STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

VALLEY PSYCHOLOGICAL, P.C.,

Plaintiff,

-against-

COUNTRY-WIDE INSURANCE COMPANY,

Defendant.

DECISION and ORDER
INDEX NO. 1280-13
RJI NO. 01-13-109998

Supreme Court Albany County All Purpose Term, August 6, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:
Law Offices of Craig Myerson
Craig Myerson, Esq.
Attorney for Plaintiff
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Latham, New York 12110

Jaffe & Koumourdas, LLP
R. Diego Velazquez, Esq.
Attorney for Defendant
40 Wall Street, 12th Floor
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TERESI, J.:

Plaintiff treated ninety nine individuals for the injuries they each sustained in separate automobile accidents. All ninety nine were insured by Defendant. Plaintiff commenced this action to recover the sums that allegedly remain unpaid for the treatment it provided to each of its ninety nine patients. With its answer Defendant demanded the venue of this action be changed, and has now moved for such relief. Plaintiff opposes the motion. Because Defendant did not demonstrate its entitlement to change venue (CPLR §510[1 or 3]) its motion is denied.

First, Defendant is not entitled to an order changing the venue of this action pursuant to CPLR §510(1) because it failed to demonstrate that Albany County "is not a proper county."

"To effect a change of venue pursuant to CPLR 510(1), a defendant must show both that the plaintiff's choice of venue is improper and that its choice of venue is proper." (Silvera v Strike Long Island, 52 AD3d 497 [2nd Dept 2008]). Venue is properly placed "in the county in which one of the parties resided when it was commenced." (CPLR §503[a]). "In that regard, a corporation is deemed a resident of the county in which its principal office is located, and... the location of a corporation's principal office is determined solely by the designation in its certificate of incorporation." (Val. Psychological, P.C. v Govt. Employees Ins. Co., 95 AD3d 1546, 1547-48 [3d Dept 2012], quoting Lombardi Assoc. Ltd. v Champion Ambulette Serv. Inc., 270 AD2d 775 [3d Dept 2000]; Weiss v Saks Fifth Ave., 157 AD2d 475 [1st Dept 1990]; CPLR §503[c]). Moreover, according to Business Corporation Law §102(a)(10), the "'[o]ffice of a corporation'... need not be a place where business activities are conducted by such corporation."

Here, Defendant failed to make the requisite "improper" showing. It is uncontested that Plaintiff's certificate of incorporation, amended in 2011, now lists Albany County as the location "in which the office of the corporation is located." Such designation is determinative of Plaintiff's CPLR §503 residence (Hamilton v Corona Ready Mix, Inc., 21 AD3d 448 [2d Dept 2005]; Biaggi & Biaggi v 175 Med. Vision Properties, LLC, 70 AD3d 880 [2d Dept 2010]), unless Defendant establishes an exception. (Lombardi Assoc. Ltd. v Champion Ambulette Serv. Inc., supra, citing Application of Dyckman, 169 AD2d 391 [1st Dept 1991]). On this record, Defendant demonstrated no exception.

Contrary to Defendant's arguments, it did not establish that Plaintiff's Albany County designation was a fraud or a sham. Defendant's attorney's statement, and its investigator's claim, that Plaintiff maintains only a "virtual office" in Albany is largely hearsay and of limited probative value. While Defendant sufficiently established that Plaintiff has other non-Albany County addresses registered with various agencies, it did not demonstrate that such registration constitutes the "legal equivalent of a designated principal office" with the New York State Secretary of State. (Lombardi Assoc. Ltd. v Champion Ambulette Serv. Inc., supra 776; Business Corporation Law §102[a][10]; Negron v Nouveau El. Indus., Inc., 104 AD3d 655 [2d Dept 2013]). Nor has such proof rebutted Plaintiff's president's assertion that: "Plaintiff has maintained an address for and conducted business in Albany County continuously since approximately the year 2000 through the present."

Defendant similarly failed to demonstrate that venue was improper under CPLR §503(e). Such provision states, in pertinent part, that: "[i]n an action for a sum of money only, brought by an assignee other than an assignee for the benefit of creditors... the assignee's residence shall be deemed the same as that of the original assignor at the time of the original assignment." It is uncontested that Plaintiff is the assignee of its ninety nine patients. Defendant failed to sufficiently demonstrate, however, that Plaintiff does not constitute an "assignee for the benefit of creditors." Its purely semantic claim is unpersuasive. Nor did Defendant duly establish that the "residence" of the ninety nine assignors was not Albany County at the time of the subject assignment. Its Vice President's conclusory assertion of the assignors' respective residences is wholly unsupported and unavailing. Moreover, because Plaintiff's amended complaint asserts its own "non-assigned" causes of action, Defendant's reliance on CPLR §503(e) is misplaced; and

the deficiencies it notes in Plaintiff's amended complaint are irrelevant. (*see generally* St. Clare's Hosp. v Allcity Ins. Co., 201 AD2d 718 [2d Dept 1994]).

Defendant also failed to establish its entitlement to change venue, pursuant CPLR §510(3), for the "convenience of material witnesses."

A CPLR §510(3) motion must "include the names and addresses of each witness, a specific fact-based summary of the proposed testimony... how that testimony is relevant to the issues to be resolved at trial... an assertion attributed to the witness that he or she is willing to testify, and [a description of] the difficulties that will necessarily be encountered by the witness if venue is not changed." (Cavazzini v Viennas, 82 AD3d 1343, 1344 [3d Dept 2011]; Job v Subaru Leasing Corp., 30 AD3d 159 [1st Dept 2006]).

Contrary to Defendant's assertions, its motion papers do not sufficiently comply with CPLR §510(3)'s mandate. Although Defendant alleges that it will call each of Plaintiff's ninety nine patients and its claims examiners who reviewed each claim, it offered no specific fact-based summary of each individual's proposed testimony. It also provided no description of such testimony's relevance. Nor did Defendant allege that each witness is willing to testify, with an explanation of the difficulties Albany County venue poses for each witness. Because Defendant failed to "support [its] application with detailed relevant information establishing that the convenience of the nonparty witnesses would be enhanced by the change" (Singh v Catamount Dev. Corp., 306 AD2d 738 [3d Dept 2003]), its CPLR §510(3) motion is defective and denied.

Accordingly, Defendant's change of venue motion is denied in its entirety.

This Decision and Order is being returned to the attorneys for the Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to

the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
August 27, 2013

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated April 26 2013; Affirmation of R. Diego Velazquez, dated April 26, 2013; Affidavit of John Stevenson, dated April 26, 2013, with attached Exhibits A-H.
2. Notice of Cross-Motion, dated May 30, 2013; Affirmation of Craig Meyerson, dated May 20, 2013, with attached Exhibits A-F.
3. Affirmation of R. Diego Velazquez, dated July 29, 2013, with attached Exhibits I-J.
4. Affirmation of Craig Meyerson, dated August 6, 2013, with attached Exhibits A-C; Affidavit of Jonathan Kogan, dated August 6, 2013.