

Alleva v Austin

2023 NY Slip Op 31754(U)

May 24, 2023

Supreme Court, New York County

Docket Number: Index No. 150967/2020

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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ANTHONY ALLEVA,

Plaintiff,

- v -

TRENT RYAN AUSTIN, SAME DAY DELIVERY INC.,
AMAZON.COM, INC., AMAZON LOGISTICS, INC.

Defendant.

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INDEX NO. 150967/2020

MOTION DATE 12/20/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 107, 108, 109, 110, 111, 112

were read on this motion to/for CHANGE VENUE

Upon the foregoing documents, the motion by Defendants Amazon.com, Inc. and Amazon Logistics, Inc. ("Amazon Defendants") pursuant to CPLR 510 and 511, to change the venue of this action from the Supreme Court of New York, New York County, to the Supreme Court of New York, Nassau County is decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a motor vehicle collision that occurred on November 19, 2019 in Nassau County New York.

CPLR 510 (1) (3) provides that 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 or the convenience of material witnesses and the ends of justice will be promoted by the change. CPLR 511 (a) requires a motion for a change of venue based on an improper designation of county to be served with the answer or before the answer is served. If any other ground is asserted in support of the motion, the motion must be made within a reasonable time after commencement of the action.

Plaintiff commenced this action against Defendants Austin, Same Day Delivery, Inc., and Amazon.com, Inc. on January 28, 2020. Pursuant to a Decision and Order dated September 2, 2022, Plaintiff served a Supplemental Summons and Amended Complaint upon Amazon

Logistics, Inc. adding Amazon Logistics, Inc. as a defendant. The Amazon Defendants complied with the statutory procedure for changing venue by serving a written demand with its answer and thereafter moving to change venue to Nassau County within 15 days after service of the demand (CPLR 511 [a]-[b]). Plaintiff timely responded to Defendants' demand to change venue, contending that venue was proper based on Defendant Same Day Delivery, Inc.'s place of business at 2403 2nd Avenue, 2nd Floor, New York, New York.

CPLR 503 (c) provides that a domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located (*Bryan v Hagemann*, 31 AD2d 905 [1st Dept 1969]). The term "office of a corporation" is defined under Business Corporation Law (BCL) 102 (a) (10) as "the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where business activities are conducted by such corporation." In other words, a corporation, for venue purposes, is a resident only of the county in which it maintains its principal office even though it may maintain multiple offices in other counties.

Specifically, a foreign corporation's designation of the location of its office in its statement filed with the Secretary of State constitutes a designation of its residence for venue purposes under CPLR 503 [c] (*Nadle v L.O. Realty Corp.*, 286 AD2d 130, 132 [1st Dept 2001]). A domestic corporation is a resident of only one county: that county designated in its certificate of authorization as the county where its office is located (*Conway v Gateway Assoc.*, 166 AD2d 388 [1st Dept 1990]). Even though most of its activities are carried on in some other county, and indeed, even where no activities are carried on in the designated county, that county remains the residence of the corporation for venue purposes (*Martirano v Golden Wood Floors Inc.*, 137 AD3d 612, 613 [1st Dept 2016] [the designation of a county as the location of a corporation's principal office in a certificate of incorporation is controlling in determining corporate residence for the purposes of venue]; *Doyaga v Camelot Taxi Inc.*, 102 AD3d 594 [1st Dept 2013] [where the court found that a claim that the corporation's actual principal office was in another county is irrelevant

since, for venue purposes, as long as the county designation in the certificate has not been amended, the corporation's residence remains unchanged]; *Bryan v Hagemann*, 31 AD2d 905, 905 [1st Dept 1969] [the fact that the corporation has its office in a county other than that designated in its certificate of incorporation does not change its residence for the purpose of legal procedure]). A plaintiff forfeits the right to select the venue in an action if said plaintiff chooses an improper venue in the first instance (*Kelson v Nedicks Stores, Inc.*, 104 AD2d 315 [1st Dept 1984]).

Here, Same Day Delivery, Inc. is a domestic business corporation with its county designated as Rockland in its statement filed with the New York Secretary of State. Its Certificate of Incorporation states that the "office of the corporation is to be located in the County of Rockland, State of New York," and its office address to which the Secretary of State shall mail a copy of any process against the corporation lists a Post Office Box address in Orangeburg, New York. Amazon Logistics, Inc is a foreign business corporation, incorporated in Delaware, authorized to conduct business in New York State, with its county designated as Albany in its statement filed with the New York Secretary of State. Amazon.Com Inc. is a foreign corporation not authorized to conduct business in New York State and has not filed any statement with the New York Secretary of State. Defendant Austin is a resident of Nassau County.

Here, the only connection of this matter to New York County was an office utilized by Same Day Delivery, Inc. in New York County at the time of the commencement of this matter. Despite this, however, the county designation in its filings with the Secretary of State and its certificate of incorporation remained unchanged and as such, the corporation's residence remained unchanged. There is no evidence that Same Day Delivery, Inc. or any of the corporate Defendants effectuated any change with the Department of State prior to the commencement of this action, within the applicable time period pursuant to CPLR 503 [a].

Under CPLR 503 (a), venue is proper in either "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." Here, the subject accident took place in Nassau County. There is no

dispute that Defendant Austin and Plaintiff are both residents of Nassau County. Because New York County is not a proper venue for the action, and Plaintiff therefore forfeited the right to select venue, Defendants' motion to change venue to Nassau County, a proper county, is granted. Accordingly, it is

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, Nassau County; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Nassau County and shall mark his records to reflect such transfer; and it is further

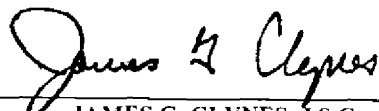
ORDERED that, within 30 days from entry of this order, counsel for movants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Nassau County, so as to ensure an efficient transfer; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

This constitutes the Decision and Order of the Court.

5/24/2023
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT