

**Weingarten v Mair**

2015 NY Slip Op 30442(U)

March 20, 2015

Supreme Court, New York County

Docket Number: 805279/2014

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
LISA WEINGARTEN,

Plaintiff,

Index No. 805279/2014

- against -

**Decision and Order**

EVAN MAIR, M.D., and SOUTH NASSAU  
COMMUNITIES HOSPITAL,

Defendants.

-----X  
**JOAN B. LOBIS, J.S.C.:**

In this medical malpractice action, defendant Evan Mair, M.D. moves pursuant to sections 510(1) and 511(a) and (b) of the Civil Practice Law and Rules (“CPLR”) for a change of venue from this County to Nassau County. As is relevant here, the complaint bases venue on the assertion that Dr. Mair maintains an office in Manhattan, at NYU Langone Medical Center (“Langone”).

Dr. Mair answered the complaint on January 6, 2015, and demanded a change of venue to Nassau County as his first affirmative defense. He also filed a demand to change venue and, when plaintiff did not respond, brought this motion. He argues that under CPLR § 503(a) venue is proper in Nassau County because South Nassau Communities Hospital (“SNCH”), one of the parties, is located there and plaintiff lives there. Moreover, the statement that he has an office in Manhattan is incorrect. Instead, during all pertinent periods Dr. Mair has worked in Forest Hills, New York, and in Garden City, New York and not in New York County and resided in Woodbury, New York, in Nassau County. He states that although he works for Langone, he is based at its Forest Hills and Garden City offices only, and therefore the complaint inaccurately asserts that he

works in Langone's New York County offices. In support, he annexes the affirmation of Dr. Mair, which reiterates the allegations in the motion.

In opposition, plaintiff states Dr. Mair maintained an office in New York County when the actions at issue in the complaint occurred. She annexes a copy of his New York State Physician's Profile from the State's Department of Health website, which in addition to his Garden City and Forest Hills offices includes Langone's radiology department at 550 First Avenue, New York, New York; and the New York State Department of State database listing for NYU Hospitals Center, which lists 550 First Avenue, New York, New York as its proper address for the purpose of service. She claims that based on these listings Dr. Mair is estopped from claiming he did not have an office in New York County. She contends that she properly served Dr. Mair based on her adequate investigation and Dr. Mair has not established improper venue through documentary evidence. She further argues that Dr. Mair's affidavit is conclusory and not of evidentiary value.

Dr. Mair's reply reiterates his position that his offices are not located in New York County. He additionally raises the argument that the location of his offices is irrelevant because where, as here, an individual is the defendant, venue is proper in his county of residence and not where he does business. He resides in Nassau County and not New York county, he states, and for this reason New York County is not a proper venue. In support, Dr. Mair submits an affirmation to this effect. In addition, he submits a copy of a water bill from January 23, 2015. The bill notes that there were readings on October 1, 2014, and on January 2, 2015.

Venue is proper in a county if one of the parties resides there at the time of the commencement of the action. CPLR § 503(a). “The court, upon motion, may change the place of trial of an action where . . . the county designated for that purpose is not a proper county[.]” CPLR § 510(1). The defendant must demonstrate that the plaintiff chose an improper venue. See Fiallos v. New York Univ. Hosp., 85 A.D.3d 678, 678 (1st Dep’t 2011). If the defendant satisfies this burden the plaintiff must show his venue choice is proper. Young Sun Chung v. Kwah, 122 A.D.3d 729, 730 (2d Dep’t 2014).

If a doctor rather than his or her medical office is the defendant, the location of the office is not dispositive of venue. See Addo v. Melnick, 61 A.D.3d 453, -- (1st Dep’t 2009); Friedman v. Law, 60 A.D.2d 832, 833 (2d Dep’t 1978). However, if the doctor is sued in his medical capacity, venue lies in the county in which his or her office is located. See Young Sun Chung v. Kwah, 122 A.D.3d 729, 730 (2<sup>nd</sup> Dep’t 2014). The critical issue in this second situation is the location of the principal office, and the inclusion of a Manhattan office address on the New York State Directory of Physicians or elsewhere is not dispositive. DiCicco v. Cattani, 5 A.D.3d 318, 318 (1st Dep’t 2004). Even if the doctor’s work occasionally brings him or her into offices in another county, this does not create venue.

Here, the materials filed by both sides show that Dr. Mair’s principal office was not New York County during any of the relevant periods. As plaintiff notes, some websites include the Manhattan address of New York Langone as one of Dr. Mair’s places of business. However, this is not sufficient to show that this is his principal office. The physician database to which plaintiff points lists the doctor’s Forest Hills and Garden City offices along with the Langone

address. Significantly, it also indicates the doctor has hospital privileges at three hospitals, all of which are in Nassau County. Furthermore, plaintiff's reliance on the Department of State information for NYU Hospitals Center is not relevant. Despite Dr. Mair's affiliation with Langone, he and not Langone is a defendant and therefore Langone's Department of State listing is not relevant. To the extent that the doctor's personal residence is relevant, Dr. Mair has shown that he does not reside in New York County. The Court has considered plaintiff's additional arguments and finds them unpersuasive.

Accordingly, there is no basis for venue in this county, and it is

ORDERED that the motion is granted; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Nassau, and upon service by movant of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of the Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Nassau.

Dated: 11/20, 2015

ENTER:

  
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JOAN E. LOBIS, J.S.C.