

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Williams v. Bronx Harbor Health Care Complex, Inc.

2023 NY Slip Op 00508 (N.Y. Ct. App. 2023) · No. Appeal No. 17247; Case No. 2021-03914; Index No. 32712/18E · Decided February 2, 2023

SUMMARY

The Appellate Division, First Department, affirmed the denial of defendant's motion for leave to renew and reargue its prior motion to change venue and dismissed the remainder of the appeal as taken from a nonappealable paper. The court held that the venue motion was untimely because defendant knew of the contractual venue-selection clause, engaged in discovery in Bronx County for more than a year, and waited 14 months after commencement of the action to seek a venue change.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; González, J.; Scarpulla, J.; Shulman, J.; Pitt, J.
JURISDICTION	New York
DECIDED	February 2, 2023
DOCKET	Appeal No. 17247; Case No. 2021-03914; Index No. 32712/18E
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from an order that denied its motion for leave to renew and reargue its prior motion for a change of venue. The Appellate Division affirmed the appealable portion of the order and dismissed the remainder as taken from a nonappealable paper.
STANDARD OF REVIEW	Abuse of discretion for the venue determination; appealability was reviewed as a threshold jurisdictional issue.
PRECEDENTIAL VALUE	published New York Appellate Division opinion
PARTIES	Bronx Harbor Health Care Complex, Inc. doing business as Kings Harbor MultiCare Center v. Nancy Williams, as Administratrix of the Estate of Carrie Williams, Nancy Williams, individually

TOPICS

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QUESTIONS PRESENTED

1. Whether Supreme Court providently exercised its discretion in finding defendant's motion for a change of venue untimely.
2. Whether the portion of the order denying leave to renew and reargue was appealable.

HOLDINGS

1. A motion to change venue was properly denied as untimely where defendant knew of the venue-selection clause and possessed the executed agreement at the commencement of the action, yet participated in Bronx County discovery and conferences for more than a year before moving.
2. The appeal was dismissed to the extent it was taken from a nonappealable paper, while the appealable portion denying leave to renew and reargue was affirmed.

KEY QUOTATIONS

“Supreme Court providently exercised its discretion in finding that defendant's motion to change venue was untimely”

“Further, defendant has never explained why it waited 14 months after the action's commencement before seeking a change of venue”

FACTUAL BACKGROUND

Defendant possessed the fully executed agreement containing the relevant venue-selection clause when plaintiff commenced the action. Despite that knowledge, defendant engaged in more than a year of Bronx County discovery, exchanged documentary evidence, and appeared at numerous conferences before moving for a change of venue. Defendant argued that it could not have moved earlier because it learned the relevant facts only after deposing plaintiff, but the depositions were scheduled and held shortly after the motion was filed, and defendant did not explain its fourteen-month delay.

PROCEDURAL HISTORY

Plaintiff commenced the action in Bronx County. Defendant participated in discovery and court conferences there for more than a year before moving for a change of venue based on a venue-selection clause in the parties' agreement. Supreme Court, Bronx County, denied the venue motion, and later entered an order denying defendant's motion for leave to renew and reargue. The Appellate Division affirmed the denial to the extent appealable and dismissed the remainder of the appeal.

DISPOSITION

CASES CITED

- Sade San A Jong v. Lesesne, 114 AD3d 624, 625 [1st Dept 2014]
- Brown v United Odd Fellow & Rebekah Home, Inc., 184 AD3d 478, 478 [1st Dept 2020]
- Mena v Four Wheels Co., 272 AD2d 223, 223 [1st Dept 2000]

OPINION

PER CURIAM.

Williams v Bronx Harbor Health Care Complex, Inc. (2023 NY Slip Op 00508) Williams v Bronx Harbor Health Care Complex, Inc. 2023 NY Slip Op 00508 Decided on February 02, 2023 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: February 02, 2023 Before: Manzanet-Daniels, J.P., González, Scarpulla, Shulman, Pitt, JJ. Index No. 32712/18E Appeal No. 17247 Case No. 2021-03914 [*1]Nancy Williams, as Administratrix of the Estate of Carrie Williams, and Nancy Williams, Individually, Plaintiff-Respondent, vBronx Harbor Health Care Complex, Inc. Doing Business as Kings Harbor MultiCare Center, Defendant-Appellant.

Schiavetti, Corgan DiEdwards, Weinberg & Nicholson, LLP, White Plains (Samantha E. Quinn of counsel), for appellant. Sinel & Olesen, PLLC, New York (Thomas Torto of counsel), for respondent. Order, Supreme Court, Bronx County (Joseph Capella, J.), entered on or about March 4, 2021, which, to the extent appealable, denied defendant's motion for leave to renew and reargue its prior motion for a change of venue, unanimously affirmed, without costs, and otherwise dismissed, without costs, as taken from a nonappealable paper.

Supreme Court providently exercised its discretion in finding that defendant's motion to change venue was untimely (see Sade San A Jong v Lesesne, 114 AD3d 624, 625 [1st Dept 2014]). Defendant does not dispute that it was aware of the venue selection clause in the relevant agreement and that it had the fully executed agreement in its possession when plaintiff commenced this action.

Nonetheless, before making its motion, defendant engaged in discovery in Bronx County for more than a year, exchanging documentary evidence with plaintiff and appearing at numerous court conferences in that county. We reject defendant's argument that it could not have moved for a change of venue earlier because it became aware of the relevant facts only after it deposed plaintiff.

Although defendant is correct that depositions had yet to be held at the time of the motion, the depositions were scheduled and held shortly after defendant filed its motion, more than two months before issuance of the court's initial order in June 2020 denying the motion. Further, defendant has never explained why it waited 14 months after the action's commencement before seeking a change of venue (CPLR 511[a]; see *Brown v United Odd Fellow & Rebekah Home, Inc.*, 184 AD3d 478, 478 [1st Dept 2020]; *Mena v Four Wheels Co.*, 272 AD2d 223, 223 [1st Dept 2000]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 2, 2023