

Habas v Oomen

2025 NY Slip Op 34046(U)

October 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 523601/2025

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of October 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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DONALD A. HABAS, ADMINISTRATOR OF THE ESTATE
OF PATRICIA EILEEN HABAS, DECEASED, and DONALD
A. HABAS, INDIVIDUALLY.

Plaintiffs,

-against-

ROY GEORGI OOMEN, M.D., JOSE D. ROSA, D.O.,
MARIA LUFRAÑO, M.D., KURUN P. OBEROI, M.D.,
MICHELLE M. HOJDYSZ, M.D., SCOTT C. GRAHAM,
M.D., JASON PHILIP, PA, BRYAN P. STANIFER, M.D.,
LEARTA KUKAJ, PA, THE NEW YORK AND
PRESBYTERIAN HOSPITAL,

Defendants.

-----X
HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: Seq. 1: 15 – 16, 17 – 22, 59 – 64, 71, 73
Seq. 2: 34 – 35, 65 – 70

Defendants Kurun P. Oberol, M.D., Jason Philip, P.A., Learta Kukaj, P.A. (“P.A.

Kukaj”), Bryan P. Stanifer, M.D., and The New York and Presbyterian Hospital move for an

Order, pursuant to CPLR 503, 510, and 511, to change the venue of this action from Kings

County to Westchester County (Seq. No. 1).

Defendant Scott C. Graham, M.D. (“Dr. Graham”) cross moves seeking the same relief,
adopting the same arguments and exhibits of the co-defendants (Seq. No. 2).

Plaintiff opposes both motions.

The Court accepts the amended Notice of Motion dated October 9, 2025, which was
revised to include the names of all defendants represented by the movants. However, the

supplemental affirmation in support, which was filed after Plaintiff's opposition, is improperly submitted and will not be considered.

At oral argument on October 15, 2025, counsel for Dr. Graham failed to appear on the cross motion, and that motion (Seq. No. 2) is accordingly **marked off**.

Plaintiff commenced this action in the Supreme Court of Kings County on July 16, 2025, asserting claims of medical malpractice against P.A. Kukaj and others. An Amended Complaint, adding claims against an additional party defendant, was filed on July 25, 2025.

CPLR 503 provides, "Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county."

Plaintiff's basis for the venue of Kings County was the alleged residence of Defendant P.A. Kukaj, according to the Summons. It is undisputed that none of the other parties resided in Kings County, and the events underlying the action occurred in Westchester County.

The movants served a demand for change of venue dated August 13, 2025, along with their Answer. They filed this motion on August 20, 2025, within 15 days of that demand. The motion is therefore timely and in compliance with CPLR 511 (a) and (b).

Under CPLR 510 (1), the Court may change the designated place of trial, upon motion, where the designated venue is not a proper county. "To prevail on a CPLR 510 (1) motion to transfer venue, a defendant bears the burden of demonstrating that the plaintiff's choice of venue was improper on the day the action was commenced, and that the defendant's choice of venue is proper. Only if a defendant meets this burden is the plaintiff required to establish, in opposition,

that the venue selected was proper.” (*Young Sun Chung v Kwah*, 122 AD3d 729, 730 [2d Dept 2014].)

The Court of Appeals has held that documentary evidence is not “invariably required” on a motion for improper venue, and a sworn, non-conclusory personal affidavit may be sufficient to meet the defendant’s burden (*Lividini v Goldstein*, 37 NY3d 1047, 1049 [2021]). In that case, which involved a physician’s “principal office” as the basis for venue, the defendant had submitted a detailed affidavit including the average amount of time he spent at each of his offices, the number of patients he saw, and the percentage of income derived from each of the locations. The Court held that this affidavit was not “conclusory,” as it contained detailed factual assertions which established his principal office was not in Bronx County (*Lividini* at 1049). However, it is still the general rule that a bare, conclusory affirmation that one does not reside in a county is insufficient “without any supporting documentary evidence” (*Joseph v Kaufman*, 188 AD3d 847, 848 [2d Dept 2020]; *see also Beli v Lacqua*, 212 AD3d 701 [2d Dept 2023]).

In support of their motion, the defendants submit a personal affidavit from P.A. Kukaj. P.A. Kukaj states “I am currently a resident of Pennsylvania and have been since June 2025.” She also states, “I have not resided or maintained an address in Kings County since 2020,” and “I did not reside in Kings County when the action was filed on July 16, 2025, or when I was served on July 24, 2025.” She was served at her place of business in Westchester County. No further details as to her alleged prior residence in Kings County are included.

The movants also submit a screenshot of a cable bill from August 2025 addressed to P.A. Kukaj at a Pennsylvania address.

In opposition, Plaintiff argues that P.A. Kukaj’s affidavit is conclusory, insufficiently detailed, and not supported by documentary evidence. Plaintiff also submitted various exhibits

supporting their contention that P.A. Kukaj resided in Kings County at the time the action was commenced.

Based on evaluation of the submissions, the Court finds that the movants failed to meet their prima facie burden of demonstrating that Kings County is an improper venue, and thus the burden does not shift to Plaintiff to prove their choice of venue was proper. Unlike the detailed affidavit in *Lividini*, P.A. Kukaj merely states in a conclusory manner that she did not reside in Kings County on the date the action was commenced, and she has not resided there “since 2020.” These denials are conclusory and not substantiated by any evidence, and therefore insufficient to meet the movant’s prima facie burden (*see Beli* at 701-702).

The one piece of additional evidence submitted by P.A. Kukaj was an August 2025 cable bill to a Pennsylvania address, which has no probative value as to whether the defendant resided in Kings County on July 16, 2025, the date this action was commenced. The movants argue in reply that a “July 2025” link was also visible in the side menu, but that bill and its starting date were not provided. Further, a party may be a resident of more than one county, and any county where they reside is a proper venue under CPLR 503. Unlike a “domicile,” which requires an “intent to make it a fixed and permanent home,” a residence is a place “where a party stays for some time with a bona fide intent to retain the place as a residence for some length of time and with some degree of permanency” (*Deas v Ahmed*, 120 AD3d 750, 750-751 [2d Dept 2014]). Thus, even if P.A. Kukaj’s statement that she resides in Pennsylvania was supported by the cable bill, it does not establish that was her sole residence (*see Demirovic v Performance Food Group, Inc.*, 170 AD3d 656, 658 [2d Dept 2019]).

In sum, the movants have failed to establish prima facie in their supporting papers that Plaintiff’s choice of venue is improper. “Only if a defendant meets this burden is the plaintiff

required to establish, in opposition, that the venue selected was proper” (*Marrero v Mamkin*, 170 AD3d 1159, 1160 [2d Dept 2019]). The motion is therefore denied on those grounds.

In the alternative, the movants argue that the place of trial should be changed under CPLR 510 (3), because “the convenience of material witnesses and the ends of justice will be promoted by the change.” The attorney affirmation states generally that they “anticipate” nonparty witnesses who work and/or reside in Westchester County will be inconvenienced by traveling to Kings County. However, they have not made any showing as to the names and addresses of prospective witnesses, that these witnesses are necessary and material, that they are willing to testify, and that they “would in fact be inconvenienced in the event a change of venue were not granted” (*O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 172-173 [2d Dept 1995]; *see also Williams v Staten Is. Univ. Hosp.*, 179 AD3d 869, 870-871 [2d Dept 2020]).

Further, the convenience of the defendants, who are parties to this action, is not a factor in considering a change of venue based on CPLR 510 (3) (*see Marrero* at 1160, citing *Palermo v White*, 133 AD3d 834, 835 [2d Dept 2015]; *Nova Cas. Co. v RPE, LLC*, 115 AD3d 717, 718 [2d Dept. 2014]; *McManmon v York Hill Hous., Inc.*, 73 AD3d 1137, 1138 [2d Dept 2010]). Therefore, the Court in its discretion finds no reason to change the place of trial on the basis of CPLR 510 (3).

Accordingly, it is hereby:

ORDERED that the motion (Seq. No. 1) of Defendants Kurun P. Oberol, M.D., Jason Philip, P.A., Leartha Kukaj, P.A., Bryan P. Stanifer, M.D., and The New York and Presbyterian

Hospital to change the venue of this action from Kings County to Westchester County is **denied**;
and it is further

ORDERED that the cross motion (Seq. No. 2) of Defendant Scott C. Graham, M.D.
seeking the same relief is **marked off** for failure to appear.

This constitutes the decision and order of this Court.

ENTER.



**Hon. Consuelo Mallafre Melendez
J.S.C.**