

Yahalomi v Vanderwilt

2025 NY Slip Op 31408(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 659876/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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LIOR YAHALOMI,

Plaintiff,

- v -

DAMIEN VANDERWILT, TINA VANDERWILT,

Defendants.

INDEX NO. 659876/2024

MOTION DATE 01/14/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 43, 44, 45, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of February 7, 2025, Defendants Damian Vanderwilt and Tina Vanderwilt (“Defendants”) motion to dismiss Plaintiff Lior Yahalomi’s (“Plaintiff”) Complaint pursuant to CPLR 3211(a)(4), or in the alternative to change venue to Suffolk County pursuant to CPLR 510(1) and 510(3) is granted in part and denied in part.

Plaintiff allegedly owns the premises at 55 Davids Lane, Watermill, New York (the “Premises”) and leased the Premises to Defendants. On December 27, 2024, Plaintiff sued Defendants for alleged breach of their lease. Plaintiff seeks monetary damages from Defendants due to damage they allegedly caused to the Premises. Prior to this lawsuit, on November 27, 2024, Defendants sued Plaintiff in Suffolk County seeking the return of their security deposit. Now, Defendants seek dismissal of Plaintiff’s Complaint based on CPLR 3211(a)(4) or transfer of this matter to Suffolk County pursuant to CPLR 510(1) and 510(3).

As a preliminary matter, the Court will consider Plaintiff’s opposition papers, even though they are technically untimely (*see generally* CPLR 2004). Plaintiff is self-represented, and

Defendants could have ameliorated any prejudice they faced by a late filing by asking this Court for an extension of time to file a reply to Plaintiff's late opposition. Further, Defendants were able to submit a reply to Plaintiff's opposition within the motion's original return date (NYSCEF Doc. 45). Moreover, Plaintiff's opposition was not egregiously late, indeed it was filed before the motion's return date.

Defendant's motion to dismiss pursuant to CPLR 3211(a)(4) is denied. This provision of the CPLR grants Courts the discretion to dismiss a lawsuit based on a prior pending lawsuit if the parties are substantially identical and the relief sought is (*Shah v RBC Capital Markets LLC*, 115 AD3d 444 [1st Dept 2014]). However, the text of CPLR 3211(a)(4) states "the court need not dismiss upon this ground but may make such order as justice requires...". Because the more just result is to transfer Plaintiff's Complaint to Suffolk County so it may be litigated alongside Defendants' lawsuit against Plaintiff, the Court declines to dismiss the Complaint under CPLR 3211(a)(4).

Defendants' motion to change venue to Suffolk County pursuant to CPLR 510(1) is denied. This branch of the CPLR allows the Court, upon motion, to change the place of trial where the county designated is improper. Venue is not improper under this prong because Plaintiff alleges, he is a resident of New York County (*see* CPLR 503[a] ["the place of trial shall be in the county in which one of the parties resided when it was commenced..."]).

However, the Court grants Defendants' motion to change venue pursuant to CPLR 510(3). This provision of the CPLR grants the Court discretion to change venue upon motion by a party. In exercising its discretion, the Court considers if the alternative venue is more appropriate based on the convenience of witnesses and in the interests of justice (*see, e.g. Henry v Central Hudson Gas and Elec. Corp.*, 57 AD3d 452 [1st Dept 2008]). Here, the Premises and Defendants are in

Suffolk County, and the parties are already litigating a related action in Suffolk County. As the property at issue is in Suffolk County, the Court and jurors in Suffolk County have a greater interest in adjudicating this lawsuit than New York County's courts and jurors. Moreover, the dockets in Suffolk County are less congested than New York County, and thus in the interest of a just and speedy resolution of this matter, Suffolk County is a more proper venue. Therefore, Defendants' motion to change venue to Suffolk County pursuant to CPLR 510(3) is granted.

Although both parties alluded to consolidating the two related actions, neither party expressly moved for that relief. Therefore, the Court makes no ruling on consolidation, which can be sought once the transfer of this matter to Suffolk County is effectuated.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(4) or in the alternative to change venue pursuant to CPLR 510(1) is denied; and it is further

ORDERED that Defendants' motion to change venue to Suffolk County pursuant to CPLR 510(3) is granted; and it is

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Suffolk; 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 Suffolk 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, Suffolk 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 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); and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF and on the County Clerk and Clerk of the General Clerk’s Office pursuant to CPLR 8019(c) who shall, upon being served, cooperate with all appropriate court support office and effectuate the transfer of this file accordingly.

This constitutes the Decision and Order of the Court.

<u>4/11/2025</u> DATE	<u>Mary V Rosado Jsc</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE