

Sandville v Law Offs. of David M. Schlachter, LLC
2020 NY Slip Op 34171(U)
December 15, 2020
Supreme Court, New York County
Docket Number: 162338/2019
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

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INDEX NO. 162338/2019

JONATHAN SANDVILLE,

MOTION SEQ. NO. 001

Plaintiff,

- v -

LAW OFFICES OF DAVID M. SCHLACHTER, LLC and
DAVID SCHLACHTER,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27

were read on this motion to/for

CHANGE VENUE

In this legal malpractice action, defendants David M. Schlachter ("Schlachter") and Law Offices of David M. Schlachter ("the law firm") move, pursuant to CPLR 503(a) and 510(1), to change venue from Supreme Court, New York County, to Supreme Court, Rockland County (Docs. 14-22, 27). Plaintiff Jonathan Sandville ("Sandville") opposes the motion (Doc. 25). After a review of the parties' contentions, as well as the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

In December 2019, Sandville commenced this action in New York County against his former attorney Schlachter, and Schlachter's law office, the law firm, by filing a summons with notice (Doc. 1). Thereafter, Sandville filed a complaint wherein he asserted a claim for legal malpractice (first cause of action), as well as a cause of action pursuant to NY Judiciary Law §

487 (second cause of action) (Doc. 5).¹ Sandville alleged, in relevant part, that Schlachter represented him in a holdover proceeding in the Civil Court of the City of New York, Index No. 058037/2012 (Doc. 5 ¶ 16), against allegations brought by the co-op board of his apartment building located at 106 West 117th Street in Manhattan that Sandville was, *inter alia*, illegally subletting his apartment (Doc. 5 ¶ 6). Following a bench trial, the Civil Court (Stoller, J.) found that Sandville had violated the lease and awarded the co-op board \$32,223.18 in attorneys' fees and disbursements, in addition to \$22,312.78 in unpaid use and occupancy charges (Doc. 5 ¶ 18, 20). After the judgment was rendered, Schlachter allegedly advised Sandville that "he was negotiating with the [co-op board] to settle the dispute" (Doc. 5 ¶ 22).

In December 2014, the co-op board filed a second lawsuit against Sandville in Supreme Court, New York County, Index No. 162438/2014, requesting that the subject apartment be sold and that the previous judgment for attorneys' fees and costs, as well as unpaid use and occupancy charges, be adjudged as a lien upon any surplus from the sale, together with interest from May 28, 2014 (Doc. 5 ¶ 23). The co-op board amended its petition, crediting Sandville with an interim payment, but otherwise seeking the same relief (Doc. 5 ¶ 24). Sandville failed to interpose an answer in the second lawsuit, prompting this Court (Edmead, J.), in 2015, to grant the co-op board's motion for a default judgment against him and directing the sale of the apartment (Doc. 5 ¶ 27). Defendants allegedly did not inform Sandville about the judgment (Doc. 5 ¶ 28).

Further, Sandville claimed that, without conferring with him, defendants unsuccessfully filed several motions seeking to vacate the default judgment and to prevent the sale of the

¹ NY Judiciary Law § 487 provides that "[a]n attorney or counselor who . . . [i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party . . . [i]s guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he [or she] forfeits to the party injured treble damages, to be recovered in a civil action."

apartment, and that they attached to the motions affidavits purportedly signed by Sandville, which he denied signing (Doc. 5 ¶ 29-35, 39-45).

In July 2017, defendants commenced a third lawsuit against the co-op board on behalf of Sandville, wherein they accused Justice Edmead of impartiality, but this case was dismissed in February 2018 (Doc. 5 ¶ 46). The apartment was ultimately sold to Soobin Kim and Hyesun Joanne Kim ("the Kims"), who commenced a fourth action against Sandville to obtain possession of the apartment (Doc. 5 ¶ 47). Defendants were discharged in March 2018 and, in June 2018, the Civil Court found that the Kims had established their ownership of the apartment and the accompanying shares (Doc. 5 ¶ 51).

In July 2020, defendants interposed an answer in this action, asserting affirmative defenses and a counterclaim against Sandville for unpaid legal fees (Doc. 8). Together with their answer, defendants served Sandville with a demand for change of venue to Supreme Court, Rockland County (Doc. 9). In an affidavit submitted in response to said demand, Sandville asserted that New York County is where a substantial part of the events or omissions giving rise to the claim occurred and that venue was therefore proper (Doc. 11).

In the instant motion, defendants argue, *inter alia*, that "the crux of [p]laintiff's claim, [d]efendants' alleged legal malpractice, is more closely connected to Rockland County or New Jersey, where . . . Schlachter maintained offices and performed the bulk of the legal work" (Doc. 15 ¶ 18, 20). In support of this argument, defendants submit, *inter alia*, an affidavit by Schlachter, wherein he represents that "while [c]ourt appearances for [p]laintiff occurred on matters in New York County, the majority of the legal work [that he] performed for [p]laintiff in connection with those legal matters, which are [the subject of the instant litigation], was performed in New Jersey and Rockland County" (Doc. 21 ¶ 8).

In a memorandum of law submitted in opposition to the motion, Sandville argues, *inter alia*, that defendants fail to meet their burden of establishing that a substantial part of the events or omissions giving rise to the claims did not occur in New York County (Doc. 25 at 5-11). Sandville contends, *inter alia*, that his choice of venue is proper because the loss of his co-op shares is directly connected to defendants' legal representation within New York County and that "Schlachter's terse and conclusory [a]ffidavit does not undermine venue in this [c]ounty" (Doc. 25 at 5-6). Sandville further claims that the substantiality requirement is one of fairness and, thus, that "a lawyer cannot enter a litigation appearance in a venue and then claim [that] the very same venue is not a proper one when [his or] her performance in the litigation becomes the subject of a legal malpractice claim" (Doc. 25 at 7).

LEGAL CONCLUSIONS:

CPLR 503(a) provides, in relevant part, that "[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which . . . a substantial part of the events or omissions giving rise to the claim occurred" (*see Marrero v Mamkin*, 170 AD3d 1159, 1160 [2d Dept 2019]; *Egleston v MKL Constr. Corp.*, 2020 NY Slip Op 31931[U], 2020 NY Misc LEXIS 2788, *2-3 [Sup Ct, NY County 2020]). However, "[t]he legislature only recently added a provision to CPLR 503 (a) that allows venue based on the location of the events underlying the claim (*see* L 2017, ch 366), but the Federal Rules of Civil Procedure contain an identical provision (*see* 28 USC § 1391 [b] [2]), doubtless the model for the amended language in CPLR 503 (a)" (*Harvard Steel Sales, LLC v Bain*, 188 AD3d 79, 82 [4th Dept 2020]). Under the federal standard, the court must first determine the nature of the claims and the acts or omissions that the plaintiff alleges give rise to those claims and then determine whether significant events or omissions related to those claims

occurred in the venue where the action was commenced (*see Daniel v Am. Bd. of Emergency Med.*, 428 F3d 408, 432 [2d Cir 2005]).

To prevail on a motion to change venue pursuant to CPLR 510(1), the movant must make "an affirmative showing . . . that plaintiff's choice of venue was improper. Then, and only then, is a court empowered to pass upon the propriety of the choice of venue proposed by the defendant" (*Lividini v Goldstein*, 175 AD3d 420, 421 [1st Dept 2019]; *see Williams v Staten Is. Univ. Hosp.*, 179 AD3d 869 [2d Dept 2020]; *Singh v Empire Intl., Ltd.*, 95 AD3d 793, 793 [1st Dept 2012]).

The motion is denied insofar as defendants have failed to meet their initial burden on their motion to change venue under CPLR 510(1). Although Schlachter asserts, in conclusory fashion, that most of the legal work subject to this litigation was performed in *either* New Jersey or Rockland County (*see Lividini v Goldstein*, 175 AD3d at 421-422; *Singh v Empire Intl., Ltd.*, 95 AD3d at 793), this Court finds that defendants fail to establish that a substantial part of the events or omissions giving rise to the claim did not occur in New York County. Defendants represented Sandville in four different lawsuits related to a property located in New York County, and the loss of his apartment, due to defendants' alleged errors and omissions in these courts, is directly attributed to the court orders issued in this county (*see Stratagene v Parsons Behle & Latimer*, 315 F Supp 2d 765, 772 [D Md 2004]; *compare Cold Spring Harbor Lab. v Ropes & Gray LLP*, 762 F Supp 2d 543, 559 [EDNY 2011] [finding that the Eastern District of New York was not a proper venue because defendants did not commit any of the alleged acts or omissions underlying the legal malpractice claim). Moreover, the allegations pursuant to NY Judiciary Law § 487, relating to defendants' misrepresentation to this Court belies their argument that venue is improper.

Assuming, *arguendo*, that defendants have established that New York County is not an appropriate venue, they have nevertheless failed to demonstrate that Rockland County is the appropriate venue.

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by defendants David M. Schlachter and Law Offices of David M. Schlachter, pursuant to CPLR 503(a) and 510(1), to change venue from Supreme Court, New York County, to Supreme Court, Rockland County, is denied; and it is further

ORDERED that, within 20 days after this decision and order is uploaded to NYSCEF, counsel for plaintiff Jonathan Sandville shall serve a copy of this decision and order, with notice of entry, upon defendants; and it is further

ORDERED that this constitutes the decision and order of this Court.



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KATHRYN E. FREED, J.S.C.

12/15/2020
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE