

Hobbins v Linden Ctr. for Nursing & Rehabilitation
2023 NY Slip Op 32658(U)
July 24, 2023
Supreme Court, Kings County
Docket Number: Index No. 521114/2018
Judge: Genine D. Edwards
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At an IAS Term, Part 80 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 24th day of July 2023.

P R E S E N T:

HON. GENINE EDWARDS

Justice.

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Decision and Order

D'ANDRE HOBBS, as Temporary Administrator of the Estate of MARTEL HOBBS, Deceased,

Plaintiff

-against-

Index No.: 521114/2018

LINDEN CENTER FOR NURSING AND REHABILITATION; LINDEN GARDENS NURSING AND REHABILITATION CENTER; RUBY WESTON MANOR; ALLURE REHABILITATION SERVICES, BROOKLYN GARDENS NURSING & REHABILITATION CENTER; BISHOP HENRY B. HUCLES EPISCOPAL NURSING HOME; THE BROOKLYN HOSPITAL CENTER; OLATUNDE OSOFISAN, MD; FRANZILS SAINT-LOUIS, M.D., a/k/a DR. SAINT-LOUIS FRANZ; ROSELLE REYES, RN; MAGDOLIN SHENDOUDA, PT; ALLAN SANTIAGO, M.D.; HAO ZHANG, M.D.; DIEDRICH HOLTKAMP, MD; NELISSA GRACES, RN; AHMED GHANNEM, PT; SIMONE GORDON-HARDY, RN and John Doe and Jane Doe 1-10 being unknown unnamed defendants

Defendants.

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The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motions/Orders to Show Cause/
Petition/Cross Motions and

Motion Sequences 1-5

Affidavits (Affirmations) Annexed.....40-41, 48, 60-70, 97-98, 157-158
Opposing Affidavits (Affirmations).....57, 61, 124, 140,141; 143, 144; 146,147
Affidavits/ Affirmations in Reply.....152,153; 151; 157; 155

In this action for negligence and medical malpractice, Martel Hobbins (“decedent”) died on April 16, 2020, more than a year after the commencement of this action, thereby staying this matter pending the appointment of an administrator for his Estate. On September 28, 2022, D’Andre Hobbins was granted Temporary Letters of Administration, however such letters restricted the power of the temporary administrator, allowing him to act only for the sole purpose of appearing in Supreme Court actions bearing the index Nos: 52114/2018 and 515723/2018 as the Estate’s representative to forestall the dismissal of the actions (NYSCEF doc. #339). As such, there is no-one with authority to amend pleadings or otherwise act on behalf of the decedent to correct any insufficiencies in the pleadings or move this litigation forward, pending the appointment of a person with the authority to fully represent the Estate in this matter.

Prior to decedent’s death, defendant THE BROOKLYN HOSPITAL CENTER (“TBHC”) moved pursuant to CPLR §3211(a)(8) to dismiss the action in its entirety with prejudice on the grounds that the Second Amended Summons with Notice is jurisdictionally defective for improper joinder in violation of CPLR §1003 and pursuant to CPLR §3012 (b) to dismiss the action for failure to timely serve a Complaint in response to a proper demand for a complaint (mot. seq. 1). Objections to the amended pleadings were also raised by co-defendants in their affirmations in support and opposition to motion sequences 1-5.

Plaintiff moved for a default judgment against defendants, SIMONE GORDON-HARDY, RN, RUBY WESTON MANOR, ROSELLE REYES, RN, BISHOP HENRY

B. HUCLES EPISCOPAL NURSING HOME, LINDEN GARDENS NURSING & REHABILITATION CENTER, FRANZILS SAINT-LOUIS, M.D., a/k/a DR. SAINT-LOUIS FRANTZ, ALLURE REHABILITATION SERVICES, AHMED GHANNEM, PT, MAGDOLIN SHENOUDA, PT and OLATUNDE OSOFISAN, MD, parties who had allegedly not appeared nor answered (mot. seq. 2).

Defendant MAGDOLIN SHENOUDA, PT ("Shenouda") moved to dismiss the action as to her, on the grounds that she was not served with process (mot. seq. 3).

Defendant FRANTZ F. SAINT-LOUIS, MD s/h/a Franzils Saint-Louis, MD a/k/a Dr. Saint-Louis Frantz ("SAINT-LOUIS") moved to compel acceptance of a late answer (mot. seq. 4).

Plaintiff moved to deem the Second Amended Summons with Notice served or for such alternative relief, including for leave to serve process on all appearing parties (mot. seq. 5).

Although this matter was effectively stayed on April 16, 2020, the date of decedent's death, these motions were made just prior to the automatic stay. To the extent that they raise jurisdictional issues, they will be determined to clarify which parties shall remain in the action once the action proceeds.

TBHC's motion to dismiss (mot. Seq. 1) is denied and plaintiff's motion to deem the Second Amended Summons with Notice served (mot. seq. 5) is granted, to the extent that the case is not dismissed, and the Second Amended Summons with Notice is deemed served. The plaintiff avers that the amended summons with notice was mis-labeled; the Second Amended Summons with Notice merely corrected minor errors in the amended

summons with notice, and did not in actuality, constitute an amended pleading. As such the Second Amended Summons with Notice, which added TBHC and others as party defendants, should be viewed as the first amendment to the summons, which can be done without court permission (CPLR §3025[a]). Pursuant to CPLR §2001, “at any stage of an action, including the filing of a summons with notice, summons and complaint or petition to commence an action, the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded...”.

Here, TBHC allege that not only should the action be dismissed for improper joinder (CPLR §1003) based upon plaintiff’s failure to obtain this Court’s permission to amend the pleadings (CPLR §3025a), but also for plaintiff’s failure to serve a complaint when demanded. The complaint was filed on February 27,2019, (NYSCEF doc. #23). THBC appeared via e-file and demanded a complaint three days later, on March 1,2019 (NYSCEF doc. # 26). Inasmuch as the complaint was already filed when TBHC appeared, TBHC cannot claim that it had no notice of the complaint or did not receive the complaint. Plaintiff’s alleged failure to follow-up with service of the complaint by mail upon TBHC’s demand that was e-filed with the notice of appearance, assuming *arguendo* there was a requirement that plaintiff do so although the complaint was already e-filed, is at worst, the kind of “technical, nonprejudicial” mistake that occurs during the commencement phase of an action, including some aspects of service of process that

could be disregarded pursuant to CPLR §2001. “In deciding whether a defect in service is merely technical, courts must be guided by the principle of notice to the defendant—notice that must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Ruffin v. Lion Corp*, 15 N.Y.3d 578, 582, 915 N.Y.S.2d 204 (2010). See also, *Grskovic v. Holmes*, 111 A.D.3d 234, 984 N.Y.S.2d 655 (2d Dept. 2013).

The failure to serve the complaint other than by e-filing does not deprive this Court of jurisdiction over TBHC. However, to the extent any affirmative actions may need to be taken on behalf of the Estate to amend the pleadings, same must await the issuance of further letters of administration.

Plaintiff’s motion for a default judgment (mot. seq. 2) is granted as to defendants RUBY WESTON MANOR and ROSELLE REYES, RN, neither of which appeared, answered nor opposed plaintiff’s motion. The motion is denied as to all remaining parties. All answers served prior to decedent’s demise are deemed timely, any parties who have not submitted answers to date may do so within 20 days of notice of appointment of an administrator, without prejudice to any proper objections.

SHENOUDA’s motion to dismiss (mot. Seq. 3), is held in abeyance until a traverse hearing is completed.

It appears that defendant OLATUNDE OSOFISAN, MD (“Osofisan”) may not have been properly served with process, however no separate motion to dismiss on his behalf was filed. Osofisan may make such motion and/or serve an answer to the extent not done within 20 days of the appointment of an administrator.

Defendant SAINT-LOUIS' motion to extend time to serve an answer and/or deem his answer served (mot. seq. 4) is granted. SAINT-LOUIS's answer is deemed served.

Plaintiff's motion to deem the Second Amended Summons with Notice served or for such alternative relief, including for leave to serve process on all appearing parties (mot. seq. 5) is granted to the extent set forth herein. The Second Amended Summons with Notice is deemed served. Any additional relief is stayed pending further letters of administration.

Accordingly, it is

ORDERED that RUBY WESTON MANOR and ROSELLE REYES, RN, are in default for failing to appear or answer the complaint. An inquest shall be taken at the time of trial, and it is further

ORDERED that a copy of this order shall be served upon RUBY WESTON MANOR and ROSELLE REYES, RN, by regular mail and certified mail within 5 days of the filing of this order on NYSCEF, and an affidavit of service shall be filed within 20 days, and it is further

ORDERED that a traverse hearing shall be held on August 30, 2023, and defendant MAGDOLIN SHENOUDA, PT's motion is held in abeyance, and it is further

ORDERED that the answers of all parties that were served prior to April 16, 2020, including the answer filed by defendant SAINT- LOUIS are deemed timely served, and it is further

ORDERED that the stay in this matter is continued pending further letters of administration conferring authority to act on behalf of the Estate, and it is further

ORDERED that plaintiff shall contact the Kings County Surrogate's Court to determine the status of the letters of administration, file for an extension of the temporary letters, and upload to NYSCEF an update with this Court within 30 days.

Any other relief requested and not explicitly granted herein has been considered and is denied at this time without prejudice.

The foregoing constitutes the Decision and Order of this Court.

ENTER
J.S.C.
HON. GENINE D. EDWARDS