

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

D32067
G/prt

_____AD3d_____

Argued - June 21, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2009-09626

DECISION & ORDER

Nikiki Brash, respondent, v Neil M. Richards,
etc., defendant, Harrison Mu, etc., appellant.

(Index No. 14058/06)

Martin Clearwater & Bell LLP, New York, N.Y. (Arjay G. Yao, John L.A. Lyddane,
and Thomas A. Mobilia of counsel), for appellant.

Goldstein & Goldstein, Brooklyn, N.Y. (Cindy A. Moonsammy of counsel), for
respondent.

In an action to recover damages for medical malpractice and lack of informed consent,
the defendant Harrison Mu appeals, as limited by his brief, from so much of an order of the Supreme
Court, Kings County (Dabiri, J.), dated August 14, 2009, as denied his motion pursuant to CPLR
503(a), 510, and 511 to change the venue of the action from Kings County to Queens County.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the
exercise of discretion, with costs, the motion of the defendant Harrison Mu pursuant to CPLR 503(a),
510, and 511 to change the venue of the action from Kings County to Queens County is granted, and
the Clerk of the Supreme Court, Kings County, is directed to deliver to the Clerk of the Supreme
Court, Queens County, all papers filed in the action and certified copies of all minutes and entries (*see*
CPLR 511[d]).

A demand to change venue based on the designation of an improper county (*see* CPLR
510[1]) “shall be served with the answer or before the answer is served” (CPLR 511[a]; *see Thomas*
v Guttikonda, 68 AD3d 853, 854). Since the defendant Harrison Mu did not serve his demand for

August 9, 2011

Page 1.

BRASH v RICHARDS

a change of venue until after he served his answer, he was not entitled to change venue as of right (see *Thomas v Guttikonda*, 68 AD3d at 854; *Jeffrey L. Rosenberg & Assoc., LLC v Lajaunie*, 54 AD3d 813, 816; *Palla v Doctors Hosp. of Staten Is.*, 248 AD2d 603). Thus, his motion became one addressed to the Supreme Court's discretion (see *Thomas v Guttikonda*, 68 AD3d at 854; *Jeffrey L. Rosenberg & Assoc., LLC v Lajaunie*, 54 AD3d at 816; *Palla v Doctors Hosp. of Staten Is.*, 248 AD2d at 604).

Kings County is not a proper county here, as none of the parties resided there at the time the action was commenced (see *Herrera v R. Conley Inc.*, 52 AD3d 218; *Neu v St. John's Episcopal Hosp.*, 27 AD3d 538; *Peretzman v Elias*, 221 AD2d 192). When the plaintiff commenced this action, he did not specify the basis for placing venue in Kings County and, if based on his residence, he did not specify his address, as required by CPLR 305(a) (see *Accardi v Kaufmann*, 82 AD3d 803; *Philogene v Fuller Auto Leasing*, 167 AD2d 178; cf. *Thomas v Guttikonda*, 68 AD3d at 854). Further, Mu moved promptly to change venue after ascertaining the plaintiff's true residence (see *Neu v St. John's Episcopal Hosp.*, 27 AD3d at 539; *Supino v PV Holding Corp.*, 291 AD2d 489). Accordingly, the Supreme Court improvidently exercised its discretion in denying Mu's motion to change the venue of the action from Kings County to Queens County.

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court