

**Costello v Centers Health Care, LLC**

2025 NY Slip Op 33688(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 529758/2024

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28 day of September 2025

PRESENT:

HON. ELLEN M. SPODEK, Justice

-----X  
JEFFREY COSTELLO, as Administrator of the Estate of THEAUTHER LOVE, Deceased,

Plaintiff,

-against-

CENTERS HEALTH CARE, LLC d/b/a BROOKLYN CENTER FOR REHABILITATION and NURSING,

Defendant  
-----X

DECISION AND ORDER

Index No. 529758/2024

*MS #1*

Papers

NYSCEF Number

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Upon the foregoing papers, Defendant CENTERS HEALTH CARE, LLC d/b/a BROOKLYN CENTER FOR REHABILITATION and NURSING ("Brooklyn Center"), moves, pursuant to CPLR §§ 501, 509 and 511 to change the venue of this action from Kings County to Nassau County, and directing the Clerk of the Supreme Court, Kings County to deliver to the Clerk of the Supreme Court, Nassau County, all papers filed in this action and certified copies of all minutes and entries. Plaintiff JEFFREY COSTELLO, as Administrator of the Estate of THEAUTHER LOVE, Deceased, opposes

<sup>1</sup> Defendant filed a reply affirmation (NYSCEF doc. 21) and a supplemental affirmation (NYSCEF doc. 22) which allegedly contained a supplemental affirmation from Iqra Qiaser. The document filed under NYSCEF doc. 22 is a duplicate of NYSCEF doc. 21, and no supplemental affirmation of Iqra Qiaser was provided for the Court's review.

the motion.

Plaintiff commenced this medical malpractice lawsuit via summons and complaint on November 4, 2024. Defendant filed their answer, and on March 31, 2025 defendant moved to change venue from Kings County to Nassau County pursuant to a forum selection clause in an admissions agreement. Plaintiff's father, Theauther Love, was a resident at Brooklyn Center from January 31, 2024 to February 4, 2024, when he was discharged to the Manhattan VA Hospital for chemotherapy. He was readmitted to the Brooklyn Center on February 21, 2024 and discharged on March 5, 2024. Upon his second admission to Brooklyn Center, he signed an admission agreement which contained a section entitled Governing Law, which states that "This Agreement shall be governed in accordance with the Voluntary Arbitration Agreement (See, Attachment A - Voluntary Arbitration Agreement), the terms of which are incorporated herein by reference. If neither Party seeks to execute or enforce the Voluntary Arbitration Agreement, or if the Voluntary Arbitration Agreement is found to be void, invalid or unenforceable for any reason, then the Parties agree that venue for all disputes shall be governed by the laws of the State of New York, County of Nassau." Def. mot., Exh. C pg. 13 sec. 18(a). Defendant argues that the forum selection clause governs this medical malpractice action and the case should be transferred to Nassau County.

Plaintiff argues that the defendant failed to establish the authenticity of the decedent's signature on the Admissions Agreement and the attachments. Plaintiff states that the decedent's signature is identical on every page, which suggests that the signature was copied and pasted on each page. Plaintiff argues that this signature is not the decedent's signature at all, as evidenced by the Durable Power of Attorney which

the decedent signed on February 27, 2024. Aff. In Opp. Exh. A. Plaintiff also argues that defendant's affidavit from their Financial Coordinator Iqra Qiaser is insufficient to establish that Mr. Love actually signed the Admission Agreement at the time, place and manner described.

Defendant replied that the plaintiff failed to provide any expert evidence to support the alleged inauthenticity of Mr. Love's signature which is required, as the burden to prove inauthenticity shifts to plaintiff once the defendant provides sufficient circumstantial evidence of the signature's authenticity. Defendant also contends that the plaintiff failed to show that the forum selection clause is unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or that a trial in Nassau County would be too difficult.

#### DISCUSSION

"A contractual forum selection clause is prima facie valid and enforceable unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purpose, be deprived of its day in Court." *Id.*

According to CPLR §514(2), "In any contract involving the sale, lease or otherwise providing of consumer goods, any portion of the contract or any clause which purports to designate, restrict, or limit the venue in which a claim shall be adjudicated or arbitrated shall be deemed void as against public policy." The CPLR defines "consumer goods" as "goods, wares, paid merchandise or services purchased or paid for by a consumer, the intended use or benefit of which is intended for the personal, family or

household purposes of such consumer. CPLR §514(1) The Court finds that the contract at issue in this case was a contract for consumer services, as an admission agreement to become a resident at a rehabilitation and healthcare center. CPLR §514(2) clearly applies to the contract in this case.

The legislative history of CPLR §514 shows that the concern behind the section was consumers being faced with contracts which contained “unbargained for venue clauses, typically buried in fine print” and which would “effectively deny the consumers the ability to enforce their legal rights.” See *NY Bill Jacket, 2021 A.B. 2505, Ch. 556*. The impetus for the change was specifically aimed at court rulings which have held “mandatory venue clauses to be ‘prima facie valid and enforceable’ unless specifically shown by the challenging party to be in contravention of public policy or unless it is shown that a trial in the selected forum would be ‘so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court’”. *Id.* This case presents the exact situation that the legislature was concerned about, a consumer being presented with a contract with an unbargained for forum selection clause buried in fine print. The Court finds that the forum selection clause in this case is not valid and is unenforceable as against public policy pursuant to CPLR §514(2). Without the forum selection clause, there is no other connection to Nassau County in this case. Therefore the case shall remain in Kings County.

The motion to change venue is denied.

This constitutes the decision and order of the Court.

2025 SEP 29 A 10:51  
FILED  
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ENTER,  
  
HON. ELLEN M. SPODEK  
JSC