

**Umana v Sofola**

2014 NY Slip Op 32192(U)

July 15, 2014

Supreme Court, Kings County

Docket Number: 505942/2013

Judge: Laura L. Jacobson

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FILED  
KINGS COUNTY CLERK  
2014 AUG 13 AM 9:28

At an IAS Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Borough of Brooklyn, City and State of New York, on the 15th day of July, 2014

PRESENT:

HON. LAURA L. JACOBSON.

Justice.

YANIRA UMANA, as administrator of the goods chattels and credits which were of KIMBERLY T UMANA AND YANIRA UMANA,

Decision/Order

Plaintiff,

-against-

Index No.:505942/2013

ADEOLA SOFOLA, M.D., BRUCE HENRY , M.D., HUDSON CENTER FOR WOMENS HEALTH, JONATHAN JANKUS, M.D., LORIE GREENBERG, M.D. MAJA DJORDJEVIC, M.D., NICOLAS KLEIN, M.D., NYACK HOSPITAL, et. al.

Defendant.

The following papers 1 to 4 read on the motion

Papers	Numbered
Notice of Motion and Affirmation Annexed	1-2
Affirmation in Opposition	3
Reply	4

Defendants Adeola Sofola, M.D., Maja Djordjevic, M.D., Bruce Henry, M.D. and Lorie Greenberg, M.D. move for an order pursuant to CPLR §503, CPLR §510 and CPLR §511 transferring venue of this action from Supreme Court, Kings County to Supreme Court, Rockland County.

This case arises from the death of Kimberly T. Umana who was treated by the defendants in Nyack Hospital which is located in Rockland County. Plaintiff commenced this action against defendants sounding in medical malpractice and wrongful death, by the electronic filing of a summons and complaint on October 16, 2013. Plaintiff placed venue of this action in Kings County based on the grounds that defendant Sofola's place of business is located in Brooklyn, New York. Issue was joined by the defendants and a demand for change of venue was served with the verified answer of defendant, Bruce Henry, M.D on April 1, 2014. Since plaintiff failed to respond to the written demand served with the verified answer within five (5) days, defendants moved for change of venue on April 10, 2014.

Defendants claim that they have met all procedural requirements. Defendants allege that this motion was made within fifteen (15) days after the written demand for a change of venue was served with defendant Henry's verified answer as required by CPLR §511. Defendants argue that venue was improperly placed in Kings County because Dr. Sofola is not a resident of Kings County and Dr. Sofola never provided any services to plaintiff's decedent in Kings County. Indeed, defendants allege that the proper place for venue is Rockland County because that is where services were provided to plaintiff's decedent.

Furthermore, defendants contend that pursuant to CPLR § 503(a), the general rule is that the place of trial shall be the county in which one of the parties resided when the action was commenced. Defendants assert that Dr. Sofola, the defendant on whose address venue is based, is a resident of Nassau County. Defendants further argue that the residence of a natural person is his or her abode, not his or her office. Defendants contend that there is no indication that any other co-defendant rendered treatment to plaintiff in Kings County. Defendants assert that although Dr. Sofola renders medical services at a medical office in Kings County, she did not provide any medical treatment to plaintiff's decedent at the Kings County office or at any facility in Kings County. Defendants further contend that the summons lists all other defendant's address in Rockland County except for defendant Djordjevic. Defendants assert that defendant Djordjevic never treated plaintiff's decedent in Kings County. Defendants further claim that the Letters of Limited Administration and the Decree Granting Limited Administration indicate that plaintiff's decedent was a Rockland County resident and that plaintiff resides in Rockland County. Defendants argue that since there is no nexus between any of the parties and Kings County, venue should be transferred to Rockland County.

In opposition to the motion, plaintiff argues that venue for this action was properly placed in Kings County because defendant Sofola's principal place of business, Adeola Sofola Physician, MB BCH, P.C., is located in Kings County. Plaintiff further contends that defendant did not file the written demand for change of venue separately from the answer. Plaintiff claims that the failure to indicate that they had filed the written demand in the E-filing or in their cover

letter was “surreptitious and unfair.” Plaintiff also notes that the written demand was only included in one (1) out of the five (5) answers filed by defendants’ counsel. Moreover, plaintiff claims that defendants have failed to advise the Court that defendant Sofola’s principal place of business is located in Kings County. Plaintiff alleges that pursuant to CPLR §503(a), venue is properly placed in the county where one of the parties’ principal place of business is located. Plaintiff argues that since defendant Sofola’s principal place of business is in Kings County, defendants’ motion must be denied. Plaintiff further asserts that defendants have failed to supply sufficient information such as names, addresses or the facts upon which witnesses are expected to testify in order to support a motion for change of venue based on the convenience of material witnesses.

In reply, defendants claim that the location of defendant Sofola’s principal place of business is irrelevant to determining venue because her office was not named as a party defendant. Defendants argue that the fact that defendant Sofola was named individually as a defendant, and that plaintiff’s decedent was never a patient of defendant Sofola’s professional corporation, makes defendant Sofola’s office irrelevant in determining the place of trial. Defendants also assert that they were under no obligation to disclose the existence of defendant Sofola’s medical office, because it was not named as a defendant and no relevant events occurred at the office.

Defendants further assert that plaintiff erred in his interpretation of CPLR § 503(a). Defendants claim that nowhere in the statute does it read that the place of trial should be where a party’s principal place of business is located. Additionally, defendants argue that plaintiff erroneously interpreted CPLR § 510,

by arguing that defendants were required, but failed, to submit information about non-party material witnesses. Defendants contend that such information is not required in this instance, since CPLR § 510 provides three (3) optional grounds for filing a motion for change of venue under the statute and the convenience of material witnesses is just one of them. Defendants assert that since CPLR 510 allows a motion to be filed on other grounds as well, there was no “requirement” to submit witness information.

To change venue as a matter of right on the grounds that the county designated was not proper (*see* CPLR 510[1]), a defendant is required to serve a demand for a change of place of trial pursuant to CPLR 511(a) (*Roman v Long Island Lighting, Co.*, 258 AD2d 454 [2<sup>nd</sup> Dept. 1999]). Here, defendants motion for change of venue was timely filed. Furthermore, defendants have met their burden of establishing that Kings County is an improper county for the trial of this action. Plaintiff based venue in Kings County solely upon the fact that defendant Sofola has a professional corporation whose principal place of business is located in Kings County. However, defendant Sofola’s professional corporation is not a named defendant in the action and plaintiff never received any treatment at the Kings County location. In this instance, where plaintiff’s action is not related to defendant Sofola’s professional corporation, Kings County is not a proper county in which to place the trial of this action (*see Berman v Gucciardo*, 50 AD3d 717 [2<sup>nd</sup> Dept. 2008]). Moreover, since defendants have established their entitlement to change of venue as of right, defendants do not have to satisfy the requirements for change of venue based on the convenience of witnesses. Finally, since plaintiff’s decedent was treated in Rockland County;

plaintiff resides in Rockland County and defendant Nyack Hospital is located in Rockland County, venue of this action is transferred to Rockland County (see *Goldberg v Bierman*, 35 Ad3d 807 [2<sup>nd</sup> Dept. 2006]).

Accordingly, defendants motion for change of venue from Kings County to Rockland County is granted; and it is further ORDERED that the Clerk of this County, upon service of a copy of this order and upon payment of the requisite fee if any, is directed to transmit all papers on file in the action bearing Index No.: 505942/2013 to the Clerk of the County of Rockland.

This constitutes the decision and order of the court.

Enter:



LAURA L. JACOBSON, JSC.

MISS. LAURA JACOBSON



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