

**Metropolitan Transp. Auth. v Roth & Roth, LLP**

2023 NY Slip Op 30688(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 453028/2022

Judge: Laurence L. Love

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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**

**PRESENT:** HON. LAURENCE L. LOVE **PART** **63M**

*Justice*

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METROPOLITAN TRANSPORTATION AUTHORITY, NEW  
YORK CITY TRANSIT AUTHORITY

Petitioner,

- v -

ROTH & ROTH, LLP,

Respondent.

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**INDEX NO.** 453028/2022

**MOTION DATE** 12/13/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for CHANGE VENUE.

Upon the foregoing documents, the instant Petition is resolved as follows:

Petitioners filed the instant Petition on November 28, 2022, seeking an Order transferring the action of *Roth & Roth, LLP v. NYCTA and MTA*, Index No. 817193/2022E (Sup. Ct. Bronx Cnty.) to New York County pursuant to CPLR 511 based upon allegedly improper venue.

As described in the Petition, On July 1, 2022, Roth & Roth, through its agent Briana Bermudez, submitted three FOIL requests through the MTA’s online FOIL Portal (“FOIL Portal”), which were confirmed received by the MTA on July 8, 2022. On October 12, 2022 and October 17, 2022, Roth & Roth submitted administrative appeals of purported “constructive denials” of its requests, having not received the requested items. In letters dated October 31, November 4, and November 7, 2022, Petitioner responded to said letters, seeking an additional 65 days to respond to Respondent’s FOIL request, resulting in the filing of the Bronx County Petition at issue here.

As described in Respondent’s opposition, the underlying FOIL request and Article 78 petition related to an incident where Kevin Thomas was injured on November 8, 2021, when he

was struck by a 2 train at the Pelham Parkway subway station, Bronx, NY. As a result, Kevin Thomas was completely medically incapacitated for the 90 days immediately following the incident, and thus was unable to file a notice of claim within the statutory deadline. Kevin Thomas' mother and proposed guardian, Rehenia Jones, filed a petition requesting permission to file a late notice of claim, filed as *Kevin Leon Thomas by his mother and proposed Guardian Rehenia Jones vs. New York City Transit Authority and Metropolitan Transportation Authority*, Index No. 809996/2022E (Sup Ct. Bronx Co). Said Petition was denied without prejudice for Mr. Thomas to resubmit a petition after additional information was obtained, resulting in the filing of the FOIL requests at issue. The Court notes that in a stipulation dated January 18, 2023, it was "STIPULATED AND AGREED that the Notice of Claim on behalf of KEVIN LEON THOMAS dated June 24, 2022 and filed with Respondents on June 24, 2022, be deemed timely served and filed Nunc Pro Tunc." As such, the underlying Petition and the instant Petition seeking to change venue are likely moot as the items demanded by Roth & Roth will clearly be demanded in the standard discovery following the filing of a personal injury action.

Following the November 16, 2022 filing of the underlying Petition, on November 19, 2022, MTA and NYCTA served a Demand to Change Venue, which Respondents herein failed to respond to within the time limit of CPLR 511(b). As such, Petitioners are entitled to a change of venue as of right.

Pursuant to CPLR 7804, "[a] proceeding under this article shall be brought in the supreme court in the county specified in subdivision (b) of section 506 except as that subdivision otherwise provides." Pursuant to CPLR 506(b) "[a] proceeding against a body or officer shall be commenced in any county... where [1] the respondent made the determination complained of..., or [2] where

the material events otherwise took place, or [3] where the principal office of the respondent is located.”

The MTA’s principal office is in New York County at 2 Broadway, New York, New York. The NYCTA’s principal office is in Kings County at 130 Livingston Street, Brooklyn, New York, but it also maintains offices at 2 Broadway, New York, New York. The MTA FOIL Team’s staff who process and prepare responses to FOIL requests addressed to MTA and its subsidiaries and affiliates (“MTA FOIL Team”) work out of 2 Broadway, New York, New York. As such, all three factors would indicate that the proper venue is New York County.

In opposition, Respondent argues that the material events at issue took place in the Bronx as the FOIL requests at issue seek information relating to a subway accident in the Bronx, citing, *In the Matter of Riccelli Enters., Inc. v. State of New York Workers' Comp. Bd.*, (2012 N.Y. Misc. LEXIS 2241, 28–31 (N.Y. Sup.Ct. Apr. 30, 2012); *Hecht v. New York State Teachers Retirement System*, (138 Misc.2d 198[Sup Ct, Suffolk County 1987); and *Bros. of Mercy Nursing & Rehab. Ctr. v. Debuono*, 237 A.D.2d 907, 907–908 (1997) for the proposition that “[t]he location of the material events is ‘the county wherein occurred the underlying events which gave rise to the official action complained of.’”

However, in the context of FOIL, the issue is where the request is made, where the records are kept, and where the deliberations took place. As discussed in *Cortex Tel., LLC v. N.Y. State Dep’t of Health*, No. 155606/2021, 2022 N.Y. Misc. LEXIS 87 (Sup. Ct. N.Y. Cnty. Jan. 11, 2022), “for the purposes of FOIL determinations, the term ‘material events’ does not encompass the underlying occurrences that generated the agency records that are sought. Rather, material events in the context of an agency’s FOIL determination are limited to where the records are stored, the office to which the FOIL request was made, and the place where deliberations and determinations

concerning that request were conducted and concluded” *See also, Donofrio v. City of N.Y.*, 2019 N.Y. Misc. LEXIS 8731, at \*4 (Sup. Ct. N.Y. Cnty. Nov. 27, 2019); *N.Y. Racing Assoc., Inc. v. State of N.Y. Div. of Budget*, No. 102611/2009, 2009 N.Y. Misc. LEXIS 4000, at \*14-15 (Sup. Ct. N.Y. Cnty. July 9, 2009).

ORDERED that the motion of Petitioners Metropolitan Transportation Authority and New York City Transit Authority to change the venue of *Roth & Roth, LLP v. NYCTA and MTA*, Index No. 817193/2022E is granted and venue is changed from the Supreme Court, County of Bronx, to this Court; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order on the Clerk of the Supreme Court, Bronx County, shall pay the appropriate transfer fee, if any, and shall contact the staff of said Clerk and cooperate in arranging the transfer of the file; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County shall transfer to the Clerk of the Supreme Court, New York County the file in the action venued in that court; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Bronx County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

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

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a copy of this order with notice of entry on the Clerk of this Court; and it is further

ORDERED that the Clerk of this Court, upon service of a copy of this order with notice of

entry and the transfer of the file to this court, shall, without a further fee, assign a New York County Index Number to the transferred action and record such action in the Clerk's records; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred pursuant to this order under the New York County Index Number of the transferred action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents; and it is further

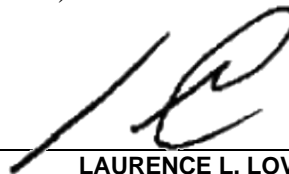
ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office, together with a Request for Judicial Intervention ("RJI") for the transferred action or, if an RJI was filed in the action while pending in Supreme Court, Bronx County, a copy of that RJI (in which event, no additional fee shall be charged therefor); and it is further

ORDERED that, upon the service of such documents, the Clerk of the General Clerk's Office shall mark the court's records to reflect the transfer and assign the transferred action to the undersigned Justice of this court; and it is further

ORDERED that service upon the Clerk of this Court and the Clerk of the General Clerk's Office shall be made in hard-copy form if the application herein has been made in hard-copy format or, if the application has been electronically filed, 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 this court's website).

3/7/2023

DATE



LAURENCE L. LOVE, J.S.C.