

**Guerra v Shoprite Supermarkets, Inc.**

2025 NY Slip Op 33359(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 161694/2024

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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GISELA GUERRA,

Plaintiff,

- v -

SHOPRITE SUPERMARKETS, INC. D/B/A SHOPRITE OF
WHITE PLAINS, WAKEFERN FOOD CORP.

Defendant.

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INDEX NO. 161694/2024

MOTION DATE 02/06/2025

MOTION SEQ. NO. 001

AMENDED DECISION + ORDER
ON MOTION<sup>1</sup>

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13,
14, 15, 21, 23

were read on this motion to/for CHANGE VENUE

Upon the foregoing documents, and after a final submission date of March 18, 2025,
Defendants Shoprite Supermarkets, Inc. d/b/a Shoprite of White Plains ("Shoprite") and Wakefern
Food Corp.'s ("Wakefern") (collectively "Defendants") motion to change venue to Westchester
County pursuant to CPLR 510(1) is granted.

Allegedly, on August 2, 2024, Plaintiff Gisela Guerra ("Plaintiff") slipped and fell in the
Shoprite at 13 City Place, White Plains, New York and now sues for personal injuries. Plaintiff
alleges she is a resident of Westchester County (NYSCEF Doc. 1 at ¶ 1). Defendant Wakefern is
a resident of New Jersey (NYSCEF Doc. 14). Plaintiff alleges that Defendant Shoprite is a resident
of Westchester County (NYSCEF Doc. 1 at ¶ 4). On February 5, 2025, Defendants served Plaintiff
with a demand for change of venue to Westchester County (NYSCEF Doc. 22). The demand to
change venue is dated January 22, 2025, but letter correspondence indicates the demand was not

<sup>1</sup> This Amended Decision and Order corrects a typographical error in the decretal paragraph of the Court's prior
Decision and Order.

served until February 5, 2025, after Defendants realized the demand was not served with their Answer as intended. On February 6, 2025, Defendants moved to change venue to Westchester County. Plaintiff opposes.

Pursuant to CPLR 510(1), the Court may change venue if “the county designated...is not a proper county.” Pursuant to CPLR 503(a), “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.” When venue is improper, CPLR 511(b) provides that a 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-day safter service of the demand, unless within five days after such serve Plaintiff serves a written consent to change the place of trial to that specified by the defendant.”

Defendant’s motion to change venue is granted. Here, there is no dispute that venue is improper, as no party is a resident of New York County and Plaintiff’s accident took place in Westchester County. Plaintiff opposes on the basis that Defendant’s demand to change venue is a nullity because Plaintiff did not have an opportunity to respond to the demand prior to the motion being filed. However, this argument is without merit. Plaintiff opposes the motion and clearly would not have consented to the demand to change venue within the statutorily allowed five-day time frame. Moreover, Plaintiff, in opposition, has failed to show that Westchester County is an improper venue, or that New York County is a proper venue, thus the five-day provision in CPLR 511(b) is inapplicable.

Finally, Plaintiff’s opposition is contrary to the text of CPLR 511(b), which does not prohibit a Defendant from filing a motion to change venue after the demand to change venue is served on Plaintiff. The text explicitly states a 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.” Here, Plaintiff never consented, and Defendants filed the motion within the fifteen-day limit, making Defendants’ motion proper. Even if Defendants’ failure to wait five days between serving the demand to change venue and filing this motion was a technical defect, it is within this Court’s discretion to overlook that defect pursuant to CPLR 2001. The Court likewise excuses the brief delay of two weeks in serving their demand to change venue due to law office failure – namely failure to annex the demand to change venue with the answer as intended. As there is no meritorious reason to deny the motion to change venue, and New York County has no relationship to this action, the Court will not deny the motion due to minor technical defects (*Algarin v Sackin*, 173 AD3d 465, 465-66 [1st Dept 2019]; *Peretzman v Elias*, 221 AD2d 192 [1st Dept 1995]). Because the Court grants Defendants’ motion pursuant to CPLR 510(1), it need not reach the other bases set forth by Defendants to change venue.

Accordingly, it is hereby,

ORDERED that Defendants’ motion to change venue is granted; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Westchester; 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 Westchester 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, Westchester 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.

9/18/25  
DATE

Mary V. Rosado, J.S.C.  
HON. MARY V. ROSADO, 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 type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input checked="" type="checkbox"/> INCLUDES TRANSFER/REASSIGN			