

Desposito v Jung

2023 NY Slip Op 34157(U)

December 1, 2023

Supreme Court, New York County

Docket Number: Index No. 154370/2023

Judge: Erika M. Edwards

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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**

<p>PRESENT: <u>HON. ERIKA M. EDWARDS</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>SALLY DESPOSITO as Administrator of the Estate of DOROTHY VACCARO, deceased,</p> <p align="center">Plaintiff,</p>	<p>PART 10M</p> <p>INDEX NO. <u>154370/2023</u></p> <p>MOTION DATE <u>09/05/2023</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
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<p>LANCE JUNG, MD, SEAVIEW HOSPITAL REHABILITATION CENTER and HOME, and NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,</p> <p align="center">Defendants.</p>	<p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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 court grants Defendants New York City Health and Hospitals Corporation s/h/a Seaview Hospital Rehabilitation Center’s and Home and New York City Health and Hospitals Corporation’s (“NYCHHC”) motion to grant leave to serve a demand for change of venue; to deem the demand to change venue as timely served *nunc pro tunc*; and to transfer this action from New York County to Richmond County. Additionally, the court grants Defendant Lance Jung, M.D.’s (“Jung”) cross-motion to transfer this action from New York County to Richmond County.

Defendants NYCHHC and Jung (collectively “Defendants”) respectively move and cross-move to transfer the present matter from New York County to Richmond County. Defendants argue in substance Plaintiff Sally Desposito as Administrator of the Estate of Dorothy Vaccaro, deceased, initiated the action in the wrong county. Defendants argue in substance that in accordance with Section 7401(3) of the Unconsolidated Laws of New York, actions against NYCHHC are to be brought in the county where the action arose, which in this matter is Richmond County. Defendants further argue that as the action arose in Richmond County, the witnesses are also located in Richmond County, and the witnesses are inconvenienced by this matter being venued in New York County. NYCHHC specifically argues in substance that it served Plaintiff with a demand to change venue and Plaintiff rejected the demand. As such, Defendants separately moved to change venue and transfer this action from New York County to Richmond County.

Plaintiff opposes NYCHHC’s motion and Jung’s cross-motion to change venue. Plaintiff argues in substance that NYCHHC failed to serve its demand for change either before or at the

time it served its answer to the Plaintiff's complaint as required by CPLR § 511(a) and (b). Plaintiff further argues in substance that NYCHHC failed to provide a reasonable excuse for its delay in serving its demand to change venue. Plaintiff contends that New York County is a proper venue as NYCHHC's principal place of business is in this county. Plaintiff further contends that Defendants failed to show how any potential witnesses will be inconvenienced by the action staying in New York County.

CPLR § 511(a) and (b) state that:

- (a) Time for motion or demand. A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. . . .
- (b) Demand for change of place of trial upon ground of improper venue, where motion made. The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant. . . . (*see* CPLR § 511[a] and [b]).

CPLR § 2004 states “[e]xcept where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed” (CPLR § 2004).

Pursuant to CPLR 505(a), the "place of trial of an action by or against a public authority constituted under the laws of the state shall be in the county in which the authority has its principal office or where it has facilities involved in the action” (see CPLR 505[a]). However, Unconsolidated Laws of New York § 7401(3) states that “[a]ll actions against the corporation of whatever nature shall be brought in the city of New York, in the county within the city in which the cause of action arose, or if it arose outside of the city, in the county of New York (*see* Uncons Laws of NY § 7401[3]).

In the present case, Defendant served Plaintiff with its demand to change venue approximately forty-eight (48) days after it filed and served its answer. As such, Defendant seeks to have its demand deemed timely served *nunc pro tunc* as though it was served with its answer as prescribed by CPLR 511(a). CPLR § 2004 allows the court within its discretion and upon good cause shown to extend the time for NYCHHC to serve its demand to change venue. The court grants the portion of NYCHHC's motion that seeks to have its demand to change venue deemed timely served *nunc pro tunc* as the parties have not engaged in discovery exchange or appeared for a preliminary conference.

Additionally, the court grants the portion of NYCHHC's motion and Jung's cross-motion that seeks to change the venue of this action from New York County to Richmond County. As dictated by the Unconsolidated Law of New York § 7401(3) dictates, all actions against NYCHHC must be brought in the county where the action arose. There is no dispute that the decedent received treatment at Seaview Hospital Rehabilitation Center in Staten Island. Therefore, this action should be properly venued in Richmond County.

To the extent not expressly addressed herein, the court considered all arguments and nonetheless grants NYCHHC's motion and Jung's motion to change venue.

As such, it is hereby

ORDERED that the court grants Defendants New York City Health and Hospitals Corporation s/h/a Seaview Hospital Rehabilitation Center's and Home and New York City Health and Hospitals Corporations' motion to grant leave to serve a demand for change of venue; to deem the demand to change venue as timely served *nunc pro tunc* as of June 22, 2023; and to transfer this action from New York County to Richmond County; and it is further

ORDERED that the court grants Defendant Lance Jung, M.D.'s cross-motion to transfer this action and change venue from New York County to Richmond County; 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 Richmond and shall mark his records to reflect such transfer; and it is further

ORDERED that, within thirty (30) days from entry of this order, counsel for Defendants New York City Health and Hospitals Corporation s/h/a Seaview Hospital Rehabilitation Center and Home and New York City Health and Hospitals Corporation to serve a copy of this order with notice of entry upon the Clerk of this Court, such counsel 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, Richmond County, 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 this Court 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)].

This constitutes the decision and order of this court.

12/1/2023

DATE


ERIKA M. EDWARDS, 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