

Ramirez v Paljusevic
2018 NY Slip Op 34318(U)
June 1, 2018
Supreme Court, Rockland County
Docket Number: Index No. 033280/2016
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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JORGE L. RAMIREZ, JR,

Plaintiff,

-against -

SHACE PALJUSEVIC and PJETAR PALJUSEVIC,

Defendants.
-----X

HON. Sherri L. Eisenpress, A.J.S.C.

DECISION/ORDER

Index No. 033280/2016

(Motion #1 and #2)

The following papers, numbered 1-10, were read in connection with Defendant Jorge L. Ramirez' motions for (i) an Order, pursuant to CPLR § 3212, granting summary judgment against defendants on the issue of liability; and (ii) for an Order, pursuant to CPLR § 603, severing the claims against the deceased defendant Shace Paljusevic:

PAPERS

NUMBERED

Motion #1

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF JORGE RAMIREZ/EXHIBITS "A-C" 1-3

LETTER FROM DEFENSE COUNSEL DATED MAY 17, 2017/LETTER FROM PLAINTIFF'S COUNSEL DATED JULY 6 ,2017/LETTER FROM DEFENSE COUNSEL DATED FEBRUARY16, 2018/DEATH CERTIFICATE 4-6

Motion #2

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/EXHIBITS "A-I" 7-8

LETTER FROM DEFENSE COUNSEL DATED MARCH 21, 2018/AFFIRMATION IN OPPOSITION 9-10

Plaintiff commenced the instant matter to recover damages for personal injuries arising out of an automobile accident which occurred on February 12, 2016, at the intersection of Orange Avenue (Rt. 202) at its intersection with Washington Avenue, in the Village of Suffern, New York, when the vehicle operated by defendant Shace Paljusevic, and owned by Defendant Pjetar Paljusevic, allegedly struck the rear of Plaintiff's stopped vehicle.

Plaintiff moved for summary judgement as to liability against defendants. In response, Defense counsel advised Plaintiff and the Court that defendant Shace Paljusevic had

died intestate on March 8, 2017. Defense counsel noted that there was an automatic stay of the proceedings as a result of Defendant's death. By letter dated May 17, 2017, Plaintiff opposed a stay and argued that the stay provided for in CPLR Sec. 1015 is "not an absolutely strict requirement and there is case law which holds that if the death of a party does not affect the merits of the case, there is then no need and no reason for strict adherence to the requirement of a stay of the proceedings." In support of this contention, Plaintiff relies upon a Third Department case, Bova v. Vinciguerra, 139 A.D.2d 797, 526 N.Y.S.2d 671 (3d Dept. 1988). However, upon examination of the Bova case, the Court finds that case to be distinguishable from the instant matter.

This issue of the stay was discussed before this Court at several conferences, and the Court granted the parties permission to address the issue by way of correspondence, which they did. The parties were advised that the Court would then make a decision on this issue. While the matter was pending before this Court, Plaintiff chose to file a second motion, seeking to sever the claims against the deceased Defendant, rather than to seek to have a temporary administrator appointed.

CPLR § 1015, entitled "Substitution upon death," states as follows:

(a) Generally. If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties.

Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the personal substitution of a personal representative for the decedent. Neuman v. Neumann, 85 A.D.3d 1138, 926 N.Y.S.2d 632 (2d Dept. 2011). Notably, a motion for substitution may be made by the successors or representatives of a party or by *any party*. Lambert v. Estren, 126 A.D.3d 942, 7 N.Y.S.3d 169, 171 (2d Dept. 2015).

In most instances a personal representative appointed by the Surrogate's Court should be substituted in the action to represent the decedent's estate, in the event no such representative exists, an appropriate appointment may be made by the Supreme Court and that

individual may be substituted in place of decedent. Lambert, supra, at 943. Indeed, in order to avoid delay and prejudice in an action that has been pending and trial ready, there is no special need to proceed in Surrogate's Court and the Supreme Court should grant the request for the appointment of a guardian as temporary administrator, and for substitution, thereby permitting the case expeditiously. Harding v. Noble Taxi Corp., 155 A.D.2d 265, 266, 547 N.Y.S.2d 29 (1st Dept. 1989).

Despite what appears to this Court to be fairly clear law on this issue, the Court does not have before it an application to appoint a personal representative to represent decedent's estate and substitute that individual in place of decedent. Instead, the Court has before it a motion to sever. However, the death of a party divests the court of jurisdiction and stays the proceedings until a proper substitution has been made pursuant to CPLR §1015(a). Singer v. Riskin, 32 A.D.3d 839, 821 N.Y.S.2d 120 (2d Dept. 2006). "Moreover, any determination rendered without such substitution will generally be deemed a nullity." JPMorgan Chase Bank, N.A. v. Rosemberg, 90 A.D.3d 713, 714, 934 N.Y.S.2d 346 (2d Dept. 2011); Stancu v. Cheon Hyang Oh, 74 A.D.3d 1322, 1323, 903 N.Y.S.2d 268 (2d Dept. 2010).

In a case directly on point, Harding v. Noble Taxi Corp., 155 A.D.2d 265, 547 N.Y.S.2d 29 (1st Dept. 1989), the trial court denied plaintiff's motion for substitution and appointment of a temporary administrator and instead, severed the plaintiff cause of action, and all cross-claims against the deceased. The Appellate Court reversed that decision and held that the trial court was without jurisdiction to order the severance of the action and its order in that regard was void. Id. at 266. As the Court has no jurisdiction to sever the action, Plaintiff's application for severance must be denied. Likewise, for the same reason, this Court has no jurisdiction at this time to decide Plaintiff's motion for summary judgment. As such, that motion is also denied, but with leave to renew upon the appointment and substitution of a temporary administrator for the deceased Defendant Shace Paljusevic.

Accordingly, it is hereby

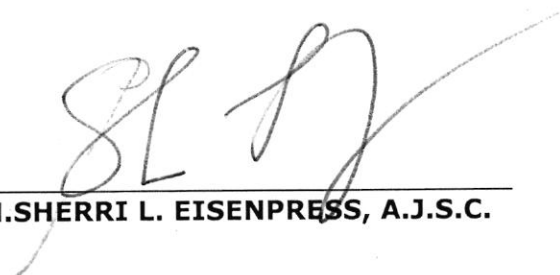
ORDERED that Plaintiff Jorge L. Ramirez, Jr.'s motion for summary judgment, pursuant to CPLR § 3212 (Motion #1) , is denied, with leave to renew upon the substitution of a temporary administrator of defendant Shace Paljusevic's Estate for purposes of defending the action; and it is further

ORDERED that Plaintiff's motion to sever the claims against defendant Shace Paljusevic (Motion #2) is denied in its entirety; and it is further

ORDERED that all parties are directed to appear for a status conference on **MONDAY, JULY 23, 2018**, at 9:45 a.m.

The foregoing constitutes the Opinion, Decision & Order of the Court on Motions #1 and #2.

Dated: New City, New York
June 1, 2018



HON. SHERRI L. EISENPRESS, A.J.S.C.

TO:
All Parties (by e-file)