

BOND

LITIGATION INFORMATION MEMO

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Certificates of Incorporation Control: New Venue Concerns for Corporations in New York State

Background

The term “venue” in New York State civil procedure means the county in which a lawsuit is filed and prosecuted. Although it may seem somewhat inconsequential on its face, venue is an important strategic tool for litigation. It can create a powerful imbalance in the financial burden of litigation between two opposing parties. If an action is commenced in Supreme Court, Westchester County, for example, a plaintiff whose attorney’s office is located across the street from the courthouse could easily pay less in legal expenses than the defendant whose attorneys are located in Buffalo, especially if the lawsuit proceeds to trial. A mindful attorney might also deliberately choose a venue where that attorney regularly practices because that attorney will be familiar with the individual justices and their judicial temperament and preferences, providing a competitive edge at various stages of litigation.

In the Jan. 26, 2023, decision in *Marte v. Lampert*, the Appellate Division, First Department, placed new weight on the effect of certificates of incorporation on determining proper venue.

In *Marte*, the First Department reversed an order of the Supreme Court, New York County, which granted a corporate defendant’s motion to transfer venue from New York County to Nassau County. The First Department based its reversal on the fact that the corporate defendant’s certificate of incorporation named New York County as the county in which the corporate defendant had its principal office. Accordingly, the corporate defendant was deemed a resident of New York County for purposes of venue under N.Y. CPLR 503(c) and the case needed to remain there.

The unusual twist, however, is the fact that the corporate defendant *did not actually have* an office in New York County. Rather, the corporate defendant’s office was in Nassau County—the very county to which the corporate defendant had sought to transfer venue. Indeed, the corporate defendant’s vice president even filed an affidavit declaring that the *de facto* location of the corporate defendant’s principal office was in Nassau County.

These facts did not matter to the First Department, which declared that “[t]he corporate residence designated in the initial certificate of incorporation controls for venue purposes.” See 2023 N.Y. Slip Op. 00375, at *1 (1st Dep’t 2023). If the corporate defendant had moved its principal office to Nassau County, the First Department reasoned, then it should have executed an amended certificate of incorporation to reflect that fact. Since it did not execute an amended certificate of incorporation, the corporate defendant was still deemed a resident of New York County for purposes of venue and the lawsuit needed to remain there.

Implications for Corporations

Following the COVID-19 pandemic, many businesses relocated due to the cultural switch in preference to remote work and the high costs of leasing office space in urban areas. Indeed, similar to the corporate

defendant in *Marte*, a corporation might not have *any presence* in the county in which it originally had its principal office.

If you manage a corporation that is organized in New York State, you should be especially cognizant of where the certificate of incorporation states your corporation's principal office is located following *Marte*. To avoid your corporation being haled into court in a distant venue due to an outdated certificate of incorporation, you should periodically review its certificate of incorporation and amend it if necessary.

Such diligence could determine the success of your future litigation.

If you have any questions or need Bond's assistance, please contact [Collin M. Carr](#), any attorney in Bond's [litigation practice](#) or the attorney at the firm with whom you are regularly in contact.

