

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND DEPARTMENT**

Biaggi & Biaggi v. 175 Medical Vision Properties, LLC

105 A.D.3d 790, 961 N.Y.S.2d 807 (N.Y. App. Div. 2013) · Decided April 10, 2013

SUMMARY

The New York Appellate Division, Second Department, affirmed an order granting defendants leave to amend their answer to add five counterclaims. The court held that any delay caused by transferring venue between counties was neither prejudicial nor sufficiently gross to justify denying leave to amend.

OPINION

PER CURIAM.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered February 1, 2012, which granted the defendants' motion for leave to amend the answer to include five counterclaims. Ordered that the order is affirmed, with costs. Leave to amend the pleadings "shall be freely given" absent prejudice or surprise resulting directly from the delay (CFLR 3025 [b]; *McCaskey, Davies & Assoc. v New York City Health & Hosps.*

Corp., 59 NY2d 755, 757 [1983]; *Fahey v County of *791Ontario*, 44 NY2d 934, 935 [1978]). "The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis" {*Skinner v Scobbo*, 221 AD2d 334, 335 [1995]}. Inasmuch as the venue for this case had been changed from Westchester County to Kings County, the defendants moved the Supreme Court, Kings County, on or about February 19, 2010, for leave to amend their answer.

After the venue of the case was transferred back to Westchester County, the defendants' motion was denied without prejudice to renew the same motion in Westchester County, which they accomplished in a timely fashion.

Accordingly, the Supreme Court, Westchester County, properly granted the motion, since any delay in filing the motion in Westchester County was neither prejudicial nor so gross as to warrant denial of the motion on that basis {see *id.* at 335; *Hickey v Hutton*, 182 AD2d 801, 802 [1992]}.

The plaintiff's remaining contentions are without merit. Skelos, J.R., Angiolillo, Roman and Cohen, JJ., concur.

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