

Amin v Homegoods, Inc.

2024 NY Slip Op 32090(U)

June 20, 2024

Supreme Court, New York County

Docket Number: Index No. 160735/2023

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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MAGED AMIN,

Plaintiff,

- v -

HOMEGOODS, INC., THE TJX COMPANIES, INC.

Defendant.

INDEX NO. 160735/2023

MOTION DATE 05/04/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for TRANSFER

Upon the foregoing documents, Defendants HomeGoods, Inc. and The TJX Companies, Inc.’s (collectively “Defendants”) motion to change venue to Nassau County pursuant to CPLR 510 and/or 511(b) is granted.

I. Background

This is an action arising from Plaintiff Maged Amin’s (“Plaintiff”) fall at a HomeGoods store located at 1030 Old Country Road, Westbury, New York (NYSCEF Doc. 1 at ¶¶ 23-24). On December 13, 2023, Defendants served on Plaintiff a demand for change of venue to Nassau County (NYSCEF Doc. 9). On December 27, 2023, Defendants filed the instant motion to change venue (NYSCEF Doc. 15).

Defendants argue change of venue is appropriate under CPLR 510 or 511(b) because Plaintiff is a resident of New Jersey, Defendants maintain their principal place of business in Massachusetts, and the accident occurred in Nassau County. Plaintiff opposes and argues that venue was properly laid in New York County. Plaintiff further argues that it is Defendants’ burden to show that venue is inappropriate, and that Defendants have failed to meet their burden here.

Plaintiff asserts that Defendants have made no showing that any parties or material witnesses will be inconvenienced by a trial in New York County and have failed to submit any affidavits detailing said inconvenience. Plaintiff also argues that venue is proper because HomeGoods, Inc.'s Department of State filings lists New York County as its residence.

In reply, Defendants argue that New York County is merely the address of its registered agent and that pursuant to its filed application for authority, its designated office is in Albany County. Defendants also argue they are not required to produce affidavits from inconvenienced witnesses to sustain their burden for a discretionary change of venue. Defendants rely on the fact that the situs of Plaintiff's injury was in Nassau County and therefore that is the county in which the cause of action should be tried.

II. Discussion

Pursuant to CPLR 510, the Court, upon motion, may change venue where (1) the county designated for trial is improper; (2) there is reason to believe an impartial trial cannot take place in the venue, or (3) the convenience of material witnesses and the ends of justice will be promoted by the change. A plaintiff's selection of a venue is improper if none of the parties reside there (*IME Watchdog, Inc. v Baker, McEvoy, Morrissey & Moskovits, P.C.*, 145 AD3d 464 [1st Dept 2016]).

Pursuant to CPLR 503(c), a foreign corporation shall be deemed a resident of the county in which its principal office is located. Business Corporation Law § 102(10) provides that "office of a corporation" means the office the location of which is stated in the application for authority of a foreign corporation. For purposes of venue, parties are bound by the designated county in a foreign corporation's application for authority (*Crucen v Pepsi-Cola Bottling Co. of New York, Inc.*, 139 AD3d 538, 539 [1st Dept 2016]; *Marko v Culinary Institute of America*, 245 AD2d 212 [1st Dept 1997]).

Here, Plaintiff's selection of New York County as the venue for trial was improper. Although Defendants listed with the Secretary of State a New York County address for service of process, the unrefuted application for authority lists Albany County as Defendants' office location. This means that Defendants' are residents of Albany County for purposes of selecting a proper venue (*Crucen, supra* ["although it has notified the Department of State to forward process to an address in Bronx County, the designation made by defendant in its application for authority still controls for venue purposes"]; *see also Bailon v Avis Rent A Car, Inc.*, 270 AD2d 439, 440 [2d Dept 2000] ["it is well settled that for venue purposes the sole residence of a foreign corporation is the county in which its principal office is located, as designated in its application for authority to conduct business filed with the State of New York"]). Moreover, the undisputed site of Plaintiff's injury is Nassau County, and Plaintiff is a resident of New Jersey. Therefore, Plaintiff selected an improper venue.

Because no party is a resident of New York County, and the site of the accident was in Nassau County, Defendants' demand for venue to be changed to Nassau County is proper, and their motion is granted.

Accordingly, it is hereby

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Nassau; 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 Nassau and shall mark his 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, Nassau 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); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>6/20/2024</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE