

**Amplified Capital Partners Holdings, LLC v Kabro
Assoc. of Syosset LLC**

2018 NY Slip Op 33711(U)

September 13, 2018

Supreme Court, Nassau County

Docket Number: 606399-14

Judge: Vito M. DeStefano

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 10
NASSAU COUNTY

**AMPLIFIED CAPITAL PARTNERS HOLDINGS,
LLC and ACP SYOSSET LLC d/b/a BACH TO
ROCK MUSIC SCHOOL,**

Decision and Order

Plaintiffs,

**MOTION SEQ. NO.: 07
INDEX NO.:606399-14**

-against-

KABRO ASSOCIATES OF SYOSSET LLC,

Defendant.

**ACP SYOSSET, LLC, AMPLIFIED CAPITAL
PARTNERS, LLC and CERTAIN UNDERWRITERS
AT LLOYD'S LONDON Subscribing to Policy No.
ARSV140077 as subrogee of AMPLIFIED CAPITAL
PARTNERS LLC,**

INDEX NO.: 600753/2015

Plaintiffs,

-against-

**KABRO OF SYOSSET LLC, 631 CONSTRUCTION,
INC. and ANGELO FRANCIS CORVA &
ASSOCIATES ARCHITECTS, P.C.,**

Defendants.

**The following papers and the attachments and exhibits thereto have been read on this
motion:**

Notice of Motion	1
Affirmation in Support	2
Reply Affirmation	3

In this unopposed motion, the movant, Certain Underwriters at Lloyd’s London (a plaintiff in action 2), moves for an order: (i) pursuant to CPLR 1015, appointing the Nassau County Public Administrator as Temporary Administrator for the Estate of Angelo Francis Corva; (ii) pursuant to CPLR 1021, substituting the Nassau County Public Administrator (as representative of the Estate of Angelo Francis Corva) for Defendant Angelo Francis Corva & Associates Architects; (iii) amending the caption of action 2 to add the Estate of Angelo Francis Corva instead of Defendant Angelo Francis Corva & Associates Architects; and (iv) lifting the stay so that the action 2 can proceed.

The initial action was commenced on December 2, 2014. A second action was commenced on March 25, 2015. In an order dated December 23, 2015, the actions were joined for trial.

On November 15, 2017, Angelo Francis Corva died. Corva was the only member of the sole proprietorship of Defendant (in action 2) Angelo Francis Corva & Associates Architects (“Corva Associates”). Action 2 was thereafter stayed pending the appointment of an individual to represent Corva’s estate.¹

According to the movant, it is appropriate for the court to appoint the Nassau County Public Administrator as temporary administrator for the estate and substitute the administrator as a party defendant because it has been over six months without the appointment of an administrator for the estate and there is no indication that an administrator will be appointed in the near future. Moreover, the parties are ready to engage in mediation as soon as the stay in action 2 is lifted.²

While, ordinarily, the application for appointment of an administrator is made in the Surrogate’s Court (see CPLR 1021 and SCPA 1002), which is then followed by a motion for substitution in the court in which the action is pending (see CPLR 1021 and CPLR 1015[a]), this court has jurisdiction to entertain the instant application for both the appointment of a temporary

¹ Upon the death of a party, the court is divested of jurisdiction to act and a pending civil action will be stayed (CPLR 1015; *Hyman v Booth Memorial Hospital*, 306 AD2d 438 [2d Dept 2003]).

² Following the death of a defendant in a lawsuit, a party or personal representative shall make an application to the court to appoint a personal representative and the court, in its discretion, may order the appointment and substitution of the administrator (CPLR 1021; CPLR 1015[s]).

administrator and to substitute the temporary administrator in order to avoid delay and prejudice in the instant action (*Dieye v Royal Blue Services, Inc.*, 104 AD3d 724, 725-726 [2d Dept 2013]; *Harding v Noble Taxi Corp.*, 155 AD2d 265, 266 [1st Dept 1989]). Also, where, as here, the decedent’s estate does not have a personal representative, “an appropriate appointment should be made and that individual should be substituted in place of the decedent” (*Dieye v Royal Blue Services, Inc.*, 104 AD3d at 725, *supra* quoting *Grillo v Tesse*, 113 AD2d 871, 873 [2d Dept 1985]).

Last, the moving party has taken good faith efforts to put any interest persons on notice of the instant motion by mailing a copy of the motion to such persons.

Based on the foregoing, it is hereby

Ordered that the motion by the plaintiffs for an order pursuant to CPLR 1015 and 1021, appointing and substituting the Nassau County Public Administrator as Temporary Administrator for the Estate of Angelo Francis Corva; and it is further

Ordered that the caption shall be amended, as follows, to reflect the substitution:

**AMPLIFIED CAPITAL PARTNERS HOLDINGS,
LLC and ACP SYOSSET LLC d/b/a BACH TO
ROCK MUSIC SCHOOL,**

Plaintiffs,

-against-

KABRO OF SYOSSET LLC,

Defendant.

**ACTION #1
INDEX NO.: 606399/2014**

**CERTAIN UNDERWRITERS AT LLOYD’S
LONDON Subscribing to Policy No. ARSV140077
as subrogee of AMPLIFIED CAPITAL
PARTNERS LLC,**

Plaintiffs,

**ACTION #2
INDEX NO.: 600753/2015**

-against-

**KABRO OF SYOSSET LLC, J.C.I. ENTERPRISES,
INC. d/b/a 631 CONSTRUCTION, AND PUBLIC
ADMINISTRATOR OF NASSAU COUNTY AS
TEMPORARY ADMINISTRATOR FOR THE ESTATE
OF ANGELO FRANCIS CORVA AS SUCCESSOR-
IN-INTEREST TO ANGELO FRANCIS CORVA &
ASSOCIATES ARCHITECTS,**

Defendants.


and it is further

Ordered that the stay in action 2 is hereby lifted and the parties are directed to contact the mediator within 15 days of the date hereof and schedule the mediation which shall not take place until after 45 days of the date hereof; and it is further

Ordered that the movant shall promptly serve a copy of this order with notice of its entry upon all parties within 5 days of the date hereof and shall comply with CPLR 8019(c).

This constitutes the decision and order of the court

Date: September 13, 2018



Hon. Vito M. DeStefano, J.S.C.

ENTERED

SEP 14 2018

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**