

**Clark v Archdiocese of N.Y.**

2012 NY Slip Op 32350(U)

June 19, 2012

Supreme Court, New York County

Docket Number: 102464/2011

Judge: Lucy Billings

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

PRESENT: \_\_\_\_\_  
Justice

PART 46

Index Number : 102464/2011

INDEX NO. \_\_\_\_\_

CLARK, GREGORY A.

MOTION DATE \_\_\_\_\_

vs

ARCHDIOCESE OF NEW YORK

MOTION SEQ. NO. \_\_\_\_\_

Sequence Number : 001

MOTION CAL. NO. \_\_\_\_\_

SUMMARY JUDGMENT

motion ~~to~~/for Summary judgment

PAPERS NUMBERED

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

1

Answering Affidavits — Exhibits \_\_\_\_\_

2, 4-5

Replying Affidavits \_\_\_\_\_

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Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered ~~that this motion~~ and adjudged that:

*The court grants defendant's motion for summary judgment dismissing the claims against defendant Archdiocese of New York, but denies their motion to change the venue of this action, pursuant to the accompanying decision. C.P.L.R. §§ 511(b), 3212 (b) and (e).*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/19/12

L. Williams

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

-----x

GREGORY A. CLARK, individually and  
as natural guardian to SOPHIA CLARK,  
an infant under the age of 18 years,

Index No. 102464/2011

Plaintiffs

- against -

DECISION AND ORDER

ARCHDIOCESE OF NEW YORK, CHURCH OF  
ST. JOHN EVANGELIST, and ST. JOHN  
EVANGELIST SCHOOL,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

Defendants move for summary judgment dismissing plaintiffs' claims against defendant Archdiocese of New York and, if the court grants that relief, to change the venue of this action to Putnam County, since venue in New York County is premised solely on the Archdiocese of New York's principal place of business here. C.P.L.R. §§ 510(1), 511(a) and (b), 3212(b) and (e). Plaintiffs claim Sophia Clark, a minor, whose father sues on her behalf, was injured December 3, 2010, by defendants' negligence in maintaining a table in their school cafeteria in an unsafe condition.

I. SUMMARY JUDGMENT DISMISSING DEFENDANT ARCHDIOCESE OF NEW YORK

Since defendants served their motion, they have stipulated to plaintiffs' conduct of disclosure to ascertain the extent of the Archdiocese of New York's ownership, operation, management, maintenance, supervision, or control over the premises,

facilities, and furnishings of the school where Sophia Clark was injured. Plaintiffs now have obtained all the documents and deposition testimony sought for purposes of defeating summary judgment in favor of the Archdiocese of New York, C.P.L.R. § 3212(f), yet uncovered no evidence regarding the Archdiocese's responsibility for maintenance of the school premises, facilities, or furnishings.

In particular, the deposition testimony of Sister Eileen Clifford, a vice chancellor of the Archdiocese of New York from September 2002 through at least December 2010, denied that the Archdiocese exercised any supervision or control over schools' funding, fundraising, or tuition or indebtedness plans or the safety of their facilities or furnishings. Although the Archdiocese of New York ultimately did discontinue subsidization to defendant St. John Evangelist School, where the child was injured, this decision was only in conjunction with the school's decision to close due to poor enrollment, a resulting lack of funds from tuition, escalating expenses, and the lack of prospects for reversing the school's decline.

The Archdiocese of New York did not, in any event, provide subsidies for the purchase of furniture. Schools in the Archdiocese of New York were responsible for their furniture.

Neither this testimony nor any other disclosure has rebutted defendants' prima facie defense that the Archdiocese of New York did not own, operate, manage, supervise, or control the St. John Evangelist School premises, facilities, or furnishings; was

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uninvolved in their maintenance; and did not employ any school employees. E.g., Hanlan v. Parkchester N. Condominium, Inc., 32 A.D.3d 799 (1st Dep't 2006); Jackson v. Board of Educ. of City of N.Y., 30 A.D.3d 57, 60 (1st Dep't 2006); Gibbs v. Port Auth. of N.Y., 17 A.D.3d 252, 254-55 (1st Dep't 2005); Walker v. Archdiocese of N.Y., 270 A.D.2d 127, 128 (1st Dep't 2000). See Kaplan v. New York Mercantile Exch., 55 A.D.3d 406 (1st Dep't 2008); Sew Wai Yong v. City of New York, 41 A.D.3d 212, 213 (1st Dep't 2007); Richardson v. Lenox Terrace Dev. Assoc., 41 A.D.3d 108, 109 (1st Dep't 2007); Abraham v. Port Auth. of N.Y. & N.J., 29 A.D.3d 345, 347 (1st Dep't 2006). Therefore the court grants defendants' motion insofar as it seeks summary judgment dismissing plaintiffs' claims against defendant Archdiocese of New York. C.P.L.R. § 3212(b) and (e).

## II. CHANGE OF VENUE

Defendants concede that their motion insofar as it seeks to change the venue of this action is untimely, having been served more than 15 days after their demand to change venue to which plaintiffs did not accede. C.P.L.R. § 511(b); Simon v. Usher, 17 N.Y.3d 625, 628 (2011); Banks v. New York State & Local Employees' Retirement Sys., 271 A.D.2d 252 (1st Dep't 2000); Singh v. Becher, 249 A.D.2d 154 (1st Dep't 1998); Newman v. Physicians' Reciprocal Insurers, 204 A.D.2d 210 (1st Dep't 1994). This deadline requires strict compliance. Collins v. Greenwood Mgt. Corp., 25 A.D.3d 447, 449 (1st Dep't 2006); Banks v. New York State & Local Employees' Retirement Sys., 271 A.D.2d 252;

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LaMantia v. North Shore Univ. Hosp., 259 A.D.2d 294 (1st Dep't 1999); Philogene v. Fuller Auto Leasing, 167 A.D.2d 178, 179 (1st Dep't 1990). The court's discretion regarding defendants' untimely motion to change venue, when based only on commencement of the action in a county outside C.P.L.R. § 503's scope, is limited to conformance with a contract provision regarding venue, policy dictates that place venue in another county, and consolidation. Newman v. Physicians' Reciprocal Insurers, 204 A.D.2d 210; Pittman v. Maher, 202 A.D.2d 172, 175 (1st Dep't 1994). See Herrera v. R. Conley Inc., 52 A.D.3d 218, 219 (1st Dep't 2008); Kurfis v. Shore Towers Condominium, 48 A.D.3d 300, 301 (1st Dep't 2008); Howard v. New York State Bd. of Parole, 5 A.D.3d 271, 272 (1st Dep't 2004); Banks v. New York State & Local Employees' Retirement Sys., 271 A.D.2d at 253.

Defendants do not claim that plaintiffs misled defendants as to the propriety of the venue selected, which would absolve defendants' failure to comply with the statutory time frames. Kurfis v. Shore Towers Condominium, 48 A.D.3d 300; Peretzman v. Elias, 221 A.D.2d 192 (1st Dep't 1995); Pittman v. Maher, 202 A.D.2d at 175; Koschak v. Gates Constr. Corp., 225 A.D.2d 315, 316 (2d Dep't 1996). See Collins v. Greenwood Mgt. Corp., 25 A.D.3d at 449; LaMantia v. North Shore Univ. Hosp., 259 A.D.2d 294; Philogene v. Fuller Auto Leasing, 167 A.D.2d at 179. Rather than misleading defendants into believing venue was adequately premised, the complaint readily disclosed that the basis for venue was defendant Archdiocese of New York's principal place of

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business.

Although defendants timely served a demand to change venue April 21, 2011, and 11 days later forwarded evidence of defendant Archdiocese's lack of ownership, operation, or control of the defendant school, plaintiffs never gave written consent to the change. Nor were defendants waiting for disclosure from plaintiffs to show defendant Archdiocese's lack of ownership, operation, control, supervision, management, or maintenance of the defendant school; defendants themselves were the best source of this information. Absent plaintiffs' consent to the change of venue, it then was incumbent on defendants to move to change venue within 15 days after April 21, 2011. C.P.L.R. §§ 509, 511(b); Banks v. New York State & Local Employees' Retirement Sys., 271 A.D.2d 252; Pittman v. Maher, 202 A.D.2d at 174. See Philogene v. Fuller Auto Leasing, 167 A.D.2d at 179. The failure to follow the statutory procedure thus deprives defendants of their right to a change and preserves plaintiffs' right to their choice of venue. C.P.L.R. §§ 509, 511(b); Herrera v. R. Conley Inc., 52 A.D.3d 218; Kurfis v. Shore Towers Condominium, 48 A.D.3d 300; Collins v. Greenwood Mgt. Corp., 25 A.D.3d at 449; Howard v. New York State Bd. of Parole, 5 A.D.3d at 272.

Consequently, while the court grants defendants' motion insofar as it seeks summary judgment dismissing plaintiffs' claims against defendant Archdiocese of New York, C.P.L.R. § 3212(b) and (e), the court denies defendants' motion insofar as it seeks to change the venue of this action to Putnam County.

C.P.L.R. § 511(b). This decision constitutes the court's order and judgment dismissing the claims against defendant Archdiocese of New York.

DATED: June 19, 2012

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.

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

GREGORY BLAKE AS PARENT & NATURAL  
GUARDIAN OF SYLVIA BLAKE  
vs.

INDIVIDUAL ASSIGNMENT PART 46

STIPULATION

INDEX NO. 102464/2011

MOTION CALENDAR NO.

DATE 10/20/11

ARCHDIOCESE OF NEW YORK,  
CHURCH OF ST. JOHN EVANGELIST  
AND ST. JOHN EVANGELIST SCHOOL

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

AS MOTION FOR SUMMARY JUDGMENT TO DISMISS  
ITS COMPLAINT AS AGAINST A ARCHDIOCESE, AND  
TO FURTHER TRANSFER VENUE FROM N.Y. COUNTY  
TO PUTNAM COUNTY IS ASSUMED TO ALLOW  
ITS TO PURSUE DISCOVERY ON THE ISSUE  
OF SUBSIDIES FROM A ARCHDIOCESE including depositions of  
Archdiocese and School.  
A MOTION ADJOURNED TO  
December 19, 2011.

Date: 10/20/11

So Ordered.

Christopher Black  
Attorney for Plaintiff Christopher Black

Christopher Wald  
Attorney for Defendant Christopher Wald

Attorney for Defendant

ENTER: Lucy Billings  
LUCY BILLINGS J.S.C.  
J.S.C.