

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: I.A. PART 17**

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In the Matter of the
Application of PETER KATZ,
Holder of One-Half of All
Outstanding Shares Entitled to Vote
in an Election of Directors,

Petitioner,

For the Dissolution of
UNIVERSAL FABRICATION CORPORATION
A Domestic Corporation, and PINCKAS KATZ,

Respondents.
----- X

DECISION AND ORDER

Index No: 2542/11

Motion Sequence Nos 001 & 002
Original Return Date: 03-31-11

P R E S E N T :

**HON. JOEL K. ASARCH,
Justice of the Supreme Court.**

The following named papers numbered 1 to 7 were submitted on this Notice of Motion on May 9, 2011:

	<u>Papers numbered</u>
Notice of Petition, Verified Petition	1-2
Memorandum of Law in Support of Petition	3
Notice of Motion to Dismiss, Affidavit and Affirmation in Support	4-6
Affidavit in Opposition to Motion	7

The motion by respondent Pinckas Katz for an Order dismissing this proceeding pursuant to Business Corporation Law §1112 on the basis of improper venue is **granted to the limited extent** that this proceeding shall be transferred to the Supreme Court in Kings County. The place of trial of the above-entitled special proceeding shall be changed from the County of Nassau to the County of Kings. Upon entry of this Order, the County Clerk of Nassau County shall forthwith deliver to the

Clerk of the Supreme Court, County of Kings, all papers filed in this proceeding.

Respondent Pinckas Katz shall serve and file his answer to the petition within 20 days of service of a copy of this order with notice of its entry.

The proper venue for a petition seeking dissolution pursuant to Business Corporation Law §1104 is “in the supreme court in the judicial district in which the office of the corporation is located at the time ... of the presentation to the court of the petition in such special proceeding” (Business Corporation Law §1112; *Matter of Dissolution of Supplier Distribution Concepts Inc.*, 80 AD3d 869 [3rd Dept 2011]). Universal Fabrication Corporation (“Universal”), the corporation for which dissolution is sought, is located in Brooklyn, which is in the second judicial district. Respondent Pinckas Katz seeks dismissal of the petition on the grounds of improper venue, because this proceeding was commenced in Nassau County, which is in the tenth judicial district.

Improper venue is not a jurisdictional defect requiring dismissal (*Lucchese v Rotella*, 97 AD2d 645, 646 (3rd Dept), *affd* 60 NY2d 815 [1983]; *Chira v. Global Medical Review, Inc.*, 160 Misc2d 368 [Sup Ct, Rockland Cty, 1994]; *State by Abrams v. Cohen*, 123 Misc2d 51 [Sup Ct, NYCty, 1983]). The appropriate remedy for initiation of proceedings in an improper venue is a change of venue, not dismissal of the proceeding (see *Gau v Kramer*, 289 AD2d 804 [3rd Dept 2001]; see also *Blish v. Mazer*, 46 AD3d 1208 [3rd Dept 2007]).

Petitioner seeks outright denial of the motion on the grounds that respondent Pinckas Katz did not strictly comply with the demand procedure set forth in CPLR 511(b) for a change of venue. Where a party fails to comply with the procedures set forth in CPLR 511(b), the motion for change of venue changes from one as of right to a matter of the court’s discretion (*Thomas v Guttikonda*, 68 AD3d 853 [2nd Dept 2009]; *Baez v Marcus*, 58 AD3d 585 [2nd Dept 2009]; *Revy v Ski Windham*

Operating Corp., 220 AD2d 568 [2nd Dept 1995]). To the extent that CPLR 511 is applicable here and the discretion of this Court is invoked, this Court finds that respondent Pinckas Katz' pre-answer motion suffices to give petitioner prompt and early notice of the improper designation of Nassau County as the venue for dissolution of Universal, a corporation located in Brooklyn. Furthermore, the Court believes that giving effect to Business Corporation Law §1112 should trump a technical failure to demand a change of venue prior to the making of the subject motion. Finally, the circumstances herein do not warrant conditioning the change of venue upon a payment in the nature of a sanction (cf. *Perez v Long Beach Motor Inn, Inc.*, 138 AD2d 583 [2nd Dept 1988]; see also *Machani v Shields*, 288 AD2d 194 [2nd Dept 2001]).

Based on the foregoing, the motion for dismissal is **granted to the limited extent that this special proceeding is hereby transferred to Supreme Court, County of Kings**, as set forth above.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
September 12, 2011

ENTER:


JOEL K. ASARCH, J.S.C.

Copies mailed to:
Gleich, Siegel & Farkas, Esqs.
Attorneys for Petitioner

Allen M. Schwartz, Esq.
Attorneys for Respondents

ENTERED
SEP 13 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE