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| <b>Scalzo v Cedar Manor Acquisition I, LLC</b>   |
| 2026 NY Slip Op 30256(U)   |
| January 12, 2026   |
| Supreme Court, Kings County  |
| Docket Number: Index No. 531592/2024   |
| Judge: Ellen M. Spodek   |
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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 360 Adams Street, Brooklyn, New York, on the 12<sup>th</sup> day of January, 2026.

P R E S E N T:

HON. ELLEN M. SPODEK,  
Justice.

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SHERYL SCALZO and ROSE NOVAK, as  
Co-Executors of the Estate of ROBERT ROSS,  
deceased,

Plaintiff,

**DECISION AND ORDER**  
Index No. 531592/2024

*MS # 2*

-against-

CEDAR MANOR ACQUISITION I, LLC, CEDAR  
MANOR HOLDING I LLC, ZBL CEDAR MANOR,  
LLC, AND SILV MATHEW, M.D.,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

|   |                 |
|---|-----------------|
| Notice of Motion, Affirmation, and Exhibits Annexed . . . . . | 17-18, 21-23, 5 |
| Affirmation in Opposition and Exhibits Annexed . . . . .      | 29-34           |
| Reply Affirmation . . . . .                                   | 35              |

Defendant SILVY MATHEW, M.D., moves by Notice of Cross-Motion for an Order to change venue of this action from “Westchester County to Nassau County” pursuant to CPLR §§ 501, 503(a) and (b), 510, and 511(a) and (b). All other documents filed in relation to this motion in support or opposition silently disregard this error and treat this as a motion to change venue from Kings County to Westchester County. As such, this Court will treat the motion as such while cautioning Movant against further defects in form. Plaintiff SHERYL SCALZO and ROSE NOVAK, as Co-Executors of the Estate of ROBERT ROSS, deceased, oppose the motion.

### *Procedural History*

Plaintiff filed a Summons and Complaint on November 21, 2024 making allegations of negligence, malpractice and violation of the Public Health Law. As to the moving defendant, only allegations of medical malpractice were made against him. Defendant Dr. Mathew filed and served an Answer on December 31, 2024. Within his Answer, Dr. Mathew raised an affirmative defense claiming venue was improper as designated by Plaintiff in their Summons and Complaint. A Demand to Change Venue was also filed and served with Dr. Mathew's Answer.

At the time the present motion was filed, Plaintiff maintained two companion cases. An action was commenced in Westchester County Supreme Court under Index No. 65418/2023, with a Summons and Complaint filed on August 17, 2023, and names only the present action's Co-Defendant CEDAR MANOR NURSING AND REHABILITATION. A second action was filed in Kings County Supreme Court under Index No. 506846/2024, and names only the present action's Co-Defendants CEDAR MANOR ACQUISITION, LLC, CEDAR MANOR HOLDING I LLC, and ZBL CEDAR MANOR, LLC. Both companion actions arise out of the same transaction of events, namely the admission of the Plaintiff-Decedent ROBER ROSS at the Cedar Manot Nursing and Rehabilitation Cener between January 11, 2022 and May 24, 2022. The causes of action in both companion cases and this case are identical, with the sole exception being that Dr. Mathew is a named Defendant in only the instant action.

At the time of this Decision and Order, this Court has already granted Plaintiff's Motion to Consolidate (Motion Sequence #3) the companion Kings County action (Index. No. 506846/2024) into the instant action via an Order dated September 2, 2025. Also in that Order, this Court denied Defendants Cedar Manor Acquisition, LLC, Cedar Manor Holding I, LLC, and ZBL Cedar Manor LLC's Motion to Dismiss (Motion Sequence #1) and adjourned the present motion to be heard on September 30, 2025.

***Defendant Dr. Mathew's Support of Motion to Change Venue***

This Motion to Change Venue is sought pursuant to CPLR 501, 503(a) and (b), 510, and 511(a) and (b). CPLR 501 provides that “subject to the provisions of section five hundred ten . . . of this article, written agreement fixing place of trial, made before an action is commenced, shall be enforced upon a motion for change of place of trial.” CPLR 510 lists that “the court, upon motion, may change the place of trial of an action where: (1) the county designated for that purpose is not a proper county; or (2) there is reason to believe that an impartial jury cannot be had in the proper county; or (3) the convenience of material witnesses and the ends of justice will be promoted by the change.” Provisions of CPLR 503(a) and (b) in their relevant portions dictate that “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 . . .” and “an executor . . . shall be deemed a resident of his appointment as well as the county in which he actually resides.” Finally, CPLR 511(a) and (b) lay the procedural framework for changes of place of trial, stating:

- (a) A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. A motion for change of place of trial on any other ground shall be made within a reasonable time after commencement on the action.
- (b) The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within 15 days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant. Defendant may notice such motion to be heard as if

the action were pending in the county he specified, unless plaintiff with five days after service of the demand serves an affidavit showing either that the county specified by the defendant is not proper or that the county designated by him is proper.

Upon review of the docket, it appears that this motion is procedurally sound under CPLR 511(a) and (b). A Demand for Change of Place of Trial was filed on December 31, 2024 by Defendant alongside his Answer, and his Motion to Change Venue was filed on January 15, 2025 with no consent documents filed by the Plaintiff between the Demand and Motion. NYSCEF Doc. # 10 and 25.

Per Plaintiff's Summons, the basis for this action having proper venue in Kings County stems from Defendants Cedar Manor Acquisition I, LLC and Cedar Manor Holding I LLC having places of business (corporate office and county designation in corporate filings) in Kings County. Neither Plaintiff-Decedent Ross, nor Plaintiff-Co-Executors Scalzo or Novak, nor Dr. Mathew maintain residence in Kings County. Summons and Complaint, NYSCEF Doc. # 1 at ¶¶ 3-6, 26. All of the transaction of events within the Summons and Complaint relate to care that occurred at Cedar Manor Nursing Rehabilitation Center located in Westchester County between January and May, 2022, and all allegations of negligence and malpractice are to have allegedly arisen from occurrences in Westchester County.

In support of his Motion to Change Venue pursuant to CPLR 501, Defendant Dr. Mathew annexed the Admission Agreement signed by Plaintiff-Decedent Ross, which included a venue selection clause between co-defendant Cedar Manor, LLC and Ross stating that "[a]ny action arising out of or related to a dispute under this Agreement shall be brought in the State or District Court located in Westchester County, New York. The parties agree to such Court's jurisdiction." Def. Exh. C at 14. In summary, Dr. Mathew contends that as a result of Co-Defendant's "tenuous" connection

to Kings County, and the existence of an agreed upon venue selection clause contained within the Admission Agreement, this action should be transferred to Westchester County.

***Plaintiff's Opposition and Defendant Dr. Mathew's Reply***

Plaintiff's opposition to this motion can be categorized under two main arguments: (1) CPLR 510 provides three reasons why a court may change venue upon motion and none of these reasons are satisfied in Defendant Dr. Mathew's motion; and (2) Dr. Mathew cannot invoke the Admission Agreement cited by her motion as she was not a party to the agreement, and even if she was, the Agreement should not be considered as it is not authenticated and it is unenforceable as Plaintiff-Decedent's condition rendered him incompetent and unable to make decisions.

*CPLR 510: Grounds for Change of Place of Trial*

Plaintiff asserts that Defendant Dr. Mathew has failed to prove that (1) Kings County is not a proper venue; (2) there is reason to believe that an impartial jury cannot be had in Kings County; and (3) the convenience of the material witnesses and the ends of justice will be promoted by changing venue to Westchester County.

Propriety of venue in cases involving corporate entities is governed by CPLR 503(a) and (c) which provide 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,” and “[a] domestic corporation, or a foreign corporation authorized to transact business in the state shall be deemed a resident of the county in which its principal office is located.” “[T]he sole residence of a foreign corporation or a foreign limited liability company for venue purposes is the county where its principal office is located as designated in its application for authority to conduct business filed with the New York State Department of State, regardless of whether it transacts business or maintains its actual principal office or facility.” *Carlton Grp. V. Prop. Markets Grp.*, 134 A.D.3d 1018, 1019

(2d Dep't 2015). Defendants Cedar Manor Acquisition I LLC's filings with the Secretary of State indicate that it is registered as a foreign limited liability company and designates a Kings County address. Plt. Exh. 3. As a result of Cedar Manor Acquisition I LLC's residency in Kings County, this Court finds that for the purposes of CPLR 510(1) venue is proper.

There are no assertions made as to the ability to attain an impartial jury in Kings County, so by default this Court finds that for the purpose of CPLR 510(2) venue is proper.

Plaintiff argues that CPLR 510(3) does not apply as Defendant Dr. Mathew has not met the burden outlined by the Second Department to prove that "the convenience of material witnesses and the ends of justice will be promoted by the change. Under Second Department case law, a "detailed evidentiary showing" is required, and "the movant [must] furnish a detailed affidavit." *O'Brien v. Vassar Bros. Hosp.*, 207 A.D.2d 169, 170, 172-74 (2d Dep't 1995); see *Bolling v. Metropolitan Suburban Bus Authority*, 205 A.D.2d 724 (2d Dep't 1994). "A motion to change venue for the convenience of witnesses must be supported by a statement naming the witnesses involved, that they have agreed to testify and what their testimony might be. Absent such a showing, such a motion should be denied." *Greene v. Hillcrest Gen. Hosp.*, 130 A.D.2d 621 (2d Dep't 1987).

In reply to Plaintiff's Opposition, Defendant Dr. Mathew cites to two Second Department cases that she proffers to distinguish this matter from the standards dictated by *O'Brien*, *Bolling*, and *Greene*, indicating that a "transitory action should be tried in the county where the cause of action arose." Plt. Aff. in Reply at 3. The first case of binding precedent provided to support her argument was *Caro v. Frasca*, 197 A.D.2d 657 (2d Dep't 1993) which states "[a]bsent 'cogent reasons' to direct otherwise, the venue of a transitory action should be the county where the cause of action arose." Next, Plaintiff pointed the Court to *German v. Swendson*, 112 A.D. 139, 140 (2d Dep't 1985) which provided the language cited by *Caro*. Plaintiff claims that *O'Brien* cites to these cases in distinction, but neglects to provide the full context of the citation:

There is, we acknowledge, a line of cases in which there appear statements to the effect that “[a]bsent ‘cogent reasons’ to direct otherwise, the venue of a transitory action should be the county where the cause of action arose” *Caro v. Frasca*, quoting *German v. Swendson* [et al]. A parallel line of cases contains statements to the effect that all “other things being equal, a transitory action should be tried in the country where the cause of action arose” [citations omitted]. **In our opinion, these statements do not authorize an inversion of the burden of proving that the convenience of the witnesses will in fact be served by a discretionary change of venue [emphasis added].** Such statements should not be taken as negating the requirement that the movant furnish a detailed affidavit, setting forth the information outlined above, in all cases, including transitory ones, where a discretionary change of venue is sought. **Instead, these statements define the standard to be applied in deciding a motion based on CPLR 510(3), only after the requisites outlined above have been met [emphasis added]** [citations omitted].

Clearly, this Court cannot find that Defendant has met her burden as no detailed affidavit has been furnished to the Court including the required evidentiary showing, therefore venue is found to be proper under CPLR 510(3).

Plaintiff argues that the arguments provided by Defendant Dr. Mathew in regard to the Admission Agreement’s forum selection clause must be denied as Dr. Mathew is not a party to the contract therefore she cannot enforce its provisions. Generally, “only parties in privity of contract may enforce terms of the contract such as a forum selection clause found within the agreement.” *Bernstein v. Wysoki*, 77 A.D.3d 241, 251 (2d Dep’t 2010) (quoting *Freeford Ltd. v. Pendleton*, 53 A.D.3d 32, 38 (1st Dep’t 2008). Per the Admission Agreement filed, the contract was made between two parties, Plaintiff-Decedent Robert Ross and Cedar Manor LLC.

Plaintiff, in her Memorandum of Law, cited to cases in which a forum selection clause contained within an admission agreement was enforced in medical, and specifically nursing home, facilities. Having reviewed the binding authorities cited by Plaintiff, this Court has found that they are distinguishable from the present motion. In *Casale v. Sheepshead Nursing & Rehabilitation Ctr.*, 131 A.D.3d 436 (2d Dep’t 2015) and *Puleo v. Shore View Ctr. For Rehabilitation & Health Care*, 132 A.D.3d 651 (2d Dep’t 2015), the parties moving to enforce the forum selection clause of the

subject admission agreements were each direct signatory and party to the agreement. Defendant has not provided any binding authority that provides that the ability to invoke a forum selection clause contained within an admission agreement may lawfully be conferred to co-defendants who were not parties to the agreement. This Court remains unconvinced to stray from the consistently upheld legal principle that only parties in privity of contract may enforce the terms on the agreement.

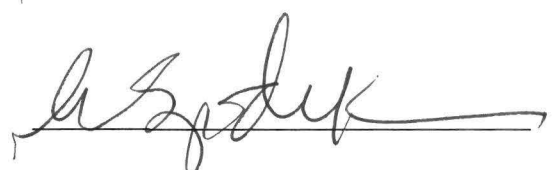
For the foregoing reasons, this Court must deny this Motion to Change Venue pursuant to CPLR 501 and will not reach the merits of arguments pertaining to the authentication of the Admission Agreement and the Plaintiff-Decedent's mental ability to confer lawful consent to the Agreement's terms.

Accordingly, it is

ORDERED that Defendant's Motion to Change Venue to Westchester County is denied.

This constitutes a Decision and Order of this Court.

ENTER,



Hon. Ellen M. Spodek

**HON. ELLEN M. SPODEK**

2026 JAN 20 A 10:17  
KINGS COUNTY CLERK  
FILED