

Brown v OBS-GYN of Rockland, P.C.

2017 NY Slip Op 31421(U)

June 30, 2017

Supreme Court, New York County

Docket Number: 805112/2017

Judge: Eileen A. Rakower

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X

Jennifer Brown,

Plaintiff,

Index No.
805112/2017

**DECISION and
ORDER**

- against -

Mot. Seq. #001

OBS-GYN of Rockland, P.C., Irene Kelly, M.D.,
Patricia Finnegan, N.P., Hudson Valley Radiology
Associates PLLC and Shari Siegel-Goldman M.D.,

Defendant.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

This is an action for medical malpractice. Plaintiff Jennifer Brown (“Brown”) claims that on or about January 5, 2015, Defendants OBS-GYN of Rockland P.C. (“OBS-GYN”), Irene Kelly, M.D. (“Kelly”), and Patricia Finnegan, N.P. (“Finnegan”) failed to detect and diagnose Brown’s breast cancer. Brown claims that in the period from January 8, 2015 to February 16, 2016, defendants Hudson Valley Radiology Associates PLLC (“Hudson”) and Shari Siegel-Goldman, M.D. (“Goldman”) also failed to detect and diagnose Brown’s breast cancer.

Brown therefore commenced this action by summons and verified complaint on March 22, 2017. In addition to the first and second causes of action for medical negligence and medical malpractice against OBS-GYN, Kelly, Finnegan, Hudson and Goldman, Brown alleges a third cause of action under Public Health Law § 2805-d. Specifically, Brown claims that she lacked information sufficient to consent because the defendants failed to disclose foreseeable risks with respect to Brown’s breast cancer. Brown claims that she suffered severe permanent personal injuries, emotional distress, physical pain and suffering. She seeks a judgment against the defendants.

On April 17, 2017, OBS-GYN and Kelly interposed their answer. On May 4, 2017, Finnegan interposed her answer and served a demand to change venue. (Finnegan's exhibit C, aff of Restrepo at 8) Hudson and Goldman interposed their answer on May 5, 2017. Finnegan filed this instant motion on May 18, 2017. Finnegan moves for an Order transferring the venue of this action from New York County to Rockland County pursuant to CPLR 503, 510 and 511.

Finnegan contends that this action should be transferred to Rockland County because none of the parties in this action reside in New York County. (affirmation of Laschewer at 3) Plaintiff Brown resides in "the County of Rockland, State of New York." (Brown complaint at 1) OBS-GYN, a professional corporation, operates a medical facility located at 510 Route 304, New City, New York 10956 where Kelly maintains an office for the practice of medicine. Additionally, Hudson, a professional limited liability corporation, operates a medical facility at 18 Squadron Blvd., New City, New York 10956 where Goldman maintains an office for the practice of medicine. Although the summons provides that the basis of venue is "Def. Finnegan's residence"¹ (Brown summons at 1), Finnegan submits a sworn affidavit wherein she states, "I do not now nor have I ever resided in New York County." (aff of Finnegan at 1) Finnegan further avers, "I own an apartment in New York at the address listed on the Summons and Complaint but I have never resided there. I reside in Rockland Country at 1 Demarest Mill Court, West Nyack, New York 10994." (aff of Finnegan at 1) Finnegan submits a copy of her driver's license issued on February 23, 2015 and expiring on "04/24/2020." (Finnegan's exhibit D) It lists her address as "1 DEMAREST MILL CT W NYACK, NY 10994." (Finnegan's exhibit D) Finnegan also submits a copy of a billing summary sent from Rockland Electric Company to "1 Demarest Mill Ct West Nyack, NY 10994." (Finnegan's exhibit D)

Plaintiff Brown does not oppose.

CPLR 503 (a) provides 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 . . ." For the purposes of venue, "A domestic corporation . . . shall be deemed a resident of the county in which its principal office is located . . ." (CPLR 503 [c])

¹ The Verified Complaint provides that, "Patricia Finnegan, N.P. is a resident of New York County, State of New York, maintaining a residence at 61 West 61nd Street, Apt. 8J, New York, New York 10023." (Brown complaint at 2)

CPLR 510 (1) provides that, “The court, upon motion, may change the place of trial of an action where . . . the county designated for that purpose is not a proper county . . .”

CPLR 511 (b) provides that, “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 fifteen days after service of the 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.” (CPLR 511 [a])

Here, Finnegan’s service of the demand to change venue comports with CPLR 511 (a) because Finnegan served this demand with the answer on May 4, 2017. (Finnegan’s exhibit C, aff of Restrepo at 8) Finnegan’s instant motion filed on May 18, 2017 comports with CPLR 511 (b) because Finnegan moved to change the place of trial within fifteen days after serving the demand on May 5, 2017.

Brown’s summons indicates that laying venue in New York County is based on “Def. Finnegan’s residence.”² (Brown summons at 1) However Finnegan has provided a sworn affidavit averring that she resides in Rockland County and has never resided in New York County. (aff of Finnegan at 1) She supports this affidavit with a copy of her driver’s license that was issued two years before this action was commenced and which expires approximately three years from the date of this decision and order. The driver’s license lists Finnegan’s address as “1 DEMAREST MILL CT W NYACK, NY 10994.” (Finnegan’s exhibit D) Finnegan also submits an electric bill that lists the address, “1 Demarest Mill Ct West Nyack, NY 10994.” (Finnegan’s exhibit D) Most significantly, however is that Plaintiff Brown does not oppose this motion to change venue.

Wherefore, it is hereby,

ORDERED that Defendant Patricia Finnegan, N.P.’s motion to transfer this matter from New York County to Rockland County pursuant to CPLR 503, 510 and 511 is granted without opposition; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Rockland, and upon service by movant Patricia

² The Verified Complaint provides that, “Patricia Finnegan, N.P. is a resident of New York County, State of New York, maintaining a residence at 61 West 61nd Street, Apt. 8J, New York, New York 10023.” (Brown complaint at 2)

Finnegan, N.P. of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Rockland.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: June 30, 2017



EILEEN A. RAKOWER, J.S.C.