

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

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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

other

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]

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