

Maria v Santamaria
2020 NY Slip Op 31757(U)
June 4, 2020
Supreme Court, Kings County
Docket Number: 517090/2019
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4th day of June, 2020

P R E S E N T:

HON. WAVNY TOUSSAINT,

Justice.

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FLOR EVELYN RODRIGUEZ-SANTA MARIA

Index No. 517090/2019

and LIDIA SANTAMARIA

Plaintiffs,

- against -

DECISION AND ORDER

ROBERT MAZZEI and BROOKE MAZZEI

Defendants.

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The following papers numbered 1 to 8 read herein:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-2
Answers/Opposing Affidavits (Affirmations)	3
Reply Affidavits (Affirmations)	4

Upon the foregoing papers, defendants ROBERT MAZZEI and BROOKE MAZZEI, move pursuant to CPLR §§§ 503(a), 510(1) and 511, for an order transferring the venue of this action from Kings County to Nassau County. Plaintiffs oppose the application.

Background

This is an action for personal injuries allegedly sustained by the plaintiffs as a result of a motor vehicle accident, which occurred on June 11, 2018, at the intersection of North Franklin and Intersection Streets, in Hempstead, New York. According to the Police Accident Report, defendant Brooke Mazzei was attempting to make a left turn onto southbound N. Franklin Street, when she struck plaintiffs' vehicle, which was in the northbound, left lane of North Franklin Street.

Defendants argue plaintiffs venue is Kings County is improper, as no party to this action resides in Kings County and the accident which gave rise to the action occurred in Nassau County. In support of their position, defendants contend that plaintiffs verified complaint alleges that the plaintiffs reside in Suffolk County. Further, defendants attach the Department of Motor Vehicles (hereinafter DMV) Record Expansion for Brooke Mazzei, showing an address of "7 Burtis Street, Lynbrook, New York" and a Registration Record Expansion for Robert Mazzei, showing the same Lynbrook, New York address.

In opposition, plaintiffs allege that venue for this action was chosen based on the information contained in the Police Accident Report, which lists defendant Brooke Mazzei's address as 111 Lawrence Street, Brooklyn, New York. Plaintiffs point out that defendants failed to submit any probative documentary evidence, i.e. an affidavit from either defendant, refuting that Brooke Mazzei resides in Kings County.

In reply, defendants reiterate that they submitted documentary evidence in the Department of Motor Vehicles abstract, which proves neither defendant resided in Kings County at the time of this accident.

Discussion

CPLR §503(a) states:

Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

“To effect a change of venue pursuant to CPLR § 510(1), a defendant must show that the plaintiff’s choice of venue is improper and that [his or her] choice of venue is proper” (*Chebab v Roitman*, 120 AD3d 736, 737 [2d Dept 2014]; citing *Gonzalez v Sun Moon Enterprises Corp.*, 53 AD3d 526, 526 [2d Dept 2008]). In order to succeed on their motion, defendants were required to demonstrate that, on the date the action was commenced, none of the parties to the action resided in Kings County (*O.K. v Y.M. & Y.W.H.A. of Williamsburg*, 175 AD3d 540, 541 [2d Dept 2019]; citing *Deas v Ahmed*, 120 AD3d 750 [2d Dept 2014]).

Here, the evidence submitted by defendants fails to establish that Brooke Mazzei did not reside in Kings County at the time the action was commenced. The DMV record expansion for Ms. Mazzei is not certified or authenticated. It is not supported by any factual foundation sufficient to demonstrate its admissibility as a business record (*Werner v City of New York*, 135 AD3d 740, 741 [2d Dept 2016]). Further the record is dated August 15, 2019, 10 days after

this action was filed. This is in no way establishes that Ms. Mazzei was not residing in Kings County on the date the action was commenced. Lastly, defendants failed to submit any supporting affidavit from someone with personal knowledge attesting to the fact that Ms. Mazzei did not reside in Kings County on the date the action was commenced. Defendants therefore failed to meet their initial burden of demonstrating that no party resided in Kings County at the time the action was commenced.

Accordingly, defendants motion to change the venue of this action from Kings County to Nassau County is denied. This is the decision and order of the court.

ENTER

A handwritten signature in black ink, appearing to be 'J. S. C.', written over a horizontal line.

J. S. C.