

**Rago v Parker Jewish Inst. for Health Care &
Rehabilitation**

2024 NY Slip Op 32727(U)

July 2, 2024

Supreme Court, New York County

Docket Number: Index No. 805354/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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FRANK RAGO, as Executor of the Estate of ELEANOR
RAGO, and FRANK RAGO, individually,

Plaintiff,

INDEX NO. 805354/2023

MOTION DATE 04/08/2024

MOTION SEQ. NO. 001

- v -

PARKER JEWISH INSTITUTE FOR HEALTH
CARE AND REHABILITATION, and "JOHN DOE" ("JOHN
DOE", being a temporary pseudonym until the proper
identity of "JOHN DOE"
is determined),

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15
were read on this motion to/for CHANGE VENUE.

In this action, inter alia, to recover damages for medical malpractice, statutory nursing-home negligence, common-law negligence, and wrongful death, the defendant Parker Jewish Institute for Health Care and Rehabilitation (Parker) moves pursuant to CPLR 511 to transfer venue of the action from the Supreme Court, New York County, to the Supreme Court, Nassau County. The plaintiff does not oppose the motion. The motion is granted, and venue is transferred to Nassau County.

CPLR 503(a) provides, in relevant part, that, “[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; [or] the county in which a substantial part of the events or omissions giving rise to the claim occurred.” CPLR 503(c) provides, in relevant part, that “[a] domestic corporation. . . shall be deemed a resident of the county in which its principal office is located.” As the Appellate Division, First Department, has explained, a defendant corporation’s papers filed with the Secretary of State “is controlling for venue purposes,” (*Janis v Janson Supermarkets LLC*,

161 AD3d 480, 480 [1st Dept 2018]), regardless of where that defendant actually maintains its principal offices (*see id.*; *Sultana v St. Elizabeth Med. Ctr.*, 187 AD3d 590, 519 [1st Dept 2020]; *Shetty v Volvo Cars of N. Am., LLC*, 38 AD3d 202, 203, 830 [1st Dept 2007]; *Job v Subaru Leasing Corp.*, 30 AD3d 159, 159 [1st Dept 2006]).

In the instant dispute, the plaintiff resided in Nassau County when he commenced this action. His decedent resided in Nassau County at the time of her death, and her will was probated in the Surrogate's Court, Nassau County. Parker has its principal facility in Queens County, and its corporate filings with the Secretary of State designate Queens County as its principal county of business. Moreover, no part of the events or omissions giving rise to the claim occurred in New York County but, instead, occurred in Queens County. Hence, New York County is an improper county in which to lay venue in this action (*see IME Watchdog, Inc. v Baker, McEvoy, Morrissey & Moskovits, P.C.*, 145 AD3d 464, 465 [1st Dept 2016]; *Gertsenshteyn v Staten Is. Univ. Hosp.*, 2022 NY Slip Op 31049[U], *2-3, 2022 NY Misc LEXIS 1605, *3-4 [Sup Ct, N.Y. County, Mar. 29, 2022] [Kelley, J.]).

With respect to Parker's motion, CPLR 511(a) requires that a defendant who seeks to transfer the venue of an action on the basis of improper venue must satisfy two requirements. First, under CPLR 511(a), the defendant must serve a demand for change of venue on that ground either prior to or with its answer. If a defendant satisfies this requirement, then, pursuant CPLR 511(b), it may move to transfer venue within 15 days of serving the demand and, if the plaintiff fails to respond to the demand, the defendant may elect to make the motion to transfer venue either in the county in which the action was commenced or the county to which it seeks to transfer venue. In this action, Parker complied with CPLR 511, in that it (1) served a demand for change of venue on the ground of improper venue with its answer (*see* CPLR 511[a]), (2) it moved to transfer venue within 15 days of serving the demand (*see* CPLR 511[b]), and (3) despite the plaintiff's failure to respond to the demand, it elected to make the motion returnable before this court.

Hence, Parker established that New York County is not a proper county in which this action may be tried, while Nassau County is a proper county in light of the plaintiff's residence therein at the time that he commenced this action. Parker's motion thus must be granted.

Accordingly, it is,

ORDERED that the motion is granted, and venue of this action is transferred from the Supreme Court, New York County, to the Supreme Court, Nassau County; and it is further,

ORDERED that, within 15 days after the entry of this order, the defendant Parker Jewish Institute for Health Care and Rehabilitation shall file an EF-22 form containing the statement required by CPLR 8019(c) by serving it upon the New York County Clerk, as Clerk of the Supreme Court, New York County, along with a copy of this order and notice of entry of this order, which shall be effectuated 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:

<https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf> ([nycourts.gov](https://www.nycourts.gov)),

and, to comply with those procedures, that defendant shall (1) upload the notice required by CPLR 8019(c) in a completed Form EF-22, along with a copy of the decision and order, with notice of entry, under document title "NOTICE TO COUNTY CLERK CPLR 8019(C)," **AND** (2) separately upload the decision and order to the NYSCEF system under document title "SERVICE ON SUPREME COURT CLERK (GENL CLERK) W/COPY OF ORDER," and the County Clerk and all appropriate court support offices shall thereupon make proper entries the court records accordingly; and it is further,


ORDERED that within 15 days after the entry of this order, the defendant shall also serve a copy of this order and notice of entry of this order upon the Nassau County Clerk, as Clerk of the Supreme Court, Nassau County; and it is further,

ORDERED that upon service upon him of the EF-22 form containing the statement required by CPLR 8019(c), and a copy of this order with notice of entry, the New York County

Clerk, as Clerk of the Supreme Court, New York County, is directed to deliver to the Nassau County Clerk, as Clerk of the Supreme Court, Nassau County, all papers filed in the action entitled *Frank Rago, as executor of the Estate of Eleanor Rago, and Frank Rago, individually v Parker Jewish Institute for Health Care and Rehabilitation, et. ano.*, under New York County Index No. 805354/2023, and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.

7/2/2024
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE