

Singh v Fernandez

2018 NY Slip Op 30967(U)

April 6, 2018

Supreme Court, Bronx County

Docket Number: 26048/2015E

Judge: Fernando Tapia

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX – PART 13

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AJAY PAUL SINGH, AS ADMINISTRATOR OF THE
Estate of Parminder Jit Singh, deceased and
Ajay Paul Singh, individually
Plaintiffs,

Index No. 26048/2015E

- against -

DECISION/ ORDER

WILLIAM FERNANDEZ, JR., WEST SIDE FOODS, INC.,
AND AA TRUCK RENTING CORP.
Defendants.

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Hon. Fernando Tapia

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the motion for summary judgment, as indicated below:

Papers:	Numbered
Notice of Motion, Affirmation and annexed Exhibits	1
Affirmation in Opposition to motion and annexed Exhibit	2

Upon the foregoing papers, defendants move under CPLR 327 to dismiss the action on the grounds of forum non conveniens.

This lawsuit involves a multi-vehicle accident that occurred on the New Jersey Turnpike in Newark, New Jersey on December 15, 2013. Decedent plaintiff Parminder Jit Singh was operating a limousine in which non-parties Melissa R. Saroff and Karan R. Menda were passengers. Due to the icy road conditions, decedent Singh lost control of the vehicle and it spun to a stop partially facing the wrong way along the right concrete median. Decedent Singh exited the vehicle. Thereafter, defendant William Fernandez was operating a tractor trailer and was traveling in the same direction as the limousine. As defendant Fernandez reached the crest of a hill approaching the limousine, he lost control of the tractor trailer, which struck the limousine and dragged it with

the two passengers inside. At some point during the multi-car accident, decedent Singh was struck and killed. This action was commenced by the filing of a summons and complaint on November 3, 2015 and issue was joined by the service of an answer on September 15, 2016. Melissa Saroff and Karan Menda, the two passengers in the limousine commenced an action in New Jersey Superior Court, Essex County on February 3, 2015 naming the plaintiffs and the defendants herein as defendants in that action.

Under CPLR 327 The doctrine of forum non conveniens permits a court to dismiss an action when, although it may have jurisdiction over a claim, the court determines that “in the interest of substantial justice the action should be heard in another forum” (*National Bank & Trust Co. of N. Am. v. Banco de Vizcaya*, 72 NY2d 1005, 1007 [1988], *cert. denied* 489 U.S. 1067, 109 S.Ct. 1343, 103 L.Ed.2d 812 [1989]). The movant seeking dismissal under CPLR 327 has a “heavy burden” of establishing that New York is an inconvenient forum and that a substantial nexus between New York and the action is lacking (see *Kuwaiti Eng'g Group v. Consortium of Intl. Consultants, LLC*, 50 AD3d 599, 600 [1st Dept.2008]; *Creditanstalt Inv. Bank AG v. Chadbourne & Parke LLP*, 14 AD3d 414, 415 [1st Dept.2005]).

The factors in weighing such a motion to dismiss include the burden on New York courts, potential hardship to the defendant, the unavailability of an alternate forum, the residence of the parties, and the location of the events giving rise to the transaction at issue in the litigation, with no one factor controlling (see *Islamic Republic of Iran v. Pahlavi*, 62 NY2d 474, 479 [1984], *cert. denied* 469 U.S. 1108, 105 S.Ct. 783, 83 L.Ed.2d 778 [1985]). Other factors may include the location of potential witnesses and documents and the potential applicability of foreign law (see *Shin-Etsu Chem. Co., Ltd. v. ICICI Bank Ltd.*, 9 AD3d 171, 176–177 [1st Dept.2004]). “Unless

the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*Anagnostou v. Stifel*, 204 AD2d 61, 61[1st Dept.1994]).

The plaintiffs in this case are New York residents and although "the residence of a plaintiff is not the sole determining factor on a motion for dismissal on grounds of forum non conveniens, it has been held to generally be the most significant factor in the equation" *Thor Gallery at S. DeKalb, LLC v Reliance Mediaworks (USA) Inc.*, 131 AD3d 431, 432 [1st Dept 2015]). In fact, all of the parties are New York residents meaning the defendants have not demonstrated that there is a burden on New York courts (see *Islamic Republic of Iran v. Pahlavi*, 62 NY2d at 479). In addition, of the witnesses that have been fully identified (the parties in the action, non-party witnesses Saroff and Menda) are all New York residents. The New Jersey State Police personnel who investigated the accident have not been fully identified and the defendants have failed to demonstrate that testifying in New York would prove to be a hardship or inconvenience (*Goetz, Fitzpatrick & Flynn v Hoffman*, 238 AD2d 171, 171 [1st Dept 1997]). Finally, the issue of choice-of-law has not yet been presented in this case and it is not clear whether New York or New Jersey law would apply. Despite that uncertainty, the First Department has held that "New York courts are capable of applying New Jersey law should that necessity arise" *Travelers Cas. and Sur. Co. v Honeywell Intern. Inc.*, 48 AD3d 225, 226 [1st Dept 2008]).

For the reasons set forth above, the defendants have failed to carry their heavy burden to justify dismissal on forum non conveniens grounds. Accordingly, it is hereby ordered that the defendants motion to dismiss pursuant to CPLR 327 is denied.

This constitutes the decision and order of the Court.

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FERNANDO TAPIA, J.S.C.