

Louisot v Shah
2015 NY Slip Op 32517(U)
December 17, 2015
Supreme Court, New York County
Docket Number: 805196/2015
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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KAREN LOUISOT and FELIX LOUISOT,

Plaintiffs,

Index No. 805196/2015

-against-

Decision and Order

MANAN SHAH, M.D., KIRANKUMAR KOTHARI,
M.D., ORANGE REGIONAL MEDICAL CENTER,
And BOSTON SCIENTIFIC CORPORATION,

Defendants.

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In this motion and cross-motion, Dr. Kirankumar Kothari and Orange Regional Medical Center, respectively, seek an order of this Court under CPLR §§ 503(a), 510(1) and 511(b), changing the venue of this case to Orange County. Plaintiffs Karen and Felix Louisot oppose the motion. For the reasons below, the Court grants the motion.

This is a medical malpractice action which alleges injuries resulting from the treatment plaintiff Karen Louisot (plaintiff) received from Drs. Shah and Kirankumar at Orange Regional Medical Center (Orange Regional) in Orange County, New York. The treatment allegedly involved the implanting of a pelvic mesh product designed, manufactured, and sold by Boston Scientific Corporation (Boston Scientific). Plaintiffs reside in Milford, Pennsylvania and commenced this action in New York County based on their allegation that Boston Scientific, which is a Delaware corporation based in Natick, Massachusetts, “may be served with process through their New York registered agent C/O Corporation Service Company, 80 State Street, Albany, New York” and that it therefore “expected or should have expected its business activities to have

consequences with the State of New York as it was engaged in conduct and regularly transacted business in New York.” Complaint, ¶ 11.

In support of his motion, Dr. Kothari argues that Orange County is the proper venue for the case because he and Dr. Shah reside and have their principal places of business there, and because they treated plaintiff in Orange County at Orange Regional. Further, he argues, that venue is not proper in this county based on the allegation that Boston Scientific does business in the State. Moreover, he states, because plaintiffs selected an improper venue, defendants have the right to select a proper venue. Cross-movant Orange Regional echoes this position.

Plaintiffs oppose the motion and cross-motion. They state that the evidence establishes that Boston Scientific’s principal office is in New York County. In support, they submit 1) a New York State Tax Warrant from June 1, 2004, which states that Boston Scientific, the debtor, is located at 235 E 42nd Street in Manhattan on the 26th floor; 2) a blank application form requesting the authority to do business in the State, which must list a county in New York “in which the office of the corporation is to be located”; 3) an entity information form, which indicates that New York County was selected as the filing county; and 4) an undated page from the yellow pages which lists an address of 1249 5th Avenue in East Harlem as the address for Boston Scientific and a 212- phone number. They argue that pursuant to Johanson v. J.B. Hunt Transport, Inc., 15 A.D.3d 268 (1st Dep’t 2005), the entity information form shows that Boston Scientific shows must have listed New York County as the county in which its office would be located – and, therefore, establishes this as the county of residence for the purposes of CPLR 503(c). They additionally cite Valley Psychological, P.C. v. Government Empls. Ins. Co., 95 A.D.3d 1546 (3rd

Dep't 2012), for the proposition that venue is proper here because, according to plaintiffs, it is Boston Scientific's principal place of business.

In reply, Dr. Kothari reiterates that defendant's filing with the State indicate that Boston Scientific is a Delaware corporation with a principal office in Massachusetts. He distinguishes Johanson on the ground that there, unlike here, the plaintiff showed that in its application form for authority to do business in New York State, the defendant stated that it would maintain its office in New York County. He notes that here, on the other hand, plaintiff submitted a blank application form. The entity information form – which, Dr. Kothari stresses, was filed almost eighteen years ago – simply shows that in 1998 Boston Scientific filed its document in this county. He notes that in that same document the agent designated for service of papers is in Albany rather than New York County. He further challenges the yellow pages printout as unpersuasive because New York courts “do not take judicial notice of the yellow pages,” Reply Aff., ¶ 5, and because the fact that the page exists on the internet doesn't establish that this is current or accurate information. He points to its own internet search, which lists other entities, such as Terence Cardinal Cooke Health Center, but not Boston Scientific, at the address listed in the yellow page printout. He argues that the tax lien is insufficient to establish venue as well, as it is from eleven years ago and there is no indication the information is up-to-date. For all these reasons, he argues, the Court should grant his motion.

Venue is proper in a county if one of the parties resides there at the time of the commencement of the action. CPLR § 503(a). “The court, upon motion, may change the place of trial of an action where . . . the county designated for that purpose is not a proper county[.]” CPLR

§ 510(1). The defendant must demonstrate that the plaintiff chose an improper venue. See Fiallos v. New York Univ. Hosp., 85 A.D.3d 678, 678 (1st Dep't 2011). If the defendant satisfies this burden the plaintiff must show his venue choice is proper. Young Sun Chung v. Kwah, 122 A.D.3d 729, 730 (2d Dep't 2014).

Here, Dr. Kothari and Orange Regional both satisfied their initial burden of showing improper venue. It is undisputed that all defendants other than Boston Scientific are located in Orange County, that plaintiffs reside in Pennsylvania, and that the actions upon which plaintiffs base their complaint occurred in Orange County. Moreover, the complaint itself does not assert that Boston Scientific does business in New York County but that it does business in New York State and “should have expected its business activities would have consequences within the County of New York.” Complt., ¶ 16. For the reasons Dr. Kothari sets forth in his reply, which the Court lists above, the alleged evidence plaintiffs submit in opposition to the motion and cross-motion are insufficient to prove that Boston Scientific has offices in New York County or that for other reasons venue is proper here. The Court notes that the addresses for Boston Scientific in the tax lien differs from the one in the yellow pages, underscoring that the information online is not necessarily accurate. Most significant, though Boston Scientific has not answered it states in opposition to another motion in this case that Albany County is its residence for venue purposes.

Therefore, it is

ORDERED that the venue of this action is changed from the Supreme Court, County of New York, to the Supreme Court, County of Orange and the Clerk of the Supreme

Court, County of New York, is directed to transfer the papers on file in this action (Index No. 805195/2015) to the Clerk of the Supreme Court, County of Orange, upon service by movant of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the Clerk of the Supreme Court, Orange County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign an Orange County index number to the file transferred pursuant to this order.

Dated: Dec. 17, 2015

ENTER:

A handwritten signature in black ink, appearing to read 'JBL', is written over a horizontal line.

JOAN B. LOBIS, J.S.C.