

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

Nimmons v. EIC Assoc., Inc.

2026 NY Slip Op 03736 (N.Y. Ct. App. 2026) · No. 2025-04364 · Decided June 11, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the denial of defendants’ motion to change venue from New York County to Queens County. The court held that the venue demand was untimely, that the forum-selection clause did not apply, and that defendants failed to support an alternative motion based on witness convenience under CPLR 510(3).

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.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 11, 2026
DOCKET	2025-04364
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, New York County, denying their motion to change venue to Queens County.
STANDARD OF REVIEW	The court reviewed the denial of the venue-change motion, including whether defendants complied with the statutory time limits and whether discretionary relief under CPLR 510(3) was warranted.
PRECEDENTIAL VALUE	Published opinion
PARTIES	EIC Associates, Inc., other defendants v. Anttwon Nimmons, other plaintiffs

TOPICS

- venue
- civil procedure
- appellate procedure
- construction law

PRACTICE AREAS

- civil procedure
- appellate procedure
- construction law

QUESTIONS PRESENTED

1. Whether defendants were entitled to a change of venue to Queens County based on improper venue when their venue demand was not timely served.
2. Whether defendants were entitled to discretionary relief under CPLR 510(3) based on the convenience of witnesses and the ends of justice.
3. Whether the public works contract's forum-selection clause required venue in New York County.

HOLDINGS

1. The forum-selection clause did not dictate venue because it applied only to claims asserted against the City, not to the claims at issue in this action.
2. The motion to change venue was properly denied because defendants failed to serve their venue demand within the strict statutory time limits.
3. Defendants were not entitled to a discretionary change of venue under CPLR 510(3) because they failed to provide the identity and availability of proposed witnesses, the nature of their anticipated testimony, or the manner in which the witnesses would be inconvenienced by trial in New York County.

KEY QUOTATIONS

*“Nevertheless, defendants' motion to change venue to Queens County was properly denied because defendants did not serve their demand within the strict time limits provided by statute” (*1)*

*“However, this is not one of the "limited situations" in which an otherwise untimely motion to change venue may be granted as a provident exercise of discretion” (*1)*

FACTUAL BACKGROUND

The action arose from a public works contract. When the action was commenced, none of the named plaintiffs resided in New York County, and all events underlying the action occurred in Queens County. Defendants sought to transfer venue to Queens County, but they did not timely serve their venue demand and did not identify proposed witnesses or describe the anticipated testimony or inconvenience supporting a discretionary change under CPLR 510(3).

PROCEDURAL HISTORY

Plaintiffs commenced the action in New York County concerning a public works contract. Defendants moved to change venue to Queens County, arguing that venue was improper there because the plaintiffs did not reside in New York County and the underlying events occurred in Queens County. Supreme Court denied the motion, and the Appellate Division unanimously affirmed with costs.

DISPOSITION

affirmed

CASES CITED

- De La Cruz v. Caddell Dry Dock & Repair Co., Inc., 56 A.D.3d 365, 366 (1st Dep't 2008)
- Martirano v. Golden Wood Floors Inc., 137 A.D.3d 612, 613 (1st Dep't 2016)
- Pittman v. Maher, 202 A.D.2d 172, 175-176 (1st Dep't 1994)
- Villalba v. Brady, 162 A.D.3d 533, 533 (1st Dep't 2018)

OPINION

Nimmons v. EIC Assoc., Inc. 2026 NY Slip Op 03736

PER CURIAM.

Nimmons v EIC Assoc., Inc. - 2026 NY Slip Op 03736 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Nimmons v EIC Assoc., Inc. 2026 NY Slip Op 03736 June 11, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Anttwon Nimmons, et al., Plaintiffs-Respondents, v EIC Associates, Inc., et al., Defendants-Appellants, ABC Corp. Bonding Companies, Defendant. Decided and Entered: June 11, 2026 Index No. 654675/23|Appeal No. 6873|Case No. 2025-04364| Before: Manzanet-Daniels, J.P., González, Higgitt, Michael, Chan, JJ. Cohen Seglias Pallas Greenhall & Furman, P.C., New York (Jonathan Landesman of counsel), for appellants. Pelton Graham LLC, New York (Brent E. Pelton of counsel), for respondents. [*1] Order, Supreme Court, New York County (Nicholas W. Moyne, J.), entered on or about June 10, 2025, which denied defendants' motion for a change of venue to Queens County, unanimously affirmed, with costs. As an initial matter, venue was not proper in New York County under the forum selection clause in the public works contract underlying this action because it applies only to claims asserted "against the City," and thus does not dictate venue here (see De La Cruz v Caddell Dry Dock & Repair Co., Inc. , 56 AD3d 365 , 366 [1st Dept 2008]). Nevertheless, defendants' motion to change venue to Queens County was properly denied because defendants did not serve their demand within the strict time limits provided by statute (CPLR 510[1]; 511[a], [b]; see Martirano v Golden Wood Floors Inc. , 137 AD3d 612, 613 [1st Dept 2016]). It is undisputed that when the action was commenced, none of the named plaintiffs resided in New York County, and that all of the events underlying the instant action occurred in Queens County. Thus, venue was proper in Queens County (see CPLR 503[a]). However, this is not one of the "limited situations" in which an otherwise untimely motion to change venue may be granted as a provident exercise of discretion since "the only ground sufficient to support the change of venue is that the action was not commenced in the proper county" (Pittman v Maher , 202 AD2d 172, 175-176 [1st Dept 1994]). To the extent the motion was premised on CPLR 510(3), which is not subject to the same strict time constraints, that motion should have been denied as defendants failed to provide the identity and availability of any proposed witnesses, the nature of their anticipated testimony, or how they would be

inconvenienced by trial in New York County (see Villalba v Brady , 162 AD3d 533 , 533 [1st Dept 2018])). We have considered defendants' remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 11, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.