

<b>Calogrias v AIG Prop. Cas. Co.</b>
2019 NY Slip Op 30368(U)
February 15, 2019
Supreme Court, New York County
Docket Number: 160807/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

PETER CALOGRAS, ANNE MARIE CALOGRAS,  
Plaintiffs,

INDEX NO. 160807/2015

MOTION DATE 07/21/2018

MOTION SEQ. NO. 001

- v -

AIG PROPERTY CASUALTY COMPANY a/s/o  
CHARTIS PROPERTY CASUALTY CO, and  
FLAG CLEANING & RESTORATION,

DECISION AND ORDER

Defendants.

-----X

AIG PROPERTY CASUALTY COMPANY a/s/o  
CHARTIS PROPERTY CASUALTY CO,

Third-Party Plaintiff,

-v-

FLAG CLEANING & RESTORATION,

Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 54, 55, 56, 57, 58, 59, 72

were read on this motion to/for

CHANGE VENUE

Upon the foregoing documents, it is ordered that the motion is **denied**.

In this action for property damage by plaintiffs Peter Calogrias and Marie Calogrias, who are seeking an award for damage to their property at 235 Rose Hill Road, Water Mill, New York (the "subject property"), defendant/third-party defendant Flag Cleaning & Restoration ("Flag") moves for an order changing venue of this matter from New York County to Suffolk County pursuant to CPLR 510, based on the convenience of material witnesses, and pursuant to CPLR 511, based on improper venue. Plaintiffs oppose the motion.

Plaintiffs are suing for alleged property damage arising out of a puff back from an oil burner located in the basement of the subject premises, which distributed soot and particles throughout the duct system of the burner and into all the rooms of the subject premises. The initial action was brought by plaintiffs for breach of contract for failure to pay for property damage against AIG Property Casualty Company (“AIG”), as subrogee of Chartis, on or about October 21, 2015. Plaintiffs’ original policy was with Chartis, but Chartis subsequently changed its name to AIG in 2013.

A third-party action was brought by AIG against Flag on or about August 30, 2017 and the plaintiffs amended their summons and complaint to include Flag as a first-party defendant on or about November 27, 2017. Flag initially made a motion to change venue along with its answer to the third-party complaint on November 17, 2017. Flag then made the instant motion to change venue on December 1, 2017. Flag filed its answer to plaintiffs’ amended complaint on December 20, 2017.

Flag, by affirmation of its attorney, John D. Goldman, an associate of the law offices of Bartlett, LLP, urges that the Court, in its discretion, should move this action to Suffolk County, because the subject premises, which is also plaintiffs’ residence, is located in Suffolk County and because Flag and all of its employees who will likely be material witnesses reside in Suffolk County. Doc. No. 36. Goldman argues that the central question of this matter will hinge on the testimony of Flag’s employees as to the cleaning process and materials they used at the subject premises, and they will be deposed and called on to testify at trial, and therefore the Court, in its discretion should move the venue for the convenience of those witnesses. *Id.* ¶¶ 10-15.

Flag does not question that venue was initially proper in New York County or that AIG is licensed to do business in New York State and has a principal place of business in New York County, and therefore does not contend that venue was improper pursuant to CPLR 503. Doc. No. 58, Goldman Aff. in Reply, ¶ 3. Additionally, Flag admits that the change venue it requests is subject to the Court's discretion. Doc. No. 36, ¶ 9, Doc. No. 58, ¶ 5.

In its opposition, plaintiff, through the Affirmation in Opposition of its attorney, Tal Basis, an associate of the law firm of Weg and Meyers, P.C., argues that venue was properly placed in New York County and that Flag failed to establish grounds for change of venue pursuant to CPLR 510. Doc. No. 55.

Although Flag seeks to convince the Court that the ends of justice would be better met by moving the venue to make it more convenient for the witnesses to testify, the Court notes that all of the witnesses that Flag identified are employees of Flag and, as employees of a party, are not the types of witnesses to which the change of venue statutes are normally applied. Additionally, as plaintiff points out, and the Court particularly notes, of the fact that, most of the potential witnesses identified by Flag reside about half way between the Suffolk County Courthouse and the New York County Courthouse. The difference is, at most, 20 miles, and the Court also notes that it is quite easy for witnesses residing in Suffolk County to take mass transit into New York County. "A change of venue based on the convenience of witnesses may only be granted after there has been a detailed evidentiary showing that the convenience of nonparty witnesses would in fact be served by the granting of such relief." *O'Brien v Vassar Bros. Hosp.*, 207 A.D.2d 169 (2<sup>nd</sup> Dept 1995); *Kraft v Kamalian*, 290 A.D. 2d 264 (1<sup>st</sup> Dept 2002).

Finally, the Court also takes notice that discovery and depositions have continued to proceed in this matter during the pendency of this motion without any inconvenience to the parties noted in Flag's motion papers.

Therefore, in light of the foregoing, it is hereby:


**ORDERED** that the motion to change venue by defendant/third-party defendant Flag Cleaning & Restoration ("Flag") is denied, and plaintiffs' action shall proceed in New York County; and it is further

**ORDERED** that, within 30 days of the uploading of this order to NYSCEF, movants' counsel is directed to serve a copy of this order, with notice of entry, on all other parties and on the Clerk of the Court; and it is further

**ORDERED** that all counsel shall appear for a previously scheduled status conference in this matter on June 4, 2019 at 80 Centre Street, Room 280, at 2:15 p.m.; and it is further

**ORDERED** that this constitutes the decision and order of the court.

2/15/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT

APPLICATION:  DENIED  OTHER

CHECK IF APPROPRIATE:  REFERENCE