

**Bustillo v City of New York**

2025 NY Slip Op 33427(U)

September 12, 2025

Supreme Court, New York County

Docket Number: Index No. 150126/2025

Judge: Carol Sharpe

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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. CAROL SHARPE **PART** **52M**

*Justice*

-----X

JACLYN BUSTILLO, Individually, and as Mother and  
Natural Guardian of Infant "S.B.M.",

Plaintiff,

**INDEX NO.** 150126/2025

**MOTION DATE** 03/20/2025

**MOTION SEQ. NO.** 001

- v -

THE CITY OF NEW YORK, THE BOARD OF EDUCATION  
OF THE CITY OF NEW YORK, P.S./M.S. 200 THE  
MAGNET SCHOOL OF GLOBAL STUDIES AND  
LEADERSHIP

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for CHANGE VENUE.

Upon the foregoing documents, the motion to change venue is granted.

Defendants, represented by the Corporation Counsel of the City of New York (collectively "The City"), filed a motion seeking to change the venue of this action pursuant to CPLR §§ 504(3) and 510(1) from New York County to Queens County, on the grounds that it is where the cause of action arose; witnesses and records relating to this matter are likely located and maintained in Queens County; and the matter is in its infancy as discovery has not commenced. Plaintiff filed written opposition but failed to appear at oral arguments scheduled for July 16, 2023, and August 27, 2025.

Plaintiff commenced this action by filing a summons and complaint on January 3, 2025, in which she alleged that on October 5, 2023, her son, Infant Plaintiff S.B.M., a first-grade student attending P.S./M.S 200 The Magnet School of Global Studies and Leadership located at 70-10 164<sup>th</sup> Street, Queens County, New York, was assaulted, attacked, harassed and bullied by seventh

grade male students. Issue was joined by the filing of the defendants Answer on February 26, 2025. The complaint established that plaintiffs reside in Queens County and the school where the alleged incident occurred is in Queens County.

In support of its motion, The City submitted the Demand to Change Venue and a Stipulation to Change Venue which it filed with its Answer on February 26, 2025. Plaintiff opposed the motion on the grounds defendants waived their right to compel a change of venue in this action as the motion was filed after fifteen days in violation of CPLR § 511(b), and that the business address of the defendants is Church Street in New York County.

CPLR § 504 (3) provides that the place of trial in an action against the City shall be “in the county within the city in which the cause of action arose.” CPLR § 510 (1) provides that “[t]he court, upon motion, may change the place of trial of an action where the county designated for the purpose is not a proper county.” CPLR § 511 (a) provides that a demand for a change of place of trial shall be served with or before the answer and the “motion for change of place of trial on any other ground shall be made within a reasonable time after commencement of the action.” CPLR § 511(b) which provides in pertinent parts that where a motion is made for change of venue, the “defendant shall serve a written demand,” and thereafter “move to change the place of the trial within fifteen days after the service of the demand.” A motion for change of venue made after fifteen days may be considered at the discretion of the court. (*Carrasco v Cablevision Sys. Corp.*, 248 AD2d 122, 669 NYS2d 808 [1st Dept 1998]).

CPLR § 504 (3) is clear that in cases where the City is a defendant the venue is the county in which the cause of action arose. The court may exercise its discretion to consider an untimely motion for change of venue where there is “no inordinate delay, there being no indication of the extent to which the City had participated in disclosure, or of any other countervailing

circumstances justifying nonfulfillment of the policy objectives of CPLR 504 (3).” (*Tesfaye v Swett*, 227 AD2d 150, 150, 641 NYS2d 674 [1st Dept 1996]). “That defendants made their motion to change venue approximately two months after serving their demand for a change of venue with their answer, in noncompliance with the statutory 15-day time limit in CPLR 511 (b), is not so compelling a circumstance as to override CPLR 504 (3).” (*Smith v City of N.Y.*, 60 AD3d 540, 540, 877 NYS2d 13 [1st Dept 2009]). The mandates of CPLR § 504(3) “should be complied with absent compelling countervailing circumstances.” (*Rose v Grow-Perini*, 271 AD2d 210, 706 NYS2d 326 [1st Dept 2000]; *Garces v City of N.Y.*, 60 AD3d 551, 877 NYS2d 12 [1st Dept 2009]). A compelling reason was found where “[p]laintiff provided evidence that travel to Onondaga County would be a hardship for him and his witness, his treating psychiatrist, based on his limited financial means and the adverse effect it would have on his mental health.” (*See, Hicks v City of Syracuse*, 232 AD3d 516, 516, 220 NYS3d 307 [1st Dept 2024]).

Here, the Court will exercise its discretion and consider the motion for change of venue as the filing was only seven days late; discovery has not commenced; and plaintiff has not provided evidence of compelling circumstances to override the mandates of CPLR § 504(3).

Accordingly, it is hereby:

**ORDERED**, that the venue of this action is changed from this Court to the Supreme Court, County of Queens; 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 their records to reflect such transfer; 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, to ensure an efficient transfer and

minimize insofar as practical the reproduction of documents, including any documents that may be in digital format; 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 such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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.

ENTER:

September 12, 2025  
DATE

  
HON. CAROL SHARPE, J.S.C.  
**HON. CAROL SHARPE**  
**J.S.C.**

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: