

**City of New York v County of Rockland**

2023 NY Slip Op 32482(U)

July 19, 2023

Supreme Court, New York County

Docket Number: Index No. 451368/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK**

**PART**

**11M**

*Justice*

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THE CITY OF NEW YORK, MOLLY WASOW PARK,

Petitioner,

**INDEX NO. 451368/2023**

**MOTION DATE 07/12/2023**

**MOTION SEQ. NO. 011**

- v -

COUNTY OF ROCKLAND, NEW YORK, EDWIN J. DAY,  
COUNTY OF ORANGE, NEW YORK, STEVEN M.  
NEUHAUS, COUNTY OF DUTCHESS, NEW YORK,  
WILLIAM F.X. ONEIL, COUNTY OF ONONDAGA, NEW  
YORK, J RYAN MCMAHON, COUNTY OF BROOME, NEW  
YORK, JASON T. GARNAR, COUNTY OF CAYUGA, NEW  
YORK, DAVID S. GOULD, COUNTY OF CHAUTAUQUA,  
NEW YORK, PAUL M. WENDEL, COUNTY OF CHEMUNG,  
NEW YORK, CHRISTOPHER J. MOSS, COUNTY OF  
CORTLAND, NEW YORK, KEVIN J. FITCH, COUNTY OF  
DELAWARE, NEW YORK, TINA MOLE, COUNTY OF  
FULTON, NEW YORK, SCOTT HORTON, COUNTY OF  
GENESEE, NEW YORK, L MATTHEW LANDERS,  
COUNTY OF GREENE, NEW YORK, PATRICK S. LINGER,  
COUNTY OF HERKIMER, NEW YORK, VINCENT J. BONO,  
COUNTY OF MADISON, NEW YORK, JOHN M. BECKER,  
COUNTY OF NIAGARA, NEW YORK, REBECCA  
WYDYSH, COUNTY OF ONEIDA, NEW YORK, ANTHONY  
J. PICENTE, COUNTY OF ORLEANS, NEW YORK, LYNNE  
M. JOHNSON M. JOHNSON, COUNTY OF OSWEGO,  
NEW YORK, JAMES WEATHERUP, COUNTY OF  
OTSEGO, NEW YORK, DAVID BLISS, COUNTY OF  
PUTNAM, NEW YORK, KEVIN M. BYRNE, COUNTY OF  
RENSSELAER, NEW YORK, STEVEN F. MCLAUGHLIN,  
TOWN OF RIVERHEAD, NEW YORK, YVETTE M.  
AGUIAR, COUNTY OF SARATOGA, NEW YORK,  
THEODORE T. KUSNIERZ, COUNTY OF SCHOHARIE,  
NEW YORK, WILLIAM A. FEDERICE, COUNTY OF  
SCHUYLER, NEW YORK, CARL H. BLOWERS, COUNTY  
OF SUFFOLK, NEW YORK, STEVEN BELLONE, COUNTY  
OF SULLIVAN, NEW YORK, JOSHUA A. POTOSEK,  
COUNTY OF TIOGA, NEW YORK, MARTHA C.  
SAUERBREY, COUNTY OF WARREN, NEW YORK, KEVIN  
B. GERAGHTY, COUNTY OF WYOMING, NEW YORK,  
REBECCA J. RYAN, JOHN OR JANE DOE COUNTIES,  
JOHN OR JANE DOE,

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 132, 133, 134, 135, 136, 137, 223, 329, 330, 331, 332, 448

were read on this motion to/for

DISMISS

The instant action arises out of petitioners', The City of New York and Molly Wasow Park, in her official capacity as Commissioner of the New York City Department of Social Services (collectively "the City") challenge to respondents' Executive Orders with respect to petitioners' attempt to relocate migrants to the respective counties and towns<sup>1</sup>. Respondents, County of Onondaga and J. Ryan McMahon, II, move to dismiss the petition pursuant to CPLR § 3211(a)(3), § 3211(a)(4), and § 3211(a)(7). The City opposes the motion on the grounds, *inter alia*, that the causes of action are not similar and it was not required to assert counterclaims in the pending action in Onondaga County. For the reasons set forth below, respondents' motion is granted to the extent that the action is severed, and the matter is transferred to Supreme Court Onondaga County.

Respondents initiated an action against the City in Onondaga County Supreme Court, wherein it sought and was granted a temporary restraining order prohibiting the City from transporting migrants into the County. The parties do not dispute that this action and the action pending in Onondaga County arise out of the same factual circumstances" and contain similar legal issues.

Respondents contend that the City should have objected to venue in the Onondaga County and/or asserted its counterclaims in that action. The City contends that counterclaims are not compulsory and the fact that it could have asserted its claims in the underlying action is not dispositive, rather the City contends that it will serve judicial economy and convenience for itself

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<sup>1</sup> There are multiple motions to sever, change venue and dismiss. For the sake of clarity, the Court will address each application separately and individual decisions and orders will be issued.

to maintain the action in New York County. In support of its contention that venue is appropriate in this Court is the repeated assertion that the material events giving rise to the instant litigation occurred and is occurring in New York County.

The Court does not find the City's arguments persuasive. First, the material events giving rise to the litigation is not the influx of migrants arriving in New York City, the material events are the issuance and enforcement of the Executive Orders issued by respondents. The petition and the relief sought make that clear. With respect to judicial economy, there could be no more of an illustration of a waste of judicial resources and possibility of inconsistent judgments, then what petitioners have done here, which is initiate a new action in a different county other than the county where an action is already pending based on the same facts, circumstances and legal issues without moving to change venue. Accordingly, it is hereby

ADJUDGED that the motion by respondents, County of Onondaga and J. Ryan McMahon, II, is granted in part; and it is further

ORDERED that the action is severed and continued against the remaining respondents; and it is further

ORDERED that the caption be amended to reflect the severance and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsels for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the motion for a change of venue is granted and venue of this action as against respondents, County of Onondaga and J. Ryan McMahon, II, is changed from this Court to the Supreme Court, County of Onondaga; 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 Onondaga 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, Onondaga 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 the Court and the Clerk of the General Clerk’s Office 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](http://www.nycourts.gov/supctmanh)).

7/19/2023  
DATE

  
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LYLE E. FRANK, 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