

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

D28748
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_____AD3d_____

Submitted - September 10, 2010

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-07228
2010-01348

DECISION & ORDER

Nabil Messiha, etc., appellant, v Staten Island
University Hospital, et al., respondents.

(Index No. 30450/05)

Bernadette Panzella, P.C., New York, N.Y. (Robert A. Mulhall of counsel), for appellant.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success, N.Y. (Christopher Simone and Gerard S. Rath of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, etc., the plaintiff appeals, as limited by his brief, from (1) so much of an order of the Supreme Court, Kings County (Rosenberg, J.), dated May 28, 2009, as granted the defendants' motion to change the venue of the action from Kings County to Richmond County, and (2) so much of an order of the same court dated January 4, 2010, as, upon reargument, adhered to the original determination in the order dated May 28, 2009.

ORDERED that the appeal from the order dated May 28, 2009, is dismissed, as the portion of that order appealed from was superseded by the order dated January 4, 2010, made upon reargument; and it is further,

ORDERED that the order dated January 4, 2010, is affirmed insofar as appealed from; and it is further,

October 26, 2010

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ORDERED that one bill of costs is awarded to the defendants.

When this action initially was commenced in 2005, several of the defendants were residents of Kings County. However, in 2009, when the action was discontinued against all of the Kings County residents, the remaining defendants properly and promptly moved for a change of venue to Richmond County.

Contrary to the plaintiff's contention, the defendants moved for a change of venue on several grounds, including CPLR 510(1), and they raised the plaintiff's failure to commence this action in the proper venue. The cause of action herein arose in Richmond County and, after the action was discontinued as to the defendants who did not reside in Richmond County, no remaining party resided in Kings County. Under the circumstances, the Supreme Court providently exercised its discretion in granting the defendants' motion to change the venue of this action from Kings County to Richmond County (*see Carey v Five Bros., Inc.*, 60 AD3d 715; *Canaan v Costco Wholesale Membership, Inc.*, 49 AD3d 583, 585).

MASTRO, J.P., SKELOS, ROMAN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court