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**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. DANIEL PALMIERI**  
**Acting Justice Supreme Court**

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**MICHAEL BLOCK and DEBRA BLOCK,**

**TRIAL PART: 32**

**NASSAU COUNTY**

**Plaintiffs,**

**-against-**

**INDEX NO: 16582/03**  
**(QUEENS COUNTY)**

**MOTION DATE: 4-13-04**  
**SUBMIT DATED: 4-13-04**  
**MOTION SEQ. NO: 001**

**FLAVIO MORALES and LUZ MORALES,**  
**Defendant.**

-----x  
**FLAVIO MORALES and LUZ MORALES,**

**Third-Party**

**Third-Party Plaintiffs**

**Index No. 003284/04**

**-against-**

**TOWN OF HEMPSTEAD,**

**Third-Party Defendants.**

-----x

**The following papers having been read on this motion:**

<b>Notice of Motion, dated 3-8-04 .....</b>	<b>1</b>
<b>Affirmation in Support, dated 3-8-04 .....</b>	<b>2</b>
<b>Affirmation in Opposition, dated 3-16-04.....</b>	<b>3</b>
<b>Reply Affirmation, dated 3-24-04 .....</b>	<b>4</b>
<b>Affirmation in Support, dated 3-31-04 .....</b>	<b>5</b>
<b>Supplemental Reply Affirmation, dated 4-5-04 .....</b>	<b>6</b>
<b>Reply Affirmation, dated 4-8-04 .....</b>	<b>7</b>

The motion of the third-party defendant, Town of Hempstead, to change the venue of this action from Queens County to Nassau County is denied.

This action arises out of a sidewalk accident that took place in Nassau County. Venue was lodged in Queens County based on the residence of the defendants.

Defendant's motion in Queens County to change the venue to Nassau County was denied in a decision of Hon. William T. Glover dated December 9, 2003. Thereafter, defendant initiated a third-party action against the Town and this motion ensued.

Although CPLR § 504.2 requires that an action against a town be venued in the county in which the town is located, that section is not jurisdictional and would not preclude the consolidation of actions in a county where venue is proper, *Champion v. City of New York*, 203 AD2d 508 (2d Dept. 1994), nor does bringing in a municipality as a third-party defendant render improper venue previously designated in a county other than the one in which the municipality is situated. *Holmes v. Greenlife Landscaping, Inc.*, 171 AD 2d 916 (3d Dept. 1991). See also *Forteau v. County of Westchester*, 196 AD2d 440 (1<sup>st</sup> Dept. 1993).

To the extent that the venue change is sought pursuant to the discretionary provisions of CPLR § 510.3, the motion is also denied. It can hardly be said that the inconvenience to the town of traveling to the adjoining Borough of Queens warrants the exercise of the Court's discretion. *Holmes v. Greenlife Landscaping, Inc.*, supra 917.

As to the arguments of defendants that venue was improperly grounded in Queens County, the decision of Justice Glover is the law of the case and cannot be revisited here. *Francisco v. General Motors Corporation*, 277 AD2d 975 (4<sup>th</sup> Dept. 2000), *People v. Guin*, 243 AD2d 649 (2d Dept. 1997).

The arguments now posited by the defendant that newly submitted affidavits by them justify a change of venue based on their residence are inappropriate here and should be made to Justice Glover by motion pursuant to CPLR § 2221.

This constitutes the Decision and Order of this Court.

**ENTER**

**DATED: April 13, 2004**



**HON. DANIEL PALMIERI  
Acting J.S.C.**

**TO: WAXMAN AND WINCOTT, P.C.  
Attorneys for Plaintiffs  
MICHAEL BLOCK AND DEBRA BLOCK  
7600 Jericho Turnpike, Ste. 306  
Woodbury, NY 11797**

**ENTERED**

**APR 16 2004**

**LAW OFFICE OF JOHN P. HUMPHREYS, ESQ.  
Attorneys for Defendants/  
Third-Party Plaintiffs  
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**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

**JOSEPH J. RA, ESQ.  
Town Attorney and Attorney for  
Third-Party Defendant,  
TOWN OF HEMPSTEAD  
By: Chales O. Heine  
Hempstead Town Hall  
1 Washington Street  
Hempstead, NY 11550**