

Fattorusso v Dicioccio
2021 NY Slip Op 30563(U)
February 22, 2021
Supreme Court, Kings County
Docket Number: 519493/2018
Judge: Ingrid Joseph
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At an IAS Term, **Part 83** of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22nd day of February, 2021.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

-----X

ETHEL FATTORUSSO,

Plaintiff,

- against -

Mot. Seq. 1

Index No. 519493/2018

DECISION AND ORDER

EZIO DICIOCCIO,

Defendants.

-----X

The following papers numbered 1 to 4 read herein:

Papers Numbered

Motion/Affidavit/Affirmation Annexed/Exhibits..... 9 - 20

Opposition 23

In this action to recover damages for personal injuries, plaintiff Ethel Fattorusso (“plaintiff”) moves by Notice of Motion pursuant to CPLR § 1015 for an order appointing a temporary administrator to substitute defendant Ezio Dicioccio (deceased), and, in accordance with CPLR § 1021, for an order appointing the Law Offices of Karen L. Lawrence, or, alternatively, the Public Administrator of Kings County, as Temporary Administrator of the Estate of Ezio Dicioccio. Plaintiff further requests an order limiting temporary administration to an amount not to exceed the liability policy provided in the decedent’s policy of insurance with Allstate Insurance Company.

In support of the motion, plaintiff submitted 1) a copy of the Summons with Notice and

Verified Complaint; 2) the defendant's Answer; 3) discovery-related orders; 4) a copy of a letter from the decedent's counsel dated September 21, 2020 with a copy of the decedent's Death Certificate annexed; 5) copies of letters that plaintiff's counsel sent to the decedent's widow, Norma Dicioccio, and son, Alfonso V. Dicioccio; and 5) affidavits of service showing that the instant motion was served upon defendant's counsel, Norma Dicioccio and Alfonso V. Dicioccio. Plaintiff's counsel contends an appointment of a temporary administrator is necessary, because she was unable to ascertain from the decedent's widow and son, after sending multiple letters, whether they intended to apply for Letters Administration pertaining to the decedent's estate, or, if no Letters of Administration were petitioned, if decedent's widow and son would consent, or objected, to temporary appointment of the decedent's insurer, Allstate Insurance Company.

Counsel on behalf of Allstate Insurance Company, the Karen L. Lawrence Law Firm, submitted partial opposition to the extent of objecting to that branch of the motion requesting that Karen L. Lawrence is appointed Temporary Administrator of the decedent's estate.

The parties' respective counsel appeared at the conference held via Microsoft Teams on February 4, 2021. No one appeared from the decedent's family.

NOW, upon reading the Affirmation of plaintiff's attorney, Mirra Khavulya, Esq. (exhibits annexed), the Affirmation in partial opposition of Lauren M. Piacentini, Esq. on behalf of the Law Office of Karen L. Lawrence, after oral argument, and, upon the court's determination that the appointment of a temporary administrator will not negatively effect the Estate of Ezio Dicioccio, it is hereby

ORDERED, that the motion is granted to the extent that the automatic stay is lifted and

The Public Administrator of Kings County, as Administrator of the Estate of Ezio Dicioccio, is to be substituted in place of defendant Ezio Dicioccio (decedent), and it is further

ORDERED, that the caption of this action shall be amended to substitute The Public Administrator of Kings County, as Administrator of the Estate of Ezio Dicioccio, in place of defendant Ezio Dicioccio, as follows:

-----X
ETHEL FATTORUSSO,
Plaintiff,

- against -

**THE PUBLIC ADMINISTRATOR OF
KINGS COUNTY, AS ADMINISTRATOR
OF THE ESTATE OF EZIO DICIOCCIO,**

Defendant.
-----X

and it is further,

ORDERED, that the amended caption is without prejudice to proceedings already had herein; and it is further

ORDERED, that the temporary administration of the Public Administrator of Kings County, as Administrator of the Estate of Ezio Dicioccio, is limited to the amount of the motor vehicle liability insurance provided under the decedent's policy of insurance with Allstate Insurance Company, and it is further

ORDERED, that the Summons and Complaint together with a copy of this order with Notice of its Entry shall be served upon the Public Administrator of Kings County, as Administrator of the Estate of Ezio Dicioccio, in accordance with CPLR § 308, and upon Norma

Dicioccio and Alfonso V. Dicioccio by United States Postal Service, Certified Mail, Return
Receipt Requested within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.

ENTER



HON. INGRID JOSEPH J.S.C
Hon. Ingrid Joseph
Supreme Court Justice