

Lundi v Center for Nursing & Rehabilitation
2022 NY Slip Op 30196(U)
January 6, 2022
Supreme Court, Kings County
Docket Number: Index No. 1222/2018
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of January 2022

PRESENT:

HON. CARL J. LANDICINO,
Justice.

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JOSEPH EUGENE LUNDI, MARIE GILBERTE LUNDI, MARIE BEATA LOUIS LUNDI, BERNADETTE DUBRESIL, JN PHILIPPE LUNDI, JEAN BERLIN LUNDI, JEAN JOBNES LUNDI AND JEAN DEULISAINT,

Index No.: 1222/2018

Plaintiffs,

DECISION AND ORDER

- against -

CENTER FOR NURSING AND REHABILITATION, AND NEW YORK CITY OFFICE OF THE CHIEF MEDICAL EXAMINER

Motion Sequence #5

Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

- Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed 31-32,
- Opposing Affidavits (Affirmations).....
- Reply Affidavits (Affirmations)
- Hearing Transcript May 26, 2021 and July 21, 2021 (annexed)
- Affidavits of Service..... 33, 41, 43

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After oral argument and a review of the submissions herein, the Court finds as follows:

The attorney for the Plaintiffs Joseph Eugene Lundi, Marie Gilberte Lundi, Marie Beata Louis Lundi, Bernadette Dubresil, J.N. Philippe Lundi, Jean Berlin Lundi, Jean Jobnes Lundi and Jean Deulisan (hereinafter referred to as the "Plaintiffs"), The Law Office of Tamara M. Harris, PLLC (hereinafter referred to by the firm's name or as the "Movant"), moves pursuant to CPLR 321(b)(2), for an order permitting the Movant to be relieved as counsel. The Movant argues that it be allowed to withdraw as

attorney of record for the Plaintiffs, upon the grounds that there is a breakdown in communication between the Movant and the Plaintiffs.

The Court hereby denies the application made by The Law Office of Tamara M. Harris, PLLC to withdraw as counsel for the Plaintiffs.

As an initial matter, the Movant has made this application by notice of motion and has purported to have served the Plaintiffs by regular mail at one address. It is unclear whether service was made separately upon each Plaintiff (see NYSCEF Doc. 33). CPLR 321(b)(2) provides that an attorney's motion to be relieved shall be made on notice "as the court may direct." The Court was not afforded the opportunity to direct the nature and timing of service of the motion as it was made by notice of motion, not by Order to Show Cause. *See Palmieri v Biggiani*, 108 AD3d 604, 970 NYS 2d 41 [2d Dept 2013]. Rather than denying the motion, the Court permitted the Movant to serve a copy of the motion papers upon the Plaintiffs by personal service and provided for virtual access information, due to the COVID pandemic, pursuant to a Scheduling Order dated April 19, 2021. The Movant was to serve the April 19th Order together with the motion and a hearing date was set for May 26, 2021 at 3:00 p.m. Movant filed affidavits of service that purported to have served each Plaintiff pursuant to the April 19th Order. (NYSCEF Doc. 41).

At the hearing on May 26, 2021, the Movant and Defendants' counsel appeared on video, and several persons called in. Each of the callers stated that they were either a party or a family member of a party. Plaintiff Jean Berlin Lundi appeared by telephone. Dalcar Lundi stated that she called in for her father, Plaintiff Joseph Lundi, who was unable to appear. Plaintiff Marie Gilbert Lundi appeared by telephone as well. Finally, Bernadette Dubresil also called in with the assistance of her son. As to her son's presence, Plaintiff Bernadette Dubresil stated that "he understands better than me."

It immediately became apparent that a Creole interpreter was needed¹ and that generally, there was no consent to relieve the Movant. There was an apparent lack of communication between the Movant and the Plaintiffs who had appeared. The Court indicated that the matter would be adjourned in order to give each of the parties an opportunity to be meaningfully present and heard.

By Order dated May 27, 2021 the Court issued a further Scheduling Order for a virtual hearing to be held on July 21, 2021 at noon. Plaintiff was to serve a copy thereof upon all Plaintiffs by certified mail and upon the Defendants by e-filing on or before June 7, 2021. Plaintiff filed an affidavit of service reflecting that the Plaintiffs were each purportedly served by certified mail on June 4, 2021. However, no supporting mailing receipts were annexed.

None of the Plaintiffs appeared on the May 27, 2021 hearing date. At that time, the Movant acknowledged that she had little to no communication with any of the Plaintiffs except for Joseph Lundi. Notwithstanding this, the Movant contends that there has been “a total breakdown in communication between attorney and client.” (See Affirmation in Support, Paragraph 6). There is no indication that the Movant made any attempts to inform or otherwise communicate with the Plaintiffs, except for Joseph Lundi. During the May 27th appearance, the Movant, referring to the Plaintiffs generally, stated “...some of them I’ve never spoken to” and “I never really met any of them.” As to Joseph Lundi, the Movant has not presented any documentation reflecting that she attempted to contact Joseph Lundi, although she represented to the Court that correspondence and calls had been made and the relationship was hostile.

NYCRR Part 1200 (Rules of Professional Conduct) provides in pertinent part:

Rule 1.4

(a) A lawyer shall:

(1) promptly inform the client of:

¹ Movant had not addressed this issue with the Court prior to the hearing.

- (i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;
 - (ii) any information required by court rule or other law to be communicated to a client; and
 - (iii) material developments in the matter including settlement or plea offers.
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with a client's reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.2

- (a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter.

It is clear that the Movant has established that the attorney client relationship with the first named Plaintiff, Joseph Eugene Lundi, has broken down and the Movant is unable to continue to competently represent him. Joseph Eugene Lundi failed to appear at both hearings, and the Movant has asserted that the relationship is hostile. As such, the application by Movant to be relieved as counsel to Joseph Eugene Lundi is granted. However, there was apparently no attempt on the part of the Movant to establish communication with the remaining Plaintiffs. It would be unfair to these Plaintiffs to relieve their counsel when there has been no communication between them. There can be no breakdown in communication if the communication has never been initiated. Accordingly, the motion is denied, without prejudice, in relation to the remaining named Plaintiffs.

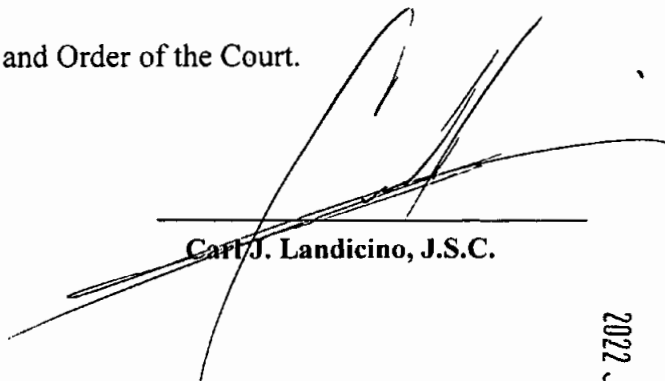
The Movant shall continue as counsel until such time as service of this Decision and Order is served on all parties, including the Plaintiff Joseph Eugene Lundi (with respect to the Plaintiff Joseph

Eugene Lundi, service shall be made by certified mail, together with copies of all papers relating to pending motions, if any). All proceedings in this action shall be stayed for a period of sixty (60) days from said date of service as provided above. This Decision and Order shall be served in the aforesaid manner upon all parties within ten (10) days of the date of entry of this Decision and Order. Upon such completed service, proof of which shall be filed with the Court within ten (10) days of such service, the Movant shall be relieved as counsel for Plaintiff Joseph Eugene Lundi. This shall afford Plaintiff, Joseph Eugene Lundi, a reasonable time to retain substitute counsel. In the event that substitute counsel has not filed a notice of appearance after the aforesaid stay period, Plaintiff Joseph Eugene Lundi shall be deemed self-represented thereafter.

Accordingly, the motion by Plaintiffs' counsel is denied, except in relation to Plaintiff Joseph Eugene Lundi as indicated.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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