

Khutaina v Silvercrest Ctr. for Nursing & Rehabilitation

2010 NY Slip Op 30067(U)

January 8, 2010

Supreme Court, New York County

Docket Number: 111882/2009

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

DEFENDANT: **ALICE SCHLESINGER**

IA PART 16

Index Number : 111882/2009
KHUTAINA, SAUL, AS EXECUTOR
VS.
THE SILVERCREST CENTER FOR NURSING
SEQUENCE NUMBER : # 001
CHANGE VENUE

Justice

INDEX NO. 111882-09
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

by defendant Dr. Pinhas is granted to the extent of transferring venue to Queens County in accordance with the accompanying memorandum decision.

FILED

JAN 14 2010

NEW YORK COUNTY CLERK'S OFFICE

JAN 08 2010

Dated: January 8, 2010

Alice Schlesinger

ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 16

-----X
SAUL KHUTAINA, as Executor of the Estate of
VIOLETTE KHUTAINA,

Plaintiff,

-against-

THE SILVERCREST CENTER FOR NURSING AND
REHABILITATION, STELLA PINHAS, M.D., ALLAN
SWERDLOFF, M.D., and FOREST HILLS HOSPITAL,

Defendants.

-----X
SCHLESINGER, J.:

Index No. 111882/2009
Motion Seq. Nos.
001, 002 and 003

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Before the Court in this medical malpractice action are three motions to change venue, all of which have been consolidated herein for disposition. Defendant Dr. Pinhas seeks to transfer venue from New York County to Queens County pursuant to CPLR §510, subd. 1, on the ground that New York County is not a proper county. According to the summons and complaint, and as confirmed by plaintiff in the opposition papers, plaintiff designated New York County for venue based on the alleged registration by Forest Hills Hospital with the Department of State as a corporation in the New York jurisdiction. However, defendant asserts that the designation is improper and that venue should be set in Queens County where all the facilities are located and all the relevant treatment was provided.

Defendant Forest Hills Hospital moves to change venue to Queens County for similar reasons. Counsel properly notes that, pursuant to CPLR §503©, a domestic corporation "shall be deemed a resident of the county in which its principal office is

located." He confirms that the principal place of business for Forest Hills Hospital is in Forest Hills, Queens, where the hospital is located. In addition, as indicated in the document relied upon by the plaintiff, the address for service of process on the Hospital is at its facility in Forest Hills, Queens. Counsel vigorously disputes that the document relied upon by the plaintiff constitutes a "designation" by the Hospital of New York as its principal place of business or its residence for venue purposes.

Lastly, defendant Dr. Swerdloff moves to change venue to Westchester County. Counsel joins his co-defendants in arguing that plaintiff's reliance on the Department of State document is misplaced and that New York is not a properly designated county. He suggests that venue be placed in Westchester County based on Dr. Swerdloff's affidavit attesting to his residence in Scarsdale for the last 23 years.

In opposition, plaintiff accuses the defendants of forum shopping. Counsel then cites various cases for the proposition that a corporation's designation on its certificate of incorporation of a particular county for its principal place of business is binding. As proof of the alleged New York County designation, plaintiff relies on the previously referenced printout relating to Forest Hills Hospital. In addition, for the first time, plaintiff seeks to set venue in this county based on the alleged residence of the defendant Silvercrest. As to both defendants, plaintiff relies solely on the computer printout from the website for the Department of State which appears to refer to New York County.

Forest Hills replies, maintaining its position and asserting that plaintiff cannot now rely on Silvercrest as the basis for venue. He correctly notes that the CPLR allows the plaintiff one opportunity to select venue, and that the defendants here have followed the requisite procedures for changing venue under CPLR §511 based on their assertion that

the plaintiff's choice was improper. What is more, in response to defendant's demand to change venue, plaintiff relied solely on the computer printout relating to Forest Hills, and made no mention of Silvercrest. Silvercrest takes no position on the motion.

Even if the plaintiff were able to point to Silvercrest now to support its designation of venue here, the Court finds that the documents offered by plaintiff do not constitute sufficient proof of either defendants' residence in New York County so as to establish a proper basis for venue. The documents are merely computer printouts from a Department of State website listing certain information about the corporation. The printouts are not certified documents. Nor are they copies of the actual certificates of incorporation. What is more, the reference to New York County is vague; it merely states "County: New York; Jurisdiction: New York." In contrast, the designated address for service of process is a clear and complete address in Queens.

Therefore, the Court agrees with defendants that New York is not a properly designated county and that they are entitled to a change of venue pursuant to CPLR §511. Since the various facilities are all located in Queens and Forest Hills Hospital has established its principal place of business there, and since all treatment was provided in Queens, venue shall be transferred there. Dr. Swerdloff will not be significantly inconvenienced or in any way prejudiced by having to travel from his home in Westchester to Queens County for these proceedings.

Accordingly, it is hereby

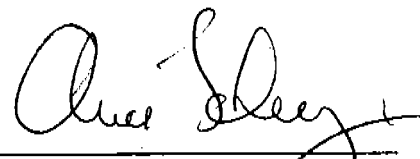
ORDERED that motions by the various defendants to change venue from New York County are granted; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Queens, and the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Queens, upon the service by counsel for Dr. Pinhas or any other movant of a copy of this order with notice of entry upon plaintiff, all co-defendants and the Clerk of the Court and the payment of appropriate fees, if any.

Dated: January 8, 2010

JAN 08 2010

ENTER:



J.S.C.

ALICE SCHLESINGER

FILED
JAN 14 2010
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