

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

D17795
O/prt

_____AD3d_____

Submitted - December 12, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-07939

DECISION & ORDER

Walter Appel, et al., respondents,
v Dumont Masonic Nursing Home, appellant, et al.,
defendant.

(Index No. 10456/04)

Kaufman Borgeest & Ryan, LLP, Valhalla, N.Y. (Jacqueline Mandell and Dennis J. Dozis of counsel), for appellant.

Grace & Grace, Yorktown Heights, N.Y. (Michael J. Grace of counsel), for respondents.

In an action to recover damages for medical malpractice, etc., the defendant Dumont Masonic Nursing Home appeals from an order of the Supreme Court, Kings County (F. Rivera, J.), dated July 13, 2007, which denied its motion to change the venue of the action from Kings County to Westchester County.

ORDERED that the order is reversed, on the facts and in the exercise of discretion, with costs, the motion to change venue of the action from Kings County to Westchester County is granted, and the Clerk of the Supreme Court, Kings County, is directed to deliver to the Clerk of the Supreme Court, Westchester County, all papers filed in the action and certified copies of all minutes and entries (*see* CPLR 511[d]).

In an order dated February 9, 2007, the Supreme Court, Kings County, granted the motion of the defendant Metrocare Ambulance Corporation for summary judgment dismissing the complaint insofar as asserted against it. In light of, *inter alia*, the fact that Metrocare Ambulance Corporation was the only party residing in Kings County, and that the action has no other connection

January 29, 2008

Page 1.

APPEL v DUMONT MASONIC NURSING HOME

to Kings County, the appellant's motion to change the venue of the action to Westchester County, where the plaintiffs reside, should have been granted (*see Fernandez v NYLCare Health Plans, Inc.*, 276 AD2d 268, 269; *Ming-Liang Philip Chung v Express Tours, Inc.*, 274 AD2d 506; *Yasin v Manhattan Eye, Ear & Throat Hosp.*, 254 AD2d 281, 283; *Tamburro v Int'l Business Machine Corp.*, 234 AD2d 535, 536; *Mitts v HIP of Greater New York*, 104 AD2d 318, 319).

SPOLZINO, J.P., SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court