

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

D24263  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 10, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2008-08413

DECISION & ORDER

Wayne Vassell, etc., respondent, v Angelo Magno,  
etc., et al., defendants, Chandra Chilappa, etc., et al.,  
appellants.

(Index No. 48838/03)

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Garbarini & Scher, P.C., New York, N.Y. (Thomas M. Cooper of counsel), for  
appellants.

Silberstein, Awad & Miklos, P.C., Garden City, N.Y. (Joseph C. Muzio and Paul N.  
Nadler of counsel), for respondent.

In an action to recover damages for medical malpractice and wrongful death, the  
defendants Chandra Chilappa, Katayun K. Mama, Lawrence J. Klecatsky, Michael Mandel, Frank M.  
Tamarin, and Sound Shore Medical Center of Westchester appeal from an order of the Supreme  
Court, Kings County (Dabiri, J.), dated June 27, 2008, which, inter alia, denied their motion pursuant  
to CPLR 510 and 511 to change the venue of the action from Kings County to Westchester County.

ORDERED that the order is affirmed, with costs.

Pursuant to CPLR 503(a), the venue of an action is properly placed in the county in  
which any of the parties resided at the time of commencement (*see Panco Dev. Corp. v Platek*, 262  
AD2d 292). In this case, the plaintiff properly placed venue in Kings County, as that was the county  
where he resided at the time this litigation was commenced. A few years after the commencement  
of the action, the defendants moved pursuant to CPLR 510 and 511 to change the venue of the action  
from Kings County to Westchester County in “the court’s discretion” (*Callanan Indus. v Sovereign*

September 15, 2009

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*Constr. Co.*, 44 AD2d 292, 295; see *Baez v Marcus*, 58 AD3d 585, 586; *Obas v Grappell*, 43 AD3d 431, 432; *Pittman v Maher*, 202 AD2d 172, 175). Inasmuch as venue was originally properly placed in Kings County, and the defendants failed to demonstrate that they would be prejudiced or would suffer any particular hardship by retaining venue in Kings County, or that the interests of justice would best be served by changing the venue of the action to Westchester County, it was not an improvident exercise of discretion to, inter alia, deny the defendants' motion.

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, 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