

Bulgarelli v Farah

2021 NY Slip Op 32653(U)

December 8, 2021

Supreme Court, New York County

Docket Number: Index No. 153706/2021

Judge: Shawn T. Kelly

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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FLORENCE BULGARELLI, JOHN DEMAIO

Plaintiff,

- v -

JAMAL FARAH, SUHAILIA FARAH,

Defendant.

INDEX NO. 153706/2021

MOTION DATE 10/25/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. SHAWN KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23

were read on this motion to/for CHANGE VENUE

Defendants Jamal Farah and Suhailia Farah move to change venue of this action to Westchester County. A Demand for Change of Venue was served on plaintiff with the Answer on May 6, 2021. Defendants contend that Plaintiffs are tenants in the ground floor apartment at 261 Palisade Avenue, Yonkers, New York, a building owned by defendants and thus, venue should be based in Westchester County.

Plaintiffs filed suit basing venue in New York County on their alleged residence at 75 Maiden Lane, Suite 205 in Manhattan. Defendants contend that this address is plaintiff DeMaio's law office. They further state that Plaintiff DeMaio does not reside there, and could not do so, because 75 Maiden Lane is a commercial building with no residential apartments.

In opposition, Plaintiffs contend that they are partners in a partnership as they are both on the lease and share equal responsibility under it. Plaintiffs further state that all of the business of the partnership is conducted exclusively in New York County at 75 Maiden Lane, including the

hiring and payment of handymen, locksmiths, and exterminators. Additionally, Plaintiffs allege that all bills, including ConEd, Cable, and Cell Phones are received, processed, and paid at the Manhattan location and no business of any kind is ever conducted at 261 Palisade Avenue. Plaintiff DeMaio also states that he is the attorney for the partnership, with his place of business at 75 Maiden Lane. However, Plaintiffs do not submit any documents in support of their affidavits. Plaintiffs' contentions are do not raise an issue of fact sufficient to warrant a hearing as to proper venue.

Plaintiffs initiated this lawsuit alleging significant violations and breaches of the warranty of habitability. There is no dispute that the premises at issue are located in Westchester County. There being no other possible basis for placing venue in New York County, aside from the location of Plaintiff DeMaio's law office, the motion to change venue to Westchester County, where the parties reside and where the causes of action arose, is granted (*see* CPLR §503[d]; *Perez v Worby, Borowick, Groner, LLP*, 290 AD2d 233, 234, 735 NYS2d 112, 113 [2002]).

Cross-Motion to Amend the Complaint

Plaintiffs cross move to amend the complaint to allege a partnership at the property. Specifically, Plaintiffs seek to add factual allegations demonstrating that they are in a partnership, including:

The Plaintiffs are business partners at the Apartment sharing rent and expenses. Each has joint contact and management of the Apartment. All Partnership business is conducted at 75 Maiden Lane, New York, New York 10038 including hiring and firing of handymen, locksmiths, and exterminators. All bills including ConEdison, Cable, and cell phone are processed and paid at the Manhattan Address.
(NYSCEF Doc. No. 22).

Although leave to amend pleadings should be “freely given” (CPLR 3025[b]; *see Boakye–Yiadom v Roosevelt Union Free School Dist.*, 57 AD3d 929, 931, 871 NYS2d 314 [2008]), a court should deny such a motion when, as here, the proposed amendment is palpably insufficient or patently without merit (*see Congel v Malfitano*, 84 AD3d 1145, 1146, 924 NYS2d 129 [2011]; *Brooks v Robinson*, 56 AD3d 406, 867 NYS2d 133 [2008]; *Pedote v Kelly*, 124 AD3d 855, 856, 3 NYS3d 56 [2015]).

Accordingly, it is hereby

ORDERED that plaintiffs’ cross to motion to amend is denied; and it is further

ORDERED that defendants’ motion for a change of venue is granted and venue of this action is changed from this Court to the Supreme Court, County of Westchester; and it is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Westchester and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Westchester County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

12/8/2021

DATE



SHAWN KELLY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE