

**DiSimone v van Dunk**

2025 NY Slip Op 34676(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 805227/2025

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

TAYLIN DISIMONE,

Plaintiff,

- v -

VICTORIO VAN DUNK, F.N.P., JOHN SAMUEL, P.A., PAUL J. ZAMUDIO, M.D., SAMUEL N. HELMAN, M.D., DEBRA ROSE BONAGURA-GREHL, S.L.P., DIENAELAINE A. MANLAPAZ, R.N., URGENT CARE PHYSICIAN OF NEW YORK-HARTSDALE, PLLC, MONTEFIORE NYACK HOSPITAL, "JOHN DOES" 1-5, "JANE DOES" 1-5, "XYZ ER PHYSICIANS' GROUP," and "ABC ICU PHYSICIANS' GROUP," fictitious names whose present identities are unknown but who are entities, doctors, attendings, residents, interns, nurses, nurse practitioners, physician assistants, speech language pathologists, and/or agents, ostensible agents, servants and/or employees of the named Defendants herein, who, either individually or by their agents, servants and/or employees, rendered medical care and treatment to the Plaintiff in the period January 10, 2024 through to January 31, 2024,

Defendants.

-----X

DECISION + ORDER ON MOTION

Table with 3 columns: Document type, Numbered range, and No(s). Rows include: The following papers, numbered 27-40, were read on this application to/for Transfer venue; Notice of Motion/ Petition/ OSC - Affidavits - Exhibits; Answering Affidavits - Exhibits; Replying.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, negligent hiring, training, supervision, and retention of healthcare personnel, and lack of informed consent, the defendant Samuel N. Helman, M.D., moves pursuant to CPLR 503, 511(a), and 511(b) to transfer venue of the action from New York County to Rockland County, and to stay all proceedings in the action pending the transfer. The plaintiff opposes that branch of the motion seeking a stay, but otherwise does not oppose the

motion. The motion is granted to the extent that the action is transferred from the Supreme Court, New York County, to the Supreme Court, Rockland County, and the motion is otherwise denied.

The plaintiff commenced this action on July 25, 2025, designating New York County as the place of trial, based on her understanding that, as of that date, Helman resided at 1510 Lexington Avenue, New York, New York. Simultaneously with his service of an answer on September 2, 2025, Helman served a demand to change venue to Rockland County, based on his contention that New York County was not a proper county in which to place venue (see CPLR 511[a]), and that a substantial part of the events and omissions giving rise to the claim occurred in Rockland County (see CPLR 503[a]). The plaintiff did not serve an affidavit within five days of that date showing that New York County was a proper county or that Rockland County was an improper county (see CPLR 511[b]). On September 15, 2025, Helman made the instant motion to change venue on the ground that the plaintiff had designated an improper county as the place of trial (see CPLR 2211, 511[b]). Hence, this motion was timely made within 15 days after service of the demand to change venue (see CPLR 511[b]).

CPLR 503(a) provides, in relevant part, that, “[e]xcept 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; [or] the county in which a substantial part of the events or omissions giving rise to the claim occurred.” In support of his motion, Helman attested in an affirmation that he had moved to Westchester County in 2023, and, thus, that he no longer resided in New York County as July 25, 2025, the date on which the plaintiff commenced this action. Inasmuch as the plaintiff’s designation of New York County as the place of trial was premised solely upon Helman’s purported residence in New York County, and Helman established that he did not reside in this county on the date that the plaintiff commenced this action, Helman established that New York County is not a proper county. In opposition to that showing, the plaintiff conceded that New York County was an improper county, and that Rockland County would

indeed be a proper county. Hence, that branch of the motion seeking to transfer venue from New York County to Rockland County is granted, without opposition.

CPLR 511(c) provides that “[n]o order to stay proceedings for the purpose of changing the place of trial shall be granted unless it appears from the papers that the change is sought with due diligence.” Although Helman clearly sought to change venue with due diligence, the court has broad discretion to determine whether a stay of proceedings is appropriate in a given situation (*see 215 W. 84th St Owner LLC v Ozsu*, 209 AD3d 401, 401 [1st Dept 2022]). The court concludes that, inasmuch as the parties already have been serving demands for discovery and exchanging items of discovery, there is no need to impose a stay of proceedings while the New York County Clerk transfers the case file to the Rockland County Clerk, and the support offices in the Supreme Court, Rockland County, assign this matter to a Justice in that county. Consequently, the branch of the motion seeking a stay is denied.

In light of the foregoing, it is,

ORDERED that the motion of the defendant Samuel N. Helman, M.D., is granted to the extent that the venue of this action is transferred from the Supreme Court, New York County, to the Supreme Court, Rockland County, and the motion is otherwise denied; and it is further,

ORDERED that, within 15 days after the entry of this order, the defendant Samuel N. Helman, M.D., shall serve an EF-22 form containing the statement required by CPLR 8019(c) upon the New York County Clerk, as Clerk of the Supreme Court, New York County, along with a copy of this order and notice of entry of this order, by uploading those documents to the New York State Court Electronic Filing system under document title “NOTICE TO COUNTY CLERK CPLR 8019(C),” and the County Clerk and all appropriate court support offices shall thereupon make proper entries the court records accordingly; and it is further,

ORDERED that within 15 days after the entry of this order, the defendant shall also serve a copy of this order and notice of entry of this order upon the Rockland County Clerk, as Clerk of the Supreme Court, Rockland County; and it is further,

ORDERED that upon service upon him of the EF-22 form containing the statement required by CPLR 8019(c), and a copy of this order with notice of entry, the New York County Clerk, as Clerk of the Supreme Court, New York County, is directed to deliver to the Rockland County Clerk, as Clerk of the Supreme Court, Rockland County, all papers filed in the action entitled *Taylin DiSimone v Victorio van Dunk, F.N.P., et al.*, under New York County Index No. 805227/2025, and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.

12/1/2025  
DATE



JOHN J. KELLEY, 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: