

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

Johnson v. Finkelstein

2016 N.Y. Slip Op. 08507 (N.Y. Ct. App. 2016) · No. 2015-03271 · Decided December 21, 2016

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendants’ motion to change venue from Kings County to New York County in a medical malpractice and lack-of-informed-consent action. The court held that the defendants failed to establish prima facie that the plaintiff was not a Kings County resident when the action was commenced, so the burden did not shift to the plaintiff.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Ruth C. Balkin, J.P.; Thomas A. Dickerson, J.; Hector D. LaSalle, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	December 21, 2016
DOCKET	2015-03271
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed, as limited by their brief, from the portion of an order denying their motion to change venue from Kings County to New York County.
STANDARD OF REVIEW	The appellate court reviewed whether defendants established prima facie entitlement to a venue change by demonstrating that plaintiff was not a Kings County resident when the action commenced.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; the opinion states that it is uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Seth Finkelstein, et al., Defendants v. Gale Johnson, Plaintiff

TOPICS

venue

medical malpractice

informed consent

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

venue

medical malpractice

informed consent

QUESTIONS PRESENTED

1. Whether defendants established prima facie that the plaintiff was not a resident of Kings County when the action was commenced, warranting a change of venue to New York County under CPLR 503(a).
2. Whether a party may have more than one residence for purposes of venue.

HOLDINGS

1. Defendants failed to demonstrate prima facie that the plaintiff was not a resident of Kings County when she commenced the action; therefore, the burden did not shift to the plaintiff to establish her Kings County residence, and the motion to change venue was properly denied.
2. For venue purposes, a residence is a place where a party stays for some time with a bona fide intent to retain it as a residence for some length of time and with some degree of permanency, and a party may have more than one residence.

KEY QUOTATIONS

*“For venue purposes, a residence is where a party stays for some time with a bona fide intent to retain the place as a residence for some length of time and with some degree of permanency” (*1)*

FACTUAL BACKGROUND

The plaintiff brought an action for damages arising from alleged medical malpractice and lack of informed consent. She commenced the action in Kings County based on her claimed residence there. Defendants relied principally on her deposition testimony, arguing that it showed she lacked a fixed Kings County address before commencement and had moved to Florida the week before commencement.

PROCEDURAL HISTORY

The plaintiff commenced a medical-malpractice and lack-of-informed-consent action in Kings County, relying on her alleged Kings County residence for venue. Defendants moved under CPLR 503(a) to transfer the action to New York County, asserting that plaintiff was not a Kings County resident when the action was commenced. The Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed that portion of the order.

DISPOSITION

affirmed

CASES CITED

- Ellis v. Wirshba, 18 AD3d 805, 805

- Patton v. Malychev, 132 AD3d 829, 830
- Forbes v. Rubinovich, 94 AD3d 809, 810
- Farrington v. Fordham Assoc., LLC, 129 AD3d 591, 592
- Chehab v. Roitman, 120 AD3d 736, 737-738
- Deas v. Ahmed, 120 AD3d 750, 751

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