

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - May 2, 2007

_____AD3d_____

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-09996

DECISION & ORDER

Donald Pickering, et al., appellants, v Westchester
County Health Care Corporation, et al., defendants,
University OB/GYN, P.C., Dominic D. Aro, etc.,
respondent.

(Index No. 13958/03)

Burns & Harris, New York, N.Y. (Alison R. Keenan and Jean M. Prabhu of counsel),
for appellants.

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Lori R. Remlies
of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiffs
appeal from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered
September 20, 2006, as denied their cross motion to transfer venue from Westchester County to
Bronx County.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiffs forfeited their right to select venue of this action (*see Ruiz v Lazala*, 26
AD3d 366; *Fisher v Finnegan-Curtis*, 8 AD3d 527, 528; *Figueroa v Mari*, 5 AD3d 629; *Mei Ying
Wu v Waldbaum, Inc.*, 284 AD2d 434, 435; *Dalton v Barrett*, 275 AD2d 297, 298). Moreover, the
plaintiffs failed to demonstrate that venue should be transferred to Bronx County as a matter of

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discretion on the basis that Westchester County is not a proper county (*see* CPLR 510[1]; *cf. Tamburro v International Bus. Machs. Corp.*, 234 AD2d 535, 535-536), or that the convenience of material witnesses and the ends of justice would be promoted by the change (*see* CPLR 510[3]; *Markowitz v Makura, Inc.*, 29 AD3d 650, 651; *Agostino Antiques v CGU-American Employers' Ins. Co.*, 6 AD3d 469, 470; *Mei Ying Wu v Waldbaum, Inc.*, *supra*). Accordingly, the court providently exercised its discretion in denying the plaintiffs' cross motion.

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court