

Matter of Sinanaj v City of New York

2014 NY Slip Op 30129(U)

January 16, 2014

Supreme Court, New York County

Docket Number: 117469/08

Judge: Manuel J. Mendez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ
Justice

PART 13

IN RE 91ST STREET CRANE COLLAPSE LITIGATION:

XHEVAHIRE SINANAJ and SELVI SINANOVIC as
CO-ADMINISTRATORS OF THE ESTATE OF
RAMADAN KURTAJ, DECEASED, and SELVI
SINANOVIC Individually,

INDEX NO. 117469/08
MOTION DATE 12-10-2013
MOTION SEQ. NO. 050
MOTION CAL. NO. _____

Plaintiff(s),

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF BUILDINGS, MICHAEL CARBONE, PATRICIA J.
LANCASTER, ROBERT LIMANDRI, NEW YORK CRANE
& EQUIPMENT CORP., JAMES F. LOMMA, LOMMA
TRUCKING & RIGGING, JF LOMMA RIGGING AND
SPECIALIZED SERVICES, BRADY MARINE REPAIR CO.,
TESTWELL, INC., BRANCH RADIOGRAPHIC LABORATORIES
INC., CRANE INSPECTION SERVICES, LTD., SORBARA
CONSTRUCTION CORP., 1765 FIRST ASSOCIATES,
LLC, LEON D. DEMATTEIS CONSTRUCTION, MATTONE GROUP
CONSTRUCTION CO., LTD., MATTONE GROUP LTD., MATTONE
GROUP LLC, CITY OF NEW YORK SCHOOL CONSTRUCTION
AUTHORITY, CITY OF NEW YORK SCHOOL CONSTRUCTION FUND,
HOWARD I. SHAPIRO & ASSOCIATES CONSULTING ENGINEERS,
P.C., NEW YORK RIGGING CORP., TOWER RIGGING
CONSULTANTS, INC., TOWER RIGGING, INC., UNIQUE RIGGING
CORP., LUCIUS PITKIN, INC., MCLAREN ENGINEERING GROUP,
M.G. MCLAREN, P.C. and JOHN/JANE DOES 1 THROUGH 10,

Defendant(s).

AND ALL RELATED ACTIONS

The following papers, numbered 1 to 11 were read on this motion and cross-motion to/ for
Dismiss and/or Preclude:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____ cross motion _____
Replying Affidavits _____

PAPERS NUMBERED	
1 - 3	
4 - 6	
7 - 11	

Cross-Motion: X Yes No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Motion to Dismiss and/or Preclude is denied. Plaintiff's Cross-Motion is also denied.

In this Motion to Dismiss and/or Preclude, Defendant, Leon D. DeMatteis Construction Corporation ("DeMatteis"), seeks an order dismissing and/or precluding Plaintiff's, Selvi Sinanovic ("Sinanovic") claim for pecuniary loss pursuant to EPTL Section 5-1.2(5) and (6) and CPLR Section 4519.

This case relates to the collapse of a Kodiak Tower Crane (#84-052) (the "Crane") on May 30, 2008, at East 91st Street, New York County. All actions related to the Crane collapse have been joined for the supervision of discovery.

Sinanovic, Co-Administrator of the Estate of Ramadan Kurtaj and individually, commenced this action to recover damages as a result of personal injuries suffered by and death of Ramadan Kurtaj ("Kurtaj") on May 30, 2008, when the Crane collapsed.

Sinanovic asserts she married Kurtaj in Kosovo on March 23, 2005. At the time of their marriage, Sinanovic was a United States citizen attending high school in the U.S. Within a week of the marriage, Sinanovic returned to the U.S. to continue high school. *Sinanovic Deposition, page 98*. Kurtaj was not a U.S. citizen at the time of their marriage. Kurtaj did not emigrate to the U.S. until January of 2006. *Id, page 99*.

Sinanovic and Kurtaj lived with Sinanovic's parents in New York City in the Borough of the Bronx. All Parties agree that the couple did not share a bedroom. *Id, page 99*.

After three or four months of living with Sinanovic's parents, Kurtaj moved out to live with two of his cousins in the Bronx, while Sinanovic continued to live with her parents. Sinanovic alleges she visited Kurtaj, but never stayed overnight. *Id, pages 101-04*.

Approximately six months after living with his cousins, Kurtaj moved again and Sinanovic admits to never visiting Kurtaj at that address. *Id, page 104*.

In or about September 2006, Sinanovic moved to Maryland. Sinanovic moved to Maryland because her father disowned her. Sinanovic's father disowned her because she had gotten pregnant by a man other than Kurtaj. Sinanovic's father forbade any family members, including Kurtaj, from having contact with Sinanovic. *Id, pages 113-19*.

According to Sinanovic, after moving to Maryland she traveled to New York to visit Kurtaj several times a year up until his death. *Id, pages 110-13*.

According to Sinanovic, Kurtaj was angry upon learning of Sinanovic's pregnancy, but that both of them were committed to continuing to be married. *Id.*, pages 117-21.

According to Sinanovic, after Kurtaj moved out of Sinanovic's parents' house, he mailed Sinanovic \$200-300 in cash per month up to the time of his death. *Id.*, pages 143-45.

DeMatteis argues that based upon EPTL Section 5-1.2(5) and (6) that Sinanovic's claim as a surviving spouse should be dismissed.

EPTL Section 5-1.2(a) states that, "[a] husband or wife is a surviving spouse...unless it is established...that...(5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death. (6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support."

Sinanovic opposes and Cross-Moves for an order determining that Sinanovic is the surviving spouse of Kurtaj and granting partial Summary Judgment on Sinanovic's status as a surviving spouse.

In their affidavits, the Parties submitting papers on the Motion go into great detail as to the trials and tribulations experienced by Sinanovic and Kurtaj. The Parties also reference statements made by or to other family members regarding the state of the marriage and actions taken by other family members. The Parties then offer their own explanation of how these statements and actions should be interpreted to provide context explaining the status of Sinanovic and Kurtaj's marriage.

Sinanovic and DeMatteis thus present competing narratives of the marriage that support their respective Motions.

So that Courts are not required to attempt to divine what truly lies within the hearts of supposedly married individuals, EPTL Section 5-1.2 presumes a surviving spouse status unless a party can prove otherwise. DeMatteis has not proven otherwise in its Motion, therefore the Motion must be denied.

"Abandonment involves more than a technical physical separation, it must be without justification and with the intention of not returning. Intention of course is a mental condition and its existence or non-existence with reference to a particular course of conduct can only be gleaned from the actions of the person

involved.” *In re Prince’s Estate*, 36 A.D.2d 946, 321 N.Y.S.2d 798, 799 (N.Y.A.D. 1st Dept. 1971) *aff’d sub nom. Matter of Prince’s Estate*, 30 N.Y.2d 512, 280 N.E.2d 888 (1972);

The fact that Sinanovic was banished by her father from the family home and was forbidden from having any contact with any other family members who might have taken her in, including her own husband, seems to this Court a significant justification for her relocation, not to mention the social stigma inherent in the circumstances of her pregnancy. Also, according to the testimony offered, she had every intention of returning once her father was convinced to relent as to her banishment, and in fact she did come to visit Kurtaj on many occasions. Lastly, DeMatteis fails to establish that Sinanovic’s relocation was without the consent of Kurtaj. See *In re Estate of Arrathoon*, 49 A.D.3d 325, 853 N.Y.S.2d 72 (N.Y.A.D. 1st Dept. 2008).

DeMatteis “also failed to establish that [either Kurtaj or Sinanovic] had a duty to support [the other party] had the means or ability to do so; and failed or refused to do so.” *Matter of Estate of Gardner*, 176 A.D.2d 142, 574 N.Y.S.2d 28 (N.Y.A.D. 1st Dept. 1991).

Defendant New York Crane & Equipment Corp., (“NY Crane”) submitted an Affirmation in Support of DeMatteis’ Motion. NY Crane argues that there is “not one shred of admissible evidence regarding the validity of Sinanovic’s purported marriage to Kurtaj.” NY Crane’s argument confuses the burden of proof established by CPLR Section 4519. The onus is on the party seeking to rebut the presumption of surviving spouse status, not the other way around.

DeMatteis and NY Crane argue that the marriage licence documenting Sinanovic and Kurtaj’s wedding is invalid and argue that this means the marriage is invalid as a consequence. In support of this argument the Parties rely upon a letter from the Republic of Kosovo’s Consulate General in New York which states, in part, that “the Marriage Certificates until recently issued by the United Nations Interim Mission, in Kosovo, UNMIK, are no longer valid, in this regard the citizens of Kosovo that hold this certificates [sic] should apply for new, Republic of Kosovo Marriage Certificates.”

Even the most cursory review of the recent history of Kosovo would explain the context of such a letter. Suffice it to say, this Court takes judicial notice that the Republic of Kosovo declared independence on February 17, 2008. Regime changes are inherently fraught with difficulties, the least of which is the need to re-apply for licences and official documents issued under previous authorities. Without more, this Court will not conclude that the letter relied upon by Defendants proves that Sinanovic and Kurtaj were not validly married. As such, the burden is on the Defendants to disprove the surviving spouse status, which they have failed

to do.

DeMatteis' Motion also seeks to preclude Sinanovic pursuant to CPLR Section 4519 from testifying regarding money she asserts Kurtaj was mailing her after she was banished from her family home.

CPLR Section 4519 states that a party "shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest against the executor, administrator or survivor of a deceased person or the committee of a mentally ill person, or a person deriving his title or interest from, through or under a deceased person or mentally ill person, by assignment or otherwise..."

DeMatteis makes no showing of how it qualifies as an 'executor, administrator or survivor of a deceased person or the committee of a mentally ill person, or a person deriving his title or interest from, through or under a deceased person or mentally ill person, by assignment or otherwise' such that it may invoke the preclusion of CPLR Section 4519. Nor does DeMatteis even explain how Sinanovic's statements could be considered adverse to such a party for the purposes of these proceedings.

DeMatteis cannot invoke the preclusion of CPLR Section 4519 against Sinanovic in the manner it is attempting to do in its Motion.

Despite, as noted above, the presumptive surviving spouse status of EPTL Section 5-1.2, this Court will not grant Sinanovic's Cross-Motion seeking declarations concerning the status of Sinanovic and Kurtaj's marriage. EPTL Section 5-1.2 presumes surviving spouse status such that this Court deems Sinanovic's claims, for the purposes of this Motion, valid. However, this Court is cognizant of the fact that there may be other parties, whether or not they are involved in these proceedings, whose rights this Court does not want to forestall by making the declarations sought by Sinanovic.

There are other forums better suited to determine the rights pursuant to the Estate of the Decedent and this Court will leave such determinations to such forums without risking interference therewith. For the purposes of these proceedings, this Court continues to recognize Sinanovic's presumptive status as surviving spouse such that it will not dismiss her claims, but the Court declines to make any affirmative declarations in that regard.

Accordingly, it is the decision and order of this Court that DeMatteis' Motion to Dismiss and/or Preclude is denied. Sinanovic's Cross-Motion is also denied.

Accordingly, it is ORDERED that DeMatteis' Motion to Dismiss and/or

Preclude is denied, and it is further

ORDERED that Sinanovic's Cross-Motion is also denied.

ENTER :

Dated: January 16, 2014

MANUEL J. MENDEZ
J.S.C. MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE