

**Anderson v Singh**

2020 NY Slip Op 34563(U)

June 30, 2020

Supreme Court, Westchester County

Docket Number: 58229/2016

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. SAM D. WALKER, J.S.C.**

-----X  
MAXINE BENT ANDERSON and HEATHER BENT-TAMIR,

Plaintiffs,

-against-

**DECISION AND ORDER**  
Index No. 58229/2016  
Seq# 14

GURMEET SINGH, NISHAN SINGH, BERNARD MORCHELES, and JOHN DOES 1-5, (hereafter "JOHN DOE") a fictitious name for the individuals or entities which hired, employed or otherwise contracted with Defendant(s) at the time of the subject incident and is responsible by way of vicarious liability, respondeat superior or otherwise for the acts and omissions alleged herein and/or negligently repaired, managed, maintained, controlled, entrusted, and/or owned the subject vehicles described below and involved in the subject incident and whose identity is presently known only to the Defendant(s),

Defendants.

-----X  
FIDUCIARY INSURANCE COMPANY OF AMERICA a/s/o  
MAXINE BENT ANDERSON

Plaintiffs

Index No. : 019203/2016

-against-

BERNARD MORCHELES,

Defendant.

-----X  
The following papers were read on the plaintiffs' motion to appoint a temporary administrator:

- Notice of Motion/Affirmation in Support/Exhibits A-H
- Affirmation in Opposition
- Reply Affirmation

Upon the foregoing papers it is ordered that the motion is granted.

The plaintiffs, Maxine Bent Anderson and Heather Bent-Tamir ("Bent-Tamir") commenced this action on May 7, 2015 in New York County, to recover monetary damages for alleged injuries sustained in a motor vehicle accident that occurred on December 8, 2013 at or near the intersection of 12<sup>th</sup> Avenue and West 57<sup>th</sup> Street in New York City. At the time of the accident, the plaintiffs were passengers in a taxi operated by the defendant, Gurmeet Singh and owned by the defendant Nishan Singh, and such taxi was struck in the rear by a vehicle owned and operated by the defendant, Bernard Morcheles ("Morcheles").

By Decision and Order entered on May 19, 2016, the New York Supreme Court transferred venue to Westchester County. Then, on or about October 20, 2016, Fiduciary Insurance Company of America A/S/O Maxine Bent-Anderson commenced a subrogation action (Index No. 19203/2016) in Queens County against Bernard Morcheles, with regard to the same accident, seeking reimbursement for Additional Personal Injury Protection benefits paid to or on behalf of Maxine Bent-Anderson. By Decision and Order dated and entered on December 7, 2018, this Court granted a motion to transfer the subrogation action to this Court and join the actions for the purposes of discovery and trial.

By Decision and Order dated December 17, 2019, this Court granted the motion of defendants, Gurmeet Singh and Nishan Singh, dismissing the complaint against them. The Court also granted the plaintiffs' motion by Decision and Order dated December 17, 2019, as to liability and summary judgment in their favor as to the striking of the defendants' affirmative defenses with regard to the plaintiffs' comparative negligence and/or the plaintiffs' conduct as the sole proximate cause of the accident. Also, the Court granted in

part and denied in part Morcheles' motion to dismiss Heather Bent-Tamir's allegations with regard to her sustaining a serious injury and denied the motion to dismiss as against Maxine Bent Anderson's. The matter was to proceed on the issue of damages and was scheduled for jury selection, however, due to the pandemic, the jury selection was postponed.

In September 2020, the parties held a conference before the Court Attorney/Referee, at which time the defendant's attorney verbally expressed a desire to seek leave for post Note of Issue discovery filing, since additional dates of treatment had been exchanged by the plaintiffs' supplemental Bill of Particulars. There were new dates of treatment, but no allegations of new injury and the Referee issued discovery motion briefing schedules dated September 17, 2020. On October 5, 2020, the defendant's counsel filed a motion to compel further depositions and IME's. On October 6, 2020, the defendant's counsel informed the Court and the opposing counsel that Morcheles had passed away and on October 7, 2020, provided the death certificate show that he had actually passed away on February 16, 2020, several months prior.

The plaintiffs now file this motion for an Order, pursuant to CPLR 1015(a), 1021 and 3025, to appoint Linda M. Coronato, Esq.<sup>1</sup>, as temporary administrator of the decedent's estate; alternatively, to appoint Justin D. Wacenske of Amica Mutual Insurance Company as temporary administrator of the decedent's estate; or alternatively, to appoint Richard

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<sup>1</sup>The attorney states that Ms. Coronato is an attorney, admitted to practice in New York [retired] and New Jersey, who has been appointed numerous times as a guardian by the Courts and her practice focuses primarily on family law and guardianships. The plaintiffs' attorney represents that she has spoken with Ms. Coronato and she has agreed to be appointed as a temporary administrator.

Sklarin, Esq., or another member of the defense counsel's firm, as temporary administrator of the decedent's estate; and directing that Linda M. Coronato, Esq., be substituted nunc pro tunc, to the date of filing of the summons and complaint in place and instead of Morcheles, as temporary administrator of the decedent's estate; for an order amending the caption accordingly and vacating the stay and restoring the case to the active calendar.

Morcheles' attorney opposes the motion, contending that Surrogate's Court is the appropriate forum for the appointment of a temporary administrator; that there is no agreement to limit the amount of recovery sought to the limits of available insurance coverage available to Morcheles; the proposed temporary administrators must not be considered because Richard Sklarin, Esq., because if there is no agreement, there may be a conflict of interest, there is a clear conflict in the potential appointment of the insurance carrier's claim examiner, and the plaintiffs' attorney offered no information with regard to Linda M. Coronato, Esq. The plaintiffs' attorney also asserts that the attorney offered no explanation why they cannot pursue other options, such as making an application in the Surrogate's Court for a Public Administrator or someone else appointed as the representative of the deceased estate.

#### DISCUSSION

CPLR 1015[a] states generally that, "if a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties" (NY CPLR 1015). "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 AD3d 839, 839-840 [2d Dept. 2006]). However, the determination of a motion pursuant to CPLR 1021 made by the successors of representatives of a party or by any

party is an exception to a court's lack of jurisdiction (*Vicari v Kleinwaks*, 157 AD3d 975, 977 [2d Dept 2018]).

"The Supreme Court is a court of general jurisdiction with the power to appoint a temporary administrator, and may do so to avoid delay and prejudice in a pending action" (*Dieye v Royal Blue Service, Inc.*, 104 AD3d 724, 726 [2d Dept 2013]). "In most instances a personal representative appointed by the Surrogate's Court should be substituted in the action to represent the decedent's estate" (*Lambert v Estren*, 126 AD3d 942, 943 [2d Dept 2015]). "However, 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 the decedent" (*Id.*).

In this case, the plaintiffs' attorney has set forth the steps taken with regard to having a personal representative or a Public Administrator appointed. Morcheles' attorney advised that he died intestate and no administrator of the estate was appointed and that none of his family members are willing to be appointed as administrator fo Morcheles' estate, even for the limited purpose of being substituted in his stead in the caption of this action. The plaintiffs' attorney avers that the firm tried to confirm this information to determine if any of Morcheles' four surviving children or spouse would be willing to be an administrator, but there was no response to the correspondence or phone messages.

The plaintiffs' attorney also contacted the Surrogate's Court in Montgomery County Maryland, where Morcheles resided and died and the Surrogate's Court in Suffolk County, New York, where Morcheles was buried and neither court has a record of any filings relative to the deceased. The attorney further avers that the Westchester County Public

Administrator is not amenable to being appointed in this matter due to jurisdictional concerns. Further, this case was marked ready for trial and a jury was to be selected, making a delay to proceed in Surrogate's Court unnecessary. Therefore, since the plaintiffs' attorney has agreed to limit the amount of recovery sought to the limits of the insurance coverage available to Morcheles, his estate will not be adversely affected and in light of factors previously noted, the Court now grants the motion.

Accordingly, based on the foregoing, it is

ORDERED that the motion to appoint a temporary administrator, to amend the caption, and lift the stay is granted; and it is further

ORDERED that Linda M. Coronato, Esq., is appointed as temporary administrator for the estate of Bernard Morcheles nunc pro tunc to the date of filing of the summons and complaint; and it is further;

ORDERED that the stay is lifted and the action is restored to the trial calendar; and it is further

ORDERED that the caption shall be amended as follows:

-----X  
MAXINE BENT ANDERSON and HEATHER BENT-TAMIR,

Index No. 58229/2016

Plaintiffs,

-against-

GURMEET SINGH, NISHAN SINGH, LINDA M. CORONATO, ESQ., AS TEMPORARY ADMINISTRATOR OF THE ESTATE OF BERNARD MORCHELES, and JOHN DOES 1-5, (hereafter "JOHN DOE") a fictitious name for the individuals or entities which hired, employed or otherwise contracted with Defendant(s) at the time of the subject incident and is responsible by way of vicarious liability, respondeat superior or otherwise for the acts and omissions alleged herein and/or negligently repaired, managed, maintained, controlled, entrusted, and/or owned the subject vehicles described below and involved in the subject incident and whose identity is presently known only to the Defendant(s),

Defendants.

-----X  
FIDUCIARY INSURANCE COMPANY OF AMERICA a/s/o  
MAXINE BENT ANDERSON

Plaintiffs

Index No. : 019203/2016

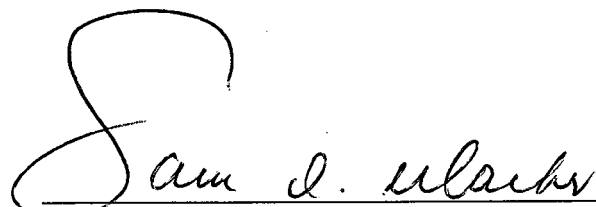
-against-

LINDA M. CORONATO, ESQ., AS TEMPORARY ADMINISTRATOR OF THE ESTATE OF BERNARD MORCHELES,

Defendant.

-----X  
The parties are directed to appear before the Settlement Conference Part on a date to be determined. The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York  
June 30, 2020

  
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HON. SAM D. WALKER, J.S.C.