

<b>Citibank, N.A. v Lewis</b>
2019 NY Slip Op 33087(U)
October 16, 2019
Supreme Court, New York County
Docket Number: 850282/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH**

**PART IAS MOTION 32**

*Justice*

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CITIBANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE OF NRZ PASS-THROUGH TRUST VI,

**INDEX NO. 850282/2018**

**MOTION DATE 09/20/2019**

**MOTION SEQ. NO. 002**

Plaintiff,

- v -

CLARENCE LEWIS, ELNORA LEWIS, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY DEPARTMENT OF FINANCE PARKING VIOLATIONS BUREAU, JOHN DOE AND JANE DOE

**DECISION + ORDER ON MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for

AMEND CAPTION

Plaintiff's motion to amend the caption is granted in part and denied in part.

Plaintiff brings this motion to amend the caption and to appoint a guardian ad litem. Plaintiff previously brought similar motion, which the Court denied in its entirety. In that motion, plaintiff sought to amend the caption to add defendant Clarence Lewis' heirs, but the Court denied the branch of the motion because plaintiff failed to offer an explanation as to why it started a case against a deceased defendant and also noted that plaintiff failed to attach a death certificate.

The Court also noted that while Elnora Lewis is named as a defendant, plaintiff's records showed that Ms. Lewis passed away in May 2013 and plaintiff did not seek to amend the caption as to Ms. Lewis. Lastly, the Court denied leave to serve Mr. Lewis' heirs by publication because plaintiff did not provide an explanation of due diligence conducted in an effort to locate the purported heirs.

In this motion, plaintiff explains that it did not know that Mr. Lewis had passed away when it commenced this action. Plaintiff attaches a copy of Mr. Lewis' death certificate and claims that it learned about Mr. Lewis' death only after it attempted to serve him. The Court grants the branch of the motion to amend the caption to add the heirs of Mr. Lewis (plaintiff states it is not seeking to add the Estate of Mr. Lewis because it is waiving a deficiency judgment against the Estate). All parties added must be served pursuant to the CPLR. Although plaintiff asks the Court to serve the heirs (including Barrett Lewis, Craig Lewis, Anthony Lewis, Clarice Lewis and Cynthia Gatewood) by publication, plaintiff has not explained why service by publication is justified here.

Plaintiff also seeks to amend the caption with respect to Elnora Lewis. This branch of the motion is denied. As Court pointed out in its previous decision, the records submitted by plaintiff (NYSCEF Doc. No. 31 at 201) suggests that Ms. Lewis passed away. For some reason, plaintiff continues to suggest that it is "unable to confirm whether the Elnora Lewis death record referenced in the O'Brien affidavit is the same Elnora Lewis named in [this] action" (NYSCEF Doc. No. 40, ¶ 13). Plaintiff wants this Court to allow it to serve her (or her heirs if she has passed away) by publication. There is no justification for that relief; plaintiff must conduct more due diligence.

Plaintiff also seeks to appoint a guardian ad litem to act on behalf of any unknown heirs of the Estate of Clarence Lewis. That branch of the motion is granted.

Accordingly, it is hereby

ORDERED that defendant CLARENCE LEWIS shall be substituted with UNKNOWN HEIRS-AT-LAW OF THE ESTATE OF CLARENCE LEWIS A/K/A CLARENCE L. LEWIS, DECEASED and BARRETT LEWIS, CRAIG LEWIS, ANTHONY LEWIS, CLARICE LEWIS, CYNTHIA GATEWOOD; and DIVISION OF LIENS AND RECOVERY, CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK SUPREME COURT, ATLANTIC

CREDIT & FINANCE, INC., A/A/O HOUSEHOLD BANK, and NEW YORK CITY TRANSIT

ADJUDICATION BUREAU shall be added as defendants, and the caption shall read as follows:

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

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CITIBANK, N.A., NOT IN ITS INDIVIDUAL  
CAPACITY, BUT SOLELY AS TRUSTEE  
OF NRZ PASS-THROUGH TRUST VI,

Plaintiff,

v.

UNKNOWN HEIRS-AT-LAW OF THE  
ESTATE OF CLARENCE LEWIS A/K/A  
CLARENCE L. LEWIS, DECEASED and  
ELNORA LEWIS, BARRETT LEWIS,  
CRAIG LEWIS, ANTHONY LEWIS  
CLARICE LEWIS, CYNTHIA GATEWOOD,  
NEW YORK CITY ENVIRONMENTAL  
CONTROL BOARD, NEW YORK CITY  
DEPARTMENT OF FINANCE PARKING  
VIOLATIONS BUREAU, DIVISION OF  
LIENS AND RECOVERY, CRIMINAL  
COURT OF THE CITY OF NEW YORK,  
NEW YORK SUPREME COURT,  
ATLANTIC CREDIT & FINANCE, INC.,  
A/A/O HOUSEHOLD BANK, and NEW  
YORK CITY TRANSIT ADJUDICATION  
BUREAU, JOHN DOE AND JANE DOE

Defendant(s).

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and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being substituted and added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/suptmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice; and it is further

ORDERED that the new defendants added to this action shall be served pursuant to the CPLR; and it is further

ORDERED that Elaine Shay with an address of 800 Third Avenue, Suite 2800 New York, NY 10022, 212-520-2690, is hereby appointed guardian ad litem for the Unknown Heirs-At-Law of the Estate of Clarence Lewis and plaintiff shall pay said guardian ad litem \$250/hour, within 30 days of receipt of invoice to plaintiff's attorneys, which amounts shall be recoverable as a litigation expense; and it is further

ORDERED that the branch of the motion with respect to Elnora Lewis is denied.

Next Conference: January 7, 2020 at 2:15 p.m.

10-16-19

DATE

ARLENE P. BLUTH, J.S.C.  
HON. ARLENE P. BLUTH

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:

- NON-FINAL DISPOSITION
- GRANTED IN PART  OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT  REFERENCE