

**Yang v City of New York**

2025 NY Slip Op 33285(U)

September 3, 2025

Supreme Court, New York County

Docket Number: Index No. 155897/2025

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

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EVELYN YANG,

Plaintiff,

- v -

THE CITY OF NEW YORK, AAA NORTHEAST, ALLIED  
ENTERPRISES NY, LLC, MUSS DEVELOPMENT CORP

Defendant.

-----X

INDEX NO. 155897/2025

MOTION DATE 08/29/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to CHANGE VENUE.

Defendants Allied Enterprises NY, LLC and Muss Development Corp. (collectively “Defendants”) move, pursuant to CPLR §§ 503(a), 510, and 511(b), for an order changing the venue of this action from New York County to Queens County. Defendants contend that New York County is an improper venue because none of the parties reside there, the incident giving rise to the action occurred in Queens County, and the relevant properties are situated in Queens County. Defendants further argue that plaintiff has forfeited her statutory right to select venue by designating an improper county.

Plaintiff Evelyn Yang commenced this personal injury action by filing and serving a summons and complaint in Supreme Court, New York County on May 6, 2025. The action arises from a trip-and-fall incident on July 11, 2024, on the sidewalk near 20-09 Francis Lewis Boulevard, Queens, New York. Plaintiff alleges she sustained injuries due to the condition of the sidewalk abutting the premises.

Defendant City of New York answered on June 11, 2025. Defendant AAA Northeast answered on June 24, 2025. Defendants Allied Enterprises NY, LLC and Muss Development Corp. answered on July 2, 2025, simultaneously serving a written demand to change venue to Queens County pursuant to CPLR § 511.

Plaintiff failed to serve either a consent to the change of venue within five (5) days of receiving the demand or an affidavit demonstrating that New York County was proper or that Queens County was improper. Defendants timely moved, within fifteen (15) days of serving the demand, for an order transferring venue to Queens County.

No opposition to this motion was submitted by plaintiff.

CPLR § 503(a) provides that venue shall generally be placed in the county in which one of the parties resided when the action was commenced. If none of the parties resided in New York County, plaintiff's designation of venue there is improper.

CPLR § 504(3), governing actions against the City of New York, mandates that such actions be brought "in the county within the City in which the cause of action arose." Thus, where the alleged tort occurred in Queens County, venue is proper only in Queens County.

CPLR § 511(b) establishes the procedure for challenging an improper venue. A defendant must serve a demand with or before the answer. If plaintiff fails to consent or to justify the original venue within five days, the defendant may move within fifteen days thereafter for a change of venue. Compliance with this statutory scheme entitles the defendant to the relief sought as of right.

Here, the undisputed record demonstrates that plaintiff is a resident of Queens County, the incident occurred in Queens County, and the defendants Allied Enterprises NY, LLC and Muss Development Corp. are domiciled in Queens County. Defendants served a timely venue demand together with their answer, and when plaintiff failed to respond within five days, they timely filed

this motion within the statutory fifteen-day window. In *McKenzie v. MAJ Transit, Inc.*, 204 AD2d 154 (1st Dept 1994), the Appellate Division, First Department, held that venue was properly based on the defendant's residence as shown by official documentation. Likewise, in *Vasquez v. Sonin*, 259 AD2d 340 (1st Dept 1999), the Appellate Division, First Department, reaffirmed that venue properly lies in the county of a party's actual residence as documented in official records.

Under CPLR § 504(3), actions against the City of New York must be venued in the county where the cause of action arose. Because the alleged accident occurred in Queens County, New York County is not proper.

Plaintiff's designation of New York County was therefore erroneous, and her failure to respond to the venue demand constitutes forfeiture of her right to designate venue (*see Roman v. Brereton*, 182 AD2d 556 [1st Dept 1992]).

Defendants have thus strictly complied with the statutory requirements of CPLR §§ 510 and 511(b). On this record, the court has no discretion to deny relief (*see Lopez v. K Angle K, Inc.*, 24 AD3d 422 [2d Dept 2005][transfer of venue required upon compliance with statutory prerequisites]).

Plaintiff has not opposed this motion. While an unopposed motion is not granted automatically, the court has reviewed the moving papers and finds them to establish entitlement to relief as a matter of law (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]). Accordingly, it is hereby

ORDERED that the motion for a change of venue is granted and venue of this action is changed from this court to the Supreme Court, County of Queens; 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 Queens 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, Queens 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).

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

9/3/2025  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: