

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Civil Action No. 2017-CP-23-1127

RECEIVED

John Garvin,)
)
Plaintiff,)
)

AUG 10 2018

SC Court of Appeals

v.)
)
Scott D. Robinson Law Firm, LLC,)
)
)
Defendant.)

**ORDER GRANTING DEFENDANT'S
MOTION FOR CHANGE OF VENUE
AND ORDER ON DEFENDANT'S
MOTION FOR PROTECTIVE ORDER**

The hearing on Defendant's motions for change of venue and protective order in the above-captioned action came before this Court in Greenville, South Carolina on May 31, 2018. Plaintiff, *pro se* appeared and Defendant was represented by Warren C. Powell, Jr., Esquire. Three matters were brought before this Court for consideration. First, Defendant's motion to change venue to Spartanburg County. Second, Defendant's motion for protective order seeking protection from responding to discovery until such time as venue is moved. Third, a housekeeping matter concerning Plaintiff's Complaint.

I. MOTION TO CHANGE VENUE

1. Facts:

A. Plaintiff's allegations made in the Complaint material to venue motion:

a. After Plaintiff's being arrested in Spartanburg County on or about August 20, 2012 pursuant to arrest warrants numbered N158303 and N158322, Attorney Scott D. Robinson was appointed by the Spartanburg County General Sessions Court to represent Plaintiff (Complaint Paragraph 8);

b. Mr. Robinson conducted the initial interview with Plaintiff at the Spartanburg County Detention Center (Complaint Paragraph 8);

c. On December 6, 2012, Plaintiff was indicted by the Spartanburg County General Sessions Court for trafficking heroin, first indictment concerned the sale, manufacture ... delivery, or bringing into this state more than four grams of heroin, a Schedule I controlled substance, all of the above concerning or related to a transaction on July 7, 2012 occurring in Spartanburg County;

d. The second indictment concerned the sale, manufacture ... delivery, or bringing into this state more than fourteen grams of heroin, a Schedule I controlled substance, all of the above concerning or related to a transaction on July 17, 2012 occurring in Spartanburg County (Complaint Paragraph 10; Indictments);

e. On May 23, 2013, Plaintiff alleges he was convicted of drug trafficking from a plotted conspiracy, said conviction occurring in the Court of General Sessions for Spartanburg County, Seventh Judicial Circuit (Complaint Paragraph 13);

f. Plaintiff alleges that Spartanburg County Assistant Solicitor James E. Hunter and Mr. Robinson, "violated plaintiff's civil right Under the United States Constitutional laws of South Carolina by conspiring to convict him of drug trafficking." (Complaint Paragraph 17);

g. Plaintiff contends that the judgment against him was obtained by fraud, practiced by Defendant and Spartanburg County Assistant Solicitor, James E. Hunter (Complaint Paragraph 47); and

h. Plaintiff alleges that the arrest warrants were falsified by Spartanburg County Sheriff's Department Officer Ken Hancock (Complaint Paragraph 9).

B. Facts drawn from supplemental evidence:

- a. The sale of the subject heroin in the criminal action took place in Spartanburg County (Affidavit supporting arrest warrants);
- b. James E. Hunter, Spartanburg County Assistant Solicitor, prosecuted the action in General Sessions Court and Mr. Robinson defended Mr. Garvin in that trial (Complaint, Court records, arrest warrants, indictments, documents attached to Plaintiff's discovery requests);
- c. The heroin at issue in the underlying criminal trial was transported into Spartanburg County;
- d. The sale of heroin on July 7, 2012 and July 17, 2012 took place in Spartanburg County;
- e. Plaintiff was arrested in Spartanburg County on or about July 17, 2012;
- f. Plaintiff was indicted in Spartanburg County on December 6, 2012;
- g. Plaintiff was tried and convicted in Spartanburg County General Sessions Court on May 22, 2013.
- h. Plaintiff did not offer any evidence that any material event(s) giving rise to the alleged claims took place in or were connected with Greenville County.

C. Material witnesses:

Among the material witnesses in this case are public employees paid by either the State of South Carolina or Spartanburg County, or both (Complaint, Documents referred to hereinabove).

D. Defendant is a limited liability company with its only office located in Greenville, South Carolina.

E. Defendant has not participated in discovery since this case was filed and instead filed his motion for protective order pending resolution of the venue motion.

Law/Discussion

The South Carolina venue statute was changed in 2005 with venue in suits against domestic limited liability companies governed by §15-7-30(E), which provides in material part as follows:

“(E) a civil action tried pursuant to this section against a ... domestic limited liability company ... must be brought and tried in the county in which the:
 (1) corporation, limited liability company ... has its principal place of business at the time the cause of action arose; or
 (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Also material to Defendant’s motion to change venue is S.C. Code Ann. §15-7-100(a) (1976) which provides in material part:

(A) The Court may change the place of trial if

.....

(3) **The convenience of witnesses and the ends of justice would be promoted by the change.** (Emphasis added)

The Supreme Court addressed this Code section in *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) and, in reversing the trial court’s denial of the motion for change of venue, stated:

A trial judge may change the place of trial “**when the convenience of witnesses and the ends of justice would be promoted by the change.**” S.C. Code Ann. §15-7-10(3) (1976). Unlike the determination of residency, which is a question of law, **it is within the trial judge’s discretion to determine whether to grant a motion to change venue based on the convenience of the witnesses and the ends of justice.** *Varnadoe v. Hicks*, 264 S.C. 216, 219, 213 S.E.2d 736, 737 (1975). (Emphasis added.)

Whaley, 363 S.C. at 476, 609 S.E.2d at 296.

The Supreme Court went on to state that,

Moreover, we hold that the ends of justice were not promoted by having this case tried in Hampton County. *See Varnadoe v. Hicks*, 264 S.C. 216, 213 S.E.2d 736 (1975) (**convenience of the witnesses is a factor the court may consider in deciding whether a change of venue would promote the ends of justice**); *Holden v. Beach*, 228 S.C. 234, 89 S.E.2d 433 (1955) (**the**

ends of justice are promoted by having a jury from the same area as the witnesses evaluate witness credibility). (Emphasis added.)

Whaley, 363 S.C. at 478, 609 S.E.2d at 297

Plaintiff argued that because Defendant's motion and/or memorandum in support of its motion to change venue were not supported by affidavits, Defendant did not comply with the South Carolina Code of Laws and the South Carolina Constitution. This Court finds both arguments to be without merit as the S.C. Code and Constitution require affidavits be filed when a change of venue is sought on the ground that a fair and impartial trial cannot be had in the county in which the action was filed. *See*, S.C. Code Ann. §15-11-100 (1976) and Section 23 of the South Carolina Constitution. Defendant's motion is not made on such grounds.

This Court finds that the most substantial part of the alleged act or omission giving rise to this action occurred in Spartanburg County. Greenville County has no connection with the action other than the fact that Defendant has its office in Greenville County. In addition, this Court finds and concludes that employees of the Spartanburg County Sheriff's Department and the Solicitor's Office for the Seventh Judicial Circuit, Spartanburg County, will likely be material witnesses at the trial of this action. Plaintiff has offered no fact or event giving rise to the alleged cause of action which occurred in Greenville County. Under such circumstances to require public employees to unnecessarily travel from Spartanburg County to Greenville County to testify at trial would not promote the ends of justice. Accordingly, this Court orders that the venue of this action is hereby moved to Spartanburg County.

II. DEFENDANT'S MOTION FOR PROTECTIVE ORDER

This Court orders that Defendant's Motion for Protective Order will be heard by the Seventh Judicial Circuit Court of Common Pleas, Spartanburg County after this action is moved.

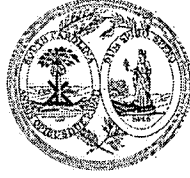
III. PLAINTIFF'S MOTION TO AMEND COMPLAINT ADDING SCOTT ROBINSON AS A PARTY INDIVIDUALLY

This Court granted Plaintiff's motion to amend his Complaint in its Order of December 18, 2017. However, defense counsel has brought to the attention of this Court that Plaintiff has not in fact amended his Complaint and has offered to consent to the amendment and, inasmuch as the only proposed change in the Complaint was to make Mr. Robinson a party individually, defense counsel has agreed to add Mr. Robinson's name to the caption on all future filings including Defendants' answer to the amendment naming Mr. Robinson as a party, said amended answer to be filed within 30 days after the Spartanburg County Clerk receives the Order changing venue. This process will save Plaintiff, *pro se* the trouble of having to prepare and serve his amended complaint. Furthermore, this Court finds that Plaintiff will be free to initiate discovery afresh against Scott Robinson individually once he is made a party by the filing of Defendants' Amended Answer.

IT IS SO ORDERED.

The Honorable Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
_____, 2018



Greenville Common Pleas

Case Caption: John Garvin vs. Scott D Robinson Law Firm LLC

Case Number: 2017CP2301127

Type: Order/Other

So Ordered

s/ Edward W. Miller

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