

<b>Melendez v KFG Operating I, LLC</b>
2022 NY Slip Op 33040(U)
September 7, 2022
Supreme Court, Kings County
Docket Number: Index No. 500536/2022
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: Part 36

-----X  
YVONNE MELENDEZ, as Administrator of the Estate of  
CHELSTON JACKSON,

Plaintiff,

-against-

KFG OPERATING I, LLC and THE NEW YORK  
METHODIST HOSPITAL

Defendants,  
-----X

Index No.: 500536/2022

**DECISION/ORDER**

**Hon. Bernard J. Graham**  
Supreme Court Justice

**Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion to: change venue from Kings County to Richmond County pursuant to CPLR §501 and §510.**

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Annexed.....	1-2
Order to Show cause and Affidavits Annexed.....	_____
Answering Affidavits.....	3
Replying Affidavits.....	4
Exhibits.....	_____
Other: ..... (memo).....	_____

**Upon the foregoing cited papers, the Decision/Order on this motion is as follows:**

Counsel for defendant, KFG OPERATING I, LLC, has moved to change venue of this medical malpractice action, pursuant to CPLR §501 and §510, from Kings County to Richmond County Supreme Court.

The present lawsuit was initiated on behalf of the plaintiff, Yvonne Melendez, as Administrator of the Estate of Chelston Jackson (hereinafter “Yvonne Melendez”) in Kings County Supreme Court by service of a summons and complaint on or about January 6, 2022. Plaintiff selected Kings County as the venue based upon the place of business of the defendant, The New York Methodist Hospital (“Methodist”), which is situated in Brooklyn, New York.

Plaintiff's counsel opposes the motion for change of venue from Kings to Richmond County. Argument was heard virtually via Microsoft Teams on May 12, 2022.

### DISCUSSION

The issue is whether the proper venue of this matter should be Richmond County, based upon a forum selection clause in an Admission Agreement which provides that all litigation should be initiated in Richmond County.

Defendant moves to change venue pursuant to CPLR §501 and §510 and the Admission Agreement signed by Plaintiff on September 5, 2018 on behalf of her spouse ("decedent"), which agreement is alleged to be binding "on the parties, heirs, administrators, distributees, successors, and assignees." (See the Admission Agreement annexed to Defendant's motion as Exhibit "C"). The Agreement contains a forum selection clause specifically stating that "any action arising out of or related to a dispute under this Agreement shall be brought in the State or District Court located in Richmond County, New York." CPLR §501 states that, subject to the provisions of CPLR §510 (2), a written agreement fixing the place of trial shall be enforced upon a motion for change of place of trial.

Plaintiff submits opposition to the relief sought for a change of venue, arguing that venue is proper because New York Methodist Hospital's place of business is situated in Kings County. (See CPLR §503). Plaintiff has argued that the Admission Agreement offers no proof of authenticity of that document or the signatures that defendants rely on to support their argument. Plaintiff further argues that the forum selection clause is not highlighted in any notable way that would make it readily identifiable to anyone reviewing the document. Furthermore, Ms. Melendez attests that she does not recall signing the Agreement nor does she recollect that

anyone at the defendant facility explained the clause or that it meant she was relinquishing the legal rights of herself or that of her spouse.

Evidence of authenticity may be satisfied by the testimony of a witness who was present at the time and saw the person make or sign the instrument. (See *Andreyeva v. Haym Solomon Home for the Aged, LLC* 190 A.D.3d 801 [2d Dept. 2021]).

It is generally accepted case law that a contractual forum selection clause is valid and enforceable unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court. (See *Casale v. Sheepshead Nursing & Rehabilitation Ctr.* 131 A.D.3d 436 [2d Dept. 2015]).

In the present case, this Court finds that the venue should be situated in Richmond County Supreme Court, pursuant to CPLR §501 and §510, and as mandated by the Admission Agreement. This Court also finds that the requirement of evidence of authenticity was satisfied as established by the affidavit from the defendant's medical coordinator, Marilyn Morales. The Court considered plaintiff's contentions that 1) the forum selection clause is not highlighted in any notable way, and 2) Ms. Melendez does not recall signing the Agreement or having anyone at the defendant facility explain it to her. However, these arguments are not persuasive because the affidavit shows that the Admission Agreement was explained to Ms. Melendez in layman terms and that she verbally comprehended the contents of the Agreement and signed her initials on all ten (10) pages of the Agreement.

In the *Casale* case, which is very similar to the instant case, the decedent was a resident of Sheepshead Nursing & Rehabilitation Center, a residential health care facility located in

Brooklyn, New York. Upon the decedent's admission to the facility, the decedent's spouse signed an Admission Agreement that contained a forum selection clause reciting that “[a]ny and all actions arising out of or related to this Agreement . . . shall be brought in . . . the New York State Supreme Court, located in Nassau, New York.” *Casale v SNRC*, 131 AD3d at 437. Following the decedent's death, the plaintiff commenced an action against the facility in Kings County Supreme Court. The facility moved to transfer venue to Nassau County, which was denied by the Supreme Court. The Appellate Court held that “the Supreme Court erred and should have granted the Sheepshead Nursing and Rehabilitation Center’s motion, pursuant to CPLR 501, 510, and 511, to change the venue of the action from Kings County to Nassau County.” *Casale v SNRC*, 131 AD3d at 437. Here, the facts are almost identical and, as such, venue should be situated in Richmond County in accordance with the Admission Agreement.

#### CONCLUSION

Based on the facts of the case and the provisions of CPLR §501 and §510, Defendant’s motion to transfer venue from Kings County to Richmond County Supreme Court is granted. The evidence shows that the Admission Agreement was properly signed by Ms. Melendez, and no evidence is offered to show that the Agreement was unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court.

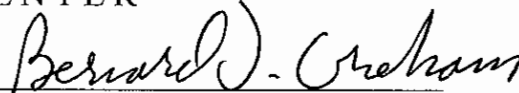
The contractual forum selection clause is therefore valid and enforceable pursuant to CPLR §501 and §510, and generally accepted case law (See *Casale v. Sheepshead Nursing & Rehabilitation Ctr.* 131 A.D.3d at 436).

Accordingly, the Clerk of the Kings County Supreme Court is directed to transfer this matter to the Chief Clerk of the Richmond County Supreme Court.

This shall constitute the decision and order of this Court.

Dated: September 7, 2022  
Brooklyn, NY

ENTER

  
Hon. Bernard J. Graham, Justice  
Supreme Court, Kings County

**HON. BERNARD J. GRAHAM**