

City of New York v County of Rockland
2023 NY Slip Op 32490(U)
July 19, 2023
Supreme Court, New York County
Docket Number: Index No. 451368/2023
Judge: Lyle E. Frank
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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,

- v -

INDEX NO. 451368/2023MOTION DATE 07/11/2023,
07/11/2023MOTION SEQ. NO. 009 010

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,

**AMENDED DECISION + ORDER
ON MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 139, 140, 141, 142, 143, 144, 145, 146, 199, 325, 326, 327, 328, (Motion 004) 116, 117, 118, 119, 120, 121, 122, 123, 131, 177, 214, 220, 309, 310, 311, 312, 455, 456, 472

were read on this motion to/for

CHANGE VENUE

The following e-filed documents, listed by NYSCEF document number (Motion 010) 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 261, 262, 457, 458, 459, 460, 461, 462, 473

were read on this motion to/for

DISMISSAL

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 towns¹. Respondents, the County of Niagara and Rebecca Wydysh, in her official capacity as Legislature Chair of Niagara County, move to sever and change venue (mot. seq. 009²) and move to dismiss the petition (mot. seq. 010). The City opposes the instant motion. For the reasons set forth below, the motion to change venue is granted and the motion to dismiss is held in abeyance for determination by the Supreme Court Niagara County.

Respondents contend that pursuant to CPLR § 504 and CPLR § 506(b) the instant action must be severed and transferred to Niagara County absent compelling circumstances. In opposition, the City contends that it will serve judicial economy and convenience for itself 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.

¹ 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.

² The movant sought the same relief under another motion sequence number, motion sequence 004, the documents filed with respect to that motion were reviewed for the purposes of deciding the instant motion sequence, as indicated above.

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 that give rise to this instant litigation are the issuance and enforcement of the Executive Orders issued by respondents. The petition and the relief sought make that clear. Moreover, the Court finds that the City has failed to establish any compelling circumstances as to warrant that venue remain in New York County in violation of the applicable statutes that mandate the judicial proceeding or action against a county to be in said county or in the "judicial district where the respondent made the determination complained of." CPLR §§ 504, 506(b). Accordingly, it is hereby

ADJUDGED that the motion by respondents, the County of Niagara and Rebecca Wydysh, in her official capacity as Legislature Chair of Niagara County, to dismiss (motion sequence 010) is held in abeyance for determination by a Justice in the Supreme Court Niagara County; and it is further

ORDERED that the motion for a change of venue and to sever (motion sequence 009) is granted and venue of this action as against respondents, the County of Niagara and Rebecca Wydysh, in her official capacity as Legislature Chair of Niagara County is changed from this Court to the Supreme Court, County of Niagara; 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 Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Niagara 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, Niagara 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).

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7/19/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

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REFERENCE