

Vargas v Goetz

2025 NY Slip Op 34918(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 805084/2025

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

-----X

JULISSA VARGAS and HARLEN VARGAS,

Plaintiffs,

- v -

DR. JUAN GOEZ, MOUNT SINAI HEALTH SYSTEM, and
MOUNT SINAI SOUTH NASSAU,

Defendants.

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INDEX NO. 805084/2025

MOTION DATE 11/25/2025
11/25/2025

MOTION SEQ. NO. 001, 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 46, 47, 49, 50, 51, 52, 53, 55, 56, 58, 59, 60

were read on this motion to/for DISMISSAL/TRANSFER VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 54, 61

were read on this motion to/for DISMISSAL/TRANSFER VENUE.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and loss of spousal consortium, the defendants Mount Sinai Health System (MSHS) and Mount Sinai South Nassau (together the Mount Sinai defendants) move pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against MSHS, and thereupon pursuant to CPLR 510(1) and 511(a) to transfer the venue of this action from New York County to Nassau County (MOT SEQ 001). The plaintiffs oppose that motion. The defendant Dr. Juan Goetz separately moves to dismiss the complaint insofar as asserted against MSHS, and thereupon to transfer venue from New York County. The plaintiff opposes that motion as well. The Mount Sinai defendants' motion is granted, the complaint is dismissed insofar as asserted against MSHS, and venue of the action is transferred from the Supreme Court, New York County, to the Supreme Court, Nassau County. Goetz's motion is granted to the extent that venue of the action is transferred to Nassau County, and is

otherwise denied for his lack of standing to seek dismissal of the complaint insofar as asserted against a codefendant.

The plaintiffs commenced this action on March 28, 2025, designating New York County as the place of trial, based on their understanding that New York County was the “Defendant’s Residence,” although they did not specify which defendant resided in New York County. On April 22, 2025, the Mount Sinai defendants served their answer and a demand to change venue to Nassau County on the ground that New York County was not a proper county within which to place venue (*see* CPLR 511[a]), inasmuch as that MSHS was an improper defendant, that the plaintiffs, Mount Sinai South Nassau, and Goez all resided in Nassau County (*see* CPLR 503[a]), and that a substantial part of the events and omissions giving rise to the claim occurred in Nassau County (*see id.*). On August 8, 2025, Goez served his answer and a demand to change venue on the same grounds. The plaintiffs did not serve an affidavit within five days of either of those dates, showing that New York County was a proper county or that Nassau County was an improper county (*see* CPLR 511[b]). On August 11, 2025, the Mount Sinai defendants made their motion on the grounds that MSHS was not a proper party and that the plaintiff had designated an improper county as the place of trial (*see* CPLR 2211, 511[b]). On August 15, 2025, Goez made his motion, seeking the same relief.

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.” When they commenced the action, the plaintiffs resided in Baldwin, which is located in Nassau County, Goez resided in Bellmore, which is located in Nassau County, and Mount Sinai South Nassau resided in Oceanside, which is also located in Nassau County. The only defendant that resided in New York County at that time was MSHS. The Mount Sinai defendants, however, established that MSHS did not provide medical care or treatment to any patients, including the plaintiff Julissa Vargas, and employed no one for the purpose of providing

medical care or treatment. They thus established that MSHS cannot be held liable for medical malpractice and, hence, was an improper party to this action (see *Waheed v Barar*, 2025 NY Slip Op 33477[U], *7, 2025 NY Misc LEXIS 7633, *11 [Sup Ct, N.Y. County, Sep. 15, 2025] [Kelley, J.]; *Koller v Kolev*, 2025 NY Slip Op 32869[U], *27, 2025 NY Misc LEXIS 6776, *50-51 [Sup Ct, N.Y. County, Jul. 18, 2025] [Kelley, J.]; *Vallone v Vulcano*, 2022 NY Slip Op 32099[U], *16, 2022 NY Misc LEXIS 11310, *29-30 [Sup Ct, N.Y. County, Jun. 30, 2022] [Kelley, J.]; *Garcia v Global Prop. Servs., Inc.*, 2018 NY Slip Op 30957[U], *7-8, 23, 2018 NY Misc LEXIS 1870, *9-10, 34 [Sup Ct, Bronx County, Apr. 3, 2018]). Thus, that branch of the Mount Sinai defendants' motion seeking to dismiss the complaint insofar as asserted against MSHS must be granted. Goetz, however, lacks standing to move to dismiss the complaint insofar as asserted against MSHS, since he has no direct interest in the outcome any such motion, and will not be aggrieved by any order disposing of that motion (see *Can Lan Lu v Elk Mas 86 E. 10th, LLC*, 2025 NY Slip Op 32394[U], *2 n, 2025 NY Misc LEXIS 6001, *2 n; *Lopez v Philip Ross Indus., Inc.*, 85 Misc 3d 1285[A], 2025 NY Slip Op 50799[U], *4, 2025 NY Misc LEXIS 4236, *8 [Sup Ct, Nassau County, May 16, 2025]; *Pianin v Altorki*, 2022 NY Misc LEXIS 37682, *22 [Sup Ct, N.Y. County, May 17, 2022] [Kelley, J.]; see also *Augustine v Halcyon Constr. Corp.*, 71 Misc 3d 715, 716-717 [Sup Ct, Bronx County 2021]; cf. *Mixon v TBV, Inc.*, 76 AD3d 144, 149 [2d Dept 2010] [defining "aggravement" for appellate purposes])." Thus, the court denies that branch of his motion seeking to dismiss the complaint insofar as asserted against MSHS.

That branch of Goetz's motion seeking to change venue was timely made within 15 days after his service of his demand to change venue (see CPLR 511[b]). Although the Mount Sinai defendants' motion was not made within 15 days after they served their demand to change venue, that fact, standing alone, does not require that their motion be denied as untimely, since "[w]here venue is initially placed on the basis of the principal place of business of an improper party, a motion to change venue should be granted after the action is dismissed as against the improper party" (*Chow v Long Is. R.R.*, 202 AD2d 154, 155 [1st Dept 1994]; see *Scuorzo v*

Safdar, 134 AD3d 511, 511 [1st Dept 2015]; *Gramazio v Borda, Wallace & Witty*, 181 AD2d 428, 429 [1st Dept 1992]; *Caplin v Ranhofer*, 167 AD2d 155, 157 [1st Dept 1990]).

Consequently, upon this court's dismissal of the complaint insofar as asserted against MSHS, it is perfectly proper for it to entertain and grant that branch of the Mount Sinai defendants' motion which was to transfer venue from New York County to Nassau County on the ground that New York County no longer is a proper county within which to place venue.

Accordingly, it is,

ORDERED that the motion of the defendants Mount Sinai Health System and Mount Sinai South Nassau (MOT SEQ 001) is granted, the complaint is dismissed insofar as asserted against Mount Sinai Health System, and the venue of this action is transferred from the Supreme Court, New York County to the Supreme Court, Nassau County; and it is further,

ORDERED that the motion of the defendant Dr. Juan Goetz (MOT SEQ 002) is granted to the extent that the venue of this action is transferred from the Supreme Court, New York County to the Supreme Court, Nassau County, and that motion is otherwise denied; and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendant Mount Sinai Health System; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendant Mount Sinai Health System; and it is further,

ORDERED that, within 15 days after the entry of this order, the defendant Mount Sinai South Nassau 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 Mount Sinai South Nassau shall also serve a copy of this order and notice of entry of this order upon the Nassau County Clerk, as Clerk of the Supreme Court, Nassau 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 Nassau County Clerk, as Clerk of the Supreme Court, Nassau County, all papers filed in the action entitled *Julissa Vargas, et ano. v Dr. Juan Goetz, et al.*, under New York County Index No. 805084/2025, and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.

12/15/2025
DATE



JOHN J. KELLEY, J.S.C.

MOTION 001:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
MOTION 002:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE