

Serrano v 432 Park S. Realty Co., LLC

2014 NY Slip Op 32031(U)

August 1, 2014

Sup Ct, New York County

Docket Number: 119133/01

Judge: Alice Schlesinger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

IA PART 16

PRESENT: ALICE SCHLESINGER
SCHLESINGER
Justice

PART 16

SERRANO, GERMAN

INDEX NO. 119133/01

432 PARK SOUTH REALTY CO., LLC

MOTION DATE _____

MOTION SEQ. NO. 17

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted in accordance
with the accompanying memorandum
decision.

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

FILED

AUG 04 2014

COUNTY CLERK'S OFFICE
NEW YORK

Alice Schlesinger
J.S.C.

AUG 01 2014

Dated: _____

ALICE SCHLESINGER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

FILED

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

AUG 04 2014

-----X

GERMAN SERRANO,
Plaintiff,

COUNTY CLERK'S OFFICE
NEW YORK

-against-

Index No. 119133/01
Mot Seq No. 017

432 PARK SOUTH REALTY CO., LLC.,
Defendant.

-----X

SCHLESINGER, J.:

Before the Court in this personal injury action is a motion by Clarendon National Insurance Company for an order, pursuant to CPLR § 1015, substituting Ethel J. Griffin, the New York County Public Administrator, in place of the now deceased plaintiff German Serrano, and for leave to pursue its lien. No opposition has been received to the motion.

The predicate for the action is an injury suffered by Mr. Serrano in 2000 while working for Fortune Interior Dismantling Corp at the premises owned by defendant 432 Park South Realty Co., LLC. Clarendon indicates that, pursuant to a worker's compensation policy then in effect, it made payments for indemnity and medical expenses for a total of \$212,234.41, which it then asserted as a lien (Exh 1). Following a trial before this Court, a judgment was entered in favor of Mr. Serrano for a sum exceeding seven million dollars (\$7,000,000.00) (Exh 2). Plaintiff's counsel collected the judgment and then provided the information needed to finalize the lien in 2009 (Exh 3).

However, in 2010 Mr. Serrano died in Mexico, and plaintiff's counsel obtained proof of that fact in 2011 and forwarded it to Clarendon's counsel (Exh 4). Clarendon then requested a hearing before the Workers' Compensation Board (Exh 5). By decision dated November 14, 2012, the Board directed Clarendon to pursue its lien in this court (Exh 6).

While Clarendon sought to do so in a timely fashion, and the New York State Insurance Fund sought to intervene as well, plaintiff's counsel opposed the motions because Mr. Serrano had died and no representative of his estate had been appointed to represent his interest (Exhs 7 - 10). This Court agreed with plaintiff's counsel and denied the motions on that ground by decision dated February 20, 2013 (Exh 11). Clarendon then sought, and obtained on May 5, 2014, Limited Letters of Administration (Exhs 12-13).

The substitution of the Public Administrator is undeniably proper. Further, Clarendon may proceed to enforce its lien. It calculates the net amount to be \$137,952.36 and proposes serving a new complaint with the amended caption. However, as the Public Administrator was served with these papers and neither she nor any other party or counsel opposed the requested relief, the parties are urged to resolve the matter expeditiously upon the service of the amended complaint in the form attached as Exhibit 14 without further intervention from the Court. Certainly, should any party disagree, the Court will entertain another motion to finalize this matter once and for all.

Accordingly, it is hereby

ORDERED that the motion is granted, and Ethel J. Griffin, as Public Administrator of New York County for the Estate of German Serrano, deceased, shall be substituted as plaintiff in the above-entitled action in the place and stead of the plaintiff, German Serrano, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings and proceedings in the above-entitled action shall be amended by substituting the name of Ethel J. Griffin, as Public Administrator of New York County for the Estate of German Serrano, deceased, as plaintiff in the place and stead of Mr. Serrano, without prejudice to the proceedings heretofore had herein; and it is

further

ORDERED that the complete caption shall hereafter read as follows:

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

-----X
ETHEL J. GRIFFIN, As Public Administrator of
New York County for the Estate of
GERMAN SERRANO, deceased

Index No. 119133/01

Plaintiff,

-against-

432 PARK SOUTH REALTY CO., LLC.,

Defendant.

-----X
432 PARK SOUTH REALTY CO., LLC,
Third-Party Plaintiff,

Third-Party
Index no. 591071/03

-against-

PARTIMER, INC.,

Third-Party Defendant

-----X

432 PARK SOUTH REALTY CO., LLC.,

Second Third-Party Plaintiff,

Second Third-Party
Index No. 59008/04

-against-

FORTUNE INTERIOR DISMANTLING, CORP.,

Second Third-Party Defendant.

-----X

432 PARK SOUTH REALTY CO., LLC.,

Third Third-Party Plaintiff,

Third Third-Party
Index No. 590671/05

-against-

UNITED ENVIRONMENTAL ENTERPRISES, INC.,

Third Third-Party Defendant.

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court and upon the General Clerk's Office (Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that Clarendon shall serve the Amended Complaint and the parties shall thereafter proceed in accordance with the CPLR.

Dated: August 1, 2014

AUG 01 2014



J.S.C.
ALICE SCHLESINGER

FILED

AUG 04 2014

COUNTY CLERK'S OFFICE
NEW YORK