

Eisler v Iacono

2022 NY Slip Op 34591(U)

May 12, 2022

Supreme Court, Kings County

Docket Number: Index No. 501183/2018

Judge: Donald Scott Kurtz

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This opinion is uncorrected and not selected for official publication.

At the JCP Part of the Supreme Court of the State of New York, Kings County, located at 360 Adams Street, Brooklyn, New York on the 12th day of May, 2022

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

DAVID EISLER and ALEXANDER FLORES,

Plaintiff(s),

-against-

RALPH IACONO,

Defendant(s).

Index No.: 501183/2018
Motion Sequence No.: 5

DECISION/ORDER

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

<u>Papers</u>	<u>NYSCEF Document Number</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	57-59
Answering Affidavits/Affirmations.....	61
Reply Affidavits/Affirmations.....	64
Memoranda of Law.....	
Other.....	

Upon oral argument and a review of the papers submitted and the relevant law, the Decision/Order on this motion is as follows:

Plaintiff moves for an order pursuant to CPLR §1015(a) and CPLR §1021 to appoint defendant’s counsel, The Law Offices of Karen L. Lawrence, as temporary administrator of defendant Ralph Iacono’s estate for purposes of representation in this action and for substitution of that administrator in place of the deceased defendant.

Defendant, Ralph Iacono, died on June 16, 2020. Defendant’s attorney notified plaintiff by letter dated December 15, 2020 and provided a copy of the death certificate. The Court stayed the action on January 25, 2022 due to the death of the defendant. Plaintiff now moves to appoint defendant’s attorney as temporary administrator of defendant’s estate for the sole purpose of representation in this action. Plaintiff has agreed to limit the amount of recovery sought to the defendant’s insurance policy limits.

In support of plaintiff’s motion, plaintiff alleges that they have been unable to verify if there is an executor and/or administrator appointed to the decedent’s estate and defense counsel

has not provided any information. In addition, plaintiff argues undue delay and prejudice based on the fact that the case is on the trial calendar.

In opposition, defendant argues that plaintiff has failed to seek relief in the appropriate Surrogate's Court and has failed to show undue delay and prejudice.

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 Servs., Inc.*, 104 A.D.3d 724 (2nd Dep't 2013). The determination of whether to exercise its authority to appoint a temporary administrator is committed to the sound discretion of the Court. *Lambert v. Estren*, 126 A.D.3d 942, 943 (2nd Dep't 2015).

In *Dieye, supra*, the Appellate Division upheld the Supreme Court's exercise of concurrent jurisdiction with the Surrogate's Court to appoint a temporary administrator for the estate of a deceased defendant so as to effect a substitution of parties. The Supreme Court acted properly in the interests of avoiding delay, and no prejudice accrued to the estate because the plaintiff, who made the motion, stipulated to seek recovery only to the extent of the defendant's insurance policy. The Appellate Division reversed the lower Court's decision on other grounds.

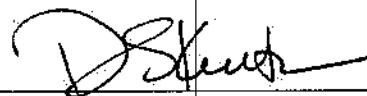
The Court finds that, in view of the plaintiff's agreement to limit the amount of recovery sought to the defendant's insurance policy limit, the defendant's estate will not be adversely affected by the continuation of this action. The Court further finds that the plaintiff has shown undue delay and prejudice based on the fact that this case is on the trial calendar.

In view of the foregoing, it is hereby

ORDERED that plaintiff's motion to appoint defendant's counsel, The Law Offices of Karen L. Lawrence, as temporary administrator of defendant Ralph Iacono's Estate for the sole purpose of representation in this action is granted; and it is further

ORDERED that the portion of the motion seeking to amend the caption to substitute The Law Offices of Karen L. Lawrence as the Administrator of Ralph Iacono's Estate in place of the defendant is granted.

The foregoing shall constitute the Decision and Order of the Court.



DONALD SCOTT KURTZ
Justice, Supreme Court