

**Brown v Rogerson**

2026 NY Slip Op 31543(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 805361/2025

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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NOEL BROWN,

Plaintiff,

- v -

ASHLEY ROGERSON, M.D., UNIVERSITY OF ROCHESTER, STRONG MEMORIAL HOSPITAL, UNIVERSITY OF ROCHESTER SCHOOL OF MEDICINE & DENTISTRY, UNIVERSITY OF ROCHESTER MEDICAL FACULTY GROUP, SETH MENSAH, M.D., ANDREW TOENNIESSEN, D.O., FRANK SKURPSKI, M.D., JANEEN BAXTER, N.P., THE PEARL NURSING CENTER OF ROCHESTER, LLC, ROCHESTER GENERAL HOSPITAL, ROCHESTER REGIONAL HEALTH, and FIRST DOCS, P.C.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 50, 75, 76, 77

were read on this motion to/for CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 51

were read on this motion to/for CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46, 47, 48, 49, 52, 78, 79, 80, 82, 83

were read on this motion to/for CHANGE VENUE.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 81, 84

were read on this motion to/for CHANGE VENUE.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and negligent hiring, training, supervision, and retention of healthcare personnel, the defendants Ashley Rogerson, M.D., University of Rochester, Strong Memorial Hospital, University of Rochester School of Medicine & Dentistry, and University of Rochester Medical Faculty Group (collective the UR defendants)

move pursuant to CPLR 503, 510, and 511 to transfer the venue of this action from New York County to Monroe County (MOT SEQ 001). The defendant Seth Mensah, M.D., moves for the same relief (MOT SEQ 002), as do the defendants Rochester General Hospital and Rochester Regional Health (together the RGH defendants) (MOT SEQ 003) and the defendants Frank Skurpski, M.D., Janeen Baxter, N.P., and First Docs, P.C. (collectively the First Docs defendants) (MOT SEQ 004). The plaintiff, in papers uploaded to the New York State Court Electronic Filing system only under Motion Sequence 001, nonetheless opposes the motions of the UR defendants, Mensah, and the RGH defendants, which are pending under Motion Sequences 001, 002, and 003, and separately opposes the motion of the First Docs defendants, which is pending under Motion Sequence 004. The motions are denied.

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.” CPLR 503(c) provides, in relevant part, that “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.” As the Appellate Division, First Department, repeatedly has explained, a defendant corporation’s papers filed with the Secretary of State “is controlling for venue purposes,” (*Janis v Janson Supermarkets LLC*, 161 AD3d 480, 480 [1st Dept 2018]), regardless of where that defendant actually maintains its principal offices (*see id.* [defendant’s “designation of New York County in its application is controlling for venue purposes, even if it does not actually have an office in New York County”]; *Sultana v St. Elizabeth Med. Ctr.*, 187 AD3d 590, 591 [1st Dept 2020] [quoting *Janis*]; *Crucen v Pepsi-Cola Bottling Co. of N.Y., Inc.*, 139 AD3d 538, 539 [1st Dept 2016] [“even if defendant does not actually have an office in New York County, . . . the designation made by defendant in its application for authority still controls for venue purposes”]; *Shetty v Volvo Cars of N. Am., LLC*, 38 AD3d 202, 203, 830 [1st Dept 2007]; *Job v Subaru Leasing Corp.*, 30 AD3d 159, 159 [1st Dept 2006]; *see also Prechtl v Trane*

*U.S., Inc.*, 213 AD3d 537, 537 [1st Dept 2023]; *Marte v Lampert*, 212 AD3d 560, 560 [1st Dept 2023]). In his papers, the plaintiff has submitted a printout of the Secretary of State's records that are referable to the defendant First Docs, P.C., which established that First Docs, P.C., a California professional services corporation, has designated New York County as its principal place of business within the state. The court takes judicial notice of the entry in the Secretary of State's on-line database indicating that Frist Docs, P.C., has in fact made this designation (see CPLR 4511[b]; *Kingsbrook Jewish Medical Center v Allstate Ins Co.*, 61 AD3d 13, 20 [2d Dept 2009] [court may take judicial notice of "material derived from official government websites"]; see *LaSonde v Seabrook*, 89 AD3d 132, 137 n 8 [1st Dept 2011]; see also *Matter of Katonah-Lewisboro Union Free Sch. Dist. v New York State Educ. Dept.*, 243 AD3d 66, 71 [3d Dept 2025]; *Maisto v State of New York*, 196 AD3d 104, 116 n 11 [3d Dept 2021]; *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 20 [2d Dept 2009]).

Since one of the parties "resided" in New York County for venue purposes when the plaintiff commenced this action, the plaintiff properly placed venue in New York County, and the motions to transfer venue must be denied to the extent that they were premised upon the commencement of this action in an allegedly improper county.

The movants also argued that the convenience of witnesses provides an independent, discretionary ground for the transfer of venue to Monroe County because the treatment rendered to the plaintiff occurred in Monroe County, and virtually all persons involved in rendering the treatment reside in Monroe County or in counties adjacent to or near to Monroe County. Initially, the court concludes that, inasmuch as all of the movants made the instant motions on that ground less than three months after the commencement of this action, and prior to the issuance of any case management order, they have done so within a reasonable time after the initiation of the lawsuit (see CPLR 511[a]; *Gissen v Boy Scouts of Am.*, 26 AD3d 289, 290 [1st Dept 2006] [motion to transfer venue based on alleged convenience of witnesses made more than 2½ years after action was commenced, but before discovery had begun, was made

within a reasonable time]). Nonetheless, to the extent that the motions are based upon the purported inconvenience of witnesses, the motions must be denied in that context as well.

The “mere fact that the courthouse is in a different county” than the one in which a witness resides or works “does not give rise to a presumption that a witness will be inconvenienced” (*Pollack v St. Francis Hosp.*, 202 AD3d 453, 453 [1st Dept 2022]; see *Gersten v Lemke*, 68 AD3d 681, 681 [1st Dept 2009]). Moreover, it has long been the rule that,

“[a] party moving for a discretionary change of venue pursuant to CPLR 510(3) has the burden of demonstrating that the convenience of material witnesses and the ends of justice will be promoted by the change. In so doing, the moving party must set forth (1) the names, addresses, and occupations of the prospective witnesses, (2) the facts to which the witnesses will testify at trial, so that the court may judge whether the proposed evidence is necessary and material, (3) a statement that the witnesses are willing to testify, and (4) a statement that the witnesses would be greatly inconvenienced if the venue of the action was not changed”

(*Ambroise v United Parcel Serv. of Am., Inc.*, 143 AD3d 927, 928 [2d Dept 2016] [citations omitted]; see *Nir v Wakeford*, 237 AD3d 437, 438 [1st Dept 2025] [movant failed to show how potential witnesses would be inconvenienced by having to testify in New York County]; *Gissen v Boy Scouts of Am.*, 26 AD3d at 290-291 [movant must show the manner in which the witnesses will be inconvenienced, that the witnesses have been contacted and are available to testify, and the manner in which the anticipated testimony is material to the issues raised in the case]; *Cardona v Aggressive Heating, Inc.*, 180 AD2d 572, 572 [1st Dept 1992] [same]; see also *Ryan-Avizienis v JBEW Bar Corp.*, 121 AD3d 579, 580 [1st Dept 2014] [enumerating several of the relevant factors that must be considered]; *Weisemann v Davison*, 162 AD2d 448, 448 [2d Dept 1990]; *Stavredes v United Skates of America*, 87 AD2d 502, 502 [1st Dept 1982]).

It is well settled that “the convenience of ‘defendants themselves, or their employees, . . . is not a factor in considering a change of venue based on CPLR 510(3)’” (*McManmon v York Hill Hous., Inc.*, 73 AD3d 1137, 1138 [2d Dept 2010], quoting *Cilmi v Greenberg, Trager, Toplitz & Herbst*, 273 AD2d 266, 267 [2d Dept 2000]; see *Moshin v Port Auth. of N.Y. & N.J.*, 83 AD3d 536, 536 [1st Dept 2011] [convenience of party witnesses is not a factor in determining a venue

transfer motion based on CPLR 510[3]; *Martinez v Dutchess Landaq, Inc.*, 301 AD2d 424, 425-426 [1st Dept 2003] [convenience of a party's employee is "not a 'weighty factor'" in considering a motion for a discretionary change of venue]). Moreover, the placement of venue for the convenience of attorneys is manifestly improper (see *Naples v Daubert Chemical Co.*, 93 AD2d 745, 745 [1st Dept 1983]).

The movants have identified no nonparty witnesses who might be required to testify in this action, let alone how they might be inconvenienced by having to travel from Rochester, New York, and its environs to Manhattan for trial. "[N]otably lacking is any evidence that defendant[s] contacted the witness[es] to determine whether they are willing to testify on material matters and would be inconvenienced by having to do so in New York County" (*Prechtl v Trane U.S., Inc.*, 213 AD3d at 538). They have only referred to parties or employees of parties whose testimony might be necessary at trial, which is not relevant to the court's inquiry. In any event, to the extent that depositions of those persons might be warranted, depositions can be conducted remotely, as this court generally directs in its case management orders, or, should the parties agree that in-person depositions are preferable, those persons could be deposed in Monroe County or in a location near their homes or places of work.

Accordingly, it is,

ORDERED that the motion of the defendants Ashley Rogerson, M.D., University of Rochester, Strong Memorial Hospital, University of Rochester School of Medicine & Dentistry, and University of Rochester Medical Faculty Group to transfer venue of this action from New York County to Monroe County (MOT SEQ 001) is denied; and it is further,

ORDERED that the motion of the defendant Seth Mensah, M.D., to transfer venue of this action from New York County to Monroe County (MOT SEQ 002) is denied; and it is further,

ORDERED that the motion of the defendants Rochester General Hospital and Rochester Regional Health to transfer venue of this action from New York County to Monroe County (MOT SEQ 003) is denied; and it is further,

ORDERED that the motion of the defendants Frank Skurpski, M.D., Janeen Baxter, N.P., and First Docs, P.C., to transfer venue of this action from New York County to Monroe County (MOT SEQ 004) is denied.

This constitutes the Decision and Order of the court.

4/10/2026  
DATE

JOHN J. KELLEY, J.S.C.

MOTION 001:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" 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 type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" 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 003:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" 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 004:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" 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