

NYSCEF DOC. NO. 184

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RECEIVED NYSCEF: 05/13/2025



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May 13, 2025

VIA NYSCEF

Hon. Anne E. Minihan
District Administrative Judge
Ninth Judicial District
Richard J. Daronco Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

Re: *Oral Clarke, et al. v. Town of Newburgh, et al.* (Index No. EF002460-2024; Orange Cnty.)

Dear Justice Minihan,

We represent Defendants Town of Newburgh and Town Board of the Town of Newburgh (collectively, “Defendants” or “Town”) in the above-referenced action. We write in opposition to Plaintiffs’ remarkable May 13, 2025 letter (NYSCEF Doc. No. 183) requesting—after they already proceeded to trial in Orange County, and then caused trial to be called off after their own opening statements—that this case be transferred to a judge in Westchester County and set for an immediate trial. Plaintiffs’ latest, cynical attempt to have this trial held before a judge whom they perceive is more favorable to them (Plaintiffs previously requested that this case be reassigned from Justice Vazquez-Doles, who ruled against Plaintiffs on summary judgment, to a different justice *but, notably, without requesting a transfer to a different court*) should be denied.

As a threshold matter, there is absolutely no basis for transferring this case from Orange County to Westchester County at this late hour. Venue has been established since Plaintiffs chose to file their lawsuit in Orange County back in March of 2024. At no point in over a year since Plaintiffs themselves determined venue was appropriate in Orange County have Plaintiffs raised an intention to transfer these proceedings to Westchester County—that is, until yesterday, *after trial commenced*.^{*} Plaintiffs have thus obviously “waive[d]” any objections to this case going forward in Orange County by not “timely demand[ing] or mov[ing] for a change of venue.” *Balbuenas v. New York City Health & Hosps. Corp.*, 177 N.Y.S.3d 52, 57 (2d Dep’t 2022).

^{*} Plaintiffs’ only apparent explanation for raising this venue issue now is that the Hon. Sherri Eisenpress, to whom the case was reassigned yesterday, “stated that the law required the case to be sent to a Westchester County judge.” (NYSCEF Doc. No. 183, at 1.) This claim is extremely misleading, given that Justice Eisenpress granted briefing on the issue before recusing herself from this case and, specifically, from ruling on the transfer issue itself.

Nor is there any reason to honor Plaintiffs' desire that this Court take administrative action to secure them a quicker trial. *The only reason that trial is not currently ongoing (and set to complete this week) in Orange County is that Plaintiffs did not disclose their relationship with Justice Vazquez-Doles until after Her Honor made the disclosure following Plaintiffs' opening statement; and it was Plaintiffs who then refused to allow the case to move forward based on the disclosure.* In particular, after trial began yesterday, Justice Vazquez-Doles raised a long-ago connection that she had to one of the named Plaintiffs. At that point, Plaintiffs' counsel revealed additional contacts other Plaintiffs have had with Justice Vazquez-Doles and her late husband over the years. Notwithstanding these belated disclosures—which were presumably known to the Plaintiffs and their counsel for the entirety of these proceedings, and yet were sprung on Defendants after the start of trial—*Defendants explained that they were in favor of moving forward with trial*, given the substantial burdens they had undertaken to make themselves and their experts available this week. Notwithstanding Defendants' willingness to hold trial this week even after these belated disclosures, it was *Plaintiffs* who objected to Justice Vazquez-Doles continuing with the case, causing trial to be called off.[†]

Defendants respectfully request that Plaintiffs' gamesmanship and attempted judge-shopping not be rewarded. The only reason trial is not occurring right now is due to Plaintiffs' own conduct in failing to disclose their multiple connections to Justice Vazquez-Doles, and then, when one of those connections was disclosed by Her Honor, refusing to proceed even though the perceived conflicts were within Plaintiffs' knowledge. Moreover, it is worth noting that Plaintiffs allege in their Complaint that "the nomination process for candidates for Town office in November 2025 will begin in or around February 2025," and thus, in order for "any court-ordered remedies" issued in this lawsuit to be effective, such remedies would need "to be implemented before February 2025." *See* NYSCEF No. 1 ¶¶ 140, 143. Plaintiffs repeated this position, including on November 1, 2024, when they represented that "it is critical that this matter be decided in time for the 2025 election cycle, which will begin in February. **If the trial is delayed until January**, it will be extraordinarily difficult to achieve that. In those circumstances, **even if the Court decides that the plaintiffs are entitled to relief, they will not see it until 2027.**" NYSCEF No. 144 (emphasis added). Therefore, Plaintiffs' assertion that this case must proceed immediately contradicts their long-standing position in this matter. Because any relief, if granted by any court, will not affect the 2025 election, there is no need to facilitate immediate trial, which, it bears repeating, would already be underway but for Plaintiffs' own conduct before Justice Vazquez-Doles.

For these reasons, Defendants respectfully request that this case be assigned to a different Justice in Orange County and set for trial as that Justice deems appropriate, consistent with all legal requirements.

[†] Defendants maintain that the disclosed connections between Justice Vazquez-Doles and Plaintiffs did not create a reason for Justice Vazquez-Doles to recuse and that trial could have occurred this week, as scheduled. In any event, in regard to Plaintiffs' request to transfer this case to avoid potential recusal issues, it simply makes no sense to transfer this case to Westchester County, where Plaintiffs' counsel's offices are located.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bennet J. Moskowitz", written over a horizontal line.

Bennet J. Moskowitz

cc: All counsel of record via NYSCEF