

<b>Gertsenshteyn v Staten Is. Univ. Hosp.</b>
2022 NY Slip Op 31049(U)
March 29, 2022
Supreme Court, New York County
Docket Number: Index No. 805263/2021
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

*Justice*

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LEONID GERTSENSHTEYN, as administrator of the estate  
of KHAYM GERTSENSHTEYN, deceased,

Plaintiff,

INDEX NO. 805263/2021

MOTION DATE 01/28/2022

MOTION SEQ. NO. 002

- v -

STATEN ISLAND UNIVERSITY HOSPITAL/NORTHWELL  
HEALTH and MOHAMMED HUSSAIN ZGHEIB, M.D.,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for

CHANGE VENUE

In this action to recover damages for medical malpractice, the defendant Mohammed Hussain Zgheib, M.D., moves pursuant to CPLR 511 to change the place of trial of this action from New York County to Richmond County. No party opposes the motion. The motion is granted, and the venue of this action is transferred to Richmond County.

The plaintiff commenced this action on August 27, 2021. On December 14, 2021, Zgheib answered the complaint, and simultaneously served a demand to change venue from New York County to Richmond County, alleging that New York County was not a proper county. Hence, the demand was timely served (see CPLR 511[a]). The plaintiff did not respond to the demand by serving an affidavit showing that the county that he specified was a proper county or that the county specified by Zgheib was an improper county (see CPLR 511[b]). Moreover, as required by CPLR 511(b), Zgheib made the instant motion within 15 days after serving his demand to change venue.

The basis for the plaintiff's designation of New York County as the place of trial was that one of the defendants resided in New York County on the date that he commenced this action.

Clearly, Staten Island University Hospital resides in Richmond County for the purposes of venue, as Zgheib has demonstrated by submitting a copy of the hospital's registration with the New York State Department of State. Hence, the plaintiff essentially asserted that Zgheib resided in New York County as of the date that he commenced this action.

In the affidavit that Zgheib submitted in support of his motion, however, he asserted that his "residence has been exclusive to Richmond County, Staten Island, NY, since February 2019." Specifically, he asserted that

"[i]n February 2019, following a marital separation, I moved into an apartment owned by and located above my medical practice at 1497 Richmond Road Staten Island NY 10304. I lived in this apartment continuously from February 2019 until October 2021.

"While I lived at 1497 Richmond Road address, my mailing address was the other location of my medical practice at 1112 South Avenue, Staten Island, NY, 10314."

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"While I own rental property in Manhattan, NY, I have not been a Manhattan resident since February 2019, and I do not spend time at my properties in Manhattan, nor do I stay overnight at my rental properties in Manhattan. I have not lived in Manhattan since February 2019 due to a marital separation followed by divorce proceedings during which I have lived continuously in Richmond County, Staten Island, NY."

Zgheib thus averred that, although his driver license still shows an address at his former Manhattan residence because it was issued in 2018, he had already moved to Staten Island six months prior to the plaintiff's commencement of this action, has lived on Staten Island continuously since that date, and has applied for a loan to purchase a house on Staten Island. Zgheib submitted bank records from 2021 showing that he resided on Staten Island during that year and that he was in the process of purchasing a house there.

CPLR 503(a) provides, in relevant part, that

"[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred."

“For venue purposes, a residence is where a party stays for some time with a bona fide intent to retain the place as a residence for some length of time and with some degree of permanency” (*Schaefer v Schwartz*, 226 AD2d 619, 620 [2d Dept 1996]; see *Sibrizzi v Mt. Tom Day School*, 155 AD2d 337, 338 [1st Dept 1989]). Zgheib established, with documentary evidence as well as his own affidavit, that Richmond County became his residence for venue purposes six months prior to the commencement of this action. Inasmuch as no party to this action resided in New York County on the date that the action was commenced, and all of the events and omissions giving rise to this medical malpractice action occurred in Richmond County, venue of this action must be transferred to Richmond County.

Moreover, a proper balancing of relevant factors, including the residence of all of the parties in Richmond County, the fact that the hospital made a separate motion to transfer venue to Richmond County, certainty and predictability in the resolution of disputes, and the avoidance of inconsistent judgments, warrants the transfer of the entire action to Richmond County, rather than the severance and transfer only of the claims asserted against Zgheib (see *New York State Workers' Compensation Bd. v Episcopal Church Home & Affiliates, Inc.*, 64 Misc 3d 176 [Sup Ct, Albany County 2019]).

Accordingly, it is

ORDERED that the motion of the defendant Mohammed Hussain Zgheib, M.D., to transfer venue of this action from New York County to Richmond County is granted, without opposition, and the entire action is transferred to the Supreme Court, Richmond County, for consideration and disposition; and it is further,

ORDERED that within 30 days after the entry of this order, the defendant Mohammed Hussain Zgheib, M.D., shall file an EF-22 form and the statement required by CPLR 8019(c), and shall also serve them upon the New York County Clerk, as Clerk of the Supreme Court, New York County, along with a copy of this order and notice of entry of this order, and shall also

serve a copy of this order and notice of entry of this order upon the Richmond County Clerk, as Clerk of the Supreme Court, Richmond County; and it is further,

ORDERED that upon service upon him of the EF-22 form, the statement required by CPLR 8019(c), and a copy of this order with notice of entry, the New York County Clerk, as Clerk of the Supreme Court, New York County, is directed to deliver to the Richmond County Clerk, as Clerk of the Supreme Court, Richmond County, all papers filed in the action entitled *Gertsenshteyn v Staten Is. Univ. Hosp./Northwell Health.*, under New York County Index No. 805263/2021, and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.

3/29/2022

DATE

  
JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE