

Eden Arcade, Inc. v Centrex XR Inc.

2026 NY Slip Op 31533(U)

April 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 524734/2024

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Comm Division Pt 2 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 9th day of April, 2026.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X
EDEN ARCADE, INC.,

Plaintiff(s),

-against-

CEMTREX XR INC. AND SAAGAR GOVIL,

Defendant(s).
-----X

ORDER

Calendar Date: 11/10/2025

Calendar #(s): 16

Index #: 524734/2024

Mot. Seq. #(s): 4

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits _____

63, 64, 66

Opposing Affidavits (Affirmations) and Exhibits _____

69

Reply Affidavits (Affirmations) and Exhibits _____

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NATURE OF ACTION

On September 12, 2024, plaintiff Eden Arcade, Inc. (“Plaintiff”) commenced this Commercial Division action against defendants Cemtrex XR, Inc. (“Cemtrex”), and Saagar Govil, the president of Cemtrex (“Defendants”) (*see* NYSCEF Doc. #2 at ¶¶ 1-4). Plaintiff contracted Defendants to develop a video game as set forth in an engagement letter (“Engagement Letter”) dated July 21, 2022, (*see* NYSCEF Doc. #66). The Complaint set forth four causes of action (1) two causes of action for breach of contract, (2) breach of the implied covenant of good faith and fair dealing, and (3) unjust enrichment (*see id.* at ¶6).

Defendant’s Motion CPLR §§ 3212, 501, 511

Defendants now move the Court pursuant to CPLR § 3212 (“Motion Sequence Four”) for an order granting Summary Judgment dismissing Plaintiff’s Complaint asserting the parties agreed

that any disputes must be resolved in “New York, New York” or in the alternative a transfer to New York County pursuant to their Engagement Letter (*see* NYSCEF Doc. #63).

Plaintiff opposed the motion asserting that Defendants heavily participated in motion practice before this Court and as such are not entitled to change the venue from Kings County to New York. Additionally, Plaintiff cross moved for sanctions (*see* NYSCEF Doc. #69).

BACKGROUND

On July 21, 2022, Plaintiff and Defendants signed an Engagement Letter whereby Defendants contracted to develop a video game and Plaintiff paid Defendants approximately \$935,700 to do so, (*see* NYSCEF Doc. #66; *see also* NYSCEF Doc. #1 at ¶10).

On September 12, 2024, Plaintiff filed its initial Complaint. Shortly thereafter, on October 3, 2024, Defendants moved to dismiss the original complaint (“Motion Sequence 1”) pursuant to CPLR § 3211 (a) (7) (*see* NYSCEF Doc. #7). In their motion to dismiss Defendants did move to change venue. Approximately nine months thereafter, Defendants withdrew its motion to dismiss the Complaint on or about June 30, 2025 (*see* NYSCEF Doc. #29).

On or about June 24, 2025, Plaintiffs filed the First Amended Complaint and on July 15, 2025, Defendants again moved to dismiss the Amended Complaint under CPLR § 3211 (a) (7), (“Motion Sequence 2”) (*see* NYSCEF Doc. #25; *see also* NYSCEF Doc. #30). Again, Defendants did not seek to move the Court to transfer the case to New York County. This Court denied Defendant’s Motion Sequence 2 to Dismiss the Amended Complaint, (*see* NYSCEF Doc. #73).

On or about August 11, 2025, Defendant filed its third motion seeking advancement of legal fees in defense of this action, (*see* NYSCEF Doc. #32,33), which this Court denied (*see* NYSCEF Doc. #73).

On October 31, 2025, Defendants filed the instant motion, Motion Sequence 4 seeking to change venue to “New York County”. (*see* NYSCEF Doc. #63).

On or about March 12, 2026, the parties stipulated to extend Defendant’s time to answer the First Amended Complaint and in turn Defendants waived all defenses to “personal jurisdiction” (*see* NYSCEF Doc. #77). In compliance with the stipulation, Defendant filed its answer on or about March 13, 2026, (*see* NYSCEF Doc. #78).

DISCUSSION

For this Court to grant Defendants' request to dismiss the Complaint based on Plaintiff's improper filing of the case in Kings County, which Defendants argue is contrary to the parties' contractual venue, Defendants' must comply with CPLR §511, *See, (Allen v. Morningside Acquisition I, LLC, 205 A.D.3d 861 [2nd Dept 2022])*. Here, Defendants have failed to comply with the statutory requirements set forth in CPLR §511.

NY CPLR § 511, Change of place of trial, provides

- (a) Time for motion or demand. 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 of the action.

Defendants waived their right to change venue under the disputed forum selection clause. It is well established under New York law that if a party does not timely raise the issue of a forum selection clause that they waive the right to enforce said clause, *See, Brown v United Odd Fellow & Rebekah Home, Inc., 184 A.D.3d 478, 478 [1st Dept 2020]*.

Defendants actively litigated this case in Kings County from September 2024 until October 2025 when they first filed the instant motion to change venue. Defendants filed two summary judgments motions to dismiss both the original complaint on October 3, 2024, and the First amended complaint on July 15, 2025, pursuant to CPLR 3211(a)(7). Thereafter Defendants filed a motion for sanctions against Plaintiff on August 11, 2025. Additionally, Defendants have participated actively in multiple settlement conferences before the undersigned with appearances by their clients and foreign attorneys. Despite Defendants' appearances before the undersigned on three motion dates and multiple settlement conferences for more than a year, Defendants never raised an issue with resolving the litigation in Kings County or their desire to litigate the case in New York County. Defendants' level of participation and their untimeliness in bringing this motion undermines Defendants' challenge to venue and is fundamentally inconsistent with the right to enforce a forum selection clause.

By engaging in extensive litigation for thirteen months before this Court with full knowledge of its venue selection clause and not moving to change venue until Defendants were denied dismissal of the action and sanctions, this Court finds Defendants waived their right to

enforce the Engagement Letter's forum selection clause and agreeably consented to the jurisdiction of Kings County Supreme Court. This Court further notes that Defendants failed to provide a reasonable explanation for their delay in bringing this motion, *see, (Brown v United Odd Fellow & Rebekah Home, Inc., 184 A.D.3d 478, 478 [1st Dept 2020])* - Appellant's motion to change venue was untimely where Appellant was aware of the venue selection clause in its own admission agreement and defendant waited almost two years after the action was commenced before seeking a change of venue, and provided no reasonable explanation for the delay. *See, Williams v. Bronx Harbor Health Care Complex, Inc., 213 A.D.3d 430, 430-431 [1st Depart 2023]* - change of venue denied where Defendant was aware of venue selection clause and waited 14 months after the action's commencement before seeking a change of venue with no explanation for its delay. *See, (Cortez v. Terrence Cardinal Cooke Health Ctr., 199 A.D.3d 450 [1st Depart 2023])*.

Defendants continuously filed motions to dismiss on substantive grounds without requesting relief to move the case to New York County until thirteen months after the original complaint was filed, withdrawal of one motion to dismiss and denial of two of their motions. Thus, Defendants willingly consented to litigate the case in Kings County deeming it the proper forum to resolve the parties' dispute.

SANCTIONS

A court may "impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct." Conduct is frivolous if it is completely without merit in law or is undertaken primarily to delay or prolong the resolution of the litigation (*see T. I. v. R. I., 2026 N.Y. Slip Op. 01344 [2d Dept 2026]*).

Defendants filing the instant Summary Judgment motion six months prior to answering the First amended complaint knowing that issue had not been joined, CPLR § 3212(a) was procedurally incorrect. But the filing of a summary judgment in lieu of a motion to transfer the case New York County, Defendants alternate relief requested, is not sufficient to sanction Defendants.

This Court finds some merit in Plaintiff's argument for sanctions in that Defendants "Fully embraced this Court as the proper forum when they believed they might secure dismissal or advancement. They invoked this Court's authority, sought substantive judicial determinations,

requested attorney-fees relief, and repeatedly litigated on the merits, all without raising venue. Only after their unsuccessful dispositive motions did Defendants pivot and claim, for the first time, that Kings County is “improper.” Even if their reading of “New York, New York” were correct (it is not), the clause would support at most a transfer under CPLR 501/510, not dismissal, and certainly not pre-answer summary judgment. Their demand for dismissal thus lacks any legal foundation.” (see NYSCEF Doc. #69).

However, Defendants’ last-ditch effort in their fourth motion before this Court to transfer the case to New York County after denial of two of their prior motions is not sufficient to warrant sanctions. The appropriate determination based on long standing precedent is denial of their motion based on their delay in filing same and failure to provide an explanation for their delay in filing.

CONCLUSION

Defendant’s Summary Judgment motion sequence 4 is denied in its entirety. Plaintiff’s cross motion seeking sanctions is denied in its entirety.

Accordingly, it is hereby:

ORDERED, that Defendants’ Motion for Summary Judgment (Motion Sequence Four) is **DENIED** in its entirety; and it is further

ORDERED, that the parties are to appear for a preliminary conference before this Court on May 26, 2026, at 11:00am, Court room 756.

This constitutes a Decision and Order of the Court.

E N T E R,

Dated: April 9, 2026



Hon. Cenceria P. Edwards, CPA