whether JLL employees or third-party contractors repaired these conditions. Defendant Chase contends that the employees work in Westchester County and reside in or near Westchester County, therefore, they would be inconvenienced and prejudiced if required to testify in New York County; and finally, 7) a trial in New York County would inconvenience Mr. Romero, due to the distance needed to travel and all materials for Mr. Romero's testimony preparation are located in Westchester County and Rockland County.

Plaintiff's Opposition

In opposition to the motion, plaintiff argues, *inter alia*, that "Chase's motion abuses the terms 'proper county' and 'non-party witness'." Specifically, plaintiff argues that defendant Chase does not allege, or submit any evidence to show that New York County is not its residence, pursuant to *CPLR §503*, and defendant Chase admits in its motion papers that its principal office in the state and global headquarters are located in New York County. In addition, plaintiff argues that defendant Chase has failed to meet the statutory requirements of *CPLR §511* for a change of venue because Chase did not assert that New York was improperly designated or that none of the parties reside in New York County, however, defendant Chase's demand stated that grounds for the change in venue were "the convenience of non-party witnesses and "forum non-conveniens."

In addition, plaintiff argues that to the extent defendant Chase seeks a discretionary change of venue, the term "non-party witnesses," does not include the parties themselves or their employees, and the only witness who submits an affidavit alleging inconvenience is Chase's employee who does not live in Westchester County. Plaintiff also argues that Chase gives no explanation as to why New York County is inconvenient other than the distance between the two counties, which the court has repeatedly rejected as a basis to change venue. Further, plaintiff argues that defendant Chase fails to disclose any facts to which the proposed witnesses are expected to testify, that no witness is identified who inspected the alleged dangerous condition or who claims personal knowledge of the circumstances of the incident that led to the plaintiff's injuries, and the proposed expert witness has not yet been retained. Finally, plaintiff argues that defendant Chase has not satisfied the burden of proof to show that the county designated by plaintiff is inappropriate.

Defendant's Reply

In reply, defendant Chase argues that it is improperly named in this action as JP Morgan Chase & Co., instead of as JP Morgan Chase Bank, N.A., and that JP Morgan Chase & Co., is the parent company of JPMorgan Chase Bank, N.A., and cannot be held liable for the actions of its subsidiary. Specifically, Chase argues that while the bank's parent company maintains its global headquarters in New York, New York, Chase's retail branches operate independently of that location, and are very much a part of the local surrounding communities. Defendant Chase claims that the filing of this action in New York County is a clear example of plaintiff's search for a perceived favorable venue, no matter the inconvenience to all parties and witnesses, including the plaintiff's own medical providers. Defendant Chase argues that New York County does not bear any interest in adjudicating this case, and that the plaintiff resides in Westchester, within five minutes from where the accident took place. Defendant Chase also reiterates that the nonparty witness, Domenick Margotta, who will testify on behalf of defendants lives in or near Westchester County. Finally, defendant Chase argues that a change of venue to Westchester County would promote the best use of judicial resources and limit trial calendar congestion in New York County.

Discussion

Pursuant to *CPLR §503*, “[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 then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.” *CPLR §503(a)*. Here, the defendant admits in its motion papers that its principal office is in New York County.

Pursuant to *CPLR § 511(a)*, a motion for change of place or trial... shall be made within a reasonable time after commencement of the action.” *Cruz v. Murphy*, No. 150512/2021, 2023 WL 3271807, at *1 (N.Y. Sup. Ct. May 05, 2023). Under *CPLR §511(b)*, as relevant herein, where a defendant or respondent contends that the venue designated by the plaintiff or petitioner is improper, “[t]he defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand[.]” *Bernstein v. Tietz*, No. 453250/2022, 2023 WL 3075249, at *1 (N.Y. Sup. Ct. Apr. 25, 2023).

Pursuant to *CPLR §510(1)*, one ground for a change of venue is that “the county designated for that purpose is not a proper county.” *See, CPLR §510(1); Bernstein v. Tietz*, No. 453250/2022, 2023 WL 3075249, at *1 (N.Y. Sup. Ct. Apr. 25, 2023). 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.” 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).

“To obtain a discretionary change of venue under *CPLR §510(3)*, “the moving party must provide detailed justification for such relief in the form of the identity and availability of proposed witnesses, the nature and materiality of their anticipated testimony, and the manner in which they would be inconvenienced by the initial venue.” *See, Martinez v. Dutchess Landaq, Inc.*, 301 AD2d 424, 425 (1st Dept 2003) (*internal citations omitted*). “The convenience of a party's employee is

not a ‘weighty factor’ in considering a motion for a discretionary change of venue. *Id.* Here, the Court finds that the movant-defendant has failed to meet its burden of demonstrating that a change of venue for the convenience of material witnesses would be warranted. Defendant Chase submitted the affidavit of Ramon Romero, who explains that there are employee witnesses and a *potential* expert witness, that has not yet been retained, who would be inconvenienced if the trial took place in New York County. “[T]he moving party must set forth (1) the names, addresses, and occupations of numerous prospective witnesses, (2) the facts to which the witnesses will testify at trial, so that the court may judge whether the proposed evidence of the witnesses is necessary and material, (3) a statement that the witnesses are willing to testify, and (4) a statement that the witnesses would be greatly inconvenienced if the venue of the action was not changed.” *See, McManmon v. York Hill Hous., Inc.*, 73 A.D.3d 1137, 1138 (2d Dep’t 2010). However, the motion is devoid of the names and addresses of the potential witnesses that would be inconvenienced by having to testify in New York. Further, the witnesses that defendant claims would be inconvenienced are either employee witnesses or an expert witness that has not yet been retained. Accordingly, this Court finds that the defendant Chase’s motion must be denied, and the action shall remain in New York County.

Accordingly, it is


ORDERED that defendant JP Morgan Chase & Co.’s motion to change the venue of the instant action from New York County to Westchester County is **DENIED**, and it is further

ORDERED that the parties shall proceed with discovery in a good faith and an expeditious manner; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision an Order of this Court.

12/15/2023
DATE

20231215150833 HEADLEY LCBAF5DF6B547BAF493642384736A73

LISA S. HEADLEY, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT

INCLUDES TRANSFER/REASSIGN REFERENCE