

Sultana v St. Elizabeth Med. Ctr.

2022 NY Slip Op 34370(U)

December 20, 2022

Supreme Court, New York County

Docket Number: Index No. 805233/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

-----X

FARZANA SULTANA, as Administrator of the Estate of
FARDUSH SULTANA, deceased, FARZANA SULTANA,
Individually, ABUL BASHAR, and PARVEEN AKHTER,

Plaintiffs,

- v -

ST. ELIZABETH MEDICAL CENTER, MVHS MEDICAL
GROUP, and FAROOK KIDWAI, M.D.,

Defendants.

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INDEX NO. 805233/2019

MOTION DATE 11/03/2022

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 433, 434, 435, 436, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459

were read on this motion to/for CHANGE VENUE.

Upon the foregoing documents, for the reasons set forth on the record at the oral argument held before the court on December 1, 2022, the court grants in part Defendants St. Elizabeth Medical Center's ("SEMC") and MVHS Medical Group's ("MVHS") motion to change the venue of this action and the place of trial from New York County to Oneida County and grants in part Plaintiffs' cross-motion to retain venue in New York County, or in the alternative, to change venue to Columbia County, to the extent that the court changes venue from New York County to Columbia County as set forth herein.

As stated on the record, the court finds that Defendants SEMC and MVHS demonstrated that a change of venue out of New York County is warranted as the only tie to New York County was former Defendant Emergency Physician Services of New York, PC ("EPSNY"), which resided in New York when the action was commenced and the court previously granted

EPSNY's motion for summary judgment and dismissed the case against it. Therefore, EPSNY is no longer a party in this action and venue in New York County is no longer proper.

However, the court finds that Columbia County, instead of Oneida County, is the appropriate venue for this action in the interests of justice and for the convenience of the material non-party witness and Plaintiffs. The court determines that Plaintiffs demonstrated the following:

- (1) that while the Deceased Plaintiff, Fardush Sultana, attended school at Utica College in Oneida County, she maintained her permanent residence at her parents, Abul Bashar's and Parveen Akhter's, home in Columbia County;
- (2) that the Deceased's Plaintiff's parents, who are also Plaintiffs in this action, still reside in Columbia County;
- (3) that the older sister and Administrator of the Deceased Plaintiff's Estate, Farzana Sultana, resides in Connecticut and has a ten-month old baby, so it would be a hardship for her to travel to Oneida County for trial, but convenient for her to travel to Columbia County and stay with her parents;
- (4) that the Deceased Plaintiff's younger sister is a material non-party witness who attends school at Stony Brook University in Nassau County, who presumably maintains her permanent residence at her parents' home in Columbia County, and that it would be convenient for her to also stay at her parents' home in Columbia County during the trial; and
- (5) that Defendant Farook Kidwai, M.D. no longer works or resides in Oneida County and that it appears that he resides in Maryland and works in the Maryland/Washington, D.C. area.

Therefore, the court determines that the only ties to Oneida County are the location of Defendant SEMC, the location of the occurrence, the location of the Deceased Plaintiff's death, and the location of her temporary college residence. Thus, the court finds that Columbia County is the appropriate venue for this action and the trial.

The court considered all additional arguments raised by the parties, but not specifically discussed herein and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Defendants St. Elizabeth Medical Center's and MVHS Medical Group's motion to change the venue of this action and trial and Plaintiffs' cross-motion to retain venue in New York County, or in the alternative, to change venue to Columbia County, to the extent that the court changes venue from New York County to Columbia County as set forth herein; and if is further

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, County of Columbia and shall mark his records to reflect such transfer; and it is further

ORDERED that, within thirty (30) days from entry of this order, counsel for the Plaintiffs shall serve a copy of this order with notice of entry upon the Clerk of this Court, such counsel shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Columbia County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

This constitutes the Decision and Order of this court.

Erika M. Edwards
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12/20/2022

DATE

ERIKA M. EDWARDS, 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: