

Green v Taub

2013 NY Slip Op 32159(U)

August 7, 2013

Supreme Court, Kings County

Docket Number: 501902/2013

Judge: Laura Jacobson

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Borough of Brooklyn, City and State of New York, on the 7th day of August 2013.

PRESENT:
HON. LAURA L. JACOBSON

Justice

LORRAINE GREEN and DAZELL GREEN,

Plaintiff,

-against-

Cal. No.:8 & 9

Index No.:501902/2013

STANLEY TAUB, M.D., STANLEY TAUB, M.D., P.C.,
STANLEY TAUB, M.D., and LEONID TIMASHPOLSKY
PHYSICIAN, P.C.,

Defendants.

The following motions are consolidated for purposes of disposition.

The following papers numbered 1 to 9 read on this motion	Papers Numbered
Notice of Motion - Order to Show Cause-Cross-Motion and Affidavits (Affirmations) Annexed _____	1-4
Answering Affidavit (Affirmation) _____	5-7
Reply Affidavit (Affirmation) _____	8-9
Supporting _____ Affidavit (Affirmation) _____	_____
Pleadings-Exhibits _____	_____
Stipulations - Minutes _____	_____
Filed Papers _____	_____

Defendants Leonid Timashpolsky, M.D. and Leonid Timashpolsky Physician, P.C. (hereinafter collectively "The Timashpolsky Defendants") move for an order pursuant to CPLR §§ 503 and 510(1) changing venue of this action from Kings County to the County of New York. Defendants Stanley Taub, M.D., Stanley Taub, M.D., P.C. and Stanley Taub, M.D., F.A.C.S., P.C. (hereinafter collectively "The Taub Defendants") cross move

2013 SEP -4 AM 7:41

for an order changing the venue of this action as of right to the County of Dutchess. Plaintiffs commenced this action sounding in medical malpractice with the filing of a summons and complaint in Supreme Court Kings County on April 15, 2013. Plaintiffs alleges that plaintiff Lorraine Green sustained injuries on November 1, 2010, as the result of a plastic surgery procedure performed by defendants. Plaintiffs' summons designates venue for this action in Kings County based on the addresses listed with the New York State Division of Corporations Database for the Timashpolsky defendants. The Timashpolsky defendants assert that defendants served their respective verified answers and Demands for Change of Venue on May 16, 2013 and that plaintiffs have not contested defendants' demand for change of place of trial. Additionally, the Timashpolsky defendants claim that the instant motion is timely.

The Timashpolsky defendants contend that Kings County is not a proper venue for this case because the address listed for them in the New York State Division of Corporations Database is not a current address. Defendant Leonid Timashpolsky submitted an affidavit alleging that his personal address and the residence of his professional corporation are located at 61 West 62nd Street, Apt. 11M, New York, New York. Dr. Timashpolsky claims that he does not reside in Kings County nor does his professional corporation maintain an office in Kings County. Dr. Timashpolsky contends that he moved from Kings County to New York County in 2008. According to Dr. Timashpolsky, the alleged malpractice that forms the basis of plaintiffs' complaint occurred in New York County in 2010. Dr. Timashpolsky claims that at that time, he and his professional corporation resided at the New York County address. The Timashpolsky defendants allege that plaintiffs reside in Dutchess County and the Taub defendants are located in New York County. The Timashpolsky defendants argue that since none of the parties reside in Kings County and the alleged malpractice did not occur in Kings County, plaintiff's designation of Kings County as the place for trial of this action is improper. Consequently, the Timashpolsky defendants contend that they are entitled to change of venue to New York County which is the county in which they reside and the county in which the malpractice occurred.

The Taub defendants argue that since Kings County is an improper venue for this action, venue should be changed to Dutchess County which is the county in which Stanley Taub, M.D., P.C. has its principle place of business and it is the county in which plaintiffs reside. The Taub defendants also assert that plaintiff is likely to have treated in Dutchess County. The Taub defendants further allege that Dutchess County is subject to the applicable laws of the Appellate Division, Second Department. The Taub defendants contend that the cross-motion was made within a reasonable time after the commencement of this action, as they only found out about co-defendants' residence during the course of this motion practice.

In opposition, plaintiff alleges that pursuant to the Certificate of Incorporation for Leonid Timashpolsky Physician, P.C. which was signed by defendant Leonid Timashpolsky, M.D., at the time that this action was commenced, the principle place of business for Leonid Timashpolsky Physician, P. C. was located in Kings County. Plaintiffs allege that the Certificate of Incorporation which was filed with the New York State Department of State on November 23, 2005 is current as of June 19, 2013. Plaintiffs further assert that the Entity Information on the New York State Department of State Division of Corporations, State Records website lists the county for Leonid Timashpolsky Physician, P. C as "Kings". Plaintiffs argue that since the sole residence of a domestic corporation or a professional corporation for purposes of venue is the county designated in its Certificate of Incorporation, venue was properly placed in Kings County. Additionally, plaintiffs assert that the Taub defendants cross-motion against plaintiffs is improper because plaintiffs are not the moving party and the cross-motion is untimely.

In reply, the Timashpolsky defendants allege that although Leonid Timashpolsky Physician, P. C. did not amend its certificate of Incorporation the affidavit of defendant Dr. Timashpolsky states that the professional corporation is currently located in New York County and it was located in New York County at the time of the alleged malpractice. The Timashpolsky defendants argue that defendant Timashpolsky's affidavit sufficiently demonstrates that their principal place of business is New York County and the failure to amend the Certificate of Incorporation is not controlling in this case. The Taub defendants argue that their motion was timely and that it deals with the issues before the Court regarding the venue of this matter.

"Pursuant to CPLR 503(a), the venue of an action is properly placed in the county in which any of the parties resided at the time of commencement ... To effect a change of venue pursuant to CPLR 510(1), a defendant must show that plaintiff's choice of venue is improper and that its choice of venue is proper. [*citations omitted*]"(*Gonzalez v. Sun Moon Enterprises Corp.*, 53 AD3d 526 [2nd Dept. 2008]). Moreover, CPLR 511 (b) provides that "[t]he 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 fifteen 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." Here, the papers submitted to the Court by the Timashpolsky defendants are insufficient because they failed to contain copies of the pleadings including defendants' answer and defendants Demand for a Change of Venue. Furthermore, none of the defendants established that plaintiff improperly placed venue in Kings County. "It is well settled that the sole residence of a domestic corporation for venue purposes is the county designated in its certificate of incorporation, despite its maintenance of an office

facility in another county” (*Graziuso v 2060 Hylan Blvd Restaurant Corp.*, 300 AD2d 627[2nd Dept. 2002]). Moreover, the same is true for a professional corporation (see *Della Vecchia v Daniello*, 192 AD2d 415 [1st Dept. 1993]). Since defendants have presented no evidence to demonstrate that the certificate had been amended to designate a different county, venue was properly placed by plaintiffs in Kings County despite defendants claim that their office is in New York County (see *Hamilton v Corona Ready Mix, Inc.*, 21 AD3d 448 [2nd Dept. 2005]; see also, *Biaggi & Biaggi v 175 Medical Vision Properties*, 70 AD3d 880 [2nd Dept. 2010]).

Accordingly, defendants’ motion and cross-motion for change of venue are denied.

This constitutes the decision and order of the court.

ENTER

J.S.C

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2013 SEP -4 AM 7:41

COUNTY CLERK 4