

NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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**KAMAL ALSAIDI, individually and
derivatively on behalf of MOUNTAIN OF
SABER, LLC,**

Plaintiffs,

- against -

Index No. **808680/2022E**

Hon. **FIDEL E. GOMEZ**
Justice

**ALI ALSAEDE, CAPITAL A MANAGEMENT
NY INC., ABDO ALSAEDE, AHMED NASSER,
and ABDO M. NASSER,**

Defendants,

MOUNTAIN OF SABER, LLC,

Nominal Defendants.

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The following papers numbered 1 to 3, read on this motion, noticed on 6/29/2022, and duly submitted as no. 1 on the Motion Calendar of 6/29/2022.

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	

Defendants Ali Alsaede and Capital A Management NY Inc.'s motion to change venue is decided in accordance with the Decision and Order annexed hereto.

Dated: 9/7/22

Hon. 
FIDEL E. GOMEZ, A.J.S/C.

1. CHECK ONE..... CASE DISPOSED NON-FINAL DISPOSITION
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER DO NOT POST
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT
 NEXT APPEARANCE DATE: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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**KAMAL ALSAIDI, individually and
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SABER, LLC,**

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DECISION AND ORDER

- against -

Index No. **808680/2022E**

**ALI ALSAEDE, CAPITAL A MANAGEMENT
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Defendants,

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Defendants Ali Alsaede and Capital A Management NY Inc. (“Defendants”) move for an order transferring this action from Kings County to Bronx County pursuant to CPLR §§ 503, 510, and/or 511. Plaintiffs Kamal Alsaidi, individually and derivatively on behalf of Mountain of Saber, LLC (“Plaintiffs”) oppose. The remaining defendants do not oppose.

For the reasons which follow, Defendants’ motion is denied.

BACKGROUND:

On June 9, 2022, Defendants filed the instant motion. The motion was marked fully submitted on June 29, 2022.

DISCUSSION:

Motion to Change Venue:

Compliance with CPLR 511:

CPLR 511 provides that:

- (a) a demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. A motion for change of place of trial on any other ground

shall be made within a reasonable time after commencement of the action.

(b) The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant. Defendant may notice such motion to be heard as if the action were pending in the county he specified, unless plaintiff within five days after service of the demand serves an affidavit showing either that the county specified by the defendant is not proper or that the county designated by him is proper.

A motion to change venue based on improper venue requires compliance with CPLR 511. (*Pittman v Maher*, 202 AD2d 172, 174 [1st Dept 1994]). Failure to comply with the rule warrants a denial of the motion (*Siwek v Phillips*, 71 AD3d 469, 469-470 [1st Dept 2010]; *Singh v Becher*, 249 AD2d 154, 154 [1st Dept 1998]).

Here, the motion is untimely. The demand to change venue is dated May 16, 2022, and the attached affidavit of service indicates that it was served on the parties on May 16, 2022, by mail and by electronic means (Defendants' Exhibit A). As such, the motion was required to be filed by May 31, 2022, fifteen days later. This motion was filed on June 9, 2022.¹ An affidavit of service of the motion states that it was served on the parties on June 10, 2022, via overnight delivery service, and on June 11, 2022, via mail and by electronic means. Even affording Defendants the earlier date of service of the motion, June 10, 2022, the motion is untimely, as it was made 25 days after the demand was served (*See* CPLR § 2211 [“A motion on notice is made when a notice of the motion or order to show cause is served”]).

Moreover, even if the Court were to apply the five-day extension under CPLR 2103(b)(2)² to the 15-day time period required by CPLR 511(b), the motion would be untimely, as the deadline to make the motion would have been June 5, 2022.

Accordingly, Defendants' motion to change venue is denied.

¹ NYSCEF indicates that the original notice of motion was returned for correction. A corrected notice of motion was filed on June 13, 2022.

² “. . . service by mail shall be complete upon mailing; where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is made within the state and six days if the mailing is made from outside the state but within the geographic boundaries of the United States”.

It is hereby

ORDERED that the Clerk dismiss this action. It is further

ORDERED that Plaintiffs serve a copy of this Decision and Order upon all parties, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated:

9/7/22

Hon.


FIDEL E. GOMEZ, A.J.S.C.