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SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CIVIL ACTION NO: 2020-CP-38-00845

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Ping Wang and Hua Jiang,

Plaintiffs,

v.

Santee Modular Homes, Inc. and the South
Carolina Department of Transportation
Defendants.

**Order Denying Defendant South Carolina
Department of Transportation's Motions to
Dismiss and Change Venue**

This matter comes before the Court on Defendant South Carolina Department of Transportation's ("Defendant SCDOT") Motions to Change Venue and Dismiss for Improper Venue. Defendant SCDOT filed its Motion to Change Venue on October 23, 2020; its Motion to Dismiss on October 30, 2020; and its Memorandum in Support of these motions on January 6, 2021. Plaintiffs filed their Memorandum in Opposition to Defendant SCDOT's motions on January 8, 2021. Defendant SCDOT subsequently filed a Reply in Support of its motions on January 8, 2021. This matter was decided on the memorandums and reply filed by the parties, without a hearing.

I. Factual Background

This is a motor-vehicle crash case involving a downed tree in the road, which occurred in Richland County. Plaintiff Ping Wang asserts that she was a pedestrian walking near the downed tree when a vehicle travelling in the opposite direction struck the tree. Ping Wang claims she was subsequently struck by the tree, the vehicle, or both. She alleges that she was injured because of this crash.

Plaintiffs' brought the present action against Defendant SCDOT and Defendant Santee Modular Homes, Inc. ("Defendant Santee Modular Homes"), a company that performs tree-removal services for SCDOT. In its Answer, Defendant Santee Modular Homes admits that its primary place of business is in Orangeburg County, South Carolina.

II. Motion to Dismiss

In its Memorandum in Support, Defendant SCDOT argues that this case should be dismissed, pursuant to Rule 12(b)(3), because this case should have been brought in Richland

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County pursuant to S.C. Code Ann. § 15-78-100(b).

As discussed below, venue in this case is proper in Orangeburg County. However, even if Richland County were the only proper venue, dismissal would not be appropriate. *See* Rule 82(b), SCRCP (“When an action is brought in the wrong county or in the wrong court, the court *shall not dismiss* the action but shall transfer it to any proper county or court in which it could have been brought.”) (emphasis added).

Therefore, this Court finds that dismissal on the grounds that this case was brought in an improper venue is prohibited by Rule 82(b), SCRCP.

III. Motion to Change Venue

When a case involves multiple defendants, and venue would be proper against each defendant in a different county. “[T]he plaintiff ordinarily has the right of election as to the county in which an action will be brought.” Jeter v. S.C. Dep’t of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006); *see also* S.C. Code Ann. § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

The present case involves two Defendants, and an action may be properly commenced against each defendant in a different venue. Venue is proper in Orangeburg County because Defendant Santee Modular Homes has its principal place of business in Orangeburg County. *See* S.C. Code Ann. § 15-7-30(E)(1). Venue would also be proper in Richland County, because a lawsuit against Defendant SCDOT may be brought where the motor-vehicle crash occurred. *See* S.C. Code Ann. § 15-78-100(b).

Because Plaintiffs filed this case in one of the proper venues, Defendant SCDOT “has no right to request a change of venue . . . on the ground that the action was not brought in the proper county, even if the action could also have been commenced [there].” Jeter, 369 S.C. at 442, 633 S.E.2d 143 at 148 (internal quotations omitted).

Therefore, this Court finds as follows:

- (a) Venue in this case would be proper in either Orangeburg County or Richland County.
- (b) Plaintiffs have the right of election as to the county in which the action will be brought.
- (c) Plaintiffs properly filed this lawsuit in Orangeburg County.

For the reasons stated above,

IT IS THEREFORE ORDERED THAT Defendant SCDOT's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED THAT Defendant SCDOT's Motion to Change Venue is DENIED.

IT IS SO ORDERED.

Judge Edgar W. Dickson
First Judicial Circuit

_____, 2021
Orangeburg, South Carolina



Orangeburg Common Pleas

Case Caption: Ping Wang , plaintiff, et al VS Santee Modular Homes, Inc. ,
defendant, et al
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So Ordered

s/ Edgar W. Dickson #2153

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