

Rycz v. Superior Court (McGarry)
(2022) 81 Cal. App. 5th 824

The availability of remote trial testimony is not a proper basis for denying a motion to transfer a case to the county where most witnesses are located.

FACTS/ PROCEDURE

Stella Yeh became highly intoxicated at a college party. An Uber was requested to take her back to her dorm at the University of San Diego. Allegedly, during the ride, the first Uber driver exited the freeway and ordered her out of the car after she vomited all over the inside of the car and the dashboard. It was alleged he forced her to exit in a dangerous and unlit area. Yeh requested a second Uber driver, Mark Rycz. However, when Rycz arrived, Yeh allegedly refused to get in the Uber because he was not identified as an Uber driver. She left the area. Neither driver called 911. A half hour later, several miles away from the site she was last seen at, Yeh walked onto a different freeway and was struck multiple times. Stella Yeh's mother filed a wrongful death suit against Uber, and both Uber drivers in San Francisco County where the Uber corporate headquarters is located. Rycz moved to change venue to San Diego County as all events occurred there and most witnesses lived there. The trial court denied the venue change motion, ruling the location of witnesses was unimportant because they could appear remotely under Code Civ. Proc., § 367.75. Rycz sought a writ of mandate.

FIRST DCA RULING

The court of appeal granted the petition in favor of Rycz. It found CCP § 367.75 was enacted in response to the COVID-19 pandemic and allows courts to take advantage of the benefits of remote trial testimony while preserving the flexibility to require in-person testimony. However, it did not render the existing venue laws moot and was not to be applied wholesale to an entire trial as a means to reject a change of venue motion. The Court noted, while there have been many benefits during the pandemic from remote testimony, one operating assumption of our justice system has long been that the opportunity to observe witnesses “upon the stand and the manner in which they gave their testimony...in no small degree aid[s] in the determination of the truth and correctness of testimony.” (*Pac. Coast Title Ins. Co v. Land Title Ins. Co.* (1950) 97 Cal. App.2d 829, 834.)

The real question under the venue statute, CCP § 367.75, is whether the moving party made a sufficient showing as to whether moving venue would promote the convenience of witnesses and the ends of justice. Here, the moving party made a showing that almost all of the witnesses were located in San Diego County, the alleged dangerous condition area where she exited the Uber was in San Diego and given the allegations, it was possible a site visit would be necessary. Additionally, the plaintiff failed to show any witness lived in San Francisco. Therefore, under CCP § 367.75, a trial court, in an appropriate circumstance, has the availability to order remote testimony to ease the inconvenience for a witness that lives far from the trial location. However, CCP § 367.75 is not itself a basis to deny a motion to transfer venue to a county where most of the witnesses are located.