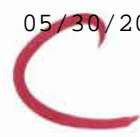


Kamara v 767 Fifth Partners, LLC
2019 NY Slip Op 32062(U)
May 8, 2019
Supreme Court, Bronx County
Docket Number: 24677/2015
Judge: Lucindo Suarez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.



Mtn. Seq. # 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

ABU KAMARA,

Index No.: 24677/2015

Plaintiff,

- against -

DECISION and ORDER

767 FIFTH PARTNERS, LLC,

Defendant.

PRESENT: Hon. Lucindo Suarez

The issue in Plaintiff's motion is whether he should be allowed to amend his pleadings to add a cause of action for wrongful death.¹ The court finds that Plaintiff did not demonstrate by competent medical evidence that there existed a causal connection between Defendant's alleged negligent acts and his subsequent death. Therefore, absent such a showing Plaintiff's application to amend his pleadings is denied.

Pursuant to CPLR §3025, a party may amend a pleading at any time by leave of court. A request to amend is determined in accordance with the general considerations applicable to such motion, including the statute's directive that leave "shall be freely given upon such terms as may be just." CPLR §3025(b); *see also Kimso Apts., LLC v. Gandhi*, 24 N.Y.3d 403, 23 N.E.3d 1008, 998 N.Y.S.2d 740 (2014). New York State Courts have consistently recognized that absent prejudice or surprise, courts are free to permit the amendment of pleadings. *Id.* Further, applications seeking leave to amend pleadings are within the sound discretion of the court. *See*

¹ Plaintiff's counsel also moved to substitute the deceased Plaintiff with his Estate's Administratrix pursuant to CPLR §§1015(a) and 1021. Defendant did not oppose that branch of Plaintiff's motion, therefore, same is granted and will not be addressed herein.

Mack v. City of NY, 165 A.D.3d 443, 84 N.Y.S.3d 481 (1st Dep't 2018).

However, the Appellate Division, First Department, has held to support amending a personal injury complaint to add a cause of action for wrongful death, plaintiffs were required to submit competent medical proof of the causal connection between the alleged negligent act and the death of the original plaintiff. *See Frangiadakis v. 51 W. 81st St. Corp.*, 161 A.D.3d 478, 73 N.Y.S.3d 420 (1st Dep't 2018).

Here, Plaintiff did not submit any medical documentation demonstrating a causal connection between Defendant's alleged negligent acts and his subsequent death. Even considering the liberal standard under CPLR §3025 the court cannot grant Plaintiff's request absent making such a showing.

Accordingly, it is

ORDERED, that Plaintiff's motion for substitution and to amend its pleadings is granted in part; and it is further

ORDERED, that Plaintiff shall be substituted for Haja Kamara as Administratrix for the Estate of Abu Kamara; and it is further

ORDERED, that Plaintiff's application to amend his pleadings to assert a cause of action for wrongful death is denied without prejudice to refile, if at all; and it is further

ORDERED, that the stay in this matter is lifted; and it is further

ORDERED, that the Clerk of the Court is directed to place this matter back on the LPM Calendar; and it is further

ORDERED, that this action shall now bear the following caption:

[INTENTIONALLY LEFT BLANK]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

HAJA KAMARA as Administratrix for the Estate of
ABU KAMARA,

Plaintiff,

- against -

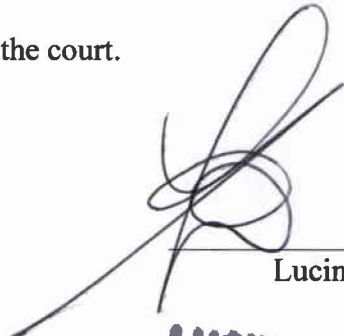
Index No.: 24677/2015

767 FIFTH PARTNERS, LLC,

Defendant.

This constitutes the decision and order of the court.

Dated: May 8, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.